

Legal Pragmatism for Animals

Review of Raffael Fasel's *More Equal Than Others: Humans and the Rights of Other Animals*

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In *More Equal Than Others: Humans and the Rights of Other Animals*, Raffael Fasel draws on his legal and philosophical expertise to develop arguments that are sophisticated yet clear and accessible. This remarkable and engaging book addresses tensions between the defense of human rights and the extension of some of these rights to non-human animals (henceforth, animals).

The book focuses on the tension between what Fasel calls Meritocratic and Aristocratic approaches and advocates for the Species Membership Approach, which is a form of legal pragmatism, as an alternative to both. He presents not merely the moral justification of rights, but whether a legal system can sustain stable, public and egalitarian rights while extending protection beyond humans (1–4).

Fasel deems the Aristocratic and Meritocratic approaches legally unworkable (11–12). Despite all that the law shares with philosophy, legal reasoning is subject to simplicity, publicity and feasibility constraints. These constraints require the law to adopt an understanding of rights that philosophy does not need. Fasel develops these arguments clearly and systematically, offering critical but charitable discussions of various past authors in a balanced, exhaustive and original historical review.

1. ARISTOCRATIC AND MERITOCRATIC VIEWS

Fasel presents the Aristocratic and Meritocratic approaches as a conflict between egalitarian legal protection based on group membership and moral individualism that assigns rights based on individual traits.

Fasel explores Enlightenment thinker Jean-Baptiste Salaville to illustrate the Aristocratic approach, which grounds equal rights in membership of the human species to secure equality among humans as humans while excluding animals from rights protection—regardless of their interests or degree of sentience. He presents the Meritocratic approach through Jean-Claude Delamétherie, whose view rejects species membership as morally relevant and instead grounds rights based in individual sentient beings' capacities and interests. This allows for the extension of rights to animals but risks hierarchical differentiation among rights holders, including humans. Fasel explores these opposing views to show that contemporary animal rights debates relate to longstanding contestation between egalitarianism and moral individualism. Fasel uses this contrast to demonstrate the need for legal pragmatism (8–9, 35–41).

2. COCHRANE'S SENTIENTISM

Fasel also examines contemporary author Alasdair Cochrane who grounds rights on sentience, claiming that sentience is a sufficient condition for animals to have moral claims. Like the Aristocratic approach, Cochrane focuses on relevant traits, and like the Meritocratic view, he also denies that species membership possesses moral relevance.

Fasel ultimately rejects Cochrane's proposal as an effective middle ground because he argues that it remains meritocratic since it grounds an animal's moral status in its sentience. He argues that because sentience comes in varying levels, grounding rights in sentience risks reintroducing forms of contestability and instability into legal rights attribution. This therefore undermines egalitarian protection (110–123).

In a recent blog, Cochrane (2025) responds to Fasel and argues that sentience acts as a threshold. This means that once an individual is sentient, they possess equal moral status. He claims that this occurs regardless of what interests they have. Differences in interests may therefore justify variances in rights, although not differences in moral status. He also challenges Fasel's claim that his view is not socially or legally workable by noting that legal systems currently recognize contexts where animal interests prevail over human interests. This includes restrictions on hunting endangered species, prohibitions on bear baiting and religious slaughter.

On Fasel's view, Cochrane's defense of sentientism is philosophically plausible but legally unworkable because it grounds legal rights in individual characteristics rather than group membership.

3. LEGAL PRAGMATISM

In the final section, Fasel abandons the philosophical exploration that occupies most of the book and turns too abruptly to legal pragmatism. He presents a legal strategy that promotes stable and legally administrable rights instead of a philosophical synthesis of the Aristocratic and Meritocratic views (169–173).

The philosophical ideas he explains earlier could have been better connected with the solution he proposes. After all, philosophers like Korsgaard (2018), Nussbaum (2024) and Casal (2026) provide philosophical arguments in favor of taking species into account, in some respects, both in our moral and legal thinking. Casal (2025) argues that taking species into account is even compatible with moral individualism, which shows that Fasel arguably underestimates the extent to which species-sensitive legal frameworks can be compatible with moral individualism.

Moreover, the Great Ape Project, to which Fasel refers (87–103), is itself another example of a focus on species that is compatible with moral individualism, which is why Casal and Singer can defend this project.

Fasel's overall rationale not to offer a synthesis between the law and philosophy may still work but his approach could be more ambitious as (i) laws often contain biological information that spares judges from having to acquire any such knowledge of their own and (ii) there are many philosophical arguments for employing species and groups of species under the same laws. We also include very different humans under the same laws. The book therefore presents a legal framework that seems cut off from the previous philosophical discussion, when it could have ended with a more ambitious view that more actively engages with both.

Fasel concludes with an explanation of how legal pragmatism could be applied to great apes. This, however, is an over-determined case, since dozens of philosophers have already supported it with numerous philosophical arguments. Great ape rights are not necessarily an unsolvable problem that must be deferred to legal pragmatism. Had Fasel focused more on other groups of animals, he may have been more persuasive in showing the necessity of his approach.

Finally, his exploration of the types of rights is brief. He cursorily explores how proportionality is currently applied to rights (176–196). A more precise mapping or typology of the rights different species could have within the framework would strengthen the depiction of legal pragmatism in practice.

4. UNCHARITABLE READING OF SINGER

Fasel frequently cites Peter Singer as an illustration of the risks associated with meritocratically grounding rights in individual capacities rather than comprehensively engaging with the strongest parts of Singer's work (100–109). Singer has controversially defended euthanasia for some cases of profoundly disabled children. Fasel cites this defense to reject meritocracy. However, this focus underplays the broader views of Singer who seeks largely to constrain such outcomes and who, in his recent work on animal rights, aims to strengthen the stringency of animal rights without weakening human rights.

Another problem is that Fasel's refutation rests on existing attitudes to euthanasia. Such attitudes can change and are in fact changing. Perhaps in some years the fact that a view recommends euthanasia for profoundly disabled neonates would not be seen as a problem. While Fasel rightly notes that rights do not always expand but can also contract, he does not offer a robust approach as to how these values, such as protection against euthanasia for disabled humans, can be protected. The species membership may therefore stabilize rights legally without resolving questions about normative fragility. A pertinent example is why group-based protections should endure if societal attitudes shift or if new conflicts of interest emerge.

In short, *More Equal Than Others* identifies the core tensions between the Aristocratic and Meritocratic approaches, but it falls short of providing a philosophical synthesis. Despite this, Fasel provides a timely and engaging contribution to an extremely important contemporary debate.

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