Connecting moral status to proper legal status

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The Weak Connection between Moral Status and Legal Status

I. Introduction

In early 2015 the Nonhuman Rights Project petitioned the New York State Supreme Court for a writ of habeas corpus on behalf of two chimpanzees, Hercules and Leo, who were being kept as research subjects by the State University of New York at Stony Brook. The writ of habeas corpus is a longstanding pillar of Anglo-American law that, when petitioned for by a prisoner or detainee, requires state officials (the University, in this case) to justify the detention. In response to the petition Judge Jaffe ordered a hearing in which Stony Brook was required to justify its confinement of Hercules and Leo and the Nonhuman Rights Project argued on their behalf.[1] Although she eventually affirmed Stony Brook's right to confine Hercules and Leo, the case is quite significant. While Judge Jaffe took pains to not concede the legal personhood of the chimps,[2] the writ of habeas corpus is universally held to apply only to legal persons and consequently holding a habeas corpus hearing for Hercules and Leo amounted to treating them as legal persons.

This case combined with a handful of recent changes in the constitutions and laws of various countries suggests a growing discomfort with the millennia-old tradition of according animals the legal status 'non-person' or, equivalently, 'thing'.[3]

In this chapter I explore to what extent a case can be made for according legal status to an entity on the basis of its possessing 'moral status'. I use 'legal status' to denote an

[1] The original order can be found at https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=4D9287VfBiI66TYZPi4P1w==&system=prod (accessed 21 May 2020); it was later amended, and the amended version can be found at https://www.nonhumanrights.org/content/uploads/Order-to-Show-Cause-Amended-4-21-15.pdf (accessed 21 May 2020). For a more thorough list of recent judicial developments along these lines, see Vayr (2017, pp. 819-21).

[2] See Judge Jaffe's decision, p. 2, at https://www.nonhumanrights.org/content/uploads/Judge-Jaffes-Decision-7-30-15.pdf (accessed 21 May 2020).

[3] For a list of the most significant developments, see Fitzgerald (2015, pp. 350-3).

entity's degree of legal personhood (such that the complete absence of legal personhood is still a kind of legal status, namely thinghood). 'Legal personhood' is a gradable property that an entity possesses to the extent that the law confers the following three properties (which themselves are gradable) on it: legal rights, non-ownability, and legal standing (i.e., the ability to initiate a civil suit).[4] And for the sake of this essay, an entity's 'moral status' is the extent to which certain acts concerning that entity qualify as wronging it. So, for instance, if lying to A wrongs A, but lying to B doesn't wrong B, then *ipso facto* A has a greater degree of moral status than does B, all else being equal. I use animals as my test case (and by 'animals' I mean sentient non-human animals), but everything I say here about animals is generalizable to other kinds of entity.

For the sake of economy I am going to narrow the discussion in three ways. First, I'll focus on denying that an entity's possession of a certain degree of moral status obligates us to confer a corresponding degree of legal personhood on it. I won't take up the question whether an entity's lack of moral status obligates us to withhold legal personhood from it (though I would deny this too).

Second, I'm going to reduce legal personhood to legal personhood vis à vis the criminal law. Because I've defined moral status in terms of wronging, it will be convenient, for a discussion of the relation of moral status to legal status, to focus on that element of legal personhood that is concerned with wrongdoing. Since no act should be criminalized unless it is wrongful (this thesis is known as 'negative legal moralism' and enjoys widespread support among legal theorists), whereas the civil law may permissibly concern itself with non-wrongful harms, the implications of accepting that an entity's moral status ought to bear on its legal status would be strongest in the case of the criminal law.

[4] I am denying that there are just two legal statuses, person or thing. Granted, the consensus among legal scholars (e.g., Hall and Waters 2000, p. 3; Francione 2008, pp. 61-2; Pietrzykowski 2017, pp. 51-2) is in favour of this binary, but I argue elsewhere (Sachs unpublished) that the consensus is mistaken.

Third, I assume here that, broadly speaking, there are just three ways in which the facts as to what moral status an animal has could be connected to the facts as to what legal status it morally ought to be granted.[5] (The distinction between the first two relies on the distinction between treating an entity unjustly and wronging it. I assume here that unjust acts constitute a subclass of wrongings—namely, the particularly morally egregious ones.)

- The Strong Connection: The fact that it would wrong an animal to φ is a moral justification for criminalizing φ-ing.
- The Moderate Connection: The fact that it would constitute an injustice to an animal to φ is a moral justification for criminalizing φ-ing.
- The Weak Connection: The law's having some feature—call it X—that would facilitate the wronging of an animal makes it morally obligatory for law-makers to amend the law so that it no longer has feature X.

The position I defend in this chapter—and the implications of which I partially lay out—is that The Weak Connection holds but The Strong Connection and The Moderate Connection do not.

II. The Strong Connection

I begin by discussing The Strong Connection. If it holds then this is surely because The Strong Connection thesis is an instance of a more general thesis connecting the law and

[5] As can be inferred from the way I've expressed the issue here, I assume that there are mind-independent facts as to what moral status any entity has, but only conventional facts—and, hence, facts that are under our control—as to whether any given entity is a legal person. The former assumption will presumably be rejected by moral antirealists and sceptics of various stripes, but it would be a distraction to argue against them here. The latter assumption will be accepted by positivists and almost all of their extant opponents; only old school natural law theorists will reject it.

morality. (I cannot imagine why the connection between law and morality should be stronger in the case of animals than in the case of other entities.)

One way to formulate the idea that there is a strong connection between morality and the law is as the legal moralism thesis, with 'legal moralism' usually defined as the idea that whether some conduct should be criminalized depends whether it is morally impermissible. Duff (2018, pp. 55-8, e.g.) has helpfully disambiguated two theses that legal moralism, so construed, runs together. One is the already mentioned negative legal moralism, the claim that an act's being morally permissible makes it morally *im*permissible to criminalize that act. The second is positive legal moralism, the strong version of which, as defended by Michael Moore (2010, p. 646), runs as follows:

> Strong Positive Legal Moralism (SPLM): We are justified in criminalizing some conduct if and because it is morally impermissible.

There is a very simple, compelling argument for SPLM. Its key premise, which itself is simple and compelling, is: the fact that one can address a morally impermissible action by φ-ing is a justification for φ-ing. If this premise is true, then the SPLM-ist simply needs it to be the case that we can address morally impermissible actions by criminalizing them. This further premise certainly *is* true, as I mean "address" as a generic term covering all the various things that the criminal law might be thought useful for vis à vis morally impermissible actions—e.g., preventing them, condemning them, exacting retribution for them, etc. Here, then, is the simple, compelling argument, which presents in a generalised form a distillation of Ch. 16 of Moore's (2010) *Placing Blame*:

1. The fact that one can address a morally impermissible action by φ-ing is a justification for φ-ing.
2. We can address morally impermissible actions by criminalizing them.
3. Therefore, the moral impermissibility of an action is a justification for criminalizing it. (SPLM)

I offer an objection to this argument in §IV.

III. The Moderate Connection

As an alternative to The Strong Connection, one might posit that for *some* acts that wrong an animal their wronging that animal is a justification for criminalizing them.

This brings us to the popular idea that the criminal law should be used to secure justice. If this idea holds and it can be established that animals can be victims of injustice, then we have a connection between a fact about animals' moral status (i.e., their being potential victims of injustice) and what their legal status ought to be—specifically, The Moderate Connection will hold.

Martha Nussbaum, Alasdair Cochrane and Robert Garner have each argued for The Moderate Connection. They each begin by arguing that there is some central moral concept that can be sensibly applied to animals and is a matter of justice. For Nussbaum, it's the concept of flourishing that does the work; her contention is that all animals have the capacity to flourish.[6] Whether any particular individual *does* flourish, according to Nussbaum, depends on whether she has certain capabilities, and it is a matter of justice for each

[6] Well, almost all. Nussbaum (2006, p. 187; 2011, p. 31) says that there are some sentient humans, including vegetative humans, who cannot flourish; presumably by parity of reasoning she would concede that there are also some animals that cannot flourish.

individual that she have a sufficient level of each of the capabilities (2006, pp. 74-5). Cochrane (2012, Ch. 2; 2018, Ch. 2), meanwhile, argues that animals have rights and that justice is concerned with the upholding of rights (2012, p. 13). As for Garner (2013, pp. 21-2), he holds that animals can be oppressed and can be benefited and burdened, and that oppression and certain distributions of burdens/benefits are unjust.

The remaining question is whether facts about justice, as it is construed by any or all of these three theorists, have a bearing on what legal status individuals ought to be accorded. Of course, it is a natural thought that it is the business of the state—and, specifically, its criminal law—to secure justice, but the fact that the thought is natural doesn't undermine the need to argue for it. In what follows I examine what these three theorists have done by way of arguing for this natural thought.

As to Nussbaum, she makes no attempt. She does, admittedly, say that "[t]he purpose of social cooperation…ought to be to live decently together in a world in which many species try to flourish" (2004, p. 307), which, given Nussbaum's view (summarized above) as to the connection between flourishing, capabilities and justice, amounts to coming close to claiming that it is the state's business to secure justice. Notice, however, that Nussbaum's claim here is about what the purpose of social cooperation "ought to be". If it were instead a claim about what the purpose of social cooperation *is*, then it would certainly be relevant to question of what the state morally ought to do (by way of according legal status, and indeed by way of doing anything else). But Nussbaum does not explain how the fact as to what the state's purpose *ought to be* explains the facts as to what the state morally ought to do. One would think, in fact, that if anything the explanatory relationship would run in the reverse direction.

As to Cochrane, in his book *Animal Rights without Liberation* he contends that a theory of justice is a theory of a certain part of interpersonal morality—namely, that part of

interpersonal morality with which people can be legitimately coerced to comply (2012, pp. 13-14). The question that has to be asked of anyone who endorses this Millian conception of justice is this: Is the connection between justice and coercion a reductive definition of 'justice' or, instead, a substantive truth about it? If the former, then there is no philosophical project that merits the moniker 'developing a theory of justice'. The way to discover the demands of justice would be, instead, to develop a theory of legitimate coercion, starting with our intuitions about legitimate coercion and building on them using the method of reflective equilibrium. Our intuitions as to whether (and if so how) animals can be victims of injustice, and the theories that could be developed out of these intuitions using the method of reflective equilibrium, would be irrelevant.

If, on the other hand, the connection between justice and coercion is supposed to be a substantive truth, then Cochrane needs to give us an argument for that truth. And for *that* purpose it would be helpful to know something about his theory as to the demands of justice. In his later book, *Sentientist Politics*, Cochrane maintains that justice (or 'minimal justice', as he sometimes says) encompasses the demands of rights and of equal consideration of interests. So when he claims that "moral agents have a basic duty to create and support a political order which aims to do two things: show equal consideration to sentient creatures; and protect their basic rights" (2018, pp. 30-1) he is in effect claiming that moral agents have a duty to create and support a political order that upholds (minimal) justice. As to why that's the case, Cochrane's answer, for which he argues, is that "without such political institutions, equal consideration and the protection of rights will be unmanageable, insecure, and lack determinacy" (2018, p. 31). The implicit premise behind this is, of course, that we have an obligation to promote the manageability, security, and determinacy of equal consideration and the protection of rights.

Suppose moral agents do indeed have a duty to create and support a political order that upholds (minimal) justice. Does that imply that those whose role it is to shape the criminal law are obligated to shape it so that it upholds (minimal) justice? Not at all. At best it implies that moral agents are obligated to create an institution (i.e., a state) wherein those whose role it is to shape the institution's criminal law, i.e., legislators, are obligated by that role to shape it so that it upholds (minimal) justice. But this doesn't count one whit in favour of the claim that moral agents *have* created such an institution, and Cochrane doesn't take up the question whether they have. At best Cochrane has established that it would be a morally better world if this *were* part of the role morality of the legislator.

As to Garner, the passage in his works that is key to understanding his view as to the state's obligation to secure justice is this one:

> [B]ecause the claims of justice are regarded as so pressing, the obligation to act so as to avoid injustice falls most often on the state or other political authority…This is not to say that acts of injustice cannot be perpetrated by individuals or collective entities such as corporations, but that it is political institutions that are best placed to alter these injustices. (2013, p. 48)

Here Garner is grappling with the existence of two different ways of thinking of the property of justice—i.e. as a property of actions or as a property of states of affairs (not that it couldn't be both). He clearly wants to allow the property to attach to actions, hence his reference to "acts of injustice", but because of this he struggles to say something clear and coherent about why the state should take justice to be its concern. The expression "the obligation to act so as to avoid injustice" is simply ambiguous, as it could mean 'the obligation to avoid acting unjustly' or 'the obligation to avert [states of affairs that constitute] injustice', leaving one not knowing what to make of the purported fact that that obligation "falls most often on the state or other political authority". If Garner means to say that the state is obligated to prevent the instantiation of states of affairs that are unjust then he is making a bold, unargued leap from the fact that justice is of central moral importance. Meanwhile, the idea of altering injustices is obscure. The sentence in which the word 'altering' appears begins with "acts of injustice"

as its subject, but it's not clear what it would mean to alter an act of injustice. On the other hand, it's clear what it would mean to alter the unjust states of affairs that acts of injustice can bring about, but again there's some philosophical distance to cover to get from the idea that justice is of central moral importance to the claim that the state has an obligation to clean up the mess that acts of injustice create.

I conclude that neither Nussbaum, nor Cochrane, nor Garner has established that the state is obligated to secure justice, much less that it is obligated to use its criminal law to do so. Thus, their writings offer no help in the effort to establish that The Moderate Connection holds.

Of course, nothing I have said in this section amounts to an argument that The Moderate Connection does *not* hold. And, in fact, one can alter the simple, compelling argument for SPLM in the service of arguing for (what I'll call) Moderate Positive Legal Moralism (MPLM). The argument would run as follows:

1. The fact that one can address an unjust action by φ-ing is a justification for φ-ing.
2. We can address unjust actions by criminalizing them.
3. Therefore, the injustice of an action is a justification for criminalizing it. (MPLM)

The conclusion of this argument entails the truth of The Moderate Connection. I offer an objection to the argument in the next section.

IV. An Objection to The Strong Connection and The Moderate Connection

The indisputable truth of premise 2 in the argument for SPLM and in the argument for MPLM means that all hopes of resisting The Strong Connection and The Moderate

Connection rest on finding a flaw in the first premise of each argument. My objection to that premise rests on the idea that since legislating is an exercise of the agency that comes along with occupying an office (the office of legislator), legislators qua legislators can lack reasons they otherwise would have had.[7] Of course, this idea needs defending, not least because Moore (1989, pp. 872-3; 2010, p. 659) has argued against it.

My defence of it begins by noting that we need a theory of abuse of office, and I argue that the best theory available says that one abuses one's office when, and only when, one uses the associated agency not in the service of discharging the role obligations incumbent on holders of that office. So, for instance, if one uses one's status as a government bureaucrat to take kickbacks in exchange for awarding public contracts, one abuses one's office. One immediate problem with this theory, however, is that it implies that it is wrong to do what one has strong reasons to do. Certainly the bureaucrat has strong reasons of self-interest to line her pockets. So we need to posit that being an office-holder can make it the case that one lacks a reason to use one's powers of office to act for certain ends. My official statement of this idea, which I call the 'reasons-blocking thesis', is as follows: In virtue of the fact that some measure of agency is attached to an office, the possessor of that agency (i.e., the office holder) can lack a reason to use it to φ even though φ-ing is something she has a reason to do and she could use that role agency to φ. The positive corollary of this negative thesis is that the ends an office holder possesses that stem from the role obligations attached to that office ground reasons relevant to the exercise of her powers of office.

[7] The possibility of objecting to premise 1 this way has been noticed by others; see Edwards (2016, p. 142), Gardner (2007, p. 202), and Dempsey (2011, p. 256). None of these theorists, it should be mentioned, actually endorses the idea of objecting to premise 1 this way. Edwards (2016, p. 142) stays neutral on it, Gardner (2007, p. 277) eventually rejects it, while Dempsey (2011) ends up endorsing the more modest position that we all have the same reasons but sometimes one has reasons one ought not to act upon. For discussion of Gardner and Dempsey on this point, see Tadros (2016, p. 122).

So, to return to the bureaucrat, her goal of becoming wealthy does ground reasons for her; for instance, it grounds reasons for her to make shrewd investments or to take a second job, as neither of those actions is an exercise of her powers of office. But it does not ground any reasons relevant to her exercise of her bureaucrat powers.

The main selling point of the reasons-blocking thesis is that it is a necessary element of a plausible theory of abuse of office. What remains is to demonstrate that there is no plausible theory of abuse of office that doesn't include this thesis. This raises the important question: What would a theory of abuse of office look like if it affirmed that *all* of one's ends, not just those arising from the obligations attached to the office, grounded reasons relevant to one's exercise of one's powers of office? I contend that any such theory would have two flaws.

First, it wouldn't be able to vindicate our sense that role-bearers are sometimes justified in setting aside reasons that are clearly in some sense relevant to their decision. That we have such a sense is evidenced most straightforwardly by how we acknowledge, albeit generally resentfully, that there is some sense to the ever-frustrating responses we often receive from mid-level office-holders—responses along the lines of "That's not my problem", or "Take it up with management", or (more sensitively) "I'd love to help, but my hands are tied"—when we beg them to act contrary to the strictures of their role. The police officer who finishes writing you a parking ticket even though you're offering her an excellent justification for having parked your car where you did; the airline employee who won't re-open the gate and allow you to board the plane even though she closed it only half a minute ago and the plane hasn't moved; the cashier who won't sell you alcohol because you don't have your identification even though you clearly look older than the minimum age—you get the idea. We don't like hearing these things, but we understand them and we grudgingly accept them. The reasons-blocking thesis explains why we're right to offer this acceptance

and why our grudgingness has merit: it's because the considerations with which we're trying to persuade these office holders have no normative pull on those agents relevant to how they ought to exercise their powers of office though they do have normative pull on those agents full stop.

Second, it would have to say that abusing one's office is equivalent to engaging in a certain kind of incorrect deliberation about one's reasons. But this assertion is incompatible with the idea that an abuse of office is a wrong committed against those who sustain the institution within which the office is situated. The wrong of incorrectly weighing reasons is, as I've argued elsewhere (Sachs 2018: Ch. 4), a wrong without a vector; it's not a way of wrong*ing* someone, even if some of the reasons in question are grounded in people's well-being, desires, etc. And surely we think abuse of office is a way of wrong*ing* somebody. The American Congresswoman who sells her vote for campaign contributions wrongs the American people (and no one else).

I have argued in this section for the reasons-blocking thesis by arguing for the theory of abuse of office of which it is in integral part. If the reasons-blocking thesis is true then the door is open to rejecting premise 1 in the argument for SPLM and in the argument for MPLM, though much more would have to be said to establish that those premises actually are false.[8] That, anyway, is my roadmap for rejecting The Strong Connection and The Moderate Connection. With that laid out, I move on to discussing The Weak Connection.

V. The Weak Connection

The Weak Connection, simplifying a bit, is the claim that for any feature of the law such that its instantiation facilitates the wronging of animals, we are morally required to eliminate that

[8] The full version of the argument against premise 1 can be found in Sachs (unpublished).

feature. The idea that failure to do so would be wrong follows from the very plausible moral generalization that one wrongs an individual by facilitating someone else's wronging of that individual. In effect, then, the Weak Connection is the claim that we are morally barred from wronging animals through the law. The reason I call this a 'Weak Connection' is that it doesn't, contrary to the Strong and Moderate Connection, commit us to using the law to address—that is, prevent, condemn, exact retribution for, etc.—any wronging of animals. Moral requirements of the sort, "Don't wrong X," are more basic than requirements of the sort, "Address the wronging of X (in certain ways)" and surely, with respect to any X, one is bound by the former requirement if one is bound by the latter. Therefore, we ascribe a weaker legal status to animals when we say that we shouldn't use the law to wrong them than when we say that we should use the law to address the wronging of them.

Here are a few implications of The Weak Connection.

1) Consider the following case: Suppose X, a child, is being abused by her father, and a concerned stranger tries to abscond with X as a way of saving her from her father's abuse. It would be impermissible, surely, for another individual, Y, to prevent the stranger doing this or, if the stranger successfully does it, take X away from the stranger and return her to her father. I submit that the same holds for animals being treated cruelly by those who control them (factory farmers, for instance). If someone tries to sneak on to a factory farm under cover of darkness to take all the animals away to an animal sanctuary, it would be impermissible for some other person to prevent this action or, if it is successfully carried out, to take those animals from the sanctuary back to the factory farm.

Now, given The Weak Connection, it would be impermissible for the law to do either of those things. But that's exactly what legal systems in the Anglo-American tradition would do as it stands. To explain: It is generally agreed that ownership is a set

of legal relations[9], one of which is possession, such that the owner gets to keep the owned object in a certain place. If X is the object of Z's possession then not only can X by right be kept in place by Z, but also if some third party, Y, tries to remove X from that place or successfully does so, the law will step in to prevent or reverse as appropriate. My claim is that each animal should have a qualified immunity to the incident of possession; the law should make it such that they can be an object of that incident only when the subject of the incident promotes the animal's interests to a sufficient extent, just like a parent's rightful possession of a her child is so contingent.[10] In the case of non-domesticated animals, total immunity should be the law's default, as the law's restoring possession of a non-domesticated animal to its possessor will usually qualify as facilitating the wronging of that animal, because it is in the nature of being a non-domesticated animal that, under normal circumstance, being under the physical control of a human is harmful to that animal. In the case of domesticated animals there should be no such default, since being possessed by someone who treats them beneficently is usually better than being left to their own devices, and therefore restoring possession of a domesticated animal to its possessor will only sometimes qualify as facilitating wrongdoing. In other words, a form of guardianship should be the default. However, attempted or successful abductions of sentient domesticated animals from their guardians should not be prevented nor reversed when the guardian has been mistreating the animal.

[9] This is known, variously, as the idea that there are several "incidents" of ownership (Honoré 1961), or as the "bundle of sticks" theory of ownership.

[10] Although we don't call children 'property', it is nevertheless true that they are objects of some of the incidents of ownership, including possession, as noted by Cochrane (2009, pp. 434-42). The position on animal possession I adopt here is inspired by, and broadly in line with, Cochrane's position.

2) Suppose X and Y sign a contract, whereby X gives Y money in exchange for Y providing X with a number of captive women that X will use in his sex slavery business, and suppose further that Y lives up to his part of the bargain but X doesn't pay up. Clearly it would be impermissible for some third party to exert his influence to pressure X into handing over the money. Likewise, the law should not, and would not, enforce that contract.[11] This is an implication of The Weak Connection. Therefore, I submit, the law should decline to enforce contracts whereby factory farms conduct their business, and included in this is a refusal to enforce contracts whereby factory farms sell their animals or animal flesh. This latter refusal would amount to conferring on sentient animals qualified immunity to another incident of ownership—the incident in question this time being what Honoré (1961) called the "right to the capital".

In the foregoing two examples I relied on the idea that the basic legal underpinnings of any successful market, such as the enforcement of contracts and property relations, are causes of the success of those markets. This makes the law complicit in the egregious wrong that is the factory farm, and makes the changes I've recommended above morally required.[12]

[11] The U.S. Supreme Court has ruled (*Shelley v. Kraemer*, 334 U.S. 1 (1948)) that a state must not enforce a contract if so doing would violate the Equal Protection Clause of the 14th Amendment. This is not equivalent to declaring that *immoral* contracts must not be enforced, but it does take us part of the way to that conclusion by acknowledging that a state is permitted to exercise discretion over its use of its powers of contract enforcement.

Shiffrin (2005: 221-30) has argued that it is legitimate for the state to decline to enforce a contract on grounds of its content being immoral. She was focused specifically on contracts that are immoral because unconscionable (i.e., unfair, exploitative, etc.), but her underlying principle applies more broadly. In fact, it applies more straightforwardly, I would think, to the case of a contract that is immoral because of what it does to a third party. The underlying principle is the one endorsed in the Supreme Court case: the state does not have an exceptionless obligation to facilitate consensual transactions.

[12] One might argue that the implicit principle appealed to here—that the state is morally obligated to refrain from facilitating immoral actions—is much too strict. Bank robbers speed away on state-funded roads as they make their getaway; Ponzi schemers make use of their state-funded education in mathematics; etc. This objection is obviously sound, but (just as obviously) there must be a narrower principle that can do the trick for us. This narrower principle will appeal to some idea of foreseeability, or to a more stringent notion of causality than the notion to which I appealed earlier, or to a balancing of costs and benefits, or something like that. But clearly there is *some* valid principle prohibiting the state to abet moral wrongdoing; we need one, for instance, to explain why it would be wrong for the state to sell arms to the Taliban.

3) Suppose X hires Y to kill someone, and Y does. Clearly, Y has acted wrongly, but I think most of us would say that X has acted wrongly as well. As to why, one right answer—there may be several—is that X has facilitated the committing of a grievous wrong. Given The Weak Connection, the same holds for laws allocating government funding to cruel practices, such as the conducting of painful medical research on animals and the confining of animals in zoos.[13] Therefore the state is morally prohibited from enacting such laws.

In this section I've explored the implications of The Weak Connection. What I have not yet done, however, is say whether endorsing The Weak Connection is tantamount to holding that we morally ought to confer legal personhood on animals.

To make progress on that question we first need to delve into the theory of legal personhood. There are two questions here—what is legal personhood, and on what criteria should it be conferred or withheld. My view is that all of the extant answers to the second question that one can find in the literature are inadequate[14]; this is why I have relied exclusively on my own reasoning in this chapter thus far.

As to what legal personhood *is*, I have assumed that it is the possession of legal rights, the status of non-ownability, and legal standing. One has a legal right, presumably, in virtue of the law demanding that one be treated a certain way. There is a consensus, however, that the law's demanding that X be treated a certain way counts as X being the subject of a legal right only if the demand was enacted for X's sake (Sunstein 2000; Favre 2005; Cochrane 2009; Francione 1994 and 1995; Pietrzykowski 2017). This strikes me as a sensible stipulation, and one that can be generalized. The generalization I have in mind, and would

[13] This doesn't always wrong the animal—it is possible for a sentient animal to live a perfectly good life in a zoo—but given how zoos actually are it usually does. As to the wrongness of conducting painful medical experiments on animals, I argue for that conclusion in Sachs (2018, Ch. 8).
[14] I explain why in Sachs (unpublished).

endorse, is this: X's legal rights, non-ownability, and legal standing amount to X's possessing legal personhood only if they were conferred on X for X's sake.

This being the case, one could say that my arguing that domestic animals should, for their own sake, have a qualified immunity to being an object of the incident of possession, amounts to arguing for conferring some measure of legal personhood on them. But nothing of philosophical interest hinges on whether we decide to put it this way.[15]

VI. Conclusion

In this chapter I have laid out three implications of the idea that the Weak Connection between moral status and legal status holds—implications which, taken together, would if enacted constitute a revolution in the law's treatment of animals and (I suspect) redound to their almost incalculable benefit.

I've also offered in this chapter reasons for doubting that there is *any more than* The Weak Connection between an individual's moral status and the legal status that the individual morally ought to be granted, but I haven't explored the implications of this. I acknowledge, though, that it opens the door to changes in the law that would be to the detriment of animals. For instance, it suggests the moral permissibility, though not the moral obligatoriness, of repealing animal cruelty laws. This is no doubt a highly counterintuitive implication, and thus counts heavily against accepting that nothing more than The Weak Connection holds. Whether it counts heavily *enough* is a discussion for another day.

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[15] Similarly, I've argued elsewhere (Sachs 2011) that there is no philosophical thesis that can be expressed in the language of 'moral status' that cannot be expressed equally or more clearly in other language.

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