Animals and the Singular-plural Aporia in Environmental Law: A Derridean Perspective

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Abstract

This article illustrates the pyrrhic effects accompanying increased attempts at protecting the interests of animals under environmental laws. The South African Constitutional Court in *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* advanced an "integrative approach" that not only directly connects animal protection with the Constitutional right to have the environment protected, but makes the confusing and misleading claim of illustrating the extent to which showing respect and concern for *individual* animals reinforces broader environmental protection efforts. This article illustrates that the integrative approach to the environmental right in the *Constitution of the Republic of South Africa,* 1996 (hereafter *Constitution*) is philosophically unsound in claiming to embrace the Animal in her individuality. Rather, environmental law frameworks disavow our embeddedness in nature by creating an anthropocentric biopolitical locus of control that entrenches an oppositional limit between Man and nature and commodifying nature in its entirety. When connected to two foundational environmental concerns of "conservation" and "sustainable use", as expressed in section 24 of the *Constitution*, the particularity of the Animal is erased as she becomes objectivised and subsumed in a utilitarian calculus as a utility object under the control of humans. The metabolisation of animality in relation to these constructs or markers gives rise to what I term the singular-plural aporia in environmental law; a fundamental contradiction effecting a violative relation to Otherness that precludes the possibility of an ethical encounter with the animal Other in her singularity. Drawing on Jacques Derrida's insights into the problematic ramifications of sacrificial anthropocentric discourses and Vito De Lucia's biopolitical reading of environmental law, this article argues that any potential engagement or consideration of the singular animal within an environmental law framework inevitably passes through an aporetic moment in which she is always already subsumed in a larger calculus that intrinsically focusses on plurality and effectively forecloses the possibility of fully embracing her individuality.

Keywords

Animal ethics; environmental law; Jacques Derrida; singular-plural aporia; utilitarianism; Vito de Lucia.

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> I am not one of the family … 'I am not one of the family' means: do not consider me 'one of you,' 'don't count me in,' I want to keep my freedom, always: this, for me, is the condition not only for being singular and other, but also for entering into relation with the singularity and alterity of others. When someone is one of the family, not only does he lose himself in the herd, but he loses the others as well; the others become simply places, family functions, or places or functions in the organic totality that constitutes a group, school, nation or community of subjects speaking the same language.[1]

1 Introduction

We are increasingly awakening to the disastrous reality of the Anthropocene, the proposed emergence of a new geological epoch in which humans have emerged as an overwhelmingly destructive force dominating the planetary system.[2] Derived from the Ancient Greek *anthropos* ("human" or "man") and *kainos* ("new" or "recent"), the concept of the Anthropocene aims to capture and position the substantial scale and temporal significance of this era in relation to the timescale of Earth history.[3] Since being popularised by Paul Crutzen in 2002,[4] the concept of the Anthropocene has received significant scholarly attention across various disciplines. As the Earth is being refigured as a vulnerable domain requiring protection we are, amongst other scholarly endeavours, rethinking the relation between law and nature. This article speaks to the role of environmental law in relation to the oppression and potential liberation of animals in the Anthropocene.

The ecological re-orientation of law that the field of environmental law ostensibly envisages and effects engenders notions of a caring disposition towards nature, the nurturing of its vital potentialities and the protection of its productive capacity.[5] Yet, as several scholars have illustrated, environmental law is deeply anthropocentric[6] and facilitates the domination of nature by global capital.[7] My principal concern lies with the pyrrhic effects accompanying increased attempts at protecting the interests of animals under environmental laws. The South African Constitutional Court in *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development*[8] advanced an "integrative

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1 Derrida and Ferraris *A Taste for the Secret* 27.

2 Grear 2015 *Law and Critique* 226.

3 Malhi 2017 *Annual Review of Environment and Resources* 78-79.

4 Crutzen 2002 *Nature* 23.

5 De Lucia 2020 *Law and Critique* 329.

6 See De Lucia "Anthropocentrism and International Law"; Gillespie *International Environmental Law*.

7 See Pottage "Why Nature Has No Rights".

8 *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* 2017 1 SACR 284 (CC) (hereafter the *NSPCA* case).

approach" that not only directly connects animal protection with the Constitutional right to have the environment protected, but makes the confusing claim of "illustrat[ing] the extent to which showing respect and concern for *individual* animals reinforces broader environmental protection efforts".[9] This approach has been celebrated and expounded on by Constitutional scholars.[10]

My aim in this article is to illustrate that the integrative approach is philosophically unsound in claiming to embrace the Animal in her individuality. Rather, environmental law frameworks disavow our embeddedness in nature by creating an anthropocentric biopolitical locus of control that entrenches an oppositional limit between Man and nature and by commodifying nature in its entirety. When connected to foundational environmental concerns of "common heritage" (of *man*kind), "conservation" and "sustainable use", the particularity of the Animal is erased as she becomes objectivised and subsumed in a utilitarian calculus as a utility object under the control of humans. The metabolisation of animality in relation to these constructs or markers gives rise to what I term the singular-plural aporia; a fundamental contradiction effecting a violative relation to Otherness that precludes the possibility of an ethical encounter with the animal Other in her singularity. In order to illustrate what is at stake ethically in this process of oppressive objectification, I draw on Jacques Derrida's insights into the problematic ramifications of sacrificial anthropocentric discourses and Vito De Lucia's biopolitical reading of environmental law. Derrida's insights and De Lucia's reading of environmental law allow us to identify environmental law as a violative anthropocentric discourse of sacrifice that disavows the alterity of the animal Other and solidifies human dominance over other animals. My reading of environmental law here is related to and further illustrates my previous critiques of the use of law (more broadly) in service of animal liberation.[11]

2 Environmental law and animal protection

It is perhaps pertinent to foreground from the outset the simple yet significant axiom that environmental rights are *human* rights, standards and directives decreed by Man for Man. The United Nations Environment Programme's delineation of environmental rights as "any proclamation of a human right to environmental conditions of a specified quality"[12] succinctly captures the human-centredness and orientation of environmental rights.

9 *NSPCA* case para 58, own emphasis.

10 See Bilchitz 2017 *SALJ.*

11 See *inter alia* De Villiers "Animal Advocacy and the Power of Law"; De Villiers 2018 *PELJ.*

12 UNEP date unknown https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what.

One might ask, following this description, whether environmental rights fundamentally target the natural environment per se or rather the *human* environment? Considering that human rights emanate from an anthropocentric metaphysics of subjectivity that progressively constructed the (human) Subject in opposition and exclusion of its animal-supplement, Derrida's insight that attempts at assimilating animals to existing models of (anthropocentric) subjectivity constitute a "disastrous contradiction"[13] should surely make us cautious of attempts at assimilating (some) animals to the construct of legal subjectivity in the hope of incrementally expanding the community of rights holders.[14] In the face of this, surely the protection of animals under the umbrella of a *human* right would seem to constitute an even more pronounced disastrous contradiction. At issue here is the pervasiveness of anthropocentrism as a quasi-transcendental limit of legal discourse.

Environmental law operates as a focussed and partial manifestation of a larger legal experience that directs its force and effect. It is therefore to be expected that environmental law would mirror this larger legal experience – namely legal modernity – albeit contained and presented in a focussed context with a specialised scope of operation. Environmental law, then, will inevitably replicate the anthropocentric ontological, epistemological and axiological underpinnings of legal modernity as a distinct legal experience that is infused with distinct legal ideas.[15] It is this line of argumentation that informed and guided the critique of environmental law as a vehicle for animal liberation shortly after the emergence of environmental ethics as a subspeciality of academic philosophy in the 1970s and 1980s. To the extent that certain pro-animal theories aim to counter anthropocentrism in ethics, some environmental ethicists initially regarded these theories as supportive of their attempts at displacing human-centred thinking. Fundamental incongruences, however, soon emerged. There was widespread consensus early on that an apposite environmental ethic would have to be holistic and attribute innate, non-instrumental value to entities like species and ecological systems. By contrast, dominant pro-animal theories accord intrinsic value to conscious individual beings only.[16]

Whilst there are several other critical paradoxicalities that thwart the ethical incorporation of animals into environmental law frameworks, as will be discussed later, this profound philosophical disagreement about the notion of intrinsic value formed the initial fundamental disagreement that continues to shape related discourses. Recent years have seen theoretical and practical efforts aimed at harmonising and even dissolving this conflict.

13 Derrida and Roudinesco *For What Tomorrow* 71.
14 See De Villiers "Animal Advocacy and the Power of Law"; De Villiers 2018 *PELJ.*
15 De Lucia "Anthropocentrism and International Law" 85.
16 Varner "Environmental Ethics" 855.

Scholars like Gary Varner argue that "environmental ethicists have tended toward caricature of animal welfare and animal rights views, and that a closer look reveals significant convergence between the implications of such views and goals of the environmentalist agenda".[17] A diverse range of jurisdictions including Ecuador,[18] Brazil,[19] Slovenia[20] and Bolivia[21] have all explicitly included animal protection within the ambit of their Constitutional environmental rights and the South African Constitutional Court followed suit in *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development*[22] (hereafter *NSPCA*) by expressly connecting animal welfare and questions of biodiversity with the constitutional right to have the environment protected.[23]

Following Derrida's aporetic conception of justice,[24] I have consistently opposed a conflation of law and justice and indeed maintained that justice, understood as an ethical demand, exceeds law.[25] Far from creating a state of paralysis, this conceptualisation places an increased ethical demand on the Self to contest and re-evaluate existing laws and societal structures that effect the marginalisation of the Other in order to move towards less violent articulations of law, whilst emphasising that such a contestation is never-ending. "Justice remains *to come*, it remains *by coming*"[26] reminds Derrida. It is in light of this future-oriented aspiration that I wish to continue to question law's role in facilitating the subservient position of the animal Other. My ultimate aim is to problematise liberatory approaches that seek to effect change within systems of power and knowledge that celebrate and sustain the very oppression in question, and to illustrate the pyrrhic effect of such approaches.

2.1 The NSPCA case and the integrative approach to animal concerns

I have elsewhere presented a comprehensive discussion of the *NSPCA* case, tracing the litigation history as the trial developed from the High Court to the Supreme Court of Appeal and ultimately the Constitutional Court, and articulated a philosophical critique of the court's struggle to metabolise logically its construction and destruction of "the Animal".[27] My focus here

17 Varner "Environmental Ethics" 855-856.
18 See art 73 of the *Constitution of the Republic of Ecuador*, 2008.
19 See art 225(1)(VII) of the *Constitution of the Federative Republic of Brazil*, 1988 (as amended, 1992-2010).
20 See art 72 of the *Constitution of the Republic of Slovenia*, 1991 (as amended, 2003).
21 See arts 33 and 108 of the *Constitution of the Plurinational State of Bolivia*, 2009.
22 *NSPCA* case.
23 *NSPCA* case para 58.
24 See Derrida "Force of Law".
25 See De Villiers 2012 *SAJHR.*
26 Derrida "Force of Law" 256.
27 See De Villiers 2019 *SALJ.*

specifically centres on the Court's integrative approach that connects animal welfare and questions of biodiversity with the constitutional right to have the environment protected, and more specifically the claim that this approach can embrace animals in their individuality. My reflections ultimately speak to the challenges accompanying the use of environmental law in the service of animal liberation[28] more generally.

Whilst the *NSPCA* case fundamentally centred on the National Society for the Prevention of Cruelty to Animals' right to privately prosecute cases of animal cruelty in terms of the *Criminal Procedure Act* 51 of 1977, the court's lengthy and significant engagement with issues pertaining to animal cruelty, and more fundamentally animal Being, initiated what I have elsewhere argued can be regarded as an "animal turn"[29] in South African constitutional jurisprudence.[30] One of the ways in which the court imbued animal welfare with constitutional status was by directly including animals under the constitutional environmental right. Referencing the case of *S v Lemthongthai*[31] and the environmental right, the court argued that "[a]nimal welfare is connected with the constitutional right to have the environment protected … through legislative and other means".[32] The environmental right is contained in section 24 of the *Constitution of the Republic of South Africa*, 1996 and reads as follows:

> 24. Everyone has the right —
>
> (a) to an environment that is not harmful to their health or wellbeing; and
>
> (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that —
>
> (i) prevent pollution and ecological degradation;
>
> (ii) promote conservation; and
>
> (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Although animals are not explicitly included within the domain of the application of the environmental right, the right must be approached and

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28 I use the term "animal liberation" to designate a state of human-animal co-existence in which we humans honour the ethical obligations that we have towards animals by not violating their fundamental interests.

29 The phrase "animal turn" has been used to refer to the wide phenomenon across the social sciences, humanities and popular culture offering increased attention to issues pertaining to animals and human-animal relationality. Eisen 2017 *ICON* 912.

30 See De Villiers and Le Roux "A Suitable Bridge?".

31 *S v Lemthongthai* 2015 1 SACR 353 (SCA). The case dealt with the acquisition of permits to shoot and kill rhino for alleged trophy purposes.

32 *NSPCA* case para 58.

understood in relation to the legislative framework that section 24(b) requires. Whilst several acts have been passed to give effect to this constitutional provision,[33] the *National Environmental Management Act* 107 of 1998 (NEMA) constitutes the primary piece of legislation governing environmental protection. NEMA explicitly defines the environment as inclusive of "micro-organisms, plant and animal life"[34] and the Constitutional Court has now also incorporated animals under the ambit of section 24(b) through an "integrative approach [that] correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts".[35]

Whilst the Court does not illustrate or discuss exactly how respect and concern are shown for individual animals under an environmental rights framework, David Bilchitz, who claims authorship of the language of an "integrative approach",[36] elaborated on its key doctrinal and practical implications. At issue for Bilchitz are two contrasting approaches to the interpretation of two key concepts contained in the Constitutional environmental right above, namely "conservation" and "sustainable use". In this regard he clearly distinguishes his "integrative approach" from the "aggregative approach" that has been the dominant approach followed by the legislature and executive:

> The 'aggregative' approach … focuses on broad collective environmental goals such as the long-term survival of a species, the health of ecosystems or conserving biodiversity. The 'integrative' approach by contrast … requires the adoption of an attitude of respect for the individuals that make up a species, and ecosystem or the components of biodiversity … [As] only an integrative approach can in fact succeed in achieving the very collective goals the aggregative approach advocates, [t]hat means, in turn, that concepts such as 'conservation' and 'sustainable use' are not to be understood in a manner that excludes the interests of individual animals but must be interpreted to include respect for individual creatures. Notions at the heart of environmental law are thus not separate from those engaged in ethical theory relating to the interests of animals, but are integrated with those concerns.[37]

My first and most fundamental questions would be exactly which ethical theory relating to the interests of animals undergirds this position, and precisely which interests are acknowledged and protected here. I have consistently argued in favour of a conceptual separation of pro-animal

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33 Noteworthy legislation includes the *National Environmental Management: Biodiversity Act* 10 of 2004 and the *National Environmental Management: Protected Areas Act* 57 of 2003.

34 Section 1(1)(xi)(ii) of the *National Environmental Management Act* 107 of 1998 (*NEMA*).

35 *NSPCA* case para 58.

36 Bilchitz 2017 *SALJ* 742 fn 10.

37 Bilchitz 2017 *SALJ* 742.

theories that ascribe diverging ethical statuses to animals[38] and recalling Matthew Calarco's skilfully crafted theoretical demarcation of some of the main philosophical themes relevant to the field of animal studies (through an "Identity/Difference/Indistinction" delineation or framework),[39] we need to acknowledge that different pro-animal theories have deviating and even opposing views on several fundamental issues pertaining to animal Being and agency. I believe it is precisely the lack of a coherent ethical foundation that renders the integrative approach internally fissured and incapable of advancing the protection that it purports to advance. I am specifically concerned with the claim that the integrative approach advances (ethical) respect for "the *individuals* that make up a species".[40] Whilst Bilchitz does not attempt to formulate an ethical foundation for the integrative approach, referring only to the integrative approach as promoting a "respect-based ethic",[41] he repeatedly connects the integrative approach with various forms of utilitarianism.[42] Whilst this acknowledgement accurately aligns with the utilitarian orientation of environmental law,[43] it somewhat ironically also foregrounds what is precisely the fundamental ethical problematic characterising the integrative approach. The animal advocacy movement has *ab initio* been roughly divided into two dominant opposing camps, a utilitarian-based call for the "humane" treatment of animals (known as animal welfarism) and a rights-based approach that calls for the complete abolition of human (ab)use of animals (known as the animal rights approach).[44] Whilst a wide array of theoretical traditions has emerged since the genesis of the animal advocacy movement in the 1800s, the unifying ethical concern centres on the implications of acknowledging the subjective ethical agency of individual animals, and the extent of respect or protection that their fundamental interests should accordingly be afforded. The fundamental divergence between these theoretical approaches, as I would

38 See De Villiers 2015 *SAPL.*

39 Calarco *Thinking Through Animals.*

40 Bilchitz 2017 *SALJ* 740, own emphasis.

41 Bilchitz 2017 *SALJ* 743.

42 Bilchitz states that "a form of indirect or rule utilitarianism would … endorse the integrative view" (Bilchitz 2017 *SALJ* 748 fn 39) and that a recognition of individual animals as deserving of respect in their own rights "could be supported by a more complex version of utilitarianism in relation to the environment. Instead of adopting a view that allows the benefits of humans (or the environment as a whole) to run roughshod over individual interests, it would require a rule to be adopted that individuals are deserving of respect in their own right and their interests must be protected. That rule would in the longer run achieve better the utilitarian purposes and is an expression of the general argument that is often made for rule utilitarianism over act utilitarianism" (Bilchitz 2017 *SALJ* 762 fn 96).

43 For a comprehensive discussion of the utilitarian orientation of environmental law, see Lacombe "Legal Utilitarianism".

44 For a comprehensive discussion of the history of the animal advocacy movement and the opposing philosophical perspectives that facilitated the abovementioned divide, see De Villiers 2015 *SAPL.*

like to animate the discourse here, concerns the extent to which the singular Animal is *sacrificed* in both thought and praxis. Derrida's reflections on the question of the Animal provide deep insight into the ethical failures of sacrificial discourses that fail to embrace the animal Other[45] in her singularity and provide a suitable framework within which the ethical shortcomings of environmental law as a mechanism for animal liberation can be articulated.

3 Derrida and the question of the Animal

In critiquing the rational humanist tradition for effecting a sacrificial structure that manifests both materially and symbolically a space wherein animals can be put to death with exemption from punishment or injurious consequences, Derrida makes the following statement in an interview with Jean-Luc Nancy:

> Discourses as original as those of Heidegger and Levinas disrupt, of course, a certain traditional humanism. In spite of the differences separating them, they nonetheless remain profound humanisms *to the extent that they do not sacrifice sacrifice*.[46]

Derrida's remark here should be interpreted and understood against the background of his more general reflections on the nature of sacrifice, both elsewhere[47] and in this interview, specifically as they pertain to the inescapability of a sacrificial existence. Derrida is at pains to illustrate that certain manifestations of sacrifice inevitably persist in the impossibility of its delimitation; that "one eats [the Other] and lets oneself be eaten by him".[48] The refusal to "sacrifice sacrifice", for Derrida, refers to the solidification of the dogmatic anthropocentrism underlying discourses that refuse to recognise the ethical "Thou shalt not kill" proscription in the face of the animal Other and respond accordingly:

> The subject is responsible for the other before being responsible for himself as 'me'. This responsibility to the other, for the other, comes to him, for example (but this is not just one example among others) in the 'Thou shalt not kill'. Thou shalt not kill thy neighbour. Consequences follow upon one another, and must do so continuously: thou shalt not make him suffer, which is sometimes worse than death, thou shalt not do him harm, thou shalt not eat him, even a little bit, etc ... But the 'Thou shalt not kill' is addressed to the other

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45 By using this term, I am advancing the notion that humans subsist in a non-subsumptive relation with all individual animals as beings who radically call humans' Being into question and awaken them to ethical responsibility. This notion of the ethical, developed by Emmanuel Levinas, is grounded in the primacy of the Other and signals a radical withdrawal from the egocentric supremacy entrenched in traditional Western thought. See Levinas *Totality and Infinity*. For a comprehensive discussion of the value of Levinas' ethical logic for animal ethics, see De Villiers 2020 *PELJ.*

46 Derrida and Nancy "'Eating Well'" 113.

47 See *inter alia* Derrida *Writing and Difference*; Derrida *Glas*; Derrida *The Gift of Death.*

48 Derrida and Nancy "'Eating Well'" 114.

> and presupposes him. It is destined to the very thing that it institutes, the other as man. It is by him that the subject is first of all held hostage. The 'Thou shalt not kill' – with all its consequences, which are limitless – has never been understood within the Judeo-Christian tradition ... as a 'Thou shalt not put to death the living in general'. ... the other, such as this can be thought according to the imperative of ethical transcendence, is indeed the other man: man as other, the other as man.[49]

Derrida proposes that this ubiquitous anthropocentrism effects and sustains the "carnophallogocentric" schema of subjectivity that typifies Western culture; the Subject remains a male (*phallo*), speaking (*logos*), flesh eater (*carno*). Derrida later elaborates on the origin and pervasiveness of this culture (or "logic") of sacrifice, and also offers insight into what a sacrifice of (carnophallogocentric) sacrifice might look like in his most sustained engagement with the question of the animal, his autobiographical text *The Animal That Therefore I Am.*[50]

Derrida's reflections here stem from a rather peculiar encounter. As he steps from his shower, he finds himself stark naked under the gaze of his cat. In this moment Derrida is overcome with shame and a desire to cover himself. This initial reaction leaves him somewhat baffled, for why should he feel shame? We can begin to unpack Derrida's reaction and emanating reflections only once we understand the ethical vantage point and associated issues at stake; Derrida sees himself *being seen* (and indeed in his nudity) by another animal.[51] This encounter leads him to ponder on what is arguably the most important question of his philosophy, as he asks "[b]efore the cat that looks at me naked, would I be ashamed *like* a beast that no longer has the sense of its nudity? Or, on the contrary, *like* a man who retains the sense of his nudity? Who am I, therefore? Who is it that I am (following)?".[52] As Gerald Bruns aptly remarks, Derrida is more eager to be free of this question than he is interested in answering it.[53] His objective here is to establish the sense of it. Where does this question lead, amongst other critical issues, with regard to the nature of the difference between his Being and that of the cat?

Two critical issues should be foregrounded here. Firstly, Derrida's ethical existence is not only affected but also effected by the cat (as an ethical demand) precisely because the cat was there "first". The cat's gaze precedes his own. Secondly, apart from acknowledging the cat as a *who* rather than a *what*, Derrida grants the cat her own point of view or perspective and in doing so challenges the whole hegemonic discourse of Western philosophy that has consistently failed to recognise the Animal as

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49 Derrida and Nancy "'Eating Well'" 112-113.
50 Derrida *The Animal That Therefore I Am.*
51 Calarco *The Boundaries of Human Nature* 100.
52 Derrida *The Animal That Therefore I Am* 5-6.
53 Bruns 2008 *Research in Phenomenology* 404.

an individual Other with her own gaze. For Derrida, "[the individual Animal] has its point of view regarding me. The point of view of the absolute other, and nothing will have ever given me more food for thinking through this absolute alterity of the neighbour or of the next(-door) than these moments when I see myself seen naked under the gaze of a cat".[54] Important consequences flow from this recognition of the cat as a unique, singular being with a subjective experience of the world. Most importantly for the purpose of the argument I am developing here, the absolute singularity or individuality of the Other resists subsummation by any category like "cat", "animal" or "species", because it absorbs the individuality of the Other into an identity-machine. Indeed, the notion that there is no animal *as such* is one of the leading theses that Derrida expounds in this text, as he has done elsewhere in various forms and to varying degrees. At stake, then, is an encounter at the level of the *unsubstitutable, singular* and *irreducible*, not a subsummation into reductive categories like "man" and "animal", but rather a face-to-face encounter that reflects a relation of proximity. Recognition of this relation of proximity, which subsists in the domain of the ethical, imparts a responsibility to respond to the call of the Other in a way that disrupts the identification of oneself as a subject by way of a limit-experience that leaves both the Self and Other in an anomalous space without horizons or signposts:

> As with every bottomless gaze, as with the eyes of the other, the gaze called 'animal' offers to my sight the abyssal limit of the human: the inhuman or the ahuman, the ends of man, that is to say, the bordercrossing from which vantage man dares to announce himself to himself, thereby calling himself by the name that he believes he gives himself. And in these moments of nakedness, as regards the animal, everything can happen to me, I am like a child ready for the apocalypse, *I am (following) the apocalypse itself*, that is to say, the ultimate and first event of the end, the unveiling and the verdict … If I began by saying 'the wholly other they *call* "animal," and, for example, "cat,"' if I underlined the call [*appel*] and added quotation marks, it was to do more than announce a problem that will henceforth never leave us, that of appellation - and of the *response* to a call.[55]

3.1 L'Animot: Refractory to typology and characterology

It is precisely at this level of responding to the call of the Other in a nonviolative way that we find one of the most critical interventions that Derrida undertakes in this text. Derrida's concern is that animals have been approached or engaged in a dogmatically anthropocentric manner through appellations grounded in oppositional dichotomies that entrench a human/animal binary that erases important differences (on both sides of the divide). Derrida has consistently insisted on multiplying the dimensions of this divide, precisely so that we can attend to *singularity* by acknowledging

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54 Derrida *The Animal That Therefore I Am* 11.

55 Derrida *The Animal That Therefore I Am* 12-13.

the Other as remaining radically separate, irreducible, and transcendent from the Self. He argues that the question of the animal "becomes interesting once, instead of asking whether or not there is a limit that produces a discontinuity, one attempts to think what a limit becomes once it is abyssal, once the frontier no longer forms a single indivisible line but more than one internally divided line; once, as a result, it can no longer be traced, objectified, or counted as single and indivisible".[56] What would it mean to encounter the Animal on the other side of this reductive line, prior to the naming that reverberates oppressive categories and the emanating subjection of animals to human control?

An ethical encounter with the animal Other cannot take place within an oppositional ontological framework. In order for a face-to-face encounter[57] to take place as "an experience of difference without definition or corresponding identity that provokes the question, '*Who am I*?'",[58] we need new ontological and ethical concepts that carve a critical space within which we can begin to think and enact new possibilities. In this vein Derrida introduces the concept of *l'animot*, "a chimerical word that sounded as if it contravened the law of the French language!"[59] *Animot* echoes the word *animaux*, animals in the plural. With this concept Derrida asks that "the plural *animals* [be] heard in the singular" because, as already stated, "[t]here is no Animal in the general singular, separated from man by a single, indivisible limit".[60] The neologism *animot* furthermore also incorporates the word for word, "*mot*", and with this Derrida is challenging the manner in which language and access to Being has commonly been denied to animals and ontologically approached as a privation that served as an indivisible limit separating man from animal.[61] This dominant approach of thinking differences privatively (for which Derrida takes thinkers as radical as Martin Heidegger and Emmanuel Levinas to task) needs to be displaced if we are to move beyond the dogmatic anthropocentrism that fails to sacrifice sacrifice.

L'Animot, then, resists every typology, genus, characterology and calculation. Such an approach to the animal Other is diametrically opposed

56 Derrida *The Animal That Therefore I Am* 30-31.

57 I am deliberately using Levinas' terminology of the face (of the Other) as the site of ethical interruption: "The way in which the other presents himself, exceeding *the idea of the other in me*, we here name face. This *mode* does not consist in figuring as a theme under my gaze, in spreading itself forth as a set of qualities forming an image. The face of the Other at each moment destroys and overflows the plastic image it leaves me, the idea existing to my own measure and to the measure of its *ideatum* – the adequate idea. It does not manifest itself by these qualities, but … *expresses itself*." Levinas *Totality and Infinity* 50-51.

58 Bruns 2008 *Research in Phenomenology* 414.

59 Derrida *The Animal That Therefore I Am* 41.

60 Derrida *The Animal That Therefore I Am* 47.

61 Derrida *The Animal That Therefore I Am* 48.

to the utilitarian ethics that the integrative approach to environmental law inevitably replicates and that approaches relationality as a calculable process. The utilitarian calculus that tallies up interests of particular beings in a specific given situation, irrespective of their species (and this is where the appeal lies for some pro-animal theorists), determines the just outcome as the maximisation of the greatest good for the greatest number involved. This approach "reduces ethics to the antithesis of ethics", at least in a Derridean sense, because the aporia of judgment that Derrida so painstakingly illustrates in *Force of Law*[62] is reduced to the mechanical progression of a positivist calculation.[63] As I have previously illustrated, what Derrida calls the "haunting of the undecidable" demarcates decision making with calculation and illustrates why justice cannot exist with or without a decision. In order for a decision to be a free decision rather than "the programmable application … of a calculable process", it must go through the "ordeal of the undecidable".[64] The utilitarian calculus effects a continuism (that manifests through the concept of shared "interests") and, quite ironically, also the sort of mechanical behaviour (namely the reduction of ontology to a calculation) that Descartes subscribed to animal Being and the "bestial".[65]

3.2 Reconfiguring suffering

Derrida's second critical intervention, as I read it here, is absorbedly related to the first. Approaching animals in their irreducible plurality and singularity entails a move towards an ethical *being-with.* We need to note from the outset that for Derrida, this question of *being-with* animals is not merely hypothetical. He extensively considers the tragic real life experiences of animals since the advent of modernity, which has facilitated an unparallelled "industrialization of what can be called the production for consumption of animal meat, artificial insemination on a massive scale, more and more audacious manipulations of the genome, the reduction of the animal not only to production and overactive reproduction (hormones, genetic crossbreeding, cloning, etc.) of meat for consumption, but also of all sorts of other end products, and all that in the service of a certain being and the putative human well-being of man".[66] Derrida's face-to-face encounter or *being-with* his cat reflects a coming together of two singularities who preserve or hold onto their own interiority – fragments of their own internal subjective Being that remain beyond the reach of others. This aspect of the ethical relation, namely the inability to access fully and transparently the Being of the Other, is vital for understanding the ethical imperative of

62 Derrida "Force of Law".
63 Wolfe "In the Shadow of Wittgenstein's Lion" 26.
64 See De Villiers 2012 *SAJHR* 22.
65 Wolfe "In the Shadow of Wittgenstein's Lion" 26.
66 Derrida *The Animal That Therefore I Am* 25.

respect.[67] The ethical relation ultimately bespeaks our finitude and limitations, which we share with other animals. Derrida's second intervention brings into relief the manner in which our shared finitude can radically reform the ontological and proto-ethical dimensions of animal ethics.

The utilitarian thinker Jeremy Bentham famously argued, in relation to the question of animal compassion, that "the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?"[68] Peter Singer extensively animates this passage in his groundbreaking book *Animal Liberation,*[69] in which he draws on Bentham's consequentialist, sentience-based hedonistic utilitarianism to develop his own preference utilitarianism in service of animals. For Singer, as for Bentham, sentience (the capacity to experience pleasure and suffer pain) and emanating interest (or preference) in not suffering is sufficient to be afforded equal moral standing. Animal suffering must be included in the moral calculus; the pain involved in using the animal must be seized upon and weighed against the satisfaction of human preference on the other side and the right decision will be the one that maximises utility whilst inflicting minimal suffering. Animal suffering, then, becomes a capacity to be included in a moral calculus. Derrida would have us move away from this approach to animal suffering towards a recognition of our shared finitude and vulnerability, or what I once again regard as an ethical *being-with.*

For Derrida, the capacity to suffer is not the primordial issue at stake in our relation with animals. Rather, the question "Can they *suffer*?" directs us towards and embodies within itself the suggestion of a more basic relationality, namely "an interruptive encounter with animal suffering that calls for and provokes thought".[70] The question whether animals can suffer is thus already a response to a preceding event that Calarco describes as "the pre- or proto-ethical encounter that gives rise to the question of the animal as well as to the configuration and elaboration of any positive animal ethics".[71] Reminiscent of a Levinasian ethics that locates the disruptive force of the face in the defencelessness of the Other, Derrida is arguing that the recognition of animals' capacity to suffer holds less disruptive force than an encounter with animals' *in*capacity to escape suffering, their "fleshy vulnerability and exposure to wounding".[72] Here our egoism is brought into question and we are called to compassion:

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67 Calarco *The Boundaries of Human Nature* 105.
68 Bentham *Introduction to the Principles of Morals and Legislation* 311 fn 1.
69 Singer *Animal Liberation*.
70 Calarco *Zoographies* 117.
71 Calarco *Zoographies* 118.
72 Calarco *Zoographies* 118.

> 'Can they suffer?' amounts to asking 'Can they *not be able*?' And what of this inability? ... Being able to suffer is no longer a power; it is a possibility without power, a possibility of the impossible. Mortality resides there, as the most radical means of thinking the finitude that we share with animals, the mortality that belongs to the very finitude of life, to the experience of compassion, to the possibility of sharing the possibility of this nonpower, the possibility of this impossibility, the anguish of this vulnerability, and the vulnerability of this anguish.[73]

By insisting that animal suffering constitutes a site of interruption that calls our ethical being into question prior to any reflection or discourse to be had on the ethical status of animals, Derrida moves us further away from the dominant approaches to animal ethics that attempt to calculate the moral weight of animal suffering. These calculations deflect the primordial disruptive dimension of human-animal relationality and disavow the otherness of the animal by subsuming her Being in a positivist calculation. With this in mind, I will now turn to illustrating why environmental law constitutes a violative framework that disavows our embeddedness in nature by creating an anthropocentric biopolitical locus of control that entrenches an oppositional limit between Man and nature and commodifying nature in its entirety.

4 Conservation and sustainable use: environmental law as biopolitics

To reiterate, the integrative approach to environmental law advances the claim that the terms "conservation" and "sustainable use" can be reinterpreted through a lens "of respect for the individuals that make up a species, and ecosystem or the components of biodiversity", thereby somehow deproblematising the "broad collective environmental goals" of the dominant aggregative approach.[74] There are several problems with this claim, not the least of them being an ignorance of the collective biopower that the incorporation of these terms into law is fundamentally meant to effect. Vito De Lucia's[75] biopolitical reading of environmental law sets itself several important tasks, the foremost being to illustrate how the terms "conservation" and "sustainable use" coalesce with knowledge and power "into a regulatory framework aimed at classifying, protecting, regularising, and optimising nature" for human utilisation.[76] I now turn to consider the main thrust and implications of his argument.

Scholars have long since been illustrating that environmental law's inability to protect the environment efficiently can be situated at its very core. Rather than addressing the root causes of the environmental problematic and

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73 Derrida *The Animal That Therefore I Am* 28.
74 Bilchitz 2017 *SALJ* 742.
75 De Lucia 2017 *JHRE*.
76 See De Lucia "Anthropocentrism and International Law" 96.

effecting a paradigm shift, environmental law operates *within* the problematic.[77] Emergent from the historical coordinates of modernity, environmental law is suffused with the epistemological assumptions and cultural values that (re)produce what can be called the modern "epistemology of mastery"; an epistemological perspective that mobilises knowledge in order to materially control and dominate nature.[78] An analytics of biopolitics facilitates an understanding of the intricacies, opacities and paradoxes of the plurality of registers that constructs the intersection where law and ecology meet.

Drawing on the methodological approach developed by Thomas Lemke, De Lucia utilises an "analytics of biopolitics" that conjoins the concept of biopolitics with a genealogical method. This approach, for De Lucia, facilitates an *opening up* (of critical points of enquiry) rather than a *foreclosure*, as per the task of what can be called "critical environmental law".[79] Employing the Foucauldian framework that provides the basis for most engagements with biopolitics, the primary focus here entails an engagement with the manner in which biopower seizes life under its political horizon through modes of power operation. Biopower subsumes under its grids and loci of control both individual bodies (via disciplinary techniques, or anathomopolitics) and populations (via techniques of regularisation, or biopolitics) and presents what is arguably the most sophisticated theory of power that we have at our disposal today. De Lucia goes so far as to express the opinion that biopower in its biopolitical articulation may represent "the very horizon of sense within which the entire tradition of modernity can be organized".[80] If biopower aspires to regulate and discipline the body, at least in its anathomopolitical expression, we can say that the express objective of biopolitics is to regulate life's broad processes. Unable to govern the complexities of individual life, "its sicknesses and the modalities and timing of individual deaths",[81] biopolitics aims to manage the directions and computative properties of populations, which Foucault

77 M'Gonigle and Tadeka 2013 *Pace Envtl L Rev* 1020. The question that emanates, to my mind, is whether environmental law can function outside of an eco/anthropocentricity dualism and beyond animal/human, human/environmental hierarchies without paradoxicalising its very founding core. De Lucia refers to "critical environmental law", as conceptualised by Andreas Philippopoulos-Mihalopoulos, as an apt critical space within which we can open a field of enquiry rather than solidifying the closures that we currently find (in discourse) at the intersection between law and ecology. Whilst I agree that we need to alter "the critical register decisively beyond a dialectical relationship between two conceptual horizons that respond to the same underlying epistemological logic" (De Lucia 2017 *JHRE* 200), I remain unconvinced that a meaningful shift can be effected within environmental law frameworks without betraying the foundations of environmental law.

78 De Lucia 2017 *JHRE* 183.

79 De Lucia 2017 *JHRE* 192.

80 De Lucia 2017 *JHRE* 193.

81 De Lucia 2017 *JHRE* 193.

delineates as "propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary".[82] Biopolitics, then, aims to modulate life; to predict and optimise its processes.[83] De Lucia points out that a twofold dynamic is at play with respect to the environment: In order to exploit nature to its fullest potential, several positive interventions aimed at its care, the optimisation of its processes and the improvement of its productive forces are simultaneously implemented.[84] I believe this is exactly what the Constitutional Court envisages with the integrative approach when it argues that the "integrative approach correctly links the suffering of individual animals *to conservation*, and illustrates the extent to which showing respect and concern for individual animals *reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values*".[85]

Here we can see how the subsummation of the natural environment under biopolitics requires that we merge two analytically distinct, yet materially inseparable and reciprocal perspectives.[86] The first entails that care be taken for a human population that is operationalised through its incorporation in the horizon of the practises of regularisation that biopolitical apparatuses and institutions enact over the environmental processes that influence the welfare and efficiency of human populations.[87] For Foucault, these environmental factors constitute one facet of the biopolitical maximisation of populations and are therefore necessarily already within the purview of biopower.[88] The second perspective, which is more closely related to the argument being developed here, is directly concerned with the regularisation of natural entities and populations.[89] Whilst remaining beholden to the ultimate aim of maximising the well-being of human populations, the connection can potentially at times appear vague in instances like the "integrative approach" that, at first glance, seemingly nudges in the direction of an ecocentric re-orientation of environmental law. However, the lens of biopolitics makes it clear that such re-calibrations remain ambivalent, operating simultaneously "in terms of its dominant self-presentation as a critique of the prevalent, increasingly instrumental control of the natural world … [and] as a new set of normalising strategies *extending* the scope of biopolitical technologies of power from human populations to

82 Foucault *The History of Sexuality. Volume I* 139.
83 De Lucia 2017 *JHRE* 193.
84 De Lucia 2017 *JHRE* 193.
85 *NSPCA* case para 58, own emphasis.
86 De Lucia 2017 *JHRE* 193.
87 De Lucia 2017 *JHRE* 193.
88 De Lucia 2017 *JHRE* 193-194.
89 De Lucia 2017 *JHRE* 194.

the entire natural world".[90] This biopolitical regulation aimed at optimising a state of life is facilitated, decreed and legalised via environmental law through the concepts of "conservation" and "sustainable use". Against his best intentions, Bilchitz's integrative approach that "re-interprets" these concepts merely reinforces the optimisation of nature, which requires that the integrity and health of the individual components comprising ecosystems are maintained. I believe that this focus becomes clear in his argument that "only an integrative approach can in fact succeed in achieving *the very collective goals the aggregative approach advocates*".[91] An acknowledgement of the role that individual animal components play in the larger picture in no way moves us towards animal liberation or an *embrace* of animals in their individuality. "Nature", which of course includes animals, becomes imprisoned in a "zone of indistinction" that continually converts caring practices (like the promotion of animal welfare) into practices of death: "the conservation goals enacted through environmental law are always entangled with the systematic and sustainable exploitation of ecosystem services functional to human well-being".[92] A biopolitical reading of environmental law brings this paradox to the fore and illustrates the co-implication or entanglement of nature's *enhancement* and its *subjugation*. The role of "conservation" is exposed as designating a secondary and instrumental process aimed at facilitating the delivery of ecosystem services.[93] Various bodies tasked with "protecting" the environment clearly and unabashedly advance this perspective. The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Commission articulates the role of its ecosystem approach as facilitating the "sustainable exploitation of natural resources while maintaining the quality, structure and functioning of marine ecosystems"[94] whilst the International Council for the Exploration of the Sea (ICES) delineates its ecosystem approach as the "comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of the marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity".[95] And herein we find the ethical paradoxicality that characterises the very core of environmental law, namely, that it can protect life only by subjugating it: "environmental law

90 De Lucia 2017 *JHRE* 194.
91 Bilchitz 2017 *SALJ* 742, own emphasis.
92 De Lucia 2017 *JHRE* 201.
93 De Lucia 2017 *JHRE* 199.
94 OSPAR Commission *Quality Status Report* (2010) 9, quoted in De Lucia 2017 *JHRE* 199.
95 ICES, *Guidance on the Application of the Ecosystem Approach to Management of Human Activities in the European Marine Environment, ICES Cooperative Research Report 273* (2005) 4, quoted in De Lucia 2017 *JHRE* 199.

simultaneously facilitates the 'conservation *and* commodification' of nature".[96]

5 The singular-plural *aporia* of environmental law

I have now delineated a framework within which I wish to articulate the primary thesis of this article, namely that the "integrative approach" is philosophically unsound in claiming to protect the interests of individual animals and that this approach should be rejected if we are to hold open the possibility of animal liberation, by which term I wish to designate a state of human-animal co-existence in which we humans honour the ethical obligations that we have towards animals by not violating their fundamental interests.

This (re)turns me to my initial concern with the integrative approach, namely exactly which interests of animals are acknowledged and to what extent are they protected? Neither the Constitutional Court nor Bilchitz explicitly answers this question, though, typically of a welfarist approach, both affirmatively link "the *suffering* of individual animals to conservation".[97] The primary problematic with the welfarist paradigm that includes animal suffering in the social utility calculus, as I have extensively illustrated,[98] is that suffering *in general* is not prohibited within this paradigm. Only "unnecessary" suffering, which in practice amounts to acts of gratuitous violence, is ultimately regulated and prohibited under animal protection laws. The same problematic dynamic resurfaces in Bilchitz's attempt at applying in practice the integrative approach to issues pertaining to "sustainable use". Whilst the idea of "showing respect for animals" within this integrative framework would forbid senseless or trivial acts like killing a lion "for mere pleasure or entertainment",[99] the issue becomes significantly more complicated in instances where there is a clash between the interests of individuals and the collective. What is required in this instance, according to Bilchitz, is "a method of reasoning that recognises a clash of interests and values and attempts to resolve them in the best way possible".[100] In the case of a diseased animal, for instance, interventions like separation and quarantine should first be considered and "[o]nly if that were not possible would it be permissible to kill such an animal in the most humane way possible".[101]

This approach once again reflects a typical utilitarian-based calculation, and the now stale critique of this ethic becomes relevant again. Bilchitz's

96 De Lucia 2017 *JHRE* 201.
97 *NSPCA* case para 58; Bilchitz 2017 *SALJ* 750, own emphasis.
98 See De Villiers 2015 *SAPL.*
99 Bilchitz 2017 *SALJ* 753.
100 Bilchitz 2017 *SALJ* 765.
101 Bilchitz 2017 *SALJ* 766.

emphasis on killing the animal "humanely" is largely misguided, as R.G. Frey reminds us, because "[t]he real problem for a utilitarian theory of animal ethics has nothing essentially to do with pain and suffering, even if they are intrinsically evil. The right starting place is that we are using animal lives for our own purposes and often using them up. Whether pain is or is not inflicted in the process, we are still using and often using up these lives. *The real problem is to determine what, if anything, entitles us to do so.*"[102] The fundamental issue, then, is that the integrative approach does not and *cannot* recognise the "Thou shalt not kill" proscription as an unqualified prohibition in the face of the Animal and constitutes an anthropocentric sacrificial discourse. Rather than sacrificing sacrifice, the Animal is categorised *as* a sacrificial being in the service of the aggregated human good. Whilst I remain highly critical of the use of legal constructs like "rights" in service of animal liberation, it does need to be noted here that it is precisely this utilisation and view of animals as resources that animal rights theorists seek to eliminate. Rights function to obstruct appeals to the aggregated good from sacrificing certain fundamental interests of individuals, as is evident from the functioning of human rights. After all, when separation and quarantine proved to be insufficient in preventing the global spread of the COVID-19 virus, we did not turn to "humanely" killing infected people in the hope of preventing a pandemic.

Within the sacrificial structure of the environmental law framework, the carnophallogocentric schema of subjectivity not only remains intact, but is solidified. The environmental law framework is grounded in oppositional limits, foremost amongst them a man/nature limitrophe that simultaneously disavows our embeddedness in nature and facilitates our control over it. As Derrida reminds us, such classical philosophical oppositions do not reflect "the peaceful coexistence of a *vis-à-vis*, but rather … a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand".[103] Animals, falling under the nature side of the binary divide, are oppositionally subsumed in an identity machine that erases their individuality by metabolising their Being in relation to broad collective markers, categories and calculations that facilitate their subjection. It effects, then, a violative relation to otherness that disavows the singularity of the animal Other. Critics can at this juncture point out that Derrida's reflections on the unsubstitutability, singularity and irreducibility of the Animal function at a high level of philosophical abstraction that ultimately renders the ethical relation an aspiration rather than a possibility. Such a critique would, however, fail to appreciate the value and implications of Derrida's animal ethics for environmental law. Derrida's displacement of traditional hierarchical human-animal relationality in favour of an ethical

102 Frey "Utilitarianism and Animals" 178, own emphasis.
103 Derrida *Positions* 41.

being-with (animals) fundamentally entails a move away from the subjugation of animals as *Man's* other through categories that confine them in a collective identity *in relation to humans* and, perhaps more importantly, towards an understanding of the Ethical as an incalculable demand. The "method of reasoning that recognises a clash of interests and values and attempts to resolve them in the best way possible" typifying the integrative approach is nothing more than a utilitarian calculation that approaches the singular animal as a mere component of its plural and part of a larger resource and life process to be optimised in the service of human prosperity. Any potential engagement or consideration of the singular animal inevitably passes through an aporetic moment in which she is always already subsumed in a larger calculus that intrinsically focusses on plurality and effectively forecloses the possibility of fully embracing her individuality. I refer to this as the singular-plural aporia of environmental law. This problematic sacrificial singular-plural interplay is clearly foregrounded in the Constitutional Court's pronouncement that "respect and concern for individual animals *reinforces broader environmental protection efforts*".[104] Individual welfare is promoted only in service of the optimisation of nature and, in instances where violative practises are required in order to enhance nature or appropriately adjusted to minimise suffering and maximise utilisation, it is sacrificed through an appeal to the collective good. Such an approach forecloses the possibility of an ethical encounter with the Animal and the configuration of a constructive animal ethics within an environmental law framework.

6 Conclusion

Our ongoing utilisation of animals continues to be a disconcerting reality for animal ethicists and environmentalists alike. While our consumption of animals is exponentially increasing and species are becoming extinct at an alarming rate, the livestock sector alone produces 9% of all anthropogenic CO_2 emissions, 30% of total anthropogenic methane emissions and 65% of total anthropogenic nitrous oxide emissions.[105] Environmental law would at first glance present an apt mechanism for addressing this overlapping problem. Upon critical examination, however, it becomes clear that the environmental law framework operates within the problematic and facilitates the very exploitation in question. My central concern is that we do a grave injustice to the dire plight of animals when we evoke sacrificial anthropocentric constructs in the name of some supposed liberatory goal, thereby solidifying the current anthropocentric mode of social regulation.

104 *NSPCA* case para 58, own emphasis.
105 Streiffer and Basl "Ethical Issues in the Application of Biotechnology" 841.

My goal in this article has been to illustrate that the environmental law framework constitutes a sacrificial anthropocentric discourse that disavows the animal as an ethical Other. I specifically illustrated that the "integrative approach" that claims to embrace animals in their individuality is unable to do so in either thought or praxis and approaches human-animal relationality as a calculable process that merely reinforces a view of animals as utility objects. It is precisely this view that Derrida's reflections on his cat-encounter is trying to displace. Derrida's point is that animals are here *with* us and *before* us; embodying their own perspectives, shaping their own worlds, domains and relations. True respect for the individuality of animals requires that we not view them as utility objects that can be sacrificed in the pursuit of maximising human wellbeing, but as beings with whom we share finitude, embodiedness and compassion. Recognition of this ethical demand requires that we reject the inclusion of animals in environmental law frameworks, perhaps *especially* when it is done under the guise of animal protection.

BIBLIOGRAPHY

Literature

Bentham *Introduction to the Principles of Morals and Legislation*
Bentham J *An Introduction to the Principles of Morals and Legislation* (Dover New York 2007)

Bilchitz 2017 *SALJ*
Bilchitz D "Exploring the Relationship Between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" 2017 *SALJ* 740-777

Bruns 2008 *Research in Phenomenology*
Bruns G "Derrida's Cat (Who Am I?)" 2008 *Research in Phenomenology* 404-423

Calarco *The Boundaries of Human Nature*
Calarco M *The Boundaries of Human Nature: The Philosophical Animal from Plato to Haraway* (Columbia University Press New York 2022)

Calarco *Thinking Through Animals*
Calarco M *Thinking Through Animals: Identity, Difference, Indistinction* (Stanford University Press California 2015)

Calarco *Zoographies*
Calarco M *Zoographies: The Question of the Animal from Heidegger to Derrida* (Columbia University Press New York 2008)

Crutzen 2002 *Nature*
Crutzen P "Geology of Mankind" 2002 *Nature* 23

De Lucia "Anthropocentrism and International Law"
De Lucia V "Anthropocentrism and International Environmental Law" in Chapaux V, Mégret F and Natarajan U (eds) *The Routledge Handbook of International Law and Anthropocentrism* (Routledge Oxon 2023) 84-101

De Lucia 2017 *JHRE*
De Lucia V "Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law" 2017 *JHRE* 181-202

De Lucia 2020 *Law and Critique*
De Lucia V "Rethinking the Encounter Between Law and Nature in the Anthropocene: From Biopolitical Sovereignty to Wonder" 2020 *Law and Critique* 329-349

De Villiers 2012 *SAJHR*
De Villiers J-H "Towards an Ethical Relation to the Nonhuman Other: Deconstruction, Veganism and the Law" 2012 *SAJHR* 18-30

De Villiers 2015 *SAPL*
De Villiers J-H "Animal Rights Theory, Animal Welfarism and the 'New Welfarist' Amalgamation: A Critical Perspective" 2015 *SAPL* 406-433

De Villiers 2018 *PELJ*
De Villiers J-H "Metaphysical Anthropocentrism, Limitrophy, and Responsibility: An Explication of the Subject of Animal Rights" 2018 *PELJ* 1-29

De Villiers 2019 *SALJ*
De Villiers J-H "Law and the Question of the Animal: A Critical Discussion of *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development*" 2019 *SALJ* 207-223

De Villiers 2020 *PELJ*
De Villiers J-H "Thinking-of-the-Animal-Other with Emmanuel Levinas" 2020 *PELJ* 1-18

De Villiers "Animal Advocacy and the Power of Law"
De Villiers J-H "Animal Advocacy and the Power of Law: Critical Reflections on the Anthropomorphic Hegemony of Subjectivity" in Doomen *et al* (eds) *Law and Morality Revisited* (Boom The Hague 2024) 377-392

De Villiers and Le Roux "A Suitable Bridge?"
De Villiers J-H and Le Roux L "A Suitable Bridge? The South African Constitution and Animal Protection" in Murcott M and Wilson A (eds) *Animal Law and Welfare in South Africa* (Routledge Oxon 2026) (forthcoming)

Derrida "Force of Law"
Derrida J "Force of Law: The 'Mystical Foundation of Authority'" (trans Quaintance M) in Anidjar G (ed) *Acts of Religion* (Routledge New York 2002) 230-298

Derrida *Glas*
Derrida J *Glas* (trans Leavy J and Rand R) (University of Nebraska Press Lincoln 1986)

Derrida *Positions*
Derrida J *Positions* (trans Bass A) (University of Chicago Press Chicago 1981)

Derrida *The Animal That Therefore I Am*
Derrida J *The Animal That Therefore I Am* (trans Wills D, ed Mallet M) (Fordham University Press New York 2008)

Derrida *The Gift of Death*
Derrida *The Gift of Death* (trans Wills D) (University of Chicago Press Chicago 1995)

Derrida *Writing and Difference*
Derrida J *Writing and Difference* (trans Bass A) (University of Chicago Press Chicago 1978)

Derrida and Ferraris *A Taste for the Secret*
Derrida J and Ferraris M *A Taste for the Secret* (trans Donis G) (Polity Press London 2001)

Derrida and Nancy "'Eating Well'"
Derrida J and Nancy J "'Eating Well,' or the Calculation of the Subject: An Interview with Jacques Derrida" (trans Connor P and Ronell A) in Cadava E, Connor P and Nancy J (eds) *Who Comes After the Subject?* (Routledge New York 1991) 96-119

Derrida and Roudinesco *For What Tomorrow*
Derrida J and Roudinesco E *For What Tomorrow… A Dialogue* (trans Fort J) (Stanford University Press Stanford 2004)

Eisen 2017 *ICON*
Eisen J "Animals in the Constitutional State" 2017 *ICON* 909-954

Foucault *The History of Sexuality. Volume I*
Foucault M *The History of Sexuality. Volume I: An Introduction* (trans Hurley R) (Pantheon Books New York 1978)

Frey "Utilitarianism and Animals"
Frey R "Utilitarianism and Animals" in Beauchamp T and Frey R (eds) *The Oxford Handbook of Animal Ethics* (Oxford University Press Oxford 2011) 172-197

Gillespie *International Environmental Law*
Gillespie A *International Environmental Law, Policy and Ethics* 2nd ed (Clarendon Press Oxford 2014)

Grear 2015 *Law and Critique*
Grear A "Deconstructing Anthropos: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'" 2015 *Law and Critique* 225-249

Lacombe "Legal Utilitarianism"
Lacombe C "Legal Utilitarianism in Environmental Law: A Critique of the Critique" in Tusseau G (ed) *Research Handbook on Law and Utilitarianism* (Edward Elgar Cheltenham 2024) 412-427

Levinas *Totality and Infinity*
Levinas E *Totality and Infinity: An Essay on Exteriority* (trans Lingis A) (Martinus Nijhoff The Hague 1979)

Malhi 2017 *Annual Review of Environment and Resources*
Malhi Y "The Concept of the Anthropocene" 2017 *Annual Review of Environment and Resources* 77-104

M'Gonigle and Tadeka 2013 *Pace Envtl L Rev*
M'Gonigle M and Tadeka L "The Liberal Limits of Environmental Law: A Green Legal Critique" 2013 *Pace Envtl L Rev* 1005-1115

Pottage "Why Nature Has No Rights"
Pottage A "Why Nature Has No Rights" in Alvarez-Nakagawa A and Douzinas C (eds) *Non-human Rights: Critical Perspectives* (Edward Elgar Cheltenham 2024) 39-65

Singer *Animal Liberation*
Singer P *Animal Liberation* 4th ed (Harper Collins New York 2009)

Streiffer and Basl "Ethical Issues in the Application of Biotechnology"
Streiffer R and Basl J "Ethical Issues in the Application of Biotechnology to Animals in Agriculture" in Beauchamp T and Frey R (eds) *The Oxford Handbook of Animal Ethics* (Oxford University Press Oxford 2011) 826-854

Varner "Environmental Ethics"
Varner G "Environmental Ethics, Hunting, and the Place of Animals" in Beauchamp T and Frey R (eds) *The Oxford Handbook of Animal Ethics* (Oxford University Press Oxford 2011) 855-876

Wolfe "In the Shadow of Wittgenstein's Lion"
Wolfe C "In the Shadow of Wittgenstein's Lion: Language, Ethics, and the Question of the Animal" in Wolfe C (ed) *Zoontologies: The Question of the Animal* (University of Minnesota Press Minneapolis 2003) 1-57

Case law

National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development 2017 1 SACR 284 (CC)

S v Lemthongthai 2015 1 SACR 353 (SCA)

Legislation

Constitution of the Federative Republic of Brazil, 1988 (as amended, 1992-2010)

Constitution of the Plurinational State of Bolivia, 2009

Constitution of the Republic of Ecuador, 2008

Constitution of the Republic of Slovenia, 1991 (as amended, 2003)

Constitution of the Republic of South Africa, 1996

Criminal Procedure Act 51 of 1977

National Environmental Management Act 107 of 1998

National Environmental Management: Biodiversity Act 10 of 2004

National Environmental Management: Protected Areas Act 57 of 2003

Internet sources

UNEP date unknown https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what
United Nations Environment Programme date unknown *What are Environmental Rights?* https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what accessed 14 October 2025

List of Abbreviations

ICON	International Journal of Constitutional Law
JHRE	Journal of Human Rights and the Environment
Pace Envtl L Rev	Pace Environmental Law Review
PELJ	Potchefstroom Electronic Law Journal
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal

SAPL	Southern Africa Public Law
UNEP	United Nations Environment Programme