Xilogravura do livro *Les songes drolatiques de Pantagruel* (1565), de autoria presumida de François Desprez. Obra em domínio público. Composição visual remixada.

DOSSIÊ ESPECIAL

RIGHTS FOR AND *WITH* ANIMALS: INVITING ANIMALS *INTO* THE CONVERSATION ABOUT THEIR RIGHTS

DIREITOS PARA E COM OS ANIMAIS: CONVIDANDO OS ANIMAIS AO DIÁLOGO SOBRE SEUS DIREITOS

DERECHOS PARA Y CON LOS ANIMALES: INVITANDO A LOS ANIMALES AL DIÁLOGO SOBRE SUS DERECHOS

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Abstract
Drawing from Merleau-Ponty's phenomenology of the body, care ethics, and philosophy of ethology, this interdisciplinary article depicts beyond-human animals not as more or less like typical adult human beings, but rather as embodied, vulnerable, communicative, and agentic subjects who perceive, make meaning, and act intentionally within their *Umwelt*. Moreover, it turns to the Interest Theory of Rights and to the Bundle Theory, arguing that legal personhood need not be based on moral personhood, that is, animals can be legal persons even if they are not moral ones. It employs, instead, a phenomenological posture and insights from care ethics to comprehend the ethical implications of the interspecies kinship, which is grounded in a shared and multi-layered vulnerability and embodied communication that takes place within the shared 'flesh of the world'. It further maintains there is a human duty to acknowledge, listen, and respond to animals' agency, proposing a phenomenological–ethological methodology for identifying and translating animals' interests and preferences into legal claim-rights from their own standpoints.

Keywords
phenomenology; care ethics; animal rights; personhood; agency.

Resumen
Partiendo de la fenomenología del cuerpo de Merleau-Ponty, de la ética del cuidado y de la filosofía de la etología, este artículo interdisciplinario describe a los animals extra-humanos no en función de sus semejanzas o diferencias con respecto a los seres humanos adultos típicos, sino como sujetos incorporados, vulnerables, comunicativos y dotados de agencia, que perciben, significan y actúan intencionalmente en sus propios *Umwelten*. Además, se recurre a la Teoría de los Intereses de los Derechos y a la *Bundle Theory* para argumentar que la personalidad jurídica no necesita basarse en la personalidad moral; es decir, los animales pueden ser personas jurídicas incluso sin ser personas morales. En una dirección distinta, se adopta la postura fenomenológica y se incorporan contribuciones de la ética del cuidado para reflexionar sobre las implicaciones éticas de la alianza entre especies, cuyos miembros comparten una vulnerabilidad común y multifacética, se comunican de manera incorporada y cocrean sentido en la "carne del mundo". Con base en ello, se defiende la existencia de un deber humano de reconocimiento, escucha y respuesta ante la agencia animal, proponiéndose una metodología fenomenológico-etológica para identificar y traducir los intereses y preferencias de los animales en derechos subjetivos legales, adoptando como punto de partida sus propios puntos de vista.

Palavras clave
Fenomenología; ética del cuidado; derecho animal; personalidad; agencia.

Resumo
Partindo da fenomenologia do corpo de Merleau-Ponty, da ética do cuidado e da filosofia da etologia, este artigo interdisciplinar descreve animais extra-humanos não a partir de suas semelhanças ou diferenças em relação a seres humanos adultos típicos, mas como sujeitos incorporados, vulneráveis, comunicativos e dotados de agência, que percebem, atribuem sentido e agem intencionalmente em seus próprios *Umwelten*. Além disso, utiliza a Teoria dos Interesses dos Direitos e a *Bundle Theory* para argumentar que a personalidade jurídica não precisa se basear na pessoalidade moral, ou seja, animais podem ser pessoas jurídicas mesmo sem serem pessoas morais. Diversamente, recorre-se à postura fenomenológica e a contribuições da ética do cuidado para refletir sobre as implicações éticas da aliança entre espécies, cujos membros compartilham uma vulnerabilidade comum e multifacetada, comunicam-se de modo incorporado e co-criam sentido na "carne do mundo". Com base nisso, defende-se a existência de um dever humano de reconhecimento, escuta e resposta à agência animal, propondo-se uma metodologia fenomenológico-etológica para identificar e traduzir os interesses e preferências dos animais em direitos subjetivos legais, adotando, para isso, os seus próprios pontos de vista como ponto de partida.

Palavras-chave
Fenomenologia; ética do cuidado; direito animal; pessoalidade; agência.

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I hear a dog barking. Again, as before the storm, I feel watched.
By nature, I think now. [...] The animals have eyes that see us.
The birds, the trees, everything knows what we do.
Linda Hogan, Power, 1998

Introduction[1]

The goal of this interdisciplinary article is, first, to provide animal rights law with a more expansive moral grounding that moves away from the anthropocentric 'sameness' approach, which grants more or less value to animals based on their similarities to typical adult human beings;[2] second, to propose that animals should be invited into the conversation about their rights, which is politically relevant, since it matters who has a say in how a society organises itself; and third, to illuminate how this could be done by engaging with the phenomenological ethological bi-constructive approach.

Building on this, in Section 1, I critically examine the concepts of moral and legal personhood, arguing that the former is far too restrictive to account for animals' experiences, and not necessary for one to be a legal person to begin with. I then explain why I think animals are the kinds of beings who can hold rights, and what I take rights to be in the first place. To do this, I turn to the Interest Theory of Rights and Visa Kurki's Bundle Theory on legal personhood.

In Section 2, I introduce phenomenology as a method and explain why Merleau-Ponty's approach, by moving away from anthropocentrism and from the Cartesian reductionist view of animals, offers a more compelling foundation for an interspecies ethics to be developed. In what follows, I depict animals through phenomenology as intentional, agentic, and communicative subjects.

In the third section, I develop an interspecies ethics based on how care ethics and phenomenology may contribute to one another, arguing for the existence of three human duties towards beyond-human creatures:

(i) recognising animals as kin;
(ii) listening to them attentively; and
(iii) responding to their interests and preferences.

Lastly, in Section 4, I propose that animal rights should emerge from attentive listening to animals' embodied communication, and that their interests and preferences ought to take their own standpoints as the starting point, embracing interpretative phenomenological-ethological practices that acknowledge our evolutionary continuities and shared animality.

[1] This article summarises key arguments developed in some parts of the first chapter of my PhD thesis. See Aubert, Anna Caramuru P., *When the Body: Phenomenological Considerations for Listening to Animals in the Making of Their Rights*.

[2] On a brief description on some of the most traditional approaches on animal ethics, see Barbosa-Fohrmann; Aubert, *Eles sofrem?*.

1. Personhood

1.1 Conditions and ethical consequences

Michael Quante[3] breaks down the different usages of the concept of personhood in philosophy, illuminating them. The descriptive one, important for the present debate, refers to the conditions required for one to be considered a person – e.g., possessing enough rationality, autonomy, a sense of the future, self-consciousness, language, abstract thinking, and so on.

A different usage altogether, he notes, refers to what being a person in the descriptive sense would entail morally. As he maintains, to find out what being a moral person in the descriptive sense means in terms of moral treatment requires one to identify "the assumptions regarding the assumed ethics and meta-ethics".[4]

In other words, being a person in what he terms 'the evaluative' sense entails having a certain ethical standing. For instance, saying that "[e]xperiments with human embryos are ethically inadmissible because human embryos are persons"[5] means linking personhood to an ethical status that prohibits their utilisation in scientific experiments. However, nothing is said "[...] about further characteristics or abilities which go hand in hand with the personhood of an entity. To close this gap, it must be explicated whether the concept of the person is used in the descriptive sense, and if so, then with what contents".[6]

Finally, "[i]f we are searching for the relevance of the concept of the person as a justifying criterion for the moral status of a human being, we are aiming at the conditions for personhood"[7], that is, "the moral status should be justified via the classification of an entity as a person, i.e. through characteristics and abilities on the basis of which an entity is a person (in the descriptive sense)."[8]

1.2 Legal personhood

The problem with using personhood in the descriptive sense as a criterion for granting animals moral standing is that its conditions are traditionally based on typically human traits – like rational autonomy, self-consciousness, a certain notion of the future, etc. – thus forcing us to try and squeeze manifold creatures into a very narrow human-like scheme.

In fact, as noted by J. Baird Callicot, within 'ethical humanism', because "[o]nly human beings are rational, or capable of having interests, or possess self-awareness, or have linguistic abilities, or can represent the future, [...]",[9] they are the only ones that matter morally. As an immediate consequence, some *higher* animals have been described as persons because they possess enough of the required personhood characteristics and abilities to be considered as such (like whales,

[3] Quante, *Pragmatistic Anthropology*; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[4] Quante, *Pragmatistic Anthropology*, p. 55; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[5] Quante, *Pragmatistic Anthropology*, p. 55; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[6] Quante, *Pragmatistic Anthropology*, p. 55; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[7] Quante, *Pragmatistic Anthropology*, p. 57; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[8] Quante, *Pragmatistic Anthropology*, p. 57; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[9] Callicott, *Animal Liberation*, p. 316; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.

elephants, and great apes). On the other hand, *simpler/lower* beings who lack those qualities are kept out.

Crucially, however, moral and legal personhood are distinct concepts, and one does not need to be a moral person to be *a legal one* – the lawmaker is the one in charge of determining who is to be *assigned* legal personality in a given legal system.

Conversely, Visa Kurki's[10] Bundle Theory suggests that a legal subject has *at least one right*, regardless of the type of right. Thus, animals are already legal subjects in most places (as there are usually at least some welfare laws that protect some of their interests), even if they do not qualify as legal persons.

For beyond-human creatures to become legal persons, he says, a bundle of rights is required, so animals would need to receive enough passive legal personhood claim-rights – i.e., "fundamental protections, the capacity to be a party to special rights, and the capacity to own property"[11] – even if they do not receive active ones (like competences and duties).[12] Kids and people with severe cognitive disabilities, for instance, possess claim-rights even when they do not have the capacity to perform legal acts (legal competences) and legal responsibility (onerous legal personhood).

Still, the decision to grant someone enough of the requirements for them to become a legal person is, of course, not exercised arbitrarily. Alternatively, humans are protected as legal persons because there is a deeper belief that "human beings of their very nature 'deserve' having their status as persons recognised by the law [...]".[13] In other words, the lawmaker's ethical beliefs matter, which is why a sufficient explanation of the concept of legal personhood must encompass not only its conventional aspect, but also "the relationship between the norms that shape it on the one hand and the opinions and values that underlie these regulations on the other".[14]

In view of this, the question I wish to turn to in Section 2 refers to where one may find the ethical foundations for attributing legal personality to animals, if not in moral personhood. Before I do that, in the next section, I will briefly explain why I think animals are the kinds of beings who *can* hold rights and what I understand rights to be in the first place.

1.3 Interest Theory of Rights

There are different theories that describe what rights are based on their substance, that is, the concerns protected by rights, the motives for such rights to exist in the first place, or "what rights do for those who hold them".[15] The main ones are the Will Theory and the Interest Theory.[16]

[10] Kurki, *A theory of legal personhood*; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[11] Kurki, *A theory of legal personhood*, p. 113; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[12] Kurki, *A theory of legal personhood*; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano*.
[13] Pietrzykowski, *Personhood Beyond Humanism*, p. 11; Quante, *Pessoa, pessoa de direito e o status moral do indivíduo humano.*
[14] Pietrzykowski, *Personhood Beyond Humanism*, p. 23; Quantev, *Pessoa, pessoa de direito e o status moral do indivíduo humano.*
[15] Wenar; Cruft, *The Stanford Encyclopedia of Philosophy*, n.p.
[16] Wenar; Cruft, *The Stanford Encyclopedia of Philosophy*.

As the name suggests, the first focuses on *sovereignty* and *choice*, turning to the moral importance of autonomy, of self-realisation, and of personhood,[17] and having a right is, moreover, about having control over someone else's duty.[18] The second, in turn, maintains "[...] that the function of a right is to further the right-holder's interests. An owner has a right, according to the interest theorist, not because owners have choices, but because the ownership makes owners better off".[19]

For animals, it makes much more sense to adopt the latter, acknowledging that for a right to exist, it must preserve one or more subjective interests. The subject does not need to be competent to demand or waive the enforcement of such a right, like in the Will Theory, which is why the Interest Theory can "readily ascribe rights to children and to mentally incapacitated people (and indeed to animals, if a theorist wishes)".[20] Within this framework, Stucki explains that "two conditions must be met for animals to qualify as potential right holders: (i) animals must have interests, (ii) the protection of which is required not merely for ulterior reasons, but for the animals' own sake, because their well-being is intrinsically valuable".[21]

Crucially, although I believe animals make meaningful decisions and are agents, I acknowledge that they do not possess the same type of rational will that typical adult human beings do and that the Will Theory requires. Still, as I will clarify momentarily, they have rights *because* they have interests that *deserve* legal protection.

Nevertheless, emphasising interests instead of will does not mean that agency is not important, or that animals, human or beyond, should not have their preferences heard and their autonomy fostered. Alternatively, preferences and autonomy – having a say in one's life, identity, biography, etc. – are important interests different subjects can have in different ways depending on how they experience the world and engage with it.

A final caveat here is that in order for animals to hold rights, it does not matter that they lack the capacity for duties, an objection frequently raised against the possibility of recognising their legal capacity, assuming, mistakenly, that there ought to be a symmetry between rights and duties.[22] As argued by Kramer, there is a correlation between rights and duties.

> [...] in the sense that the existence of a right entails the existence of a duty and vice versa. Consequently, X's possession of a right does entail the bearing of an obligation – but not the bearing of an obligation by X (save in extremely unusual circumstances).[23]

Crucially, I believe, further, that animals have *two types of interests*, *welfare* ones (related to what is good for a certain subject) and *preference* ones (associated with desire and with wanting things).[24]

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[17] Harel, *Theories of rights*.
[18] Wenar; Cruft, *The Stanford Encyclopedia of Philosophy*.
[19] Wenar; Cruft, *The Stanford Encyclopedia of Philosophy*, n.p.
[20] Kramer, *Rights Without Trimmings*, p. 78.
[21] Stucki, *Towards a Theory of Legal Animal Rights*, p. 542.
[22] Stucki, *Grundrechte für Tiere*.
[23] Kramer, *Do Animals and Dead People Have Legal Rights?*, p. 42.
[24] Stucki, *Towards a Theory of Legal Animal Rights*; Palmer, *Animal Ethics in Context*.

Tom Regan notes that these two concepts are logically distinct, and that one "[...] can be interested in something that is not in his interests – for example, he might be interested in taking drugs that are injurious to his health".[25] Animals, Regan correctly argues, have both kinds of interests:

> [l]ike flowers, animals have a basic biological need for water and nourishment; but like us, and in this respect unlike flowers, they prefer to have these needs satisfied rather than unsatisfied. Correlated with their basic needs, in short, animals, like us, have desires. They are interested in food and water, just as food and water are in their interests.[26]

The only thing I would point out in disagreement with Regan's overall approach is that I do not believe that preferences are exclusive to 'more complex' or 'higher animals'. Instead, by employing a phenomenological style of thinking, I maintain that they are part of *all* animals' embodied agency and autonomy, as I hope to clarify in the following section.

2. Phenomenology of the body

2.1 The phenomenological posture

In this article, I employ phenomenology as a posture, a style of thinking, a way of looking at the world as someone who is part of it, that is, a body *who* is situated, rooted, enmeshed in the earthly web of life, rather than an objective or neutral bystander capable of transcending it when attempting to understand it and all its phenomena.

As suggested by phenomenologist Ralph Acampora, instead of placing ourselves *out* of this world, trying to learn 'how to connect with it', we have to come to terms with the fact that we are not minds floating "in a rarified space of pure spectatorship apart from all ecological enmeshment and social connection with other organisms and persons, wondering, as it were, if 'there's anybody out there'".[27] Rather, from the very beginning, we are inevitably already "caught up in the experience of being a live body thoroughly involved in a plethora of ecological and social interrelationships with other living bodies and people".[28]

Consequently, the burden of proof is reversed, and the task of the moral philosopher is no longer to extend humans' moral circle to *include* animals but rather to acknowledge that in excluding beyond-human creatures we are *actively choosing* to isolate ourselves, and this is a choice that needs to be justified if it is to be made. It therefore falls on anthropocentrism the burden of proving why this should be done in the first place, that is, what justifies renouncing our original experience of entanglement and grounding in the world.[29]

It is important to note, also, that Merleau-Ponty's phenomenology explicitly moves away from the Cartesian split of body–mind, which takes "the body as the

[25] Regan, *The case for the animal rights*, p. 87.
[26] Regan, *The case for the animal rights*, p. 89.
[27] Acampora, *Corporal Compassion*, p. 4.
[28] Acampora, *Corporal Compassion*, p. 5.
[29] Acampora, *Corporal Compassion*.

sum of its parts with no interior, and the soul as a being wholly present to itself without distance".[30] Animals, in the Cartesian framework, are seen as 'radically other' and as mere matter that move mechanically and by instinct, while humans are granted special abilities and transcendence.[31] This view, however, removes all agency from animals, who become "a mere body without a soul, a mere automaton, susceptible to all kinds of exploitation and violence".[32]

In contrast, for Merleau-Ponty, it makes no sense to "[...] conceive of the relations between species or between the species and man in terms of a hierarchy. What there is a difference of quality and [...] living creatures are not super imposed upon one another [...]".[33]

His phenomenology, therefore, offers a much less anthropocentric pathway for one to follow when attempting to comprehend animals' experiences and ways of being, reframing the ethical terms of our interspecies encounters.

A final caveat here is that phenomenology is a descriptive field of philosophy, concerning itself with defining essences, such as that of perception or consciousness. In Section 3, I will give it a normative direction, so that it can inform, first, an interspecies ethics, and second, animal law. This is needed because, as noted, lawmakers are humans who therefore rely on their ethical beliefs when designing laws, and laws, in turn, mirror societal expectations, so it matters, politically, *who* is acknowledged as capable of having a claim, that is, who counts as a citizen whose demands warrant a response.

2.2 The body

Subjecthood, in Merleau-Ponty's phenomenology, is rooted in the body, 'who' "can no longer be regarded as a vessel for the mind and/or soul, nor are the body and the mind or soul inextricably linked: they are one and the same thing".[34] Therefore, consciousness is no longer the certainty of one's existence for oneself ('I think therefore I am'[35]), or *the* condition for being. By contrast, the world is factual, and all knowledge about it comes from a certain *standpoint,* i.e., a subject's *direct experience*.[36]

This leads Merleau-Ponty to state, in *Phenomenology of Perception*, that "[r]ationality is not a problem",[37] that is, it is not as mysterious as one might imagine. As noted by him, "[...] reason [...is] not problematical. [...] All cognitions are sustained by [...] our *communication with the world* as primary *embodiment* of rationality".[38]

In other words, consciousness and mental processes do not come to be in isolation, being rooted in how life organises itself, and the mind is not separated from the body, but instead depends on its material basis, such as cells, organs, biological systems, and so on. The physical world and biological processes give rise

[30] Merleau-Ponty, *Phenomenology of Perception*, p. 230.
[31] Plumwood, *Human vulnerability and the experience of being prey*, p. 34.
[32] Maciel, *Animalidades*, p. 14, translation is mine.
[33] Merleau-Ponty, *In Praise of Philosophy and Other Essays*, p. 165.
[34] Weisberg, *The Simple Magic of Life*, p. 90.
[35] Descartes, *The philosophical works of Descartes*, p. 586.
[36] Merleau-Ponty, *Phenomenology of Perception*.
[37] Merleau-Ponty, *Phenomenology of Perception*, p. xxiii.
[38] Merleau-Ponty, *Phenomenology of Perception*, p. xxiii, emphasis added.

to the mind, and rationality is, itself, embodied, that is, rooted in the world *through* the body, forming a continuum rather than a divide, "because the subject that I am, when taken concretely, is inseparable from this body and this world".[39]

Meanwhile, the body is intentional and conscious, and not an object among others: it is "the vehicle of being in the world"[40] and a "means of communication with [it]".[41] Consciousness, therefore, becomes this 'being in the world', where the body functions as the means for experience, perception, and meaning-making, which means that body and world are always, from the very start, connected to one another.

2.3 Motor intentionality

In phenomenology, 'intentionality' refers to how consciousness is always, from the beginning, directed *at* something, therefore possessing *an intended object* – if I think, I think *of* something, like the trip I took last week. In other words, intentionality does not refer to having a purpose 'in mind' when acting, but first, *to the directedness of consciousness to something.*

As the father of phenomenology, Edmund Husserl defines it,

> [c]onscious processes are also called intentional; [...] the word intentionality signifies nothing else than this universal fundamental property of consciousness: to be consciousness of something; as a cogito, to bear within itself its cogitatum.[42]

For instance, says Merleau-Ponty, "[i]f I see an ash-tray, *in the full sense of the word see*, there must be an ash-tray there, and I cannot forego this assertion. To see is to see something".[43] Hence, "[e]very act of consciousness, every experience, is correlated with an object. Every intending has its intended object".[44]

Intention, therefore, implies a *relationship* of *consciousness* with an *object*, and consciousness is not an 'I' encapsulated within the otherwise empty individual, but a consciousness that is always *of*, connected to the *outside*.[45]

For Husserl, this takes place in a reflexive, transcendental realm, but in Merleau-Ponty, there is a structural turn to the body. As the latter explains,

> I experience my own body as the power of adopting certain forms of behaviour and a certain world, and I am given to myself merely as a certain hold upon the world; now, it is precisely my body which perceives the body of another, and discovers in that other body a miraculous prolongation of my own intentions, a familiar way of dealing with the world.[46]

[39] Merleau-Ponty, *Phenomenology of Perception*, p. 475.
[40] Merleau-Ponty, *Phenomenology of Perception*, p. 160.
[41] Merleau-Ponty, *Phenomenology of Perception*, p. 106.
[42] Husserl, *Cartesian meditations*, p. 33.
[43] Merleau-Ponty, *Phenomenology of Perception*, p. 436, emphasis in the original.
[44] Sokolowski, *Introduction to Phenomenology*, p. 8.
[45] Merleau-Ponty, *Phenomenology of Perception*, 2005; Husserl, *Cartesian meditations*; Husserl, *Ideas pertaining to a pure phenomenology and to a phenomenological philosophy*.
[46] Merleau-Ponty, *Phenomenology of Perception*, p. 412.

The body, in Merleau-Ponty,[47] is not merely a physical entity, but a living, perceiving, experiencing subjectivity. The living body is the subject of perception, and "consciousness is intentionally embodied [...]"[48], so more than the remark that 'consciousness is always *of* something', intentionality, for Merleau-Ponty, refers to the fact "that the unity of the world, before being posited by knowledge in a specific act of identification, is 'lived' as ready-made or already there".[49] As he maintains in *The Structure of Behavior*, "[g]rasped from the inside, my behavior appears as directed, as gifted with an intention and a *meaning*".[50]

Behaviour is thus not simply a series of physical events. Instead, it takes place in the form of a structure that anticipates its *future*, its *goal*. It is "[...] the projection outside the organism of a possibility which is internal to it".[51] Motility, even "in its pure state, possesses the basic power of giving a meaning [...]",[52] a meaning which is made public by the moving body, through its directedness.

As explained by Merleau-Ponty,

> consciousness is a network of significative intentions which are sometimes clear to themselves and sometimes, on the contrary, *lived rather than known*. Such a conception allows us to link consciousness with action by *enlarging our idea of action*.[53]

Consequently, from an embodied perspective, animals can be depicted as agents, as agency is not about having rational autonomy or will, but about having a body *who* perceives, *who* experiences, and *who* acts in meaningful (and therefore unmechanical) manners.

If, when animals move, their intentions are made public, one does not need to examine *if* animals *can* experience pain to assert that there is 'someone', rather than something, 'there'; their subjectivity and consciousness, instead, are given by their embodied, meaningful experiences, communicated through their bodily movements. A living body perceives the other as a living body without having to undergo any sort of cognitive process of attributing mental states to them.

Animals, therefore, become both *subjects* and *agents*, regardless of presenting any degree of rationality or any kind of human-like ability, who *perceive* and *give meaning to things* and then *act* accordingly. This is what makes them sentient, i.e., beings for whom things are like.

2.3 Embodied communication and empathy

Communication can take up many forms, e.g., speech (human), waggle dance (bees), chirping (birds), colouring in the skin (reef squids),[54] etc. Even gestures that come out of habit or "absent-mindedness"[55] carry meaning and are therefore means of communicating. For instance, "I may have been under the impression that I lapsed

[47] Merleau-Ponty, *Phenomenology of Perception*.
[48] Barbosa-Fohrmann, *Narrating Experiences of Alzheimer's Through the Arts*, p. 85.
[49] Merleau-Ponty, *Phenomenology of Perception,* p. xix.
[50] Merleau-Ponty, *The Structure of Behavior*, p. 7, emphasis added.
[51] Merleau-Ponty, *The Structure of Behavior*, p. 125.
[52] Merleau-Ponty, *Phenomenology of Perception*, p. 166.
[53] Merleau-Ponty, *The Structure of Behavior*, p. 173, emphasis added.
[54] Meijer, *When Animals Speak*; Meijer, *Multispecies Dialogues.*
[55] Merleau-Ponty, *Phenomenology of Perception*, p. xx.

into silence through weariness, [...], yet my silence [...] immediately take on a significance, because my fatigue [... is] not accidental".[56]

As maintained by Merleau-Ponty in *The Visible and the Invisible*, speaking and understanding happen

> long before learning from Descartes [...] that thought is our reality. We learn to meaningfully handle language [...], in which we install ourselves, long before learning [...] the intelligible principles upon which our tongue (*langue*) and every tongue are 'based' [...].[57]

A child, therefore, "understands well beyond what he knows how to say, responds well beyond what he could define, and this after all is as true of the adult".[58]

Because the body has a natural capacity of expression, "I do not see anger or a threatening attitude as a psychic fact hidden behind the gesture, I read anger in it. The gesture does not make me think of anger, it is anger itself".[59] Further, "[t]he sense of the gestures is not given, but understood, that is, recaptured by an act on the spectator's part".[60]

In this context, within the phenomenological tradition, empathy is not the cognitive exercise of putting oneself in someone else's shoes, but a form of intentional communication that allows one to access someone else's experiences, if only partially. It is thus enfleshed and intercorporeal, and allows for a 'living body' to directly feel another *as* 'living body'.

Finally, as explained by Dan Zahavi, empathy is "a distinctive form of other-directed intentionality, [...which] allows foreign experiences to disclose themselves as foreign rather than as [one's] own".[61] For example, one might see "[...] the other's elation or doubt, surprise or attentiveness in his or her face, we can hear the other's trepidation, impatience or bewilderment in her voice, feel the other's enthusiasm in his handshake [...]".[62]

When it comes to animals, "[w]e can tell when an animal is scared because it shrinks, that it's in pain because it screams".[63]

In other words, empathy allows one to participate in another subject's world, while leading not to a merging of these two subjects but to a co-experiencing.[64]

3. Giving a normative direction to phenomenology

3.1 Communicating with animals in the flesh of the world

Through embodied communication, the meanings created by different subjects overlap, and new meanings are co-created, making up the *interworld,*

[56] Merleau-Ponty, *Phenomenology of Perception*, p. xx-xxi.
[57] Merleau-Ponty, *The Visible and the Invisible*, p. 12.
[58] Merleau-Ponty, *The Visible and the Invisible*, p. 13.
[59] Merleau-Ponty, *Phenomenology of Perception*, p. 214.
[60] Merleau-Ponty, *Phenomenology of Perception*, p. 215.
[61] Zahavi, *Empathy and other-directed intentionality*, p. 138.
[62] Zahavi, *Empathy and other-directed intentionality*, p. 138.
[63] Dillard-Wright, *Sympathy and the Non-human*, p. 5.
[64] Barbosa-Fohrmann, *Narrating Experiences of Alzheimer's Through the Arts*.

where all animals, human and beyond, meaningfully encounter one another.[65] Meaning is thus inseparable from *subjectivity* as well as from *intersubjectivity*, being communicated through *intentional* bodily movements.

While the interworld refers to the site where meaning is created, exchanged, and co-created, the 'flesh of the world' is what makes this possible.[66] As explained by Merleau-Ponty, flesh "[...] is not matter, is not mind, is not substance. [...] [It is] a general thing, midway between the spatio-temporal individual and the idea, a sort of incarnate principle that brings a style of being wherever there is a fragment of being".[67] It thus refers to the interconnection between visible/sensible and invisible/transcendental – the

> [...] body is made of the same flesh as the world (*it is perceived and perceiving*), and [...] this flesh of my body is shared by the world, the world reflects it, encroaches upon it and it encroaches upon the world, they are in a relation of transgression or of overlapping.[68]

Flesh is therefore the fabric that holds the sensuous reality, a material and perceptual continuity responsible for binding all living beings, where all perception is directed *at* the same sensuous world, perceived, in turn, through different subjects' bodily senses. "It is the coiling over of the *visible* upon the *seeing body*, of the *tangible* upon the *touching body*".[69] Consequently, "*between my movements and what I touch*, there must exist some *relationship* by principle, some *kinship*",[70] so flesh is what accounts for this intersubjective meaning-making. Animals are, in this sense, "agents who are not just humanlike subjects or thinglike objects but actors inextricable from human life".[71]

This may seem complicated, but it really is not. Imagine, for instance, that my dog J. hears and smells something in the factual world which I, a human with a poor sense of smell and hearing in comparison to him, cannot hear or smell. Still, for a reason initially unknown to me, J. starts barking at the door and moving his body in a certain way.

I turn my attention to J. and interpret his bodily movements and conclude, upon interpreting his behaviour, that there is an unwanted human neighbour (who I will refer to as X) outside our door.

I cannot smell or hear X, but J., X, and I all share the same factual world; that is, X is *actually* there, and J. and I can hover over him, discussing him.

J. can, moreover, assess X's presence through his olfactory and hearing senses and, upon giving meaning to what he perceives ("the neighbour X is standing outside"), J. then meaningfully moves in a certain way, which tells me, in turn, that it is X, and not someone else, who is standing outside.

This is possible, also, because in this particular case, there is a shared history between us all – I know beforehand that my dog and X have had confrontations in the past, and I have learnt, over time, that J. dislikes and even fears

[65] Merleau-Ponty, *Phenomenology of Perception*.
[66] Merleau-Ponty, *The Visible and the Invisible*.
[67] Merleau-Ponty, *The Visible and the Invisible*, p. 139.
[68] Merleau-Ponty, *The Visible and the Invisible*, p. 248, emphasis added.
[69] Merleau-Ponty, *The Visible and the Invisible*, p. 146, emphasis added.
[70] Merleau-Ponty, *The Visible and the Invisible*, p. 133, emphasis added.
[71] McHugh, *Love in a time of slaughters*, p. 7. For a review on the book, see Aubert, *Suffering, Sensibility and Art in the Anthropocene*.

X from how he behaves when there is a random person outside versus when it is this specific guy.

As mentioned, I cannot hear or smell X, but I can listen to and look at J., who tells me, through the directedness of his bodily movements, that this particular human is standing outside, so the sound and smell which my dog meaningfully perceives are part of his perceptual, meaningful world, i.e., his *Umwelt*,[72] but they are not part of mine, since, initially, they hold no meaning to me – my poor sense of smell and hearing, and the door that stands between us, make it impossible for me to pick up on the cues that indicate X's presence and give any meaning to them.

Yet, when I engage in an embodied understanding with J., communicating with him, the presence of X becomes part of my *Umwelt*, as meaning is co-created between J. and me.

Again, J.'s perception is directed at the neighbour, which allows me to make the interpretation I did. As Merleau-Ponty explains, the *Umwelten*, that is, "[...] the 'private worlds' communicate",[73] being variants "of one common world",[74] which allows me and J. to witness a "[...] sole world, as the synergy of our eyes suspends them on one unique thing".[75] He continues: "[...] [t]he sensible world is common to the sensible bodies",[76] so the world becomes "the locus of their compossibility",[77] and phenomenology places itself right there, at the joints that mark the entanglement and separation that simultaneously connect and distinguish my dog, myself, and our neighbour. "Insofar as I have sensory functions, a visual, auditory, and tactile field, I am already in communication with others taken as similar psycho-physical subjects".[78]

Communication demands, finally, a reciprocity of my own body, *who is open to* understanding. This reciprocity means there is a reversal in language "when one passes from the sensible world, in which we are caught, to a world of expression, where we seek to capture significations to serve our purpose [...]".[79]

The expressions 'seek to' and 'to serve our purpose' highlight, as I interpret them, an instrumental aspect of communication, present also in movements. And as noted by Merleau-Ponty, "[t]he will to speak is one and the same as the will to be

[72] Jakob von Uexküll's *Umwelt* theory, which significantly influenced Merleau-Ponty's phenomenology (Buchanan, *Onto-Ethologies*), relates the idea that each subject inhabits varying perceptual worlds which become meaningful from their own perspectives. Therefore, rather than a neutral reality, different worlds emerge through lived experiences, in a dynamic way. He illustrates this with the tick, describing their sensorial and perceptive life. Ticks' experiences defy both anthropocentrism and the Cartesian mechanical view of animals, as they are perceived and depicted by Uexküll as subjects at the centre of their own world, and as agents. "It cannot, therefore, be compared to a machine, only to the machine operator who guides the machine" (Uexküll, *A foray into the worlds of animals and humans*, p. 45). Crucially, for Uexküll animals are non-mechanical beings who build their own life-worlds through meaningful processes, rather than mathematical ones. As he puts it, "[b]ehaviors are not mere movements or tropisms, but they consist of *perception (Merken) and *operation (Wirken); they are not mechanically regulated, but meaningfully organized" (Uexküll, *The Theory of Meaning*, p. 26, emphasis in the original).

[73] Merleau-Ponty, *The Visible and the Invisible*, p. 11.

[74] Merleau-Ponty, *The Visible and the Invisible*, p. 11.

[75] Merleau-Ponty, *The Visible and the Invisible*, p. 11.

[76] Merleau-Ponty, *The Visible and the Invisible*, p. 13.

[77] Merleau-Ponty, *The Visible and the Invisible*, p. 13.

[78] Merleau-Ponty, *The Visible and the Invisible*, p. 412.

[79] Merleau-Ponty, *The Visible and the Invisible*, p. 72.

understood",[80] so there seems to be an interest that arises through the act of communicating – that of being understood.

3.2 Embodied care

Communication is not always successful; disagreements and misunderstandings are common, even within intraspecific relationships.[81] Listening, moreover, is not a given; it must be learnt, and paying attention may be the first thing we ought to do to properly listen to different animals. In Eva Meijer's words,

> [e]mbodied listening matters because the natural world is not something outside of us, that we can understand solely with our minds, and write about from behind our computers. We are part of a larger living web, we think in part through our bodies, and we are always bodies in the world. To be able to understand and represent the world outside of us, we have to attend to it, and our body is part of this too. [...] Just as the whole body is part of speaking, the whole body is part of listening.[82]

Building on this, I believe that care ethics can provide us with interesting tools for us to learn how to pay attention and listen, while assisting in the process of giving a normative direction to phenomenology, explaining *why* there is a duty to acknowledge animals' interests, and *how* to respond to them.[83] Simultaneously, as argued by Maurice Hamington[84], care can only be understood through the acknowledgment of its embodied dimension, since reciprocity is what accounts for communication – and therefore empathy – to come to being.[85] Without embodiment, one cannot "make meaningful reciprocal connections that [... prompt] actions".[86]

Lori Gruen[87] argues that at the core of ethical engagement lies the attentiveness to the experiences of others, and the kind of moral attention she recommends is that of 'entangled empathy', which

> [...] involves both affect and cognition and will necessitate action. The empathizer is attentive to both similarities and differences between herself and her situation and that of the fellow creature with whom she is empathizing. [...] Because entangled empathy involves paying critical attention to the broader conditions that undermine the well-being or flourishing of those with whom one is empathizing, this requires those of us empathizing to attend to things we might not have otherwise (much as the material feminists would have us do) and figure out how to better navigate difference. Entangled empathy requires gaining wisdom and perspective and, importantly, motivates the empathizer to act ethically.[88]

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[80] Merleau-Ponty, *In Praise of Philosophy and Other Essays*, p. 55.

[81] Meijer, *Multispecies dialogues*.

[82] Meijer, *Multispecies dialogues*, p. 178.

[83] Care ethics emerged through Carol Gilligan's insight that women's selves are more interconnected than men's, being "determined by their relationships" (Nedelsky, *Law's Relations*, p. 31), while men's selves are more individualised (Donovan, *Interspecies dialogue and animal ethics*; Gaard, *Living interconnections with animals and nature*). Gaard notes how these two understandings of the 'self' give way to an ethics of rights or justice (separate self – male), and an ethics of care or responsibilities (interconnected self – female). Men and women can access both systems, the difference lies in the focus given to each (Gaard, *Living interconnections with animals and nature*).

[84] Hamington, *Resources for feminist care ethics in Merleau-Ponty's phenomenology of the body*.

[85] Merleau-Ponty, *The Visible and the Invisible*, p. 145. See Aubert, *Do ecofeminismo à ecofenomenologia*.

[86] Hamington, *Resources for feminist care ethics in Merleau-Ponty's phenomenology of the body*, p. 204.

[87] Gruen, *Entangled Empathy*.

[88] Gruen, *Entangled Empathy*, pp. 229-230.

In care ethics, just like in phenomenology, rather than 'putting oneself in someone else's shoes', empathy refers to a "feeling with",[89] a way of receiving another subject into ourselves.[90] But it also demands *responding*[91] to the reality of this other being, *acknowledging* their agency. A moral duty is therefore born from empathising.

3.3 Power

Crucially, attentiveness is not to be paid to sameness – i.e., characteristics we have in common – but to *difference*, which includes different ways of being, but also differences in power.[92]

On the topic of power imbalance, Josephine Donovan, through her Standpoint Theory[93], depicts knowledge as situated rather than neutral. Animals are oppressed subjects who possess a unique perspective on their oppression,[94] who therefore need to be politically included in the discussions about their rights, participating in the conversation.[95]

In parallel, Val Plumwood argues for the need not of "[...] overcoming or eliminating otherness or difference"[96] but affirming it. A sensibility to difference is about "[...] positioning oneself *with* the other",[97] instead of "[...] as the other [...]".[98]

Considering difference also means mapping the intricate ways by which some humans exert power over human and beyond-human 'Others'. Othering is a violent practice that impacts perception and understanding, and therefore, it requires (moral) attention.[99]

As explicated by Jennifer McWeeny, attending to the manifold layers of exploitation and power that make up and destroy worlds can be done through charting a topography of flesh that makes visible the messiness and entanglement of different fleshes when they are not straightforwardly clear, despite one's personal interest in concealing them.[100] It demands questioning "[w]hose hands prepared this meal? Whose eyes sewed this shirt? Whose sweat cleaned this university bathroom, this hotel room, this apartment? Whose resources are my profit? Whose inferiority enhances my superiority? Whose milk is this that I drink?"[101]

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[89] Noddings, *Caring*, p. 30; p. 205.
[90] Noddings, *Caring*.
[91] Gruen, *Entangled Empathy*.
[92] Gruen, *Entangled Empathy*.
[93] Donovan, *Feminism and the Treatment of Animals*.
[94] Originally, Donovan's Standpoint Theory was developed as a Marxist theory focused on the working classes. Later, it was adapted by feminists and applied to women. Finally, Donovan applied it to animals. The main idea is that those who are in anyway oppressed have a privileged point of view on said oppression, while the oppressing side can rationalise their oppressiveness, normalising and legitimising it. See Aubert, Anna Caramuru P. *Direitos Animais para além dos Direitos da Natureza*.
[95] See Meijer, *When Animals Speak*; Meijer, *Multispecies Dialogues*; Donaldson; Kymlicka, *Zoopolis*; Donaldson, *Animal agora*.
[96] Plumwood, *Environmental Culture*, p. 200, emphasis added.
[97] Plumwood, *Environmental Culture*, p. 203.
[98] Plumwood, *Environmental Culture*, p. 203.
[99] See Barbosa-Fohrmann; Aubert, *Como os Estudos Críticos e a Ecofemomenologia conferem visibilidade aos animais não humanos.*
[100] McWeeny, *Topographies of flesh.*
[101] McWeeny, *Topographies of flesh*, p. 279.

Finally, as Gruen maintains, "[...] it is often the richness of the individual's experiences and relationships that helps us to understand what makes life meaningful, interesting, and valuable to them, and thus what is lost or gained when we act or fail to act".[102] Therefore, we must "[...] focus on how injustice and exploitation work structurally and how those structures differentially impact individuals and their communities".[103]

3.4 Material, relational, and contextual vulnerability

A final aspect of embodied existence worth mentioning in the making of a normative phenomenological framework is that of vulnerability.

Vulnerability can mean different things for different scholars. Jacques Derrida[104], for instance, refers to its material aspect that comes from the realisation that no animal, human or beyond, can resist death – there is a helplessness that leads to an ethical bond between all mortal beings, and a corresponding duty to respond to it.

Cora Diamond, in a similar manner, maintains that "[t]he awareness we each have of being a living body, being 'alive to the world', carries with it exposure to the bodily sense of vulnerability to death, sheer animal vulnerability, the vulnerability we share with them".[105]

Animals and humans, as living bodies of flesh, share a fundamental frailty related to the fact that their existences are constantly under the threat of ending. But vulnerability has other layers we ought to attend to.

To start with, when Merleau-Ponty states that "[m]an is but a network of relationships, and these alone matter to him",[106] we learn that intersubjectivity is an innate part of our embodied condition, which means that we are vulnerable not only to ceasing to exist, but also to losing meaningful others – for instance, loved ones, plants, and animals we encounter, or even the dynamic and shared sites where different relationships take place, i.e., our territories.[107] There is a 'porosity'[108] that connects all flesh and which gives way to a relational dimension to vulnerability.

Finally, a third layer that marks vulnerability has to do with context and with the previously mentioned differences in power. Attending to vulnerability thus demands paying attention to such power imbalances.

[102] Gruen, *Entangled Empathy*, p. 12.
[103] Gruen, *Entangled Empathy*, p. 82.
[104] Derrada, *The Animal That Therefore I Am*.
[105] Diamond, *The Difficulty of Reality and the Difficulty of Philosophy*, p. 74.
[106] Merleau-Ponty, *Phenomenology of Perception*, p. 530.
[107] On the concept of 'territory', see Despret, *Living as a Bird*.
[108] Meijer, *Multispecies Dialogues*.

4. Learning the content of animals' interests and preferences

4.1. Bi- or multi-constructivism

The final question I wish to turn to in this article concerns *how* to listen to animals and translate their perspectives on their interests as well as their preferences into moral demands and, in a second step, into legal institutions. Although there is not enough space to do this thoroughly here, I will briefly touch upon this issue.

Dominique Lestel, Jeffrey Bussolini, and Matthew Chrulew[109] propose a phenomenological ethological method they refer to as bi- or multi-constructivist, which involves at least two steps. First, animals themselves engage in intentional movements – they meaningfully perceive, through their bodily senses, cues in the environment, and act intentionally. Returning to the example of my dog, J. smells and hears something outside our door, and the meaning he gives to this is that it is the neighbour he dislikes, which leads him to move in a certain fashion.

In the second step, through intentionality and applying this method to the purposes of this article, I argue that the animal's interests and preferences become public, and the human subject perceiving them engages in a co-creation of meaning alongside the animal.[110] In this stage, I perceive, interpret, and give a certain meaning to how J. is moving, and conclude that "neighbour X is standing outside, and J. does not want him to come any closer to our home".

Again, this is possible because of intentionality, which allows for animals to make the meanings they create known to an outside perceiver, as a consequence of how they move *in-order-to*[111] e.g., *achieve, engage with, reach, understand, move away from* something.

Crucially, when an ethologist – or me, with my dog, for example – interprets what an animal is communicating through their bodily movements, there are two interpreting meaning-making subjects involved.[112]

Conversely, I am not suggesting that, to include animals in our legal institutions or even to think about their moral rights, we need to ask them to physically attend seminars on the matter, log in on virtual meetings, or require their presence at literal lawmaking spaces and courts of law. I am also not arguing that animals have a concept of law, being capable of understanding our legal norms and abiding by them.[113]

Rather – and much more simply – I believe that, by employing this phenomenological bi-constructive posture towards ethology – understood, here, in a broad sense[114] – we are, in fact, *already* communicating with animals, and can

[109] Lestel; Bussolini; Chrulew, *The Phenomenology of Animal Life*.
[110] Lestel; Bussolini; Chrulew, *The Phenomenology of Animal Life*.
[111] I have borrowed this 'in-order-to' structure from phenomenologist Alfred Schütz's (1967), who proposes that interests are the motives that drive subjects to act in different ways, aiming to achieve certain goals or projects.
[112] Lestel; Bussolini; Chrulew, *The Phenomenology of Animal Life*.
[113] Castelló, *The fabric of zoodemocracy*.
[114] Ethology is, of course, a science practiced by biologists in different sites, who have been thoroughly trained for this, and whose work gets published after careful peer review. Still, without disregarding the importance of employing

learn a lot about their interests and preferences from their own standpoints – they are the ones who first perceive, give meaning, and act with intentionality, thus communicating something to us, which, in turn, we interpret and give meaning to, through this ethological practice which involves two meaning-making subjects.

4.2. Critical phenomenology

Another aspect of this interpretation I will merely touch upon in this article is that perception and communication are shaped by the habit-body, that is, our lived, experienced body.[115] Perceivers are not neutral parties, and their perception is marked by their history and context, which, to a degree, determines how they signify and respond to what they perceive.[116] This is why critical approaches are so important, because they invite us to bring light to the dominant and thus concealed ideologies that underlie the power imbalances in our everyday intercultural and interspecies encounters.

Crucially, Matthew Calarco highlights how, in animal advocacy, "most engagements with ethology have typically been limited to employing its scientific findings to debunk outmoded pictures of animal behavior and cognition".[117] Instead, he suggests that we not only attempt to access the worldly experiences of beyond-human earthly creatures but also transform our own. Ethology therefore "becomes [...] a practice of learning to see differently, to become something other through immersion in the rich life-worlds of others".[118] In doing so, the practitioner of ethology becomes vulnerable to their own contradictions, "calling into question everything from what we eat to how we move to how we clothe and shelter ourselves".[119] Thus, as Calarco views it, any "serious attempts to resolve those tensions will point toward the need to move beyond individual transformation and toward deep structural change in every area of our collective lives".

4.3. Critical anthropomorphism

Frequently, when interpreting animal behaviour, we fear anthropomorphising them, i.e., projecting exclusively human traits onto them.[120]

The answer to this conundrum cannot be the typical one, which is to treat biology as a mathematical – and thus mechanical – field, as if this would make the results achieved more reliable.[121]

Critical anthropomorphism, I think, is the only way forward. It combines different sources of knowledge about animals – and therefore manifold perspectives

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proper ethological reports when conversing with animals, I also see value in the day-to-day conversations we have with the animals we live with, work with, or simply encounter, and also the anecdotes and stories people share with us on their own dialogues with animals. See, on this topic, Meijer, *Multispecies dialogues*; Despret, *What Would Animals Say if We Asked the Right Questions?*; Bekoff, *Canine confidential*.

[115] Merleau-Ponty, *Phenomenology of Perception*.

[116] Fielding, *The Habit Body*.

[117] Calarco, *The Three Ethologies*, p. 46.

[118] Calarco, *The Three Ethologies*, pp. 56-57.

[119] Calarco, *The Three Ethologies*, p. 57.

[120] Regan, *The case for the animal rights*.

[121] Uexküll, *A foray into the worlds of animals and humans*.

on living with them, even those traditionally discarded as 'unscientific'[122] – turning also to the Darwinian evolutionary continuity, i.e., "the idea that the differences between species are differences in degree rather than differences in kind".[123] This makes it clear that many traits that humans have are shared with beyond-human animals, since they have not appeared out of thin air but are rather a consequence of a shared evolutionary history that connects all life on earth. Marc Bekoff, in fact, believes that anthropomorphising might actually be an adaptive skill that is also shared with other animals, and it is useful because, like empathy, it assists different animals in their interspecies relationships:

> We might ask, when animals seem to respond independently to our own human versions of pain or happiness, are they "anthropomorphizing" us, that is, translating what they see in us into their own terms? How do they seem to know with such confidence how we feel? Following up on Charles Darwin's ideas about evolutionary continuity, we see that it's bad biology to rob other animals of their emotional lives, and this may include the ability to anthropomorphize.[124]

A great example of where critical anthropomorphism can play a crucial role in our understanding of other animals' experiences refers to their aesthetic sense.

As explained by Richard O'Prum,[125] Darwin had already argued that animals have a concept of beauty, and that birds base many of their social decisions – like whom to mate with – on sensuous traits like plumage, colouring, and even songs. These are not characteristics shaped 'for survival' (typical in adaptive evolution). Instead, sexual ornaments are meant to evoke *desire*. In aesthetic evolution, O'Prum[126] says, trait and preference develop together, resulting in much more diverse traits.

Vinciane Despret illustrates this by turning to the evolution of peacocks' tails, whose size and colours are, paradoxically, both attractive and a nuisance from a predation point of view. Interestingly, peacocks exhibit their beauty not only to mate, but, as she interprets it, to show off: "[...] Darwin relates the following strange scene: that of a peacock striving to fan its tail in front of a pig. [...] males adore showing off their beauty, as the bird clearly requires any old spectator, be it a peafowl, turkey, or pig".[127]

Fishes[128] are another interesting example. As noted by Jonathan Balcombe,[129] they may not communicate with one another through sounds, but still, they seem to perceive, discern, and appreciate music.

Ava Chase[130] concluded this in a study that revealed that the koi fishes she worked with could distinguish between classical music (Bach) and blues (John Lee Hooker), generalising and applying, moreover, these distinctions to other artists, recognising similarities shared between Muddy Waters and Koko Taylor, as well as Beethoven and Schubert.

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[122] Greenhough; Roe, *Ethics, Space, and Somatic Sensibilities*.
[123] Bekoff; Pierce, *Wild justice*, p. xi.
[124] Bekoff, *Why Dogs Hump and Bees Get Depressed*, p. 135.
[125] O'Prum, *The evolution of beauty*.
[126] O'Prum, *The evolution of beauty*.
[127] Despret, *What Would Animals Say if We Asked the Right Questions?*, p. 38.
[128] Like Balcombe, I use the plural 'fishes', rather than 'fish', with the purpose of reinforcing their individuality.
[129] Balcombe, *What a fish knows*.
[130] Chase, *Music discriminations by carp (Cyprinus carpio)*.

Another study mentioned by Balcombe[131] demonstrated, moreover, that 240 carps exposed to (i) no music; (ii) Mozart's "Romanze: Andante"; and (iii) a nineteenth-century "Romanza" responded differently from one another. Thus, after 106 days, members of the second and third groups grew more and fed more efficiently when compared to the first group.[132]

As dangerous as anthropomorphism, therefore, is the common practice of ignoring animals' surprising traits and ways of being and, consequently, the different interests and preferences they communicate and that we can – and should – learn. The practice of anthropocetomy, which refers to the denial of certain characteristics to animals as if they were exclusively human,[133] is not the solution. Instead, I propose a return to our human animality, to embodiment, enfleshment, shared vulnerabilities (in all of its layers), inherent intersubjectivity, and therefore kinship. I suggest we return to the earthly world, to the entanglement and stickiness of the intricate web of life, learning how to listen and to respond, no longer ignoring and dismissing animals.

4.4. Illustrating my arguments

Without attempting to delve deeply into the possible concrete consequences of my approach for designing an interspecies ethics and including animals in legal institutions, I will simply illustrate how this is already done by courts of law. Following this, I suggest that what has happened in a couple of isolated cases – which I will turn to momentarily – should be turned into a common practice, and it is up to us to make room for plural views to imagine, together, how this could be structured and planned. This will demand, the way I see it, not only that we consider how to listen to animals in different settings, but also to what degree their opinions should weigh in the final decision made for different purposes and in various contexts.[134]

The first case I will turn to here, *Fi v Do,*[135] is a divorce case, and the British judge had to decide, upon the dissolution of a couple's marriage, who their dog, N –, should remain with.

The husband's arguments were strong: he had bought N and registered her as an emotional support dog in view of his chronic depression. The wife had, on a traditional view, weaker claims – she maintained that she had been the one taking care of N in the past eighteen months and that N *wanted* to stay with her and with her kids in the family home.

Surprisingly, the judge favoured the wife's argument and decided to investigate the matter further. First, he concluded that, indeed, eighteen months was a significant amount of time for a dog, so it mattered that for such a long time, N had been kept in the company of the wife and kids. Regarding the claim that N *preferred* to stay with them, upon interviewing the parties involved, the judge learnt that the

[131] Balcombe, *What a fish knows*.
[132] Papoutsoglou, *et al.*, *Effect of Mozart's Music (Romanze-Andante of "Eine Kleine Nacht Musik", G major, K525) Stimulus on Common Carp (Cyprinus carpio L.) Physiology Under Different Light Conditions*.
[133] Monsó, *Playing Possum*; Andrews; Huss, *Anthropomorphism, anthropectomy, and the null hypothesis*.
[134] See Kurki; Siemieniec, *Towards an Agency Turn in Animal Law*.
[135] The sentence is available at: https://www.bailii.org/ew/cases/EWFC/OJ/2024/384.html. Accessed on: April 25, 2025.

husband had, at one point, taken N by force, but N ran away from him, and back to her family home. Through her intentional bodily movements, N therefore voiced, loud and clear, her preferences in the case, which were interpreted by her female guardian as a manifestation of her wishes to remain under her care. The judge then interpreted the wife's interpretation of N's movements, and through a multi-constructive co-creation of meaning, N was heard, and her opinion was considered by the judge in the ruling, who decided to honour her wishes.

In a similar manner, in Murcia, Spain, a couple had separated, and the judge had to decide under whose care to leave the dog, Indie. Again, the wife, Carmen, was favoured, and the husband's request for a shared guardianship was denied. Crucially, to reach this decision, the sentence number. 00108/2019 was based on a veterinarian's report that maintained that staying with the husband, Luis, would be harmful to Indie, because she *preferred* Carmen. The sentence was also based on the judge's personal observations of Indie's behaviour during the hearing: "[...] it does not seem that Indie has any affection whatsoever towards Luis, appearing to be nervous and fearful and stroked by him" (translation is mine).

5. Conclusion

In this article, I have argued that moral personhood remains a limited and exclusionary framework for depicting animals, as it relies on typically human characteristics, thereby reinforcing an anthropocentric logic and echoing a reductionist Cartesian view of animals as mechanical beings.

Nevertheless, since animals do not need to be moral persons in order to be legal ones, I turned to Merleau-Ponty's phenomenology of the body, which offers a stronger foundation for describing beyond-human creatures' subjectivity, intentionality, and agentic qualities. This, along with care ethics, served as the basis for arguing for

(i) the existence of a moral duty to listen and respond to animals' demands – as well as the possibility to do so, which demands learning how to better dialogue with animals; and

(ii) the need to include animals, politically, in the conversation about their rights – which, at a second stage, entails their inclusion within legal institutions.

Although I have not attempted to elaborate on this latter conclusion in detail, I have illustrated it with two legal cases in which animals' voices were effectively heard and considered by courts.

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