

## 7 Rethinking Membership and Participation in an Inclusive Democracy: Cognitive Disability, Children, Animals

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*Sue Donaldson and Will Kymlicka\**

One of the most important citizenship struggles in recent decades has focused on people with cognitive disabilities (henceforth CD). Advocates have challenged exclusionary conceptions of citizenship that relegate people with CD to a kind of second-class citizenship or wardship, accorded at best certain paternalistic protection from harms and provision for objectively defined basic needs. Advocates (including self-advocates) have insisted that society must also recognize and support the agency of people with CD, enabling, insofar as possible, their ability to participate in key decisions affecting their lives, and to be co-creators of the societies we share. Society must, in short, acknowledge and enable their citizenship.

Much remains to be done to instantiate this new vision of inclusive citizenship, but it has already shaped laws and policies around the world, including the UN Convention on the Rights of People with Disabilities (2006), which calls for ‘full and effective participation and inclusion in society’. This convention affirms that people with CD are entitled to the full recognition of their human rights, and emphasizes their agency and their right to participate in individual and collective self-determination.<sup>1</sup>

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<sup>1</sup> The UN Committee that monitors the Convention has recently elaborated the meaning of these rights in a helpful document (UN Committee on the Rights of Persons with Disabilities, *General Comment on Article 12: Equal Recognition Before the Law* (Eleventh session, March 30–April 11, 2014, CRPD/C/11/4). This Comment makes clear that insofar as people with CD are unable on their own to make certain decisions, the alternative is not ‘substitute decision-making’ (using an objective best-interests standard) but rather ‘supported decision-making, which respects the person’s autonomy, will, and preferences’ (paragraph 22). For discussion of this Convention, see Arneil’s chapter in this volume.

With this new emphasis on participation we see a conscious reorientation of the disability rights movement around ‘citizenship as the central organizing principle and benchmark’ (Prince 2009: 3; cf. Carey 2009).

We believe that the new practices of citizenship emerging within the disability movement are of profound significance, and not just for citizens with CD. They require us to expand our understanding of the very meaning and purpose of citizenship, and to rethink its fundamental practices, and the spaces and places where these practices occur. They require us to rethink citizenship theory, and indeed democratic theory, from the ground up.

In this chapter, we want to draw out these broader implications of the citizenship struggles of people with CD by connecting them to two other challenges of inclusive citizenship: children (particularly young children) and animals (particularly the domesticated animals whom we have brought into our society). We will argue that developments around CD shed light on these two other cases, and vice versa. Examining these cases together can enrich our understanding of the emancipatory potential of inclusive citizenship, and also sharpen our understanding of the many challenges we face in achieving this goal.

### Rethinking Citizenship

The inclusion of people with CD represents an historical shift in ideas of citizenship, not just in terms of *who* can be conceived as a full citizen, but in terms of *how* we think of citizenship. In traditional political theory, the citizen has been conceived as a person with capacities for public reason or *logos* or Kantian autonomy or rational reflection and deliberation – complex language-mediated capacities which we will call (following Gary Steiner) ‘linguistic agency’ (Steiner 2013: 196). Linguistic agency has operated not just as an ideal, but as a threshold capacity. Those seen as lacking this capacity have been relegated to the margins of political community, situated as passive wards to whom society owes duties of care rather than as co-citizens with equal rights.

Recent citizenship struggles for people with CD offer a very different conception of the basis and purpose of citizenship – a conception based not on the possession of linguistic agency, but on rights of membership and participation in a society of equals. Citizenship isn’t a select club for linguistic agents; it’s a commitment to include and empower all members of society, across the whole spectrum of diversity, on their own terms.<sup>2</sup>

<sup>2</sup> ‘Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity... is incompatible with granting legal capacity on an assimilationist basis’ (UN Committee on the Rights of Persons with Disabilities, *General Comment on Article 12: Equal Recognition Before the Law*, paragraph 29).

People with CD should be recognized, not (or not only) as vulnerable individuals with special needs for protection and provision, but as members of society involved in dense webs of trust, communication and cooperation with others. As such, they have both rights of participation to help shape social norms as well as responsibilities to comply with those social norms. Citizenship is a means of affirming these rights of membership and participation, and of obliging states to support citizens' legal and political agency.

This new conception of citizenship is not just emerging in the context of CD. We see similar ideas in the field of children's citizenship (e.g., Wall 2011; Jans 2004), inspired in part by the 1989 UN Convention on the Rights of the Child (UNCRC). The UNCRC embraces what is called a 3P model, affirming rights of participation, not just protection and provision, even for very young children who lack linguistic agency.<sup>3</sup>

This revised conception of citizenship has multiple benefits compared to the traditional conception tied to linguistic agency. If we say that to qualify as a citizen, it is not enough to participate in social life and be responsive to social norms, but one must also be able to rationally reflect on, evaluate and articulate propositions regarding these norms, then we quickly slide into a very exclusionary conception of citizenship. Not everyone has this capacity, and no one has it for all of their lives. Defining citizenship in this way would give all of us, at best, a fragile and conditional citizenship status.

It's not simply exclusionary, but misses the point of citizenship, which is to recognize and uphold membership in a shared society. Citizenship is a way of acknowledging who belongs here, who is a member of the people in whose name the state governs, and whose subjective good must be considered in determining the public interest and in shaping the social norms that structure our cooperative relations.<sup>4</sup>

Viewed this way, the fundamental basis of democratic citizenship is not linguistic agency, but rather the capacity for norm responsiveness in intersubjective relationships – the ability to moderate behaviour in accord with internalized norms when relating to other selves (Krause 2011: 299). Recent disability theorists argue that capacities for agency and citizenship are embedded in ongoing social relations among responsive, reflexive and interdependent selves, not located in a threshold individual capacity for rational reflection and public deliberation. CD

<sup>3</sup> The UNCRC does not affirm full legal and political rights for children (unlike the UNCRPD), but does affirm their right to freely express their views, which must be 'given due weight in accordance with the age and maturity of the child' (Article 12).

<sup>4</sup> For a defence of this conception of citizenship as tracking membership, see Donaldson and Kymlicka (2011: 55–61).

does not disqualify individuals from participating in, and contributing to, norm-governed and morally valuable practices (Arneil 2009, Clifford 2012, Silvers and Francis 2005).

This approach challenges not just traditional ideas about the alleged *capacities* required for citizenship, but also about the *locations* and *practices* that define citizenship. Implementing citizenship rights and responsibilities in relation to non-linguistic agents requires developing new ways of engaging the subjectivity of these co-citizens, focusing less on the ability to articulate or understand propositions, and more on attending to their ‘varied modes of doing, saying and being’ (Neale 2004: 15).<sup>5</sup> We need to create new mechanisms for the enactment of citizenship, bringing citizenship to the places and spaces where membership, participation and decision-making are meaningful to the individuals involved.

For example, if children are to be enabled ‘to form and express a view’ on ‘all matters affecting’ them – as required by the UNCRC – we need ‘child-sized’ spaces for citizenship (Jans 2004). Similarly, for people with CD, we need to focus not on how they deviate from some ideal of an articulate, autonomous agent engaged in public reason in the public square, but on where, how and with whom they live their lives, and how power and decision-making are negotiated in these places and spaces.

This has implications for how we think about citizenship practices. In her discussion of political rights for people with CD, Nussbaum states that without an equal capability to vote and to participate in juries, people with CD are ‘disqualified from most essential functions of citizenship’ (Nussbaum 2009: 347). But this is to grab the wrong end of the stick. Ideas of the ‘essential functions of citizenship’ are precisely what are at stake in the struggle for an inclusive citizenship. The question is not (or not only) how we can enable people with CD to participate in the practices that society has already deemed ‘essential functions of citizenship’. We must also ask how people with CD can participate in *creating* norms of citizenship. Instead of fetishizing certain practices such as jury duty or voting as the hallmark of ‘real’ citizenship, we need to consider the new places and spaces of citizenship that are meaningful to people with CD, and that enable them to shape our shared social life. This may or may not include voting and participating on juries.<sup>6</sup> To find out, we

<sup>5</sup> On the importance of attending to physical expressions, gestures and sounds as key to understanding an individual’s subjective good, and socializing them into trusting relations built around cooperative norms, see Alderson (2008) concerning children, and Francis and Silvers (2007), Wong (2009) and Kittay (2001) concerning people with CD.

<sup>6</sup> Vorhaus (2005) argues that people with CD are badly served by fetishizing voting at the expense of other forms of participation that would be more effective in enabling them to shape our common life. While we agree with Nussbaum that it is crucial to remove barriers to participation in traditional citizenship practices, we disagree with her claim that *not* participating in these practices means that equality is denied. Equality is denied when

need to start from those places and spaces and work from the ground up, rather than uncritically assuming that the citizenship functions created by and for neurotypical adults are the only valid ones.<sup>7</sup>

A lot of important work has already been done within both the disability and children's rights movements to elaborate this new vision of citizenship. In this chapter, we will argue that these developments also have implications for thinking about domesticated animals (hereafter DAs), and that bringing animals into the conversation can help clarify and enrich the challenges we face in building inclusive citizenship.

In previous work, we articulate a moral argument for extending the revised conception of citizenship to DAs (Donaldson and Kymlicka 2011: chs. 4–5). If citizenship is indeed about recognizing membership, voice and agency within socially meaningful relationships involving cooperation, trust and intersubjective recognition – rather than threshold capacities for linguistic agency – then DAs qualify. Indeed, the process of domestication is precisely about the incorporation of animals into such relations. Domestication has presupposed, and further developed, capacities for trust, cooperation and communication, in ways that lay the behavioural foundations for relationships of co-citizenship. Having incorporated them into our society, and bred them to be dependent on us (or interdependent with us), we are morally obliged to recognize the membership of DAs in society, and to enable their participation in shaping the norms that govern that shared society.<sup>8</sup>

Our goal in this chapter is not to repeat that moral argument, but rather to discuss what we can learn about the prospects and challenges

you are denied the opportunity to participate in and shape practices that are or could be meaningful for you.

<sup>7</sup> Nussbaum's account replicates a problem identified by Neale in relation to children's citizenship, namely that if people with CD and very young children are subsumed into the larger categories of 'disability' and 'children', then the key challenges and radical potential of their inclusion are missed. Neale notes that much of the literature on the UNCRC focuses on older children, whose inclusion requires relatively little change to established democratic practices, since they are assumed to be (almost) able to follow adult modes of behaviour and communication. But the Convention also applies to very young children, and taking their citizenship seriously requires re-imagining practices in order "to accommodate children's varied modes of doing, saying and being" (Neale 2004: 15). Similarly, Nussbaum's focus on removing barriers to inclusion in the pre-existing functions of citizenship makes sense in relation to people with physical disabilities or mild CD, but when she moves to the case of people with significant CD, she fails to see that a more radical reconceptualization of those functions might be required (cf. Bérubé 2009: 357).

<sup>8</sup> Our theory does not endorse continuing the practice of domestication (human-controlled breeding of animals to promote traits beneficial to humans). Citizens are not bred to serve the purposes of other citizens. Rather, we must take existing DAs as they are (i.e., as they have been shaped by historical processes of domestication), recognize their membership rights, and move forward on the basis of co-citizenship (not husbandry, selective breeding or domestication).

of inclusive citizenship by bringing the cases of CD, children and DAs into conversation with each other. In all three contexts, if citizenship is to be more than a symbol or a slogan, we need to give a robust account of the practices of citizenship that give it life. We hope to show that insights from citizenship struggles for people with CD can illuminate the challenges, and possibilities, of citizenship for children and DAs, and vice versa. There is much to learn, and to share, regarding the upholding of membership and participation rights for a diverse citizenry.

### **Rebooting the Disability Rights/Animals Rights Conversation**

In exploring this shared terrain, we wish to avoid some of the past missteps in discussions connecting disability and animal rights theory. As disability scholars have noted, some animal rights theorists have engaged in a kind of ‘conceptual exploitation’ of disability, using people with CD as a passing (and often ill-informed) thought experiment ‘to bolster the case’ for animals (Carlson 2009: 552). For example, various animal rights theorists have invoked the so-called argument from marginal cases (AMC) to defend the moral status of animals. This argument assumes that so-called normal humans with capacities for linguistic agency have unquestioned moral status – they are the core case of moral status – and that insofar as both animals and people with CD lack full possession of the relevant capacities underpinning moral status, they both constitute ‘marginal’ cases. The burden of the AMC is to call for consistency in the way we deal with these ‘marginal’ cases, so that whatever moral status we accord to ‘deficient’ or ‘unfortunate’ people with CD, we should do so as well for animals with comparable cognitive capacities. (And if some animals exhibit cognitive capacities that some people with CD lack, then perhaps these animals should be seen as closer to the neurotypical norm than some humans, and hence accorded higher moral status).

This entire AMC strategy is multiply flawed – intellectually, morally and politically – and disability advocates have effectively criticized it (Carlson 2009; Kittay 2005b, 2009a). It perpetuates a deeply problematic conception of neurotypical human cognition as defining the core of moral status, and treats other forms of subjectivity as somehow deficient bases of moral status. Deviation from the norm is arrogantly conceived as misfortune, impairment or temporary embarrassment, even if neurotypicals then find ad hoc grounds for overlooking this deficiency when granting moral status to people with CD (in terms of potential capacities, former possession of capacities, membership in a group that possesses such capacities, relationship of attachment to such members,

etc.). Rather than challenging this unwarranted privileging of neurotypical human adults, the AMC re-inscribes it, and indeed generates perverse comparisons – a kind of jockeying for position in a zero-sum game regarding who falls closest to the privileged norm.

As we hope is clear, our interest in comparing the citizenship struggles of people with CD and DAs has no connection to this AMC strategy for comparing the moral status of people with CD and animals.<sup>9</sup> For one thing, we entirely reject the premise that moral status is based on a hierarchy of cognitive capacities (like linguistic agency), or on scales of neurotypicality versus deficiency/deviance. On our view, all beings who have a subjective experience of the world are self-originating sources of moral claims, regardless of their proximity or distance from any alleged norm of human neurotypicality, and regardless of their place on any alleged scale of cognitive complexity (Donaldson and Kymlicka 2011: ch. 2). The argument for animal rights would not be touched one iota if it turned out that all humans were identical in their cognitive and linguistic abilities, so that there were no overlapping or ‘marginal’ cases to appeal to for consistency. Our argument is not that ‘marginal cases’ should be treated alike, but that there are no marginal cases, because neurotypical human adults should never have been defined as the norm from which others are measured.

It’s important to emphasize that animal rights theory did not introduce the idea that people with CD (or children) are ‘marginal cases’ for the purposes of moral status (or citizenship). That pernicious idea arose much earlier, when humanist philosophers first defined moral status in terms of a hierarchy of cognitive capacities or ideas of normality. However, animal rights theorists have too often uncritically adopted this troubling strain of Western philosophy in the process of responding to speciesist defenders of a human right to exploit animals. A typical

<sup>9</sup> It should be noted that ‘conceptual exploitation’ operates both ways. If some animal rights theorists make instrumental use of disability in order to bolster the case for animal rights, it is equally true that some disability theorists do the reverse. Some simply stipulate that the test of an acceptable defence of the moral status of people with disabilities is that it excludes animals in order ‘to close the floodgates’ (Wasserman et al. 2012: 14). Others suggest that animals must be excluded from the moral community to ensure vulnerable humans are not treated the same way we treat animals. According to Grandin, ‘To prevent people from morally justifying mass euthanasia of the neurologically handicapped, they have to be speciesists and value humans more than other animals’ (Grandin 2011: 214). For these authors, the only way to envisage humans having a dignified moral status is by denying it to animals, as if the mark of human moral worth is the right to kill and exploit non-human animals. On both sides of the animal rights/disability rights divide, questions of moral status have been instrumentalized. We discuss the persistent tendency of social justice movements to assume that progress for subaltern human groups requires reaffirming a steep species hierarchy, and the perverse effects this often has, in Kymlicka and Donaldson (2014).

speciesist claim is that linguistic agency is a threshold capacity for full moral status or citizenship; animals lack linguistic agency; therefore animals have diminished status; therefore humans can use them for our benefit. The correct response to this argument is not to point out that many humans also lack linguistic agency, and that logical consistency requires treating like cases alike (whether by elevating some animals or lowering some humans). The correct response, rather, is to directly challenge the idea that linguistic agency is a threshold capacity for moral status or citizenship, or that there is such a thing as ‘normal’ human cognitive capacity against which all are measured and some are found lacking. Moreover, pointing out cognitive differences (and we are all different from one another in our cognitive capacities) is just that, a description of differences. It is not an argument for unequal treatment, or for lesser or ‘marginal’ status.<sup>10</sup>

So our reason for comparing people with CD, children and DAs in this chapter is not to figure out their relative positions on some scale of moral status that has ‘normal adult’ humans at the top. Rather our purpose is to think through the challenges of upholding membership and participation rights for all members of society who have been excluded from traditional theories and practices of citizenship on the basis of limited linguistic agency. We believe that advocacy for all such groups can benefit from a collaborative effort which challenges the traditional conception of citizenship and its neurotypicalist bias (Salomon 2010), and which articulates compelling alternative models of membership and participation that include the full diversity of the members of society.

In this respect, we view this chapter as contributing to the project of a new ‘fellowship’ between disability rights and animal rights advanced by Sunaura Taylor in her recent work (Taylor 2011, 2013, 2014). As she notes, both struggles have a shared interest in contesting ableism, since ‘we understand animals as inferior and not valuable for many of the same reasons disabled people are viewed these ways – they are seen as incapable, as lacking, and as different’ (Taylor 2013: 761). And this in turn creates a shared interest in ‘reevaluating such loaded words as “independence”, “nature”, and “normalcy”’ (Taylor 2011: 219), since ‘limited interpretations of what is natural and normal leads to the continued

<sup>10</sup> Garner (2013) has recently argued that radically egalitarian animal rights theories (such as ours) *require* the AMC because it is only through the demonstration of overlapping capacities across the species line that we can extend equal recognition and membership to animals. This is a simple failure to recognize that individual animals, like individual humans, are ‘self-originating sources of valid claims’. Even if speciesists were to identify a uniquely human capacity – shared by all humans and possessed by no animals – so what? The fact of difference is not an argument for unequal moral or citizenship status.

oppression of both disabled people and animals' (Taylor 2013: 761). Indeed, she concludes that 'disability studies is left in a state of contradiction if it claims to find value in differing bodies and minds, different ways of being, but then excludes nonhuman animals' (2011: 219). We believe that articulating new models of inclusive citizenship offers a particularly fruitful place for advancing this new fellowship.

### **The Shared Challenges of Inclusive Citizenship**

For all three groups, a key challenge is to enable political voice and participation without linguistic agency. People with CD, children and DAs may have a wide array of other capacities that are highly relevant to being a participating member of sociopolitical community, including having a subjective good; being aware of, and responsive to, others; engaging in intentional action and practical reason; being capable of empathy, concern and care; and of norm sensitivity and self-regulation. These are the capacities that make a shared social life possible, and the task of citizenship is to ensure that our shared social rules are responsive to the subjective good of all members who are part of this society. However, the absence of linguistic agency can pose a serious barrier to recognizing, interpreting, and enabling this range of capacities. Linguistic agents can more readily articulate their inner worlds. Individuals lacking linguistic agency are at a disadvantage in developing, demonstrating and exercising a wide range of capacities relevant to citizenship in a political arena designed to suit neurotypical human adults.

Indeed, unless we find ways of addressing this challenge, there is a serious risk that ideas of participation, co-authorship and citizenship will simply mask ongoing relations of domination under a fig-leaf of empowerment. Children, people with CD, and DAs are all vulnerable to misinterpretation, manipulation and unjustified paternalism, and it is all too easy to set up situations that appear to give a veneer of assent to practices that in fact subordinate or dominate them. This basic asymmetry of power is unavoidable. Members of these three groups have limited capacity for exercising a right of exit, or for organized mobilization or resistance to ensure that others recognize their perspectives or interests.<sup>11</sup> The reality is that they are dependent on others – caregivers, trustees, guardians and advocates – to support and interpret their participation. This inevitably opens the door to bias, self-interest, projection and well-intentioned error by those charged with interpreting the subjective good of those who lack linguistic agency.

<sup>11</sup> Although they are capable of individual acts of contestation and resistance (Hribal 2010).

Given these enormous challenges, it might be tempting to set aside the goal of enabling agency in shaping and communicating their subjective good, and supporting their decision-making, and to focus instead on more objective measures of welfare. In the case of DAs, for example, we might develop an account of species-typical needs or characteristic behaviours, and insist that caregivers respect these generic needs, without attempting to determine whether these species-typical needs do or do not track the subjective good of individual animals. Trying to solicit individual subjectivity, one might think, is at best unreliable, given the absence of linguistic agency, and at worst would simply operate to legitimate domination through biased and self-serving projections. Governing DAs according to objective species-typical norms is clearly paternalistic, but this might be preferable to baseless or self-serving efforts to interpret non-linguistic expressions of subjective good.<sup>12</sup>

Similar issues have arisen in the context of CD. Some political theorists have argued that where we face serious epistemic barriers in interpreting the subjective good of people with CD, we should rely instead on objective measures of the human good and species-typical norms (Nussbaum 2006). If individuals are unable to rationally judge for themselves the soundness of political propositions, society should not seek to mimic consent through the use of trustees tasked to solicit and interpret an individual's subjective experience. Rather, we should simply acknowledge that ideas of consent are not relevant, and that while we can justify measures 'for' them, we cannot justify ourselves 'to' them (Edenberg and Friedman 2013: 358). In other words, trustees for people with CD should make their best judgement of the objective interests of the person being represented, rather than making their best effort to understand how the person with CD conceives her own interests.

Most disability theorists and activists have been deeply distrustful of such paternalistic models of trusteeship. This is understandable in a movement that has had to fight a long battle against pernicious forms of paternalism, but as Bérubé notes, rather than developing less paternalistic models of guardianship for those without linguistic agency, many disability theorists have simply avoided the issue entirely, focusing on cases where the underlying problem is 'removing barriers' to self-representation rather than cases where the challenge is constructing new forms of dependent agency:<sup>13</sup>

<sup>12</sup> See Nurse and Ryland (2013); Nussbaum (2006).

<sup>13</sup> It is easier 'to speak of a "barrier-free environment" when one is speaking of wheelchairs and ramps than when one is speaking of significant cognitive disabilities' (Bérubé 2009: 357).

[D]isability studies in the United States has drastically undertheorized surrogacy and guardianship, emphasizing the self-representation of people with disabilities and overlooking the position of people with disabilities whose only substantial hope of representation lies in having their wishes (insofar as we can know their wishes) represented by another. The reasons for this undertheorization are numerous: disability studies theorists have tended subtly to emphasize physical over cognitive disabilities, particularly severe cognitive disabilities, in part because you don't find a lot of people with severe cognitive disability holding academic positions; autonomy and self-representation remain an alluring ideal even (or especially) for people with disabilities; too strong an emphasis on guardianship seems to entail the further infantilization of people with cognitive disabilities; and in my wing of the humanities, where we have been post-something for quite some time, we are still too accustomed to think in terms of the 'indignity of speaking for others,' as Gilles Deleuze put it in an oft-cited interview with Michel Foucault. (Bérubé 2009: 357–8)

In short, we seem caught between two unsatisfactory models: an anti-paternalistic model that relies entirely on an individual's self-representation of her subjective experience; and a paternalistic model that relies on third-party judgments of objective well-being. Neither model provides a plausible picture for enabling participation by those members of society without linguistic agency. They have a right as citizens that their subjective good and voice shape social norms, but can only do so in ways that are, to varying degrees, mediated, interpreted and represented by others.

To overcome this impasse, we need to rethink the 'justification for/justification to' dichotomy. If we start from the assumption that justification *to* individuals only applies if they meet demanding threshold standards of rationality and theoretical understanding, then some individuals simply fall below this threshold (Edenberg and Friedman 2013: 356, 358). On this view, first-person experience of a particular rule or practice is only relevant if it can be reflectively and linguistically articulated. But justification to individuals is not a simple yes/no on/off threshold, and there are many contexts where standards of 'assent', 'acquiescence', 'contestation' and other forms of 'justification to' are relevant even where legal thresholds of informed 'consent' are not.<sup>14</sup>

On this question, both disability and animal rights theorists can benefit from thinking about children's development, and what Bérubé calls "the ordinary perplexity attending any parent-child relationship" (2009: 359). In the parent-child context, we take it as obvious that both 'justification for' and 'justification to' are relevant, although the precise

<sup>14</sup> For the relevance of assent/acquiescence in the case of animals, see Kahn (2014: 99); in the case of CD, see Jaworska (2009).

mix changes according to context and over time. Parents intensively solicit and respond to expressions of the subjective good of young children, yet play an active role in shaping these expressions into a coherent story about the child's interests.

A few theorists have shifted towards this more nuanced model, emphasizing that people with CD, like all of us, are individuals, with unique personalities and preferences (whose interests cannot be captured by 'objective' models), and whose subjective good can be solicited and counted in shaping collective decisions (Francis and Silvers 2007). There are ways for trustees (through attentiveness, observation, trial and error and experience) to help in the construction of 'individual scripts' of the good life for people with CD, and to hold political authorities accountable to them, so that individuals with CD can exercise meaningful forms of dependent agency. On this view, autonomy is understood as a relational accomplishment, not just a capacity of individuals. The task of constructing mechanisms of dependent agency that avoid the dangers of self-serving bias and projection on the part of trustees is a daunting one, but the risks are worth it, and the dangers of a threshold framework ('justification to' if you are above the linguistic agency line; 'justification for' if you are below the line) are worse.<sup>15</sup>

In the rest of this chapter, we want to build upon these promising beginnings, to see how they can inform a new vision of inclusive citizenship for people with CD, children and DAs. If inclusive citizenship is to serve emancipatory goals, we need to clarify the sort of participation and agency that is morally relevant, and the safeguards and preconditions that make it possible. We will organize the discussion around three issues that arise in each context: the scope of agency; the structuring of choice; and the challenge of interpretation. In all three sections, we will argue that reflecting on similarities and differences among the citizenship of children, people with CD and DAs can clarify the prospects and challenges facing new models of inclusive and diverse citizenship.

### **The Scope of Agency: Macro and Micro**

The scope of agency is significantly constrained, for humans and other animals. Key dimensions of our lives are fixed by our embodied species

<sup>15</sup> As Kittay notes, the threshold model fails not only when people with CD fall below the line and so never have the chance to 'have a say' in the matters that most affect them, but also when they fall above the line and so are denied the unique structures and relationships which would allow them to exercise meaningful agency. As she puts it, threshold models 'exclude both by ignoring the existence of those who are too far afield from the idealization and by including in problematic ways those who fall far short of the idealization' (Kittay 2009a: 219).

identity, era of existence, biological parenthood and other givens. Despite these limits, it is widely assumed that we have a wide scope for agency – for making meaningful and effective choices about how we live our lives – a scope that typically expands with age and experience, under favourable material and sociopolitical conditions. Matters such as our intimate partners, our political and religious allegiances, our work and activities, and our social networks, are seen as subject to our evolving agency.<sup>16</sup> We have the right and the capacity to shape many dimensions of what we might call the ‘macro frame’ of our lives, and exercising this capacity wherever possible and meaningful is crucial to our well-being.

As part of recent citizenship struggles, advocacy for children and people with CD has sought to broaden the scope of self-determination, affirming the potential for macro-agency. When the UNCRC says that children have the right ‘to have a say’ in ‘all matters affecting them’, these matters concern not simply day-to-day decisions within the confines of a fixed life plan (e.g., choices about food, leisure activities, how to set up their bedroom), but fundamental dimensions of their lives – for example, the kind of education they receive, whether or not they engage in paid employment, who they spend time with, where their family lives, which parent they will live with in the case of a long distance separation, or whether or not they will undergo painful life-extending medical treatment (Alderson 2008).<sup>17</sup> Children have a right to be consulted in these matters, and for their ideas and preferences to help shape decision-making, and not simply be drowned out by adult concerns to protect and provide for them. The scope for agency is always changing and developing, so individuals must be engaged as presumptive agents – engaged ‘as if’ they are agents – since this is how we discover the extent to which, in any given circumstance, they are agents, and further enable them to become agents.

As noted earlier, the UNCRC frames children’s rights in terms of the 3Ps – rights to protection, provision and participation. A key challenge in

<sup>16</sup> By ‘agency’ we mean self-willed or initiated action that carries an expectation of efficacy. Krause defines agency as ‘the affirmation of one’s subjective existence, or identity, through concrete action in the world. To be an agent is to affect the world in ways that concretely manifest who you are, to see yourself and be seen by others in the effects you have, to recognize your deeds as being in some sense your own’ (Krause 2012: 240). Agency requires not just that you can initiate action but that your action can have the results you intend. As Wehmeyer and Garner put it, “being self-determined is not a function of how much you can do for yourself, behaviourally, but instead is a function of how much you make or cause things to happen” (2003: 263). In many contexts this requires that others respond to you as an agent.

<sup>17</sup> A serious limitation of the UNCRC is that ‘all matters affecting’ children is not construed to include the public political realm.

implementing this vision is ensuring that children's participation is not unduly circumscribed out of concern for protection. Regarding mobility, for example, Alderson presents some startling statistics about the growing restriction of children's mobility rights, largely in response to fears about them being killed in traffic accidents. In the UK between 1977 and 1990 the number of children killed by vehicles fell from 1,000 to 300 – a significant reduction. At the same time 'the percentage of children aged 7–11 allowed to cross the road on their own fell from 72 to 50 percent; to walk to the park went down from 63 to 37 per cent; to ride on a bus without an adult from 48 to 15 percent' (Alderson 2008: 121). In other words, the safety of children was purchased at the cost of substantially curbing their freedom. All the evidence suggests that children themselves resent this trade-off. When they 'have a say', they ask why cars aren't restricted instead of children's mobility. And indeed, Denmark took this approach, achieving a similar reduction in accident deaths by regulating cars (creating car-free spaces to walk, cycle and play) rather than restricting children (Alderson 2008: 104).

Similar issues arise in relation to children and work. While many countries prohibit all forms of child labour in the name of protection, evidence suggests that work provides a context in which children can develop agency and competence, garner respect and income, and develop relationships which may be more positive than those at home (Oswell 2013; Gasson and Linsell 2011; Bourdillon et al. 2009). Moreover, when asked to 'have a say', children indicate that they do not want blanket restrictions on work. They want non-exploitative work conditions and labour rights (Gasson and Linsell 2011; Bourdillon et al. 2009). This balance is recognized in the UNCRC, which does not ban children from working, but stipulates that work must not be exploitative, hazardous or harmful to health, education and development (Article 32).<sup>18</sup> The weight of existing evidence is that children have been harmed by blanket restrictions on work, and that overemphasis on protection denies them opportunities to participate in decisions about work in ways that support rather than compromise their flourishing.

<sup>18</sup> The UNCRC's approach to child employment is therefore different from the 'abolitionist' approach taken by the International Labour Organization in its Convention 138 (1973), which demanded that all states adopt a minimum age below which no child 'shall be admitted to employment or work in any occupation' (Article 1). While Convention 138 remains on the books, the ILO itself has subsequently shifted focus, and adopted a new Convention 182 in 2006 that focuses on eliminating harmful forms of child labour, thus coming in line with the UNCRC. For these developments, and the debate between abolitionists and regulationists regarding child labour more generally, see Bourdillon et al. (2009).

Paternalistic restrictions on freedom can lead to self-fulfilling prophecies, in which children lack opportunities to develop skills and competence, which becomes justification for the restriction:

If children aged four and five years are mainly confined to home, nursery, school and care, seldom allowed to learn to cope on their own, their inability to cope could be said to be imposed on them, or ascribed to them. It may then be assumed to be inevitable, part of their slow biological maturing, instead of part of social inexperience. (Alderson 2008: 73)

Children have been infantilized in Western societies, and greater and greater restrictions on their freedom have in turn have resulted in drastically reduced conceptions of their capacities (Alderson 2008; Oswell 2013).

Similar debates have arisen in relation to the macro-agency of people with CD. They too have asserted greater control over the fundamental dimensions of their lives – where and with whom they live, their employment status, their sex lives and marriage/family decisions. Many of these decisions are made in close consultation with family, caregivers and support workers, and, in the case of severe disability, the extent of the disabled person's participation might be quite limited. Nevertheless, the old model in which all of these decisions were strictly made 'on behalf of' individuals perceived as wards, not citizens, has been challenged (and, indeed, thoroughly rejected under the UNCRPD).<sup>19</sup> And here too, as with children, the increased emphasis on participation has put in question older assumptions about the need for blanket protections, and has revealed how restrictions can lead to self-fulfilling prophecies regarding capacities (Walker et al. 2011). When asked, people with CD do not wish to be excluded from work, but rather wish to be provided with opportunities to explore and develop their agency in these contexts, with suitable supports, social integration and appropriate protection from exploitation through robust rights protections (Flores et al. 2011; Inclusion International 2009; Reinders 2002).<sup>20</sup>

This commitment to discovering and expanding the scope of agency is always individualized and revisable. The boundaries of meaningful agency are variable across time and across contexts, but the possible need for paternalistic oversight or constraint in one domain at one point in time does not provide a licence for wholesale or enduring restrictions across other domains. In the disability movement, the goal of seeking the

<sup>19</sup> We see a clear tendency to replace older models of 'plenary guardianship' with 'tailored guardianship', and then to replace older models of tailored guardianship with assisted decision-making (Boni-Saenz 2015).

<sup>20</sup> This is the approach endorsed in Article 27 of the UNCRPD, regarding employment.

'least restrictive environment', as well as the emphasis on 'nothing about us without us', captures these ideals (Carey 2009).

A commitment to inclusive citizenship for children and people with CD endorses these efforts to expand macro-agency. When we turn to DAs, by contrast, the prevailing assumption is that they have no capacity or need for self-determination. The fundamental shape of their lives is assumed to be fixed by their evolutionary history and/or species nature, predetermining a life of rigid dependence on humans and human society in which humans make all of the key decisions on their behalf. DAs are born into species-defined functional roles (as food animals, experimental animals, working animals, etc.), and while we sometimes ask what duties we owe animals within these parameters, we don't question the existence or nature of those parameters. We do not acknowledge the need for, or even the possibility of, consulting individual animals regarding what sorts of lives they want to lead, what relationships they want to have (with humans or other animals), what (work or leisure) activities they find satisfying, and where they want to live.

In reality, however, there are many possible lives for DAs, and a commitment to inclusive citizenship would engage DAs as presumptive agents, exploring possible and meaningful lives for specific individuals. In some cases, these possible lives will involve less intensive interaction with humans.<sup>21</sup> Countless DAs have escaped human management to join feral populations either on the fringes of society or in more remote 'rewilded' communities, like mustangs on the Great Plains or camels in the Australian outback.<sup>22</sup> Some DAs have escaped from intensive human (mis)management and dependency to more self-determining situations. Consider a lucky pig that flees *en route* to slaughter and ends up at a farm sanctuary where she controls many more aspects of her daily life – feeding herself, or making her own decisions about shelter, activities and friendships.<sup>23</sup>

Given the choice, some DAs will want to spend more time with humans, partly out of dependence on humans for protection and provision, but also for reasons of sociability and companionship.<sup>24</sup> Indeed, one

<sup>21</sup> Elizabeth Marshall Thomas (1993) describes how her dog companions, given the option, chose to spend less and less time with her.

<sup>22</sup> Recent genetic analysis reveals that certain animal populations long thought to have been truly wild are in fact rewilded former domestics (Clutton-Brock 2012).

<sup>23</sup> Since Farm Sanctuary (Watkins Glen, NY) opened in 1986, the farm sanctuary movement has blossomed across North America, with dozens of shelters now in operation. We explore how these new communities are a valuable source of information concerning possible lives for DAs in Donaldson and Kymlicka (2015).

<sup>24</sup> Although not necessarily with the same human: Rita Mae Brown (2009) describes how her cat companion chose to go live with neighbours.

of the many perversities of our current treatment of DAs is that we've taken highly sociable animals (and domestication only works for animals capable of interspecies sociability), and then confined them in isolated settings cut off from both human contact and contact with other animals. Just as humans benefit from interspecies sociability – and the benefits to humans of animal companionship are now very well documented – so too the lives of DAs can be enriched by the endless surprises and challenges of interacting across species lines.

Here too the potential scope for agency depends on engaging DAs as presumptive agents under less and less restrictive (but carefully scaffolded) conditions.<sup>25</sup> The range of relevant options will vary for different species and breeds (and will alter over time as humans cease to engage in selective breeding), and the resulting choices will also vary with individual personality. DAs, like humans, are uniquely endowed individuals, with individual temperaments, talents, impulses and desires, who will therefore differ markedly in their inclinations to explore different alternatives. This process will inevitably involve a lot of trial by error and adjustment, but insofar as DAs can explore meaningful options concerning the fundamental shape of their lives, it is tyranny to deny them opportunities to do so.

Moreover, this process cannot be restricted to the realm of micro-agency, limited to the small or discrete details of a way of life that is defined by others. Many writers have extolled DA agency in this micro sense. For example, horse and dog trainers discuss how mastery of skills (e.g., agility, jumping, etc.) enlarges animals' world of possible action, a world in which they can make some of the judgments and decisions, initiate actions and engagement, and derive a sense of satisfaction from successfully accomplishing what they set out to do. This kind of agency is important, but too often it is used to rationalize a relationship in which DAs are presumed to exist (and indeed brought into existence) to serve the needs, interests and desires of humans. As trainers acknowledge, their animals' micro-agency is strictly encompassed within the pursuit of fixed goals: the explicit aim is to get animals to cooperate in the pursuit of conceptions of showmanship or mastery that humans value.<sup>26</sup> Trainers may disavow older forms of training that involve outright violence – 'breaking'

<sup>25</sup> For a fascinating account of this process, see Kerasote (2007).

<sup>26</sup> Despite the rhetoric of two-way communication, negotiation and partnership, 'the conversation between horse and rider in the arena takes place entirely in respect of tasks that are set by the rider' (Patton 2003: 90). As Clark notes, the focus on micro-agency gives the veneer of assent, but in fact horses have not been offered any opportunity to explore alternative relationships. Under these circumstances, the veneer of agency and consent becomes a recipe for legitimating domination (Clark 2009: 179).

horses and beating dogs into submission – but their own methods involve manipulation to achieve absolute obedience in response to human commands (Hearne 2007 [1986]: 43; Patton 2003: 90; Haraway 2008: 211). We are still talking about moulding DAs to human uses and preferences, not about enabling DAs to redefine the goals of their relations with humans.

The conception of macro-agency that underpins inclusive citizenship is incompatible with a static or fixed conception of an individual's roles or life script. All members of society should be enabled, as far as possible, to shape the fundamental relationships and activities of their lives. It is all too easy, whether in relation to DAs, children or people with CD, to ignore this macro frame, and to focus instead on fulfilling duties to provide and protect, and on fostering sufficient micro-agency to ensure a basic level of welfare and compliance. But our goal, even if it is only achievable in modest forms, should be genuine macro-agency – the ability to shape the very nature and purposes of our shared cooperative relations and activities, and the definition of community.

### **The Structuring of Choice**

So far, we have been talking in an admittedly loose way about creating space for people with CD, children and DAs to explore alternatives, on the assumption that their response to these alternatives can inform us about their preferences. But this hides a nest of problems. Where individuals are not linguistic agents, it is difficult to explain alternatives to them, or to confirm that their response is meaningful. Perhaps behaviour prompted by exposure to alternatives is not really indicative of someone's subjective good, but simply arbitrary movement or instinctive responses to something new in the environment. One can easily imagine circumstances in which exposure to 'alternatives', if presented in a void, would be a recipe for paralysis or anguish, not agency.

Choice, to be meaningful, needs to be socially structured. It requires that individuals be socialized into particular norms and relationships that help to define the familiar and the trustworthy, and that provide a benchmark from which incremental alternatives become meaningful. This is true for all social species, humans and animals, domesticated or wild. To enable macro-agency, therefore, we must step back and think about the structuring or 'scaffolding' of meaningful choice.<sup>27</sup>

<sup>27</sup> The concept of scaffolding derives from developmental psychologists Lev Vygotsky and Jerome Bruner, but their accounts were heavily tied to linguistic agency. Our aim in this section is to think about scaffolding choice for those who are not linguistic agents.

The literature on citizenship for children and people with CD suggests two key foundations on which choice can be scaffolded. The first is basic socialization. All members of any social grouping have the right to be socialized into the rules that enable members of society to coexist. This includes norms about appropriate physical contact, sharing space, regulating noise, avoiding dangers to oneself and others, and so on. These rules make it possible for people to flourish together, without imposing undue risks or burdens on others.

Of course the particular social norms that exist at any point in time are likely to privilege some group members while disadvantaging others. This is particularly clear in the case of DAs. We tightly prohibit and regulate any animal activity that we find inconvenient or unattractive, while ignoring the many ways our activities inconvenience or discomfort DAs. Similar asymmetries arise in relation to other historically excluded or stigmatized groups, including children and people with CD. The current rules are in no sense equally committed to the mutual flourishing of all members of society, and socialization therefore involves a dimension of domination. A central task of inclusive citizenship is to enable all members of society to ultimately challenge and reshape these social norms.

Nonetheless, basic socialization is a precondition for inclusive citizenship, and a foundation for scaffolding choice. Indeed, we can say that basic socialization in this sense is a right of membership, needed to ensure the safety of the individual and others, and because successful social integration for social beings is an essential precondition of flourishing. No meaningful agency is possible without some form of basic socialization.

A second foundation of scaffolded choice discussed in the literature on children and people with CD is stable social identity. In relation to children, for example, Article 8 of the UNCRC refers to the fundamental right to an identity. Every child will have their birth registered, be given a name (which only they can change), be accorded a family status (as someone's brother/sister, child or grandchild, niece or nephew), and have a continuous biographical identity enabling the state to fulfil its obligations regarding protection, provision and participation (Alderson 2008: 82). This may seem obvious, but it represents a crucial historical change in the way societies view children. On the one hand, it reflects a commitment to the view that children are unique individuals, not fungible possessions or property of the family. But it equally reflects a commitment to the view that children have a right to secure family and community membership – a right to sufficient stability in their social world (e.g., maintaining the integrity of the family unit as much as possible, having access to coherent physical

and cultural surroundings, etc.) so that they can develop a sense of identity. In other words, the right to identity contains two key elements – the right to be an identifiable unique individual, and to be the member of relevant groups such as the family, or ethnic/cultural community (Alderson 2008: 81).

It is a marker of the abject status of DAs in our society that this fundamental right to identity is not recognized. Zoo animals, laboratory animals, service animals, or companion animals are all routinely relocated with complete disregard for the ‘psychological effect of disrupting a family or a social network of constructed self-identities and relationships’ (Savage-Rumbaugh et al. 2007: 11; cf. Harvey 2008). Animals routinely go through the experience of having their entire lives shattered. They may be surrendered by their human ‘family’ to a shelter and adopted out to a new family. In the course of days, everything in their lives is upended – their home and environment, their friends and family, their food, their routines, their games. Even their names change. Protection of a basic right to stable identity must underlie any exploration of DAs’ participation in society. In its absence, exposure to choice and opportunity is not just meaningless but abusive.

The scaffolding of choice, therefore, starts with socialization into a reasonably stable context for individual identity formation. From this baseline, we can then expose the individual (patiently, thoughtfully) to different opportunities, environments, activities and associates. We need to structure these opportunities so that she can make meaningful choices, and then we need to respond to those choices in ways that confirm her agency and set the stage for further opportunities and further choices. This picture of scaffolded choice underpins recent discussions of CD (e.g., Ward and Stewart 2008), and we would argue it can help inform a citizenship approach to DAs.

Some choice situations will be more complex than others. In some cases we are simply eliciting raw preferences or natural inclinations related to basic needs for food, shelter, companionship, and social structure (e.g., who to hang out with, what to eat). A more difficult case concerns activities that require learning and training. These are not activities that emerge spontaneously. Consider agility training for dogs, or advanced tracking. You can’t simply take a dog to an agility course, or give him a toddler’s T-shirt to sniff, and expect him to ‘choose’ whether or not to undertake the activity. The activity must be taught and learned.

Many animal rights abolitionists jump to the conclusion that all such forms of training are unjust, an illegitimate attempt to compel DAs to engage in unnatural acts that serve human purposes. However, this ignores a central lesson of both the children and disability rights

movements: opportunities to engage in appropriately structured interaction (i.e., interactions that challenge our skills *just enough*) expand the self, and the scope for agency (Irvine 2004: 8). This is true for both humans and animals (Hillsburg 2010: 34).

Why might such activities be part of her good? A dog might be able to develop specific skills (how to gauge the Frisbee direction on a windy day, how to activate a lever to turn on the TV or generate fresh water, how to signal when a scent trail has been broken and she needs a refresher, how to take the subway, or negotiate car-filled streets), and exercising these skills might lead to pleasure, satisfaction, confidence and possibilities for greater freedom. She might develop certain kinds of knowledge (the structure of her human companion's social network or daily routines, the strange ways of cats) that enlarge her mental realm in meaningful and satisfying ways. And she might develop a range of social bonds and friendships that provide greater satisfaction than species-specific friendships. Just as humans enjoy the frisson of cross-species friendship – the strange combination of connection and mystery; the mental challenge of communication; the opportunities for surprise, respect and humour – these satisfactions may be meaningful to some DAs.<sup>28</sup>

This potential of interspecies activities connects to a broader point about how we should understand animal well-being. In much of the literature, the focus is overwhelmingly on the elimination of pain and suffering, without any serious attempt to understand the sources of positive well-being for animals.<sup>29</sup> As a result, we have not seriously considered how a mixed human–animal society can provide the preconditions for moving out into the world as a self-determining agent.

There are risks to the pursuit of such realms of freedom. Freedom can be dangerous. For example, expanded mobility and freedom for animals such as chickens, rabbits, sheep or cows may only be possible with some increase in their vulnerability to predators (Smith 2003). Greater mobility and opportunity for dogs and cats may only be possible with increased vulnerability to cars or other hazards.<sup>30</sup> But as Balcombe notes, a safer life isn't a better life (Balcombe 2009). In the human context we recognize the importance of self-determination in making choices regarding

<sup>28</sup> Cross-species interaction offers 'new information – incongruities, interruptions of expectations, challenges – in the context of familiar otherness' (Myers 1998:78; cf. Feuerstein and Terkel 2008).

<sup>29</sup> For a more extended discussion of this point, and how it has narrowed the vision of animal rights theories, see Donaldson and Kymlicka (2012).

<sup>30</sup> Thomas (1993) describes how her dog companions learned to negotiate these increased risks associated with freedom. See Donaldson and Kymlicka (2011: ch. 5) for a discussion of the challenges posed by free-roaming cats.

risk/opportunity trade-offs, and the fact that different individuals will make very different choices (Donaldson and Kymlicka 2011).

So too, we argue, with respect to DAs. Some animals will be timid and risk-averse homebodies; others will be intensely curious and adventurous. We can be guided by these differences in deciding which risks to confront, and how much effort (theirs and ours) to put into scaffolding new opportunities. And then, based on our observations, we adjust and expand the scaffold over time, introducing new, but manageable, risks. In *Merle's Door*, Ted Kerasote details the scaffolding process that allows Merle to come and go through his dog door, leading a highly self-determined life. First he has to learn the dangers of his world (like hunters and farmers with guns, charging bison, packs of coyotes), and the rules of civility (not chasing farm animals, or pestering the neighbours). With these scaffolds in place, Merle experiences an exponential leap in terms of effective agency. It is not a risk-free life, but the risks are carefully undertaken and managed (Kerasote 2007).

To sum up, we see DA agency as being structured by basic socialization, leading to incremental options that challenge 'just enough', echoing familiar themes from the disability literature. For years, people with CD and their advocates have been fighting to replace the perniciously paternalistic model (which emphasized protection and provision of basic needs according to objectively defined criteria) with models of self-determination and agency.<sup>31</sup> They emphasize the same issues that we have been raising here: the importance of starting from a secure social identity; moving to less restrictive environments where people with CD can explore a range of social sites and activities; scaffolding their opportunities for learning and making choices within these broadened environments, while expanding their social networks and mental worlds (Ward and Stewart 2008). Disability advocates have also explored the ways in which 'intentional communities' can be responsive to the needs of people with CD for security and stability while providing meaningful choices about friendships and work (e.g., Randell and Cumella 2009). And they also discuss many of the same ethical dilemmas regarding the trade-offs between protection and freedom.<sup>32</sup>

<sup>31</sup> Walker et al. discuss a small but telling example of a developmental centre that didn't allow residents (adults with CD) to order pizza from a delivery service. The rationale was safety – fear that the pizza would be too hot (burning risk) or too cold (contamination risk). The result was a restriction of meaningful agency. Add up a series of such instances, and the result is severe restriction in the scope for self-determination (Walker et al. 2011: 13–14).

<sup>32</sup> Consider reproductive freedom. Given the history of horrific abuse and forced sterilizations, the idea of (non-consensual) sterilization as a form of reproductive control for people with CD is, rightly, highly suspect. Yet in some cases, becoming pregnant (or parenting) would be dangerous or traumatic to particular individuals. And so, not infrequently, reproduction is avoided through rigorous sexual segregation (infringing association rather than bodily integrity). It is not obvious that this indirect

Indeed, theorists have created a variety of instruments and models for assessing the well-being of people with CD in various settings (Lohrmann-O'Rourke and Browder 1998; Liu et al. 2007; Flores et al. 2011). They have also developed models of social ecology that triangulate analyses of environment, agency and well-being. They can now draw on a wide range of evidence to trace the connections between expanded opportunity/access, increased agency and greater well-being for people with CD (e.g., Reinders 2002; Ward and Stewart 2008; Wehmeyer et al. 2008; Callahan et al. 2011; Walker et al. 2011).

We have less systematic evidence of the link between agency and well-being for DAs, largely because society has not committed itself to either the agency or well-being of DAs. There's plenty of evidence that animals do better in less restrictive environments – that they relish their freedom. But this is not the same as structuring opportunities for them to develop agency within society and observing how they respond to this broadening of horizons. Little research has been done on the impact on DAs of opportunities to negotiate interspecies friendships, of learning how to safely engage with different dimensions of the human-built environment, and of participating in human-facilitated work and leisure activities – in part because so few of these opportunities have ever been provided.<sup>33</sup>

However, let's assume, optimistically, that society will one day provide these opportunities to DA members of our society.<sup>34</sup> The next challenge will be to interpret the results. This will inevitably be an exploratory process as we learn to listen to what DAs tell us about their needs and preferences, to create conditions under which they can develop and communicate needs and preferences, and to respond appropriately so that they can gain some confidence in the efficacy of trying to communicate with us. This brings us to the crucial role of interpretation.

regulation of reproduction through restrictions on mobility, social bonds and sexuality is better for the individuals involved than birth control or sterilization. Here, as elsewhere, we need to better understand what matters to the individuals themselves, and how they subjectively experience different approaches. For a recent UK court decision in favour of sterilizing a man with CD in light of his relationship interests, see [www.bailii.org/ew/cases/EWHC/Fam/2013/2562.html](http://www.bailii.org/ew/cases/EWHC/Fam/2013/2562.html). In this case, it was possible to meaningfully consult the individual about his interests, even though it was not possible for him to meet a legal consent threshold concerning sterilization.

<sup>33</sup> See Savage-Rumbaugh et al. (2007) for a fascinating exception (involving captive apes, not DAs).

<sup>34</sup> As noted earlier, we believe that farmed animal sanctuaries can provide a preview of what these opportunities might look like. We apply the ideas discussed in this section – of scaffolding choice through secure social identity and 'just enough' challenges within intentional communities – to such sanctuaries in Donaldson and Kymlicka (2015).

## Interpretation

So far, we have argued that our theories and practices of citizenship must be modified to include those members of society who are not linguistic agents – including young children, people with CD, and DAs – and that these members can and should ‘have a say’ regarding the terms of our shared social world – macro-agency constructed through scaffolded choice. But readers might feel that we have ignored the central problem: namely, that these forms of agency and choice are ultimately dependent on the interpretation of others, and that this negates the feasibility or desirability of a citizenship approach.

Recall that the original challenge raised by Nussbaum was that there are serious epistemic barriers to interpreting the subjective good of people who are not linguistic agents, and that where these barriers exist, we should rely instead on objective measures of the good life and on species-typical norms, rather than engaging in the speculative and potentially self-serving task of trying to understand the subjectivity of these individuals. Nussbaum (2006) applies this argument both to people with CD and to animals.

While this position has been challenged by disability advocates, it remains pervasive in relation to DAs. For DAs to enact any form of citizenship, humans must be able to ‘read’ animal agency, and in particular to read their agency as an expression of their subjective good. Is this realistic? As Wolch (2002: 734) asks, ‘What do animals want and can we ever really know?’ If we can’t interpret DAs’ subjective good, then the goal of human-enabled DA agency is an incoherent one.

How then can we interpret what animals tell us about their preferences and desires – their subjective good?<sup>35</sup> They can’t, for the most part, use human language to directly tell us about their dietary preferences, their shelter and environment likes, their deepest fears and desires, their best friends, their favourite activities, whether they experience work satisfaction (e.g., from tracking lost children, visiting shut-ins, guarding sheep, pulling carts, performing cognitive tests, etc.), whether they enjoy sex, whether they want to have offspring, whether they mind giving up

<sup>35</sup> Our focus here is on the epistemic barriers to successful interpretation, even where humans have a good-faith intention of reading DA behaviour as an expression of their subjective good. A quite different concern is that many humans lack this good faith in the first place. To address this would require institutional checks and safeguards to ensure that trustees are indeed motivated by the well-being, interests and wishes of DAs. On both of these issues there is much to learn from the children and disability literatures, but we focus on the first.

some of their eggs, whether they are traumatized by being shorn, milked, leashed or fitted with a tracking device, and so on.<sup>36</sup>

How then can we hear their voices, and interpret their subjective good? At one level, this shouldn't be a mystery. Anyone who has any experience with DAs knows that they are constantly trying to communicate their preferences to us, and that they have views about how their relationship to us should be structured. In popular culture, we talk about 'dog whisperers' or 'horse whisperers' who are seen to have some sort of mystical ability to understand domesticated animals' subjective good. But this is not a mystical power: the sad truth is that many humans simply do not take the time and effort to engage with DAs and understand what they are communicating. As a result, at some point, animals give up trying to communicate.<sup>37</sup>

This is a familiar concern within the CD literature as well. Several studies have shown that people with CD attempt to initiate communication with caregivers and staff, but these attempts are either not recognized or ignored. And so they too eventually give up trying, leading to 'learned helplessness' in communication.<sup>38</sup>

We need to get away from the idea that understanding the subjective experience of animals is a mysterious power, and to think more systematically about the forms of knowledge that are available regarding how animals express their subjective good in their relations to us. And here again, we can make progress by drawing on the literatures regarding children and people with CD, particularly pre-verbal infants or people with severe CD who cannot verbally articulate their thoughts and feelings. While studies show that their attempts at communication are often ignored, it is also true that a great deal of effort and research by intimate caregivers, practitioners and scientists has been invested in understanding their subjective good.

<sup>36</sup> Some animals, like Alex the African Grey Parrot, can communicate using elements of human speech. Some great apes have learned sign language (and use it to communicate among themselves, as well as with humans). And the advent of computer tablets and icons has further extended the scope for communication. However, the physiology of most DAs means that human-like speech or signing aren't possible. Therefore we have to become better at reading the body language and vocalizations that they can employ.

<sup>37</sup> Smith suggests that this is actually a learned incompetence: as humans grow up and are taught mastery over animals, we are taught that we do not need to listen to animals, and lose our natural ability to do so. Far from being a difficult skill that needs to be nurtured, the ability to listen to animals is a natural skill that is suppressed through socialization into practices of human supremacy. Therefore, 'animals' inability to communicate with us is not a natural fact; it is an artefact of our domination over them' (Smith 2012: 124; cf. Pallotta 2008).

<sup>38</sup> Bray (2003) reviews several studies of this phenomenon.

These literatures suggest that there are in fact several different kinds of knowledge we can bring to bear on the task of interpreting the behaviour and preferences of those who are not linguistic agents. As a start, we could broadly distinguish three types of knowledge: expert knowledge, folk knowledge, and personal knowledge. All three are relevant, and each can help fill in the gaps left by the others (Grove et al. 1999).

Expert knowledge can tell us what to expect, in general terms, for an individual member of a particular species. For example, dogs *qua* dogs have certain predictable psychological needs in terms of sociality, play and stimulation. They have dietary requirements, health needs and susceptibilities. Moreover, experts understand enough about animals' physiology to identify objective indicators (e.g., blood cortisol or oxytocin levels; tail-biting or body postures) of elevated stress, fear, pain, excitement, love, contentment and other states relevant to subjective well-being. Experts on dogs' social world know what to expect in terms of dogs' social development, as well as how to 'read' specific dog behaviours, such as tail positions, play bows or warning growls. And there are predictable dimensions to how dogs typically interact with humans and other species. Thus expert knowledge allows us to predict the basic needs of individuals, and to assess their well-being along a range of parameters.<sup>39</sup>

Anyone who spends time with dogs learns some of these things, producing a kind of folk knowledge. The more time one spends with dogs, the more one starts to recognize certain behaviours and signals. Many people who encounter a dog can judge whether she will welcome an extended hand or snap at it. This does not require understanding tail and ear positions the way an expert does, or being able to articulate the knowledge in propositional form, or even knowing that one knows. One may simply respond to certain signs from the dog with an intuitive sense that the dog is friendly or fearful. This knowledge may be limited, partial and sometimes misguided, but it provides a useful frame of reference. Each time one approaches a new dog, she is not a completely unknown entity, but an instance of a type about whom one can make certain assumptions.<sup>40</sup>

<sup>39</sup> An intriguing example is a recent study on 'runner's high' (Hutchinson 2012). The study measured pre- and post-exercise levels of anandamide, a chemical that reduces pain and anxiety and promotes a sense of well-being, in humans, ferrets and dogs. Human runners increased their levels of anandamide by 2.6 times their pre-running levels, whereas ferrets had no significant increase. Dogs, however, get the biggest runner's high – their anandamide increased by 3.3 times the pre-run level. In this case, our folk knowledge that dogs running in a big field are happy is amply confirmed by objective measures of anandamide that they *are* happy.

<sup>40</sup> See Andrews (2011) for the role of folk knowledge as a precondition, as well as a guide, to interpreting animals' good, drawing on experience with pre-verbal human infants.

Recent research by the Family Dog Project in Budapest is demonstrating the complexity of these forms of folk knowledge. For example, as part of our co-evolutionary history, dogs have learned how to interpret a great deal of human behaviour (e.g., what we mean when we point, how emotions are indicated by our facial expressions). They have also developed a barking repertoire to communicate with humans. Humans who have spent time with dogs can listen to taped dog barks (of dogs they haven't met), and correctly identify the circumstances in which the dog is barking (e.g., 'that dog is asking to play', 'that dog is signalling an intruder or threat', 'that dog is making an urgent request to go outside, or to be fed', and so on.) This is a striking example of a kind of folk knowledge that individuals often possess without even realizing they possess it (until a scientist asks them to identify barks on a recording) (Pongrácz 2005).

Then there is personal knowledge – the knowledge of an actual individual, her personality and temperament, her idiosyncratic behaviours and habits, her likes and needs as revealed over time, her individual communication repertoire, and a shared history of interaction, social codes and systems for mutual understanding. Kittay describes how, in the case of a person with severe CD, a mere glint in the eye or a slight upturn of the lip can be interpretable signs for an intimate caregiver (Kittay 2001: 568). Parents of young infants learn to recognize their own child's repertoire of cries and other vocalizations and to attach these to specific needs and wants. Humans with dog companions learn to recognize their dog's repertoire for requesting a walk, a tummy rub or a need for time alone. Personal knowledge, like folk knowledge, is often implicit. A parent 'just knows' when her child is upset or happy or teething, without necessarily being able to articulate how or why she knows.

We can bring all of these levels of knowledge and skill to the task of interpreting subjective well-being – from personal knowledge to expert knowledge, from intuitive understanding to objective measures (Shapiro 1990). They are complementary, building on one another or serving as mutual correctives. For example, some animals tend to disguise pain (so as not to give an advantage to potential predators on one evolutionary explanation). A non-expert, lacking this knowledge, might interpret her dog's lack of whimpering or flinching to mean that he is not in pain.

In these delicate judgements, there is great room for error in our interpretation of what individuals are trying to communicate to us, and our interpretations of their well-being and interests. Animal rights abolitionists worry that this process of interpretation will be corrupted by the self-interest of humans and our desire to preserve relations of

domination and exploitation.<sup>41</sup> But interpretation can also be distorted by powerful impulses to improve the lives of those we love. An instructive discussion of this challenge arises in Jennifer Johannesen's memoir of the life and death of her son Owen Turney (Johannesen 2011). Owen suffered multiple and severe disabilities from birth. He couldn't speak or hear, and had severely limited motor control. Therefore he couldn't sign, and, while his caregivers tried to set up pointing and trigger devices for him to express or respond to basic choices, these efforts were never successful. With such limited opportunity for outward expression, it was difficult to know very much about Owen's mental world. His family and caregivers could certainly tell when he was happy or content or distressed or miserable, and could discover various needs and desires through trial and error. But his interior world remained largely mysterious.

Johannesen's book documents the temptation to project into the unknown – to confidently assert claims about Owen's mental world without any real evidence for doing so. This was particularly problematic in some of the schools Owen attended, in which professional caregivers felt compelled to justify their role by making claims about Owen's daily experiences – his favourite songs or activities, his helpfulness or leadership qualities, learning opportunities and progress on developmental tasks. Johannesen came to realize that many of these claims were baseless projections – projections that enabled caregivers to take satisfaction in their work, or justify their efforts, either to themselves or to others, or to prompt and encourage others to keep making an effort to reach Owen, or help him to develop capacities to enlarge his world.

In all of this we have to find the right balance of 'loving ignorance' in which we 'accept what we cannot know' (Tuana 2006: 15–16) rather than filling the space with false projections, without evading responsibility by claiming that our lack of 'whisperer' skills means we can't crack the mystery of other minds, human or animal.

The literature on CD also suggests that the powerful impulse to improve the lives of others can lead to an obsessive focus on learning, normalization and development of functioning that threatens to crowd out other dimensions of existence. We lose sight of the individual's freedom to simply be who she already is, instead of who she might become. There is a danger of sacrificing well-being in the moment in the name of an elusive future in which agency might be enlarged by the right therapy, learning opportunity or activity. This relentless goal-oriented mindset

<sup>41</sup> Many abolitionists favour the end of human relationships with DAs, through their gradual extinction.

can present an onslaught against which the vulnerable have little power to say ‘Stop!’ ‘Enough!’ It is easy to imagine how this could operate in the case of DAs as well. Thus it is crucial to include opportunities for contestation into the process of supporting and interpreting agency – on the part of the party concerned, as well as third parties.

We have obviously just scratched the surface here in thinking about issues of interpretation, but we hope to have said enough to show that we are not operating in an epistemological void. DAs try to communicate with us, when we take the time to listen and learn and respond, and we already have some well-developed bodies of knowledge that help us understand this communication.

### Conclusion

In this chapter, we have discussed a number of ways in which animal advocates can learn from the citizenship struggles of children and people with CD, including issues of macro-agency, the scaffolding of choice and the challenges of interpreting subjective good. But in conclusion, we’d like to step back and make a more general point about the value of these literatures for the animal question.

For the past 40 years, animal ethics has often wavered between two extremes. In its pessimistic Foucauldian moments, the relation between humans and DAs is seen as inherently and always already oppressive and dominating (disciplining and policing), with no potential for fundamental change. Interspecies relations are fundamentally locked into a framework of violence, with humans asserting a right to dominate animals as a continuing spoil of inter-species war (Wadiwel 2013). Against this background, the extinction of DAs (and a commitment to leave wild animals alone) appears as the only hope for ending the carnage.

In a more naïve (or self-serving) moments, animal ethicists search for and celebrate evidence of animals’ micro-agency, reflected in the rise of free-range farms, or cooperative training methods, or ‘enrichment’ for zoo and lab animals – all of which are taken as evidence of ‘partnership’, ‘cooperation’, even ‘love’ (e.g., Rudy 2011; Haraway 2008). Yet they leave untouched, and indeed are complicit in, the systematic exploitation of animals to serve human interests, in large part because they take as given that the purposes of human–animal relations are always already fixed by humans.<sup>42</sup>

<sup>42</sup> We describe this as an alternative to the Foucauldian story, but of course in another sense, the provision of micro-agency is a central part of Foucault’s story of how domination works.

What has been largely absent is any serious attempt to explore the vast territory in-between extinction and micro-agency, a territory in which DAs would be seen as co-authors of their relations with humans, and co-members of a shared society, in which cooperative activities would be as responsive to their interests and purposes as ours. And it is here, above all, that animal advocacy has much to learn from the citizenship struggles of children and people with CD. The shift to citizenship in the children's rights and disability rights literatures, we would argue, is precisely driven by the need to explore this territory in-between micro-agency and Foucauldian domination. And the key innovation that makes this possible is a new model of citizenship premised on ideas of membership and participation.

It is perhaps not surprising that animal rights theory has lagged behind children and disability studies in theorizing this territory. After all, in the case of DAs, it is still possible – however implausibly – to deny that they count as members of our shared society. In relation to children and CD, there is no credible way to deny membership, and so no credible alternative to including children and people with CD in our account of the demos and of citizenship.

In time, we believe, DAs will also be recognized as members of our society, and when this happens, the citizenship struggles of children and people with CD will have bequeathed a much richer set of concepts and practices for thinking about their membership and participation rights.