



CONSTITUTIONAL ANIMAL PROTECTION

Written Provisions & Unwritten Principles

Jessica Eisen



“Jurisprudence is, after all, about human beings.”

- Robin West



CONSTITUTIONAL ANIMAL PROTECTION TEXTS

- Switzerland (1973)
- India (1976)
- Brazil (1988)
- Slovenia (1991)
- Germany (2002)
- Luxembourg (2007)
- Austria (2013)
- Egypt (2014)
- Russia (2020)

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- Animal *Protection* as a Constitutional Commitment
 - Animal *Exploitation* as a Constitutional Commitment

PRESENTATION OUTLINE



TEXTUAL COMMITMENTS

Constitutional Animal Protection

CONSTITUTIONAL ANIMAL PROTECTION TEXTS

- Switzerland (1973)
- India (1976)
- Brazil (1988)
- Slovenia (1991)
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- Egypt (2014)
- Russia (2020)

[prohibit] ... all practices that
... subject animals to **cruelty**

- *Brazil*

duty ... to have **compassion**
for living creatures

- *India*

take account of the
dignity of living beings

- *Switzerland*

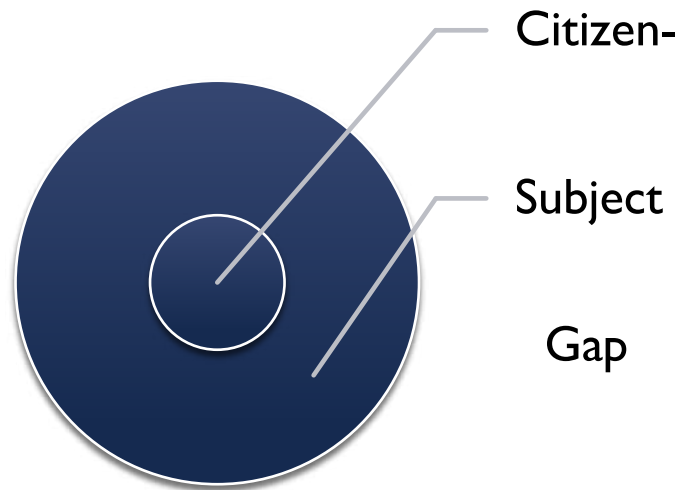
VALUES

- Human Experience
- Human Virtue
- Religion/Deontology
- Minority Persecution
- **Animal Experiences**

CONSTITUTIONAL THEORY

Democracy

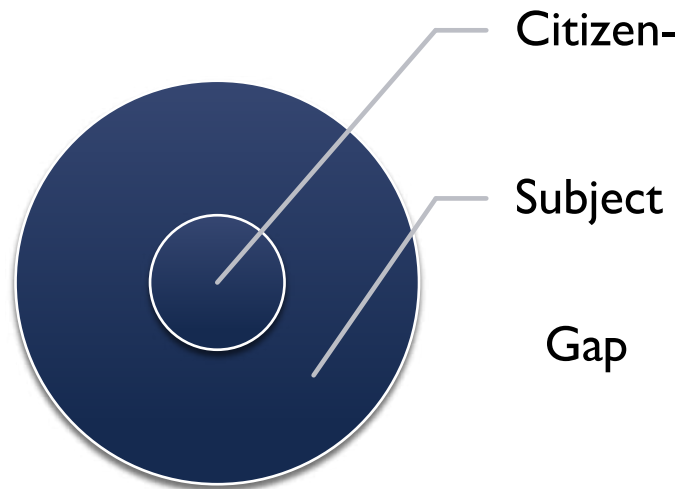
Dignity/Rights



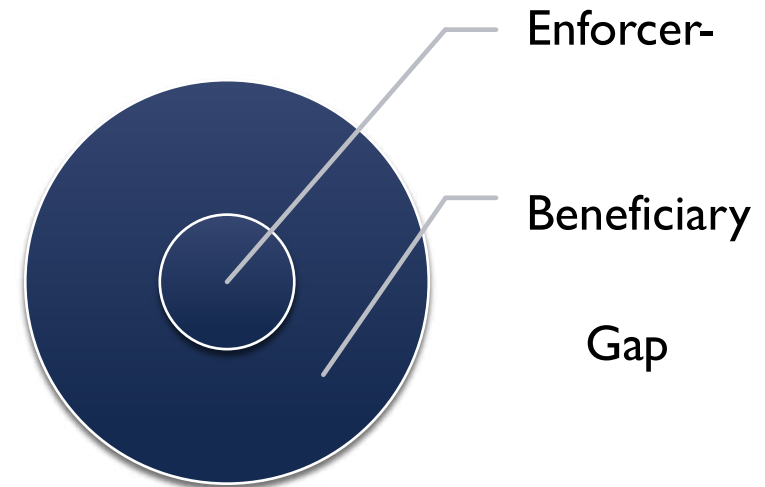
Jurisdiction	Text
Brazil	It is the responsibility of the <u>Government</u> to ... [prohibit] ... all practices that ... subject <u>animals</u> to cruelty
Germany	The <u>state</u> shall ... protect the <u>animals</u>
India	It shall be the duty of every <u>citizen</u> ... to have compassion for <u>living creatures</u>
Switzerland	The <u>Confederation</u> shall ... take account of the dignity of <u>living beings</u>

CONSTITUTIONAL THEORY

Democracy



Dignity/Rights



VULNERABILITY

Elements

- Radical Exclusion
- Harm

Prescriptions

- Structural
 - Agency Independence
 - Broad Standing Regime
- Substantive
 - Transformative/Remedial
 - Animal Autonomy
 - Focus on Majority Practices



UNWRITTEN COMMITMENTS

Animals in the Invisible Constitution

THE INVISIBLE CONSTITUTION

“Invisible”

- Extra-textual
- Unperceived

“Constitution”

- ≠ Constitutional Law
- ≠ Constitutional Culture
- Essentially Stable
- Core / Central
- Principles / Requirements

A PRETTY PICTURE

US (Tribe)

Judicial Review
Popular Sovereignty
Legality

India (Austin)

Democracy
Social Revolution
National Unity

Canada (SCC)

Democracy
Rule of Law
Minority Protection
Federalism

Core debates: Institutional

OTHER UNWRITTEN PRINCIPLES?

“Would it not (sadly) be **more accurate** to say that a constitution dating from 1867 is more likely to be based on principles of **elitism, racism, sexism, and imperialism** than on the four good things the Supreme Court identified?”

- Tomkins

OTHER UNWRITTEN PRINCIPLES?

Shift in Orientation

- Hierarchical
- Disreputable / Contested
- Polyvalent



ANIMALS IN THE INVISIBLE CONSTITUTION

Animal Exploitation Principle

ANIMAL EXPLOITATION PRINCIPLE

Definition

Animal use

Killing

Any majoritarian human interest

Constitutional Nature

Stable

Core / Foundational

Principle

CRITIQUES OF CONSTITUTIONAL PROTECTIONS

Brazil

Lawful killing and capture
“makes a mockery of”
constitutional protection

- Heron Gordhilo

Switzerland

Lack of legislative life protection is a
“contradiction to the dignity concept”
in the constitution

- Gieri Bolliger

CONCEPTUALIZING THE CRITIQUES

- Provisions as failing to deliver
 - Sham
 - Aspirational
- “Off-the-wall” interpretation (Balkin)
 - Constitutional idealism
- **Challenge to Invisible Constitution**

CONTESTING THE INVISIBLE CONSTITUTION

- Creates space for radical critique within constitutional theory
 - Interdisciplinarity
 - Critical Theory
 - Comparative Legal Method
 - Particularity / Generality
 - 'Iterative' or 'Concentric' Studies (Dixon)

NORMATIVE OBJECTIONS

Giving up the ghost?

- For animals?
- For people?

Value of Critical Theory

- Explanatory power
 - Systemic hierarchies
 - Polyvalence of constitutional forces
- Value of deliberation around principles
 - Contests *between* principles
 - Contests *within* principles

A CLOSING PROVOCATION...

Other Ignominious Constitutional Principles?

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