# Jurisprudence and animal protection
Commentary on **Crump et al** on *Decapod Sentience*

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**Abstract**: Jurisprudence is based on normative principles that go beyond instrumental reasoning and practical goals concerning what is convenient. It concerns justice and truth. The empirical evidence justifies the legal protection of various species on legal grounds. Given the risks we face regarding climate degradation, international legal agencies must expand the framework of human rights and environmental law in order to effectively protect animals and their environments.

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**1. Epistemic standing.** In their response, Crump et al (2022a) ask for specificity regarding "the different types of moral or legal status, and their grounds". I first present two grounds for *epistemic standing* that justify the legal protection of animals on the basis of their capacities for knowledge production, knowledge transmission, and related epistemic skills, independently of considerations about sentience. I then proceed to describe sources of *moral standing*, and the implications of all these types of standing for animal rights and jurisprudence.

The first source of legal standing concerns epistemic agency. Epistemic agents deserve legal protection because of their value as producers of knowledge. Knowledge production and distribution are the basic grounds for our very substantial legal protection of corporations and their intellectual property, which we extend to them despite their lack of sentience. Under this criterion, cognitive and rational capacities fundamentally deserve legal protection. We share many, if not most of these capacities, with nonhuman animals. They include various kinds of intelligence and sentience, as the criteria by Crump et al (2022b) show, but sentience is not essential for the protection of epistemic agency (Montemayor, 2022). Animals are epistemic agents that produce and gather knowledge, and like us, they are inheritors of ancestral kinds of knowledge that deserve legal protection.

The second source of legal standing is the set of conditions that are necessary for epistemic agency. In the case of corporations, these involve the community of stakeholders and the collective resources without which the corporation cannot produce or transmit knowledge. It shouldn't be difficult to argue that we are all stakeholders when it comes to the conditions that permit animal cognition. Environmental law should be much more aggressively implemented, the way corporate law operates on a daily basis. The needs of all kinds of epistemic agents, including ourselves, entail this extension to the conditions that permit the

existence of animal epistemic communities, such as forests and entire ecosystems. Rationality depends on collectives. Hence epistemic collectives deserve protection as well, independently of considerations concerning sentience.

**2. Moral standing.** According to influential moral doctrines that emphasize rationality, epistemic agency is the basis of a kind of autonomy that grounds moral standing. If one adopts this perspective, the previous sources suffice for the moral and legal protection of many animals. According to other important moral doctrines, sentience or subjective awareness is the main source of moral autonomy. As Crump et al. (2022b) show, this independent source of moral standing can also be identified in many species. According to sentience-based doctrines, sentience *suffices* for legal protection independently of knowledge-based capacities. Consciousness, independently from intelligence, has its own intrinsic value. The fact that we consider ourselves to be much higher up in the hierarchy of rationality or sentience is not an obstacle to animal protection, because even moderate amounts of autonomy and value deserve legal protection. (Consider why we protect infants or individuals who have lost their cognitive capacities.)

**3. Jurisprudence and legal protections.** The value of rational capacities and the dignity of sentient beings are the main sources of legal standing in jurisprudence. There is clearly a need to incorporate jurisprudential principles into the debate on animal sentience, in a specific and productive way. It is critical to investigate how the effective protection of human rights, according to the key international covenants that protect them, might essentially demand the protection of animal intelligences in an integral manner, for the reasons explained above (these are the *International Covenant on Civil and Political Rights* (or ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (or ICESCR). After all, we are part of the same natural world and we share our dignity with life on earth. It is unreasonable not to attend to the moral needs of fellow sentient beings as an extension of the international protection of human dignity and welfare. In particular, nonhuman animals can clearly be wronged by our actions, and to that extent, they deserve to be legally protected independently of geographical jurisdictions or practical obstacles.

**4. Protecting the *actual*, rather than the *hypothetical*.** There is a current tendency to "protect" possible and artificial agents. A kind of *escapism* is very popular among key decision makers, and it is also favoured by ethicists who seek to interface with industry as a priority, such as the trend called "longtermism", which focuses on protecting future possible lives (MacAskill, 2022). There is also much fascination with virtual reality and artificial intelligence (for a philosophical exploration of the status of virtual reality as genuinely real see Chalmers, 2017). Instead of protecting *possible* life (alien, artificial, or futuristic), we should start here and now, with the *actual* life that surrounds us, which has indubitable intrinsic and non-instrumental value, given its epistemic and moral worth. We must oppose the unreasonable interpretation of jurisprudence that systematically excludes other species. This might be difficult to implement, but international law depends on ethical and epistemic principles, not on what is practical or convenient. There is an abundance of normative reasons in favour of urgent animal protection. In fact, such protection might be a *consequence* of the most important jurisprudential principles regarding the protection of human rights. This presents

us with new opportunities to explore a less escapist view of artificial intelligence (Montemayor, 2023) that includes immediate animal protection. Jurisprudential principles stand on higher normative ground than practical considerations. This basic legal axiom must be taken seriously by everyone involved in environmental law policy.

**References**

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