

## 6 Rights of Expression

In this chapter, I investigate powerful particulars as a mode of self-evidence and information, via expression within a discourse of rights. This discourse stretches from the rights of human agents to the rights of natural agents. I will perform this investigation through a discussion of dispositional “agency” rights, briefly discussing rights of information and then rights of truth before moving on to the newest extensions of rights discourse, those of animal rights and finally “rights of nature.” Rights discourse is one of the older forms of viewing an entity from the viewpoint of its own singular powers or dispositions, modulated and recursively formed through “contextual” affordances.

### Modern Human Rights Related to Information

Agency rights, taking human powerful particulars as their core, date from the Western Enlightenment. They are canonically expressed in political documents such as the Declaration of the Rights of Man and Citizen in France (1789), the US Bill of Rights (1791), the “unalienable rights” of life, liberty, and the pursuit of happiness in the US Constitution (1776), and as conditions for inquiry on religious matters (and by implication, on matters of scholarly public expression more generally), in Kant’s 1784 essay *An Answer to the Question: “What Is Enlightenment?”* (Kant, 2013).

The great philosophical precedent for modern rights discourse is John Locke’s political philosophy, where natural law and natural rights play a central role. Natural rights in this period and later assert personal agency powers of action and expression by the nature of human being, namely, in the “unalienable” condition of human free will. (In contrast with agency rights, obligation rights, in the sense of socially assigned duties, long

preceded Locke's formulation.) Natural rights, understood as these innate agency rights of individual human beings, are the foundational concept for the twentieth-century notion of human rights.

After World War II, rights of information access were added to those of expression, forming the twin pillars of modern human rights and "intellectual freedom." As Fonseca and Mathiesen (Fonseca, 1999; Mathiesen, 2015) point out, information access as a human right is proclaimed in the United Nations' Universal Declaration of Human Rights (1948), article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontier.

Perhaps one of the most famous information access laws is that of the US Freedom of Information Act (FOIA), which was signed into law in 1966. FOIA, however, also shows the limits commonly placed by governments on information access to government records and data. FOIA exemptions include national defense information, personnel matters in government, trade secrets and geological data, financial institution supervision, information related to ongoing criminal investigations, and FOIA requests that might violate personal privacy.

Information access is also commonly forbidden in the case of some personal information. What constitutes personal or "private" information varies widely as more and more information is mediated online and by corporate entities. Some personal information records in the United States, such as medical records, are limited by legal statutes such as the Health Insurance Portability and Accountability Act (1966).

Information access rights are usually seen as what I would call "direct rights," in the same sense that expressive rights are seen in this manner. One makes a request and, even if mediated, the information—for example, the document—is retrieved or delivered. The referent, or subject of information, is taken as a known or possibly known entity represented in the document. An example of an "indirect right" of information would be the right to truth.

### Right to Truth

A somewhat-different relation to the information of documents, however, occurs with the international law principle held in many countries known

as the “right to truth.” The principle of the right to truth, though known in Anglo-American law literature, is practically invisible in the literature of Anglo-American information science or library science (one notable exception being Bishop’s discussion [Bishop, 2012]). Such is not the case, however, in the Latin American archive and library and information science literatures and in the politics of Latin American countries and South Africa, where the right to truth emerged following truth commissions set up in the aftermath of military regimes and, in the case of South Africa, the regime of apartheid.

The notion of a right to truth in this context is the right of the family of the victims of political repression, as well at times as the national society as a whole, to have an account of what happened to particular people or peoples during times of political troubles. Beyond being personal information for the family of a victim, such information has uses for criminal prosecution, for national reconciliation, for historical accountability, and for the establishment of peace (Naqvi, 2006).

As both Naqvi (2006) and Bishop (2012) describe, though the right to truth presupposes information and an archive, it also requires the prerequisite of rights to information. However, in the case of the right to truth, information is not assumed to be only available in inscribed documentary forms, but rather it may occur in oral testimony, and the right to truth also involves broader and deeper understandings of information, toward revealing the truth of an event.

Also, in distinction to a right for information, the notion of a “right to truth” is indexed not only to the person making the request or even to the information or documentation per se, but rather to the object or subject of an inquiry about what happened to a person during an historical event. The right to truth not only belongs to those requesting the information, but also to the person or persons missing within the historical event in question. Their life—or rather the loss or absence of such—is the foundation for this right. This right can be enacted through a specific, living, person (a relative, for example) or in the name of the collective rights of a society to know the truth about a person or event for the purposes of justice or reconciliation (Naqvi, 2006).

The “right to truth” is also related to a certain notion of truth: the truth of events, rather than the truth of evidence, per se. While the first may be thought to depend upon the second, there are cases when this doesn’t

actually happen. For example, Medina and Wiener (2016) studied documentary errors in the forensic identification of victims during Augusto Pinochet's dictatorship in Chile, where historical identifications were based on what later turned out to be incorrect technical analyses of forensic documents. Though the documentary evidence was incorrect, the narrative provided a type of therapeutic truth for families.

One possible conclusion we may derive from their study is that though therapeutic truth in such circumstances is indexed to documentary evidence, it is not necessary for the latter to be accurate in order for the former to occur. As is the case with other therapeutic techniques (e.g., in psychoanalysis), the importance of narrative creation can take precedence over documentary accuracy. If the "sense" of documents in their social use is pragmatically workable, then the criteria for referential accuracy in the documents can be "good enough," rather than exact. (Indeed, documentary accuracy usually follows this rule; for example, a general encyclopedia's measurement for the Golden Gate Bridge may be correct enough for a schoolchild's paper, but not for an engineer planning on repairing the span. Correctness is always in regard to some measure and some judgment of measure, and also there are various types of conditions for truth that are valid for describing different types of facts, such as correctness, completeness, timeliness, etc.) This doesn't mean that information professionals shouldn't strive for the best documentary accuracy, at least, in the above case in order not to "revictimize" the families of the disappeared (Medina & Wiener, 2016). Rather, I am suggesting that the notion of truth in the right to truth is not solely reducible to documentary accuracy and that there are therapeutic criteria in narrative involved, as well.

As Naqvi (2006) argues, the notion of truth in reconciliation commissions attempts to address the past in terms of a desired future, as well, where the truth serves not just a personal psychological, but also national reconciliatory or judicial purposes. The information demanded within such a right, therefore, can depend on a larger context of need than a simple request for a certain document or even documents on a specific topic. The right to truth is oriented toward a broader context of justice, not only in the present in regard to an event in the past, but also toward preventing abuses in the future by having access to the facts of what happened in the past. For this reason, this "right" is sometimes taken as more fundamental in regard to unalienable human rights than rights to information, which governments can contest for reasons of national security (Naqvi, 2006).

Governments can also view information access toward a right to truth as leading to their destabilization, and thus it has been contested by government agencies that have a stake in preserving such (e.g., the refusal of the US Central Intelligence Agency to reveal their practices of “extraordinary renditions” [Navqi, 2006, p. 266]). Conflicts between rights to truth and limits put upon rights to information, as well as political decisions such as amnesty laws and their effects upon rights to truth, keep the concept and the practice of the right to truth contentious at country-level political implementation and international law (Bishop, 2011).

As I have been suggesting, all those qualities that make the right to truth so appealing and take it beyond requests for identifiable information also make it a difficult legal concept and make it difficult to implement in an impartial manner. As Navqi (2006) intriguingly concludes, “The right to the truth stands somewhere on the threshold of a legal norm and a narrative device” (p. 273).

As we have seen in previous chapters, narratives can index and describe powerful particulars as specific causal agents across time and place, and conversely, the narratives produced by powerful particulars can model the contextual conditions of their expressions over time. These general conditions are not mere supplements to the particular, but rather they are intrinsic to the perspective brought out through the particular’s powers of expression. Generally, it is the social condition of the emerging bourgeoisie of the early nineteenth century in France that Flaubert brings to light through the agency of the characters and other particulars in his novel *Madame Bovary*. Analogously, the narratives of the right to truth allow the particular to shine, but it is the victim himself or herself and the survivors that bring this light upon the matter. In this way, as will be the case with the examples throughout this chapter, rights are not merely due to the narratives and semiotics of ethics, science, and law, *defining or granting those rights*, but due to the ontological powers, and rights of powers, of agents to force themselves into ethics, science, and law. Indeed, these disciplines are founded upon *the epistemic right of agents to be empirical*. Though these are ancient disciplines, their modern foundations, discourses, and cases are historically unique in this manner.

As a narrative device, the right to truth is subject to conditions of interpretation. Whereas the right to information often involves a demand for the reproduction of documents, the right to truth results in the question of “whose truth” this is evidence of. It presupposes documents of information

that can answer the need for truth, but the right to truth can also be limited by the evidence of those documents so that the demand for truth can be changed, modified, or ended, and with each the information needs may also shift or prove difficult, problematic, or impossible to fulfill.

A case of this last may be found with rights to truth in situations of prejudicial or limited documentation, as well. We can find a case like this in Brazil, in regard to the report of the public prosecutor Jader de Figueiredo Correia in 1967 regarding abuses by the Indian Protection Service (SPI),<sup>1</sup> an organization that was to protect the Amazonian Indians of Brazil, but instead was sometimes involved in their rape, torture, murder, and genocide on behalf of agricultural and mining interests. Shortly after its completion, the report was thought to have been burned in a fire at the Ministry of Agriculture, but then in 2013, it was rediscovered at the Indian Museum in Rio de Janeiro (Canêdo, 2013; Watts & Rocha, 2013). The difficulty of bringing this document to truth is multiple: first, its supposed disappearance; second, its continued interests in suppressing it; third, the passage of time and the death of witnesses who could support its findings; and fourth, and perhaps most of all, the political and documentary relation of native peoples to the state of Brazil. The “right to truth” is a legacy of modernity, and with that, it is also inscribed by the customs and traditions of documentary evidence of the West.

As I have been arguing in this book, documentarity is the theory and practice of Western metaphysics in inscription or “writing,” and an aspect of this may be what Walter D. Mignolo calls the “coloniality of knowledge” (Mignolo, 2006). For Mignolo, modernity and the founding of modern Europe began with the Spanish and Portuguese conquests of the Americas and the plundering of its riches and the subjugation of its native peoples. This was the dark foundation for the later appearance of “Europe” and European identity and the emergence of the European Enlightenment and modern thought. It is the underbelly of modernity that carries with it the prejudices and scars of its victims in its very notion of human rights and the very concept of national and social identity (Mignolo, 2003, 2006, 2011). As Mignolo writes,

The decolonial shift begins by unveiling the imperial presuppositions that maintain a universal ideal of humanity and of human being that serves as a model and point of arrival and by constantly underscoring the fact that oppressed and racialized subjects do not care and are not fighting for “human rights” (based on

the imperial idea of humanity) but to regain the “human dignity” (based on a decolonial idea of humanity) that has and continues to be taken away from them by the imperial rhetoric of modernity (e.g., white, Eurocentered, heterosexual, and Christian/secular). (2006, p. 313)

One of the most significant aspects of the Brazilian SPI case discussed above is the relation of the right to truth to the notion of the “human” in human rights. From the colonial period until today in Brazil, this involves the problem of how to name and treat “isolated” or “primitive” indigenous peoples within the context of modern nation-state, international laws, and human rights (e.g., to “preserve” them through “isolation” or through limited or full contact). Such peoples can remain borderline human subjects with their rights protected by nation-states in inverse proportion to their objective status as “quintessential” humans within a “state of nature.” Their status in regard to truth depends not only upon written, but also other inscribed and oral evidence, which may not document their powers or oppressions.

Indigenous peoples across the world are not only brought into the mechanisms of capital and nations, but also, like nonindigenous peoples in colonially drawn national states, as well, must negotiate with such, and often find a group identity that was previously absent through their engagement with the logics of identity and difference drawn on behalf of colonial powers, their devices and centers of calculation, and the cultural forms and social and economic forces of dominant political economies (e.g., taking on broader tribal or ethnic identities than their ancestors). Still further, isolated or “primitive” tribes are brought into such colonial administrative grammars for the purpose of their paradoxical management as nationally included elements of exclusion within the state and within modernity, taken as “objects” of rights of nature.

Following Mignolo’s argument, perhaps a broad incorporation of narrative techniques of the right to truth might enlarge the possibilities for documentary evidence toward understanding peoples and natural beings previously considered not to be “civilized” (by dint of writing, or at least alphabetic writing). It might do so by allowing for imaginative reframings of “information” beyond traditional documentary forms for evidence.

Rights of “truth” have to take account of the expressions of those who—by documentary techniques and the very metaphysical and ideological notion of categories of types as cases for evidence—have had their

powers as powerful particulars denied. In other words, the notion of truth would have to change from that supported by documentarity—as both documentation practice and metaphysical ontology—to narrative structures that take into account the truth of beings more broadly than those in the past who have been considered fully human and so granted natural rights.

Another case from Brazil illustrates this problem in the context of the historicity of documentation and documentary techniques and inscriptions. It is the case of the Comissão Estadual da Verdade da Escravidão Negra no Brasil da Ordem dos Advogados do Brasil o Rio de Janeiro (OAB-RJ) (State Commission on the Truth of Black Slavery in Brazil, of the Brazilian Bar Association of Rio de Janeiro), headed by lawyer Marcelo Dias.<sup>2</sup> Here, the issue is that of trying to find resources that document the existence of people who were not considered to be, or were considered to be lesser, humans and so were excluded from creating, particularly “fixed” (e.g., written) documents as testimony to their own existence, intentions, and hopes. As in the case of slaves’ narratives, poems, and other written materials in the history of the United States, the very mechanisms of writing, written language, and genre expression in the owner’s language had to be learned by the slave author. The very fact of documenting one’s self meant turning one’s self into the inscriptions of the owner class.

The truth commission on slavery in Brazil also has to grapple with the absence or loss of records for the 350-year-old history of slavery there. While modern truth commissions commonly make use of forensic materials, these are tied to birth certificates and other such bureaucratic documents that help establish individual identity and give context to anthropological or forensic evidence, so as to help the “truth” of documented subjects appear. Such may often be lacking in the case of slaves, other than the individual identities that they had as named devices in the use and exchange economies of their individual and collective owners.

### **Animal Rights and Rights of Nature**

It isn’t with a lack of tact that we now transition from issues of documentarity, human rights, and indigenous peoples and slaves and engage the rights of nonhuman animals and rights of nature. Rather, we transition to these issues in recognition of the historical problem of natural rights being seen fundamentally as human rights, and human rights belonging to



those with certain markers of human powers of expression, namely writing and, moreover, documentation and documentary evidence, understood in certain cultural forms and social norms for their deployment. Further, the argument of this book is that these documentary conceptual, institutional, and technical devices are part of a metaphysics of documentarity whose heritage has developed as “the West,” not least due to the power and dominance brought through these devices, both upon the inhabitants and non-inhabitants of the West as these devices of what would become European and then modern civilization increased their scope and range.

We may recall here the management devices of current and much older “computer centers” or “data centers” (as we have examined earlier, Latour’s “*centres de calcul*”), which, in the library and information science traditions, go back to antiquity and include libraries, archives, museums, and government and private record management centers. These institutions and their techniques allow for the management of humans and nonhumans across time and space. In both Latour’s (1996) work and Briet’s (1951, 2006) work, we have seen descriptions of the management of the “new world” by European *centres de calcul* vis-à-vis drawings, maps, ontologies, taxonomies, technologies, and institutions of representation. The ontological abstraction of entities and their institutional transformation into representational essences toward being resources for productive management is the *a priori* necessity for modern science when it is understood as engineering.

### “The Animal”

The Western philosophical tradition makes a clear distinction between human animals and nonhuman animals in regard to their abilities to *represent* through language, that is, to abstract and create abstract concepts from immediate perception. Based on this difference, differences in generative powers and rights are asserted, as human beings are seen as having substantial abilities to abstract through representations their present and past experiences and reason from these to future experience. Moral rights, both obligatory and agentive, are asserted through having such an ability, as well. Human powers through cognitive skills and *techne* have also been taken as rationales for rights of control, and for assigning categories of what is considered to be the master and the servant, the human and the nonhuman, subject and object, technology and mere tools, knowledge and

the objects of knowledge, and civilization and noncivilization. As we have seen throughout this book, epistemological assumptions carry with them ontological categories for both the agents and objects of their claims, but they also carry moral and other forms of practical reason for giving and exercising responsibility and power.

Jean-François Lhermitte, in his book *L'Animal vertueux dans la philosophie antique à l'époque impériale* (Lhermitte, 2015), argues that in Aristotle's works, human and animal sensibility or perception (αἴσθησις) is differentiated according to the former's relationship to λόγος, so that perception is a "full perception," that is, simultaneously being a sensual representation (φαντασία αἰσθητική) and a considered or deliberative representation (φαντασία βουλευτική) (p. 165). Translated into English, Lhermitte writes,

In sum Aristotle makes a distinction between: a primary form of representation, one of a purely perceptual quality (φαντασία αἰσθητική), which is a lower form of imagination, proper to animals, devoid of logical or deliberative properties, and a second, a more elaborate form of representation and proper to human beings, which overflowing the φαντασία αἰσθητική, constitutes a superior form of imagination, which is endowed with logic and deliberation and thus permits one to "form a single image from many parts," that is, an image from a syllogism. The first φαντασία conserves, more or less well, in the living being what is present in reality and gives to it a certain quasi-presence. It affords that all living beings are able to have dreams, reveries, a certain form of memory, a thin form of "thought," which makes up animal behavior. But the second is a superior φαντασία, auxiliary to "full action" (πράξις), and it is proper to human being, thinking intellect, and that which guides it.

Thus, φαντασία clearly marks the frontier between the psychic faculties of man and animal. If there does exist an animal φαντασία it is not of a logical nature, such as the human φαντασία. For Aristotle, the nature of animals does not extend much further than sensations of pleasure and pain. Certainly, habit apparently gives a limited cognitive function to their sensations, which go beyond simple sensation. But even if some of them have access to sensation, animals do not have access to moral values. They cannot be said to be temperate or intemperate other than in a metaphorical manner, and the virtue of a horse has nothing in common with the virtue of a human being. In effect, the animal lives by sensation; only human beings can attain moral perfection (ἀρετή). (pp. 166–167)

Lhermitte goes on to argue that later Stoicism continued this line of thought in terms of οἰκείωσις ("appropriation" [see also Sorabji, 1993]), as well as in terms of the cognitive capabilities of humans and animals. The

φαντασία (*fantasia*) of the animal is said to be oriented toward sensations or feelings (αισθητική, *aesthetike*), which allow them a certain type of knowledge of the quality of things (greenness or whiteness, for example), but animals cannot reason about these in terms of building representational concepts based on such experiences (green or white, for example) (Lhermitte, p. 167). As we can see here, ancient Greek authors and the philosophical tradition since then have distinguished human and nonhuman animal beings on the basis of two interrelated human qualities corresponding to the “higher” levels of human imagination or *fantasia*: complex language use and the ability to form concepts from such—and thus, the ability to form inferences about the likelihood of future events.<sup>3</sup> “Moral perfection” is a function of this inferential process. Any animal can respond, but only so many can be responsible toward the future based on inferred concepts. The failure to do so marks human moral failings.

With this observation, we return to categories and other modes of documentarity as seemingly transcendental practices of understanding. Categories, in a manner similar to writing, “fix” understand and allow inferences across different cases. The seemingly transcendental qualities of categories and writing, their seeming ability to contain different examples, gives to them not only epistemic claims of transcendental truths, but also moral claims of judgments across different examples over time. In an ironic twist, the Platonic notion of concepts as representational images returns us to the aesthetic mode of representation that Aristotle saw as fundamental not just to human beings but to other animals. Platonic metaphysics, as perhaps distinct from Aristotelian metaphysics, is a metaphysics of conceptual “images” (i.e., stable or organic wholes from parts); it is based on the imaginative power of inferred universals—a third level of *fantasia*, after the deliberative.

### Heidegger, Animals, and World

The idea that nonhuman animals lack deliberative *fantasia* or representations has continued through more contemporary philosophy, as well. McNeill (1999), for example, argues that for Heidegger both Plato and Aristotle’s understandings of cognition were structured by a notion of the governance of perception from a soul—a being that is transcendental to a

body's perceptual apparatus. The eye itself doesn't see, but rather, the eye sees as part of the human organism. This seems to be a species application of Kant's notion of transcendental apperception. Within Heidegger's phenomenology, this type of view leads to Heidegger's famous and contentious understanding that animals are "poor in world" (Heidegger, 1995), which we will now discuss. The argument is that animals share our primary perception of the world, but they lack the ability to represent such via a cognitive apparatus that is transcendental to perception in the "secondary" manner that Lhermitte discusses.

In Heidegger's 1929–30 lectures, published in English as *The Fundamental Concepts of Metaphysics: World, Finitude, Solitude* (1995), he asks how we can distinguish between stones, animals, and human beings in terms of our ability to transpose ourselves into each of them. Heidegger argues, "Being transposed into others belongs to the essence of human Dasein" (Heidegger, 1995, p. 209). This imaginative transposition—this *fantasia*—Heidegger argues, is not an issue of empathy (which assumes "man is first of all an isolated being existing for himself" [p. 208]), but rather a part of our shared world of being-with (*Mitsein*) one another in the mode of human existence (*Dasein*). For Heidegger, what we share with animals is a "going along with," that is part of our being-with them and with others. This is what Heidegger refers to in *Being and Time* as "concern" or "care" (*Sorge*). This being-with, however, is with a being—a pet, for example—who does not share their human's mode of existence because it lacks the categories of this later, such as "meal," "stairs," and ultimately "world." The argument isn't that animals don't inhabit worlds, but rather that they don't have a concept of categories for "the world" and the things in it:

Let us consider the case of domestic animals as a striking example. We do not describe them as such simply because they turn up in the house but because they belong to the house, i.e., they serve the house in a certain sense. Yet they do not belong to the house in the way in which the roof belongs to the house as protection against storms. We keep domestic pets in the house with us, they "live" with us. But we do not live with them if living means: *being* in an animal kind of way. Yet we *are with* them nonetheless. But this being-with is not an *existing-with*, because a dog does not exist but merely lives. Through this being with animals we enable them to move within our world. We say that the dog is lying underneath the table or is running up the stairs and so on. Yet when we consider the dog itself—does it comport itself toward the table as table, toward the stairs as stairs? All the same, it does go up the stairs with us. It feeds with us—and yet, we do not

really “feed.” It eats with us—and yet, it does not really “eat.” Nevertheless, it is with us! A going along with . . . a transposedness, and yet not.

. . . From the side of the animal, what is it that *grants the possibility of transposedness and necessarily refuses any going along with?* What is this *having* and yet *not having?* . . . Only where there is having do we find a not-having. And not-having *in* being able to have is precisely *deprivation*, is *poverty*. Thus, the transposibility of man into the animal, which again is not going along with, is grounded in the essence of the animal. And it is this essence which we have attempted to capture with our thesis concerning the animal’s poverty in world. To summarize: the animal intrinsically displays a sphere of transposability, and does so in such a way that man (to whose *Dasein* a being transposed belongs) already finds himself transposed into the animal in a certain manner. The animal displays a sphere of transposability or, more precisely, the animal itself is this sphere, one which nonetheless refuses any going along with. The animal has a sphere of potential transposability and yet it does not necessarily have what we call world. In contrast with the stone, the animal in any case does possess the possibility of transposability, but it does not allow the possibility of self and another. The animal both has something and does not have something, i.e., it is deprived of something. We express this by saying that the animal is poor in world and it is fundamentally deprived of world.<sup>4</sup> (Heidegger, 1995, pp. 210–211)

As the above quote shows, this question of whether or not or to what degree (nonhuman) animals can go along with us and us with them, whether we share a world with a cat or dog when they share a home with us, and who it is, or whose being it is—animal or human being—who “refuses” this going along with one another—is filled with hesitations. The hesitations perhaps belong to all “goings along with,” including human-to-human relationships, but it is the very ability to be *Mitsein* within a *Dasein* or a mode of existence that is at stake here. But conversely, this is also to say that a right to expression, and even a right to life—a right to existence—belongs to the modality of an existence, and so the dog’s own existence depends upon its “rights” as inscribed by its being within a mode of domestication to humans. And that domestication involves for both humans and nonhumans, the very concept of “world.”

“World” signifies, for Heidegger, not only the ability to go along with, but also to representationally conceptualize that going along with and the objects and relationships that belong to it. It also means to do so outside of the domains, or as Deleuze and Guattari put it, the “territories” (Deleuze & Guattari, 1987) that the animal in question has as its own within its specific existential ontology or *Dasein*. Whereas we can expect that a human being

can represent their illnesses and to some extent (at least through others) their death, the Western philosophical tradition (both as philosophy and as a cultural tradition) generally precludes or limits such in the case of non-human animals. Indeed, in that tradition it is the ability to make representational concepts and infer from those that characterizes the human, and as we have discussed, the human concept of moral being and action.

Like Briet's (1951, 2006) discussion of documentation not representing a stone in a stream or the star in the sky, but the stone in a collection and the photograph of a star, the entity becomes open to having a human "world" based on its ability to conform to the "world" as itself is understood as a representational concept. The conception and experience of "the world" as a concept or representation of "our" world marks the boundary between the human and the animal, according to this tradition.

As Calarco (2015) argues, however, an animal ethics that functions through an ethics of identity is limited to only those higher-order animals with which humans can identify, which means, ultimately, that only those animals which can to some degree "go along," with humans, or (more specifically in terms of power), which humans force to "go along" with them, are granted human care.

Heidegger approaches the matter of human specificity via human difference; he proposes a documentary sense of identity for being human, which is displayed in terms of a representational ontology, despite Heidegger's critical engagement with philosophy's metaphysical tradition. Rights are "given" to animals based on their ability to "go along with" human beings in their management of the human or animal environment or by providing zones of safety for either being. And while Heidegger doesn't reduce the domestic animal to "my little doggie" status (cf. Deleuze's distaste for domestic animals in "A" of his *Abecedaire* interview [Deleuze, 2012]), still, the "going along with" concept is intimately tied to the domestic nature of a domesticated dog (or maybe cat), rather than to a flea or tick. Rights of protection and of "friendship" are given to the pet in ways that are not at all given to other animals. (Indeed, what we sometimes call "animal lovers," in this sense, often happily feed their animals other killed animals, namely those animal types that can't seem to "go along" with the representational peculiarities of the human world of *Dasein* or privileged cultural modes of *Dasein*.) A flea may have a territory, but a dog with a human being is said to share a world (as well as having its own territory), even if it doesn't have a

world to its own self—that is to say, ontologically, ethically, and legally, *of its own right*. Having territories is not enough to have rights. For Heidegger, rights come with having, or at least sharing, a world, and conceptually, only humans have worlds.

Rights, as emerging from human rights, demand a sense of world in order for entities to have such. (Perhaps this is what is behind the notion of natural *bodies*, as we will examine later in this chapter, having rights—i.e., an ecology appears as having a *cohesive world* because it conforms to a Romantic organicism.)

Human rights—either innately held or given—seem to demand conceptual wholes of entities, in terms of individuals, classes, systems, or ecologies. They demand the ability to conceive of worlds as objects of our, or others,' habitation. As in Heidegger's example, rights are given for those animals that can "go along with" human worlds and the ways of human worlding. Too much animal territory and the animal can come into conflict with the human world. Too much biological reorganization in too fast of a time, as in microbiomes, and it becomes difficult to see it as human individual. Too fast of evolution, like with cancer mutation, and it becomes an object of control and in the case of cancer, war.

Heidegger's analysis of animals suggests that by virtue of their own powers nonhuman animals lack at least those rights that are common to humans. To have those rights, they must be brought within human worlds, which means for Heidegger, that the very concept of a world must be extended to them. Remembering the documentary manner of how an unknown animal becomes recognized as a new species of antelope in Britet's *Qu'est-ce que la documentation?*, that is, by virtue of their being brought within ontological categories and taxonomies, we can recognize that this struggle between granting nonhuman animals rights or not based on their own powers parallels the types of documentary processes and technologies of inscription we see proper to recognizing the being of entities. Heidegger's understanding seems to remain within a philosophical register of documentarity, in the sense that the animal is granted a world only within the Dasein of human domesticity. As we will see, in modern rights theory, however, we see nonhuman animals increasingly being given rights, at least ostensibly, based on their own powers (though, also as we shall see, the concepts of domesticity, organicism, and worldliness haunt these quasi-empirical recognitions of nonhuman animals, as well).

## Semiotic Being

Whatever the representational qualities of Heidegger's analysis, his work also suggests the specificity of nonhuman modes of being and suggests that such specificity or uniqueness can be extended beyond species modality and toward individual selfhood for animal entities. We may then ask how can this be done in terms of rights, if we don't want to revert to an ethics of human identification (whether one based on psychological identification—such as empathy or sympathy—or on ontological qualities)? Is there a way of re-territorializing the relation between human and nonhuman animals so as to rethink the notion of not only “animal,” but also the rights of nature, and so with this, natural rights as extended to nonhuman entities?

One way of trying to think of the specificity of other animals, not in our world, but within overlapping and mutually conjoined territories, would be by prioritizing the indexical relations of entities *prior to* (or independent of) their class identification. As I will examine below, doing this, for example, within a semiotic register of indexicality, might also allow us to view language, qua tools of communication, as a property of all beings in relation to one another and their environments according to a principle of general indexicality rather than class relations. We could call this a type of “environmental semiotics.” It would be a communicational, rather than a documentary, indexicality for being-with.

What I'm calling an “environmental semiotics” begins with the integrity of the entity from the aspect of its specificity as a powerful, expressive particular within its own communicative ecologies, rather than its belonging to human worlds via documentary categories or its ability to “go along” with certain representational qualities of human existence as, say, a domesticated animal.

Eduardo Kohn offers an argument for such a semiotics in his work on the Runa people and their natural environment in Ecuador's Upper Amazon (Kohn, 2013). Almost stereotypically, as is the case with many such anthropological stories, it starts from an “indigenous” perspective. In Kohn's telling of the Runa's relationship to their environment, the human is included within the expressive powers of their natural environment, rather than the reverse. The very notion of the “natural” is not distinct from the “human,” but rather the set of natural entities include human beings, and in Kohn's book they are inscribed together within a Peircean type of semiotics of



inter-entity and interspecies communication. Kohn doesn't do without types or kinds, but rather, he argues that categories emerge as expressions of selves in relation to one another in an environmental situation. Writing about the Runa people and their relation to an "ecology of selves," Kohn writes,

A focus on this living semiotic dynamic in which indistinction (not to be confused with intrinsic similarity) operates also helps us see how "kinds" emerge in the world beyond the human. Kinds are not just human mental categories, be these innate or conventional; they result from how beings relate to each other in an ecology of selves in ways that involve a sort of confusion. (2013, p. 16)

But what is a self for Kohn? For Kohn, it is an agent that is a product of a "semiosis"—a communicational ecology of signs within which the being finds itself:

Wherever there are "living thoughts" there is also a "self." "Self," at its most basic level, is a product of semiosis. It is the locus—however rudimentary and ephemeral—of a living dynamic by which signs come to represent the world around them to a "someone" who emerges as such as a result of this process. The world is thus "animate." "We" are not the only kind of *we*. (2013, p. 16)

Thus, the self is an indexical point of communicative or affective relationships, past, present, and with trajectories into the future, that has expressive agency. Deploying Peirce's vocabulary of "iconic" and "indexical," Kohn writes,

Indexicality, then, involves something more than iconicity. And yet it emerges as a result of a complex hierarchical set of associations among icons. The logical relationship between icons and indices is unidirectional. Indices are the products of a special layered relationship among icons but not the other way around. Indexical reference, such as that involved in the monkey's take on the crashing tree, is a higher-order product of a special relationship among three icons: crashes bring to mind other crashes; dangers associated with such crashes bring to mind other such associations; and these, in turn, are associated with the current crash. Because of this special configuration of icons the current crash now points to something not immediately present: a danger. In this way an index emerged from iconic associations. This special relationship among icons results in a form of reference with unique properties that derive from but are not shared with the iconic associated logics with which they are continuous. Indices provide information: they tell us something new about something not immediately present.

. . . What is the relationship of indices to symbols? Imagine learning Quichua. A word such as *chorongó* is relatively easy to learn. One can learn that it refers to what in English is called a woolly monkey quite quickly. As such, it isn't really

functioning symbolically. The pointing relationship between this “word” and the monkey is primarily indexical. The commands that dogs learn are much like this. A dog can come to associate a “word” like *sit* with a behavior. As such, “sit” functions indexically. The dog can understand “sit” without understanding it symbolically. (2013, pp. 52–53)

Kohn sees meaning as originating from and extending further out into the world than human language’s “iconic” or representational symbolism, and he argues that forests “think” as ecosystems through indexical relationships. As we see from the last few sentences in the quote above, in contrast to the Western philosophical tradition where thinking and language often connotes representation, for Kohn thinking and language are indexical forms of creating reference—in this sense, not so different from Latour’s map reading, but for Kohn inclusive of all entities in the world, including humans. Evidence is gotten through associations between words and things in experience. Reference is the product of these indexical relationships of sense, not the prerequisite for such. The “self” in such a schema is an index of experiences in the present, simultaneously pointing to the past and future. Living beings, for Kohn, are intrinsically joined together, because they are formed and continue to grow from out of connected systems of indexical signs that are “pragmatically” understood. In a manner, the ecological lifeworld that Kohn sketches is made of networks or graphs with indexical relationships between the organic points making up the edges.

Since, for Kohn, the entire lifeworld is alive with meaningful events that are registered in the subsequent relational expressions of each being, the notion of the self is extendable even to plants. And for this reason, as well, Kohn claims that “forests think.” For Kohn, forests are sort of environmental brains, alive through connected experiential synapses. “Aboutness” is a product of ecologies; it is product of semiotic affects, not *a priori* categories:

We humans, then, are not the only ones who interpret the world. “Aboutness”—representation, intention, and purpose in their most basic forms—is an intrinsic structuring feature of living dynamics in the biological world. Life is inherently semiotic. (2013, pp. 73–74)

By extending Peirce’s semiotics to beings as a whole, and giving to entities the notion of a “self” based on its undergoing and adapting to affects (akin to Whitehead’s process philosophy), Kohn give us a sort of semiotics gone wild, where communication and knowledge formation fundamentally occurs between human and nonhuman entities without distinction.

For Briet, the animal entity is an indexical sign because it belongs to documentation ontology; in contrast, for Kohn, it is an indexical sign because it is a self within an ecological semiotics. Instead of nonhuman animals being mute, it is the human beings of the Western cultural tradition who may be seen as being both deaf and mute to the language of their environments, captured as they are within the domesticating worlds of their representational signs. Humans of the metaphysical tradition narcissistically turn away from shared semiotic networks with other animals and plants; they fetishize their selves through metaphysics of transcendental identities, to which they see themselves as the highest form. They are captive to the power of their imaginations, blinded within their *fantasia* of representational knowledge and transcendence.

Kohn's (2013) critique of an anthropomorphic view of language and cognition makes an impassioned argument for an epistemic and ontological model of "nature" and indigenous life based on a general semiotics of affect. Kohn's argument suggests that by privileging a transcendental understanding of "aboutness" or representation, the sensual foundations of such in environmentally determined indexicality are lost sight of. Sense is lost, and indexical reference is then transformed into transcendental representations.

As Briet briefly mentions in the first part of *What Is Documentation?* (2006), the techniques and technologies of documentation bury or veil the original documental fertility of the newly discovered animal. Whereas such documentation techniques or technologies veil the animal in the name of its type essence, Kohn's work (2013) attempts to reopen the ontology of beings by an environmental semiotics that stresses the singularity of each entity.

However, one might also object that the very generality of such an environmental semiotics can also obscure the problem of the specificity of beings as entities, and even as class, particulars. Kohn's semiotics ontologically grants expressive agency to nonhuman animals, but it does so at a very general level of sensory response, thus perhaps reducing entity powers to that of system responses. Semiotic indexicality can model expression as response, but can it also model expression as integral to the experience-built ontologies of individuals, either as a species or as singular beings?

Earlier in this book, we saw an expressionist theory of singular and individual agency in terms of dispositions and affordances. Following this, I'd

like to turn our attention to recent attempts to not only give to nonhuman animals, but also to “natural” or environmental bodies, rights of expression. Such rights are both expressions of dispositions and, when viewed against strong documentarity and the documentation tradition, also rights to *not be* an entity as conceived by human knowledge. In this latter, they can be seen as rights to *not* “go along with” human *Dasein*—not to be domesticated or to fit within modes of human representational governance. In a sense, they are rights to be or remain “nature,” or “wild.” Whether such rights are even possible remains not only a pragmatic issue of legal processes, but also a conceptual issue of just how far into natural beings and objects “human rights” can be extended. Can such rights exist in the absence of their conception as rights by human owners of such? Proponents of rights of nature claim that they can be, that natural bodies have rights of expression against human claims, even if it is humans that must press for those rights through legal institutions.

From a contrary angle, though, we could also argue that natural entities have, at least *expressive*, rights *not* to be necessarily included in the worlds of “human rights.” Indeed, the natural sciences imply such, in so far as they attempt to investigate that which is not available to ordinary human experience, using tools of investigation and interpretation of the others’ nonhuman powers. Granted, these latter are not contingent on rights of continued existence, but rather, rights of claims of expressively independent existence. As Deleuze (2012) argued, territories belong to the flea or tick, or even to the dog, but worlds not necessarily so. The concept of a world doesn’t ontologically belong to a dog, though its domestication lends it one and may make its existence more long-lasting; territoriality, however, belongs to it ontologically, whether it is domesticated or not. Ontological rights for entities may not even need something like Kohn’s (2013) semiotic world of nature, though legal rights may.

### **Animal Rights and Rights of Nature**

If the development of modern “natural” (i.e., human) rights of expression and information access have been disruptive to taxonomies of being and power as embodied in obligation or duty rights, so more recent animal rights discourses, and more recently rights of nature and earth jurisprudence discourses, show an even further “rights drift” toward extending the

notion of what we can call expressive or agency rights more toward powerful particulars outside of human civil society. Each of these rights discourses has been extended from the original Enlightenment break from obligation rights, forming around a fundamental ontological understanding of individuals as powerful particulars.

This rights drift toward viewing the particular in terms of its singularity also brings with it disruptions as to what can be seen as documenting evidence of such rights, from that of transcendental properties to notions of group essences held within individuals to that of powerful particulars and powerful “particular” ecosystems. In brief, we see a gradual drift in such rights discourses from recognized essence by others to self-expression of “organic” bodies as the source for rights, and so we also find a tendency toward taking the powers of the particulars as grounds for their own self-evidence.

The drift from animal rights to rights of nature would, as it were, seem “natural.” Both “animals” and “nature” are traditionally understood to deal with nonhuman beings, and so the extension of rights of humans to animals and nature together makes sense. However, the equating of animal rights with rights of nature is complicated.

First, as we have discussed above, we should recognize that animal rights often involve the extension of human rights to domesticated animals, whether those animals are domestic animals (“pets”) or are captured wild animals. Within the “house of the human,” as it were, we extend rights to those animals that, by choice or by force, “go along with” us. The minimal type of rights given to such animals in the past two hundred or so years, at least in Western culture, is that of freedom from pain and suffering, or to put this another way, protection from “unnecessary” pain and suffering. Of course, what constitutes “unnecessary” varies widely on who is interpreting this and how. Is a bull’s quick slaughter painful, and it is unnecessary pain and suffering when compared to other ways of dying? Is euthanizing a cat with suspected cancer, saving it from the pain and suffering of a surgically produced diagnosis and possibly noncurative surgery that it cannot understand, creating or relieving unnecessary pain and suffering? Not only are culturally specific human values and particular human conveniences for measuring the animal’s pain and suffering called upon to both enact and justify actions in the above scenarios, but the very measure of pain and suffering is difficult to judge on a psychological level.

Second, animal rights often conflict with one another. Domestic cats are beloved in much of the world, but cats are biological predators; they not only instinctively hunt, but they also physiologically need to eat other fleshed animals, such as their most prized prey, birds. Hence, it is not surprising that bird lovers are not always cat lovers (and within this the irony also exists that some birds are predatory and many enact infanticide). If pet food stores are for “animal lovers,” then it better not be as lovers of those animals whose flesh is in the cans and bags throughout the store. Further, many “nature lovers,” not least those who love wild birds, find little to love in cats, which have a negative effect (far below that of the top predator, human beings, however) upon bird populations. Thus, there are cases where animal rights in the name of “unnecessary pain and suffering” conflict when applied to different types of animals understood within human customs.

Pelizzon and Gagliano (2015), however, like Kohn (2013), suggest that plants, too, are sentient beings and so, they argue, also deserve rights. And once plants have rights, along with all animals, then it is not a far stretch to say that a forest or other natural ecosystem has rights. Such rights can be based on empathy, according to the “unnecessary pain and suffering” argument or, with slightly less anthropomorphism, as we have seen, can be based upon a semiotic or cybernetic notion of life or a life system.

Third, when we extend rights to natural systems based on animal rights, we are extending the notion of an organic body to such systems and also assuming that such systems have the ability to suffer, have pain, and have autonomy, akin to animals. The moral and legal rights given to natural systems, when viewed from animal rights, may be based on emphatic and harm-based precepts in human morality and law, but unlike animal rights, it may be difficult to see pain and autonomy for such systems as equivalent to those of individual animals.

Further, social institutions seem to import notions of organic wholes for purposes of representation in order to perform natural rights discourses in political and legal contexts. “Animals,” “trees,” and “rivers,” taken as class and ecologically connected wholes, also need human advocates in political and legal contestations. Like conservation efforts based on the notion of nature as being a “service provider” to humans (Flint et al., 2013), such cases initially took the form of claiming grievances on behalf of human plaintiffs when ecological harm was done. (E.g., waste-dumping in a river poisoning a farmer’s privately owned lake downstream.) More recently,

however, in the United States, legal cases have increasingly been contested on behalf of natural entities or “bodies” (e.g., a “body” of water) *themselves* as plaintiffs (Stone, 2010). The law seems to demand the extension of the notion of subjectivity to nonhumans in order to grant them legal status, and such subjectivity includes the notion of an organic whole or “body” or “system.” Such a precedent is well established in the United States in the case of corporate bodies; its extension to natural bodies is more recent. These legal extensions of self or persons to natural entities or bodies constitute “rights of nature.”

Despite their being oriented toward the animal or natural “other,” empathy models for animal rights and rights of nature are essentially human rights arguments. Semiotic and cybernetic narratives, such as what we saw with Kohn’s (2013) work, displace these notions of subjectivity, but they may do so at the cost of enrolling all beings in “natural systems” of a very generalized sentience. Discourses and laws based upon natural rights, such as Ecuador’s famous chapter 7 of title 2 of their Constitution of 2008, which gives rights to “Pachamama,” and Bolivia’s *Ley de Derechos de la Madre Tierra* of 2010, both start from the notion that the earth is a “mother” (which, needless to add, is a very anthropocentric concept). Further, such approaches sometimes attribute such claims to indigenous peoples, with indigenous peoples being taken as having a “naturally” closer relationship with this “mother,” and so being part of the natural system, distinct from those people identified more closely with colonization.<sup>5</sup>

Despite the limitations discussed above, seen within terms of (eco)system theory rights of nature may be viewed as extensions of animal rights to groups of animals and plants, and even to the earth, all recognized as organic unities of dispositional powers. With rights of nature, we come to a form of rights where the expression of dispositional powers of organisms or superorganisms is the primary site of right-bearing agencies. Natural “systems” are viewed as powerful particulars, akin to how individual animals are seen as wholes composed of cells and other organic parts. Rights of expression are based on expressive powers emanating from such systems as unique, particular ecologies. To destroy the “system” is to endanger not just the animals within it, but also the whole as a complex system whose expressions are greater or different than its parts.

On the other hand, such a “systems” approach to ecologies, starting from stable micro-particulars and ending at the point of unified, macro,

bodies may negate the role that evolutionary selection and “competition” has in establishing any organic body. Recent work in esophageal cancer cell biology, for example, suggests that what at a certain level may be seen as an organic body of interfunctioning normal cells with a few problematic mutations, is in reality, an ecology of not only “normal” cells, but also a very large ecology of competing mutant cells (Martincorena et al., 2018). The body that results (e.g., an esophagus) maintains its integrity because some mutant particulars lack the ability to mutate the organ(ism) in some other direction of development.

Thus, while the notion of an ecological body makes more complex the notion of a “particular,” in itself, it often rests on organicist assumptions grounded in a certain level of observing entities and their interactions. Even when thinking of particulars as dynamic, we often remain trapped within organicist notions of wholes and parts, and thus representation.

In summation, in this chapter we have explored the expressive powers of particulars that lead to their being given ethical and legal rights in human worlds. Such legal rights, like scientific “rights” of powerful particulars, are due to their perceived ability to assert themselves, to be “autodocumentary,” and to push back against particularly human modes of cultural interpretation. Documentary categories are said to follow, not precede, these self-expressions.

As we mentioned, however, in reality documentary categories often begin scientific investigations through taxonomies and ontologies. In scientific research, beings are ontologically parametrized, at least by nomenclature and often by taxonomic structures, and they are then studied within those parameters according to methods and techniques deemed appropriate to their subject matter. And nonhuman animal and ecological “bodies” are given respect and standing in the human households of domestic and legal representation.

As will be discussed in the next chapter, through social network algorithms and newer artificial intelligence technologies and techniques, empirical senses take on a new importance in the construction of documents, data, and evidence of all sorts, and the reuse of them in real time events. Documentary fragments in the sped-up time of Internet social communication carry with them documentary claims to truth but within a communicational, even a conversational, framework. Powerful particulars, both of social and natural entities, thus become directed by representational



becomings that are governed by not only *a priori* categories of being, but also by predictive data vectors of represented habits, knowledge, and social relations. In the next chapter, I will collectively discuss such technologies as “post-documentation” technologies, which I see as technologies that attempt to not only measure, but also sometimes learn from, powerful particulars, while also shaping such particulars and their actions as documents for further representation and social and technical reuse.



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# Documentarity

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