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# **Moral and Legal Status of Animals**

WHY ANIMALS SHOULD HAVE LEGAL RIGHTS

Master's Thesis

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## INTRODUCTION

The idea that only human beings can be holders of rights is thought to be a conventional wisdom. This commonly held belief has been questioned by animal rights activists several times by filing the lawsuits on behalf of certain captive great apes demanding that they should be declared as non-human legal persons and therefore granted some basic rights, in particular, the right to freedom. Even though the cases such as: Tommy's case<sup>1</sup>, Kiko's case<sup>2</sup>, Hercules' and Leo's case<sup>3</sup>, and Sandra's case<sup>4</sup> have been unsuccessful and none of these apes were granted the status of legal person or any basic rights, still they sparked considerable controversy. For example, on December 2<sup>nd</sup>, 2013 an organization named The Nonhuman Rights Project filed first-ever lawsuits on behalf of four captive chimpanzees demanding courts to recognize them as legal persons and grant them the right to bodily liberty. The chimpanzees called Tommy, Kiko, Hercules and Leo were owned as private property and NhRP attempted to convince the court to order these chimpanzees to be moved in a sanctuary. So far, these cases have been unsuccessful since judges denied their writs of *habeas corpus*<sup>5</sup> on the ground that "chimpanzees are incapable of shouldering social duties and responsibilities and therefore do not qualify for personhood,"<sup>6</sup> nevertheless they remain open till this day. These cases showed that the question of the legal status of animals is very alive today and needs careful attention. Discussing this question will be one of the main purposes of my thesis.

The presented thesis, conceptually, is divided into two parts: the first one is dedicated to the moral status of animals, while another one discusses the legal status of animals. My general aim in this thesis is to provide a well-substantiated view on the place of animal kingdom in morality which will serve as a basis for

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<sup>1</sup> See Nonhuman Rights Project, Tommy's Case, retrieved April 7, 2016 from <http://www.nonhumanrightsproject.org/category/courtfilings/tommy-case/>

<sup>2</sup> See Nonhuman Rights Project, Kiko's Case, retrieved April 7, 2016 from <http://www.nonhumanrightsproject.org/category/courtfilings/kiko-case/>

<sup>3</sup> See Nonhuman Rights Project, Hercules' and Leo's Case, retrieved April 7, 2016 from <http://www.nonhumanrightsproject.org/category/courtfilings/hercules-and-leo-case/>

<sup>4</sup> Nonhuman Rights Project, Sandra's Case, retrieved April 7, 2016 from <http://www.nonhumanrightsproject.org/tag/sandra/>

<sup>5</sup> A prerogative writ used to challenge the validity of a person's detention, either in official custody (e.g. when held pending deportation or extradition) or in private hands. (A Dictionary of Law (8 ed.), ed. by Jonathan Law, (2015). *Habeas Corpus*, Oxford University Press)

<sup>6</sup> Nonhuman Rights Project, New York Supreme Court Judge Denies Kiko's Second Habeas Corpus Bid, retrieved April 7, 2016 from <http://www.nonhumanrightsproject.org/2016/02/11/new-york-trial-court-denies-kikos-latest-habeas-corpus-bid/>

determining appropriate legal status of animals. The legal status of animals requires the legal means of protection of animals' legitimate interests. In this respect I argue that granting animals legal rights is the most effective and necessary way to guarantee the inviolability of animal interests.

The first two sections of the first chapter provide an overview of the moral status of animals in ancient, medieval, modern and contemporary philosophy. I critically discuss each view on the moral standing of animals and show their main shortcomings. In order to draw the line between the animals that matter morally and the ones that do not, we need to establish a morally significant break. The third section of the first chapter argues that sentience is the best candidate for that. The fourth section deals with the question of whether animals are moral agents, moral patients or moral subjects. I sum up this chapter by concluding that while some animals can be moral subjects, none of them is a moral agent but all sentient animals qualify as moral patients. I argue that sentience grants animals the interests in avoiding pain and experiencing pleasure. I will also show that sentient animals have an interest in remaining alive.

The second chapter deals with the legal status of animals. First I provide an overview of the legal status of animals around the world and emphasize the fact that according to most laws animals are considered as mere property. Then I critically examine the legal implications that property status has for the animals and give compelling reasons why property status serves as an impediment for ensuring animal welfare. Furthermore, I provide a critical overview of the animal protection laws that attempt to regulate the humane treatment of animals and prohibit inflicting unnecessary suffering to them. I maintain that as long as animals have a property status their exploitation for the material benefit by humans, even for trivial reasons, will never come to an end. Property status of animals needs to be abolished and animals should be protected from humans by legal means other than just by animal protection laws.

In the last chapter I argue that granting animals some legal rights is the best option to guarantee the welfare and treatment they deserve according to their moral status. I consider arguments for and against the idea of legal rights for animals and conclude that some certain legal rights are totally applicable to animals. I also discuss the possible consequences of granting animals such rights.

## 1. MORAL STATUS OF NON-HUMAN ANIMALS

This chapter discusses the place animals occupy in the moral community. I provide a critical overview of the historical views on the moral standing of animals and explain the reasons for their failure to take animal interests seriously. I argue that sentience is all that matters for ascribing moral status to a being and regard it as the best candidate for the ground of moral status. Considering the biological characteristics of the animals I conclude that all sentient animals are moral patients while some of them can qualify as moral subjects as well.

### 1.1 MORAL STATUS OF ANIMALS IN ANCIENT AND MEDIEVAL PHILOSOPHY

Views on the moral standing of animals in ancient philosophy were quite mixed. Depending on their own belief systems and available knowledge philosophers would come up with differing ideas about the treatment of animals. For example, one of the earliest Greek philosophers Pythagoras who believed in metempsychosis (the supposed transmigration at death of the soul of a human being or animal into a new body of the same or a different species) and animism (the attribution of a soul to plants, inanimate objects, and natural phenomena) argued that eating animals is as wrong as eating humans since all animate beings are the same kind with respect to the soul. It is also believed that he advocated vegetarianism and abstaining from animal food.<sup>7</sup>

Unlike Pythagoras, Aristotle argued that animals can be used for the purposes of humans as he believed in the principle that the lower exist for the sake of the higher. Aristotle employed the natural hierarchy of living beings where humans were represented as superior to animals while animals themselves superior to plants. According to Aristotle animals are accorded the lower place in the Great chain of being due to the fact that humans are intellectually supreme rational beings. From that he deduced the function of animals that is – to serve the needs of human beings.<sup>8</sup>

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<sup>7</sup> See Huffman, C., (2006, October 18). *Pythagoras*, Stanford Encyclopedia of Philosophy. Retrieved March 7, 2016 from <http://plato.stanford.edu/archives/win2006/entries/pythagoras/>

<sup>8</sup> See Aristotle, *The Politics of Aristotle*, trans. into English by Jowett B., (1885). Oxford, Clarendon Press, 2 vols. Vol. 1, p. 104

Medieval philosophy was greatly influenced by the theological and Aristotelian thought. This was reflected on St. Thomas Aquinas' views on animals. Like Aristotle, he argued that animals exist for human purposes and that they have only instrumental value. He regarded animals as irrational beings and given his belief in the order of the things where imperfect were for the perfect he justified the use of animals for the benefit of humans. However, Aquinas maintained that humans have indirect duties to avoid animal cruelty for the reason that the cruelty towards animals may lead to the cruelty towards humans.<sup>9</sup>

## **1.2 MORAL STATUS OF ANIMALS IN MODERN AND CONTEMPORARY PHILOSOPHY**

One of the most influential views on animals in modern philosophy belongs to Rene Descartes who regarded animals as natural automata or moving machines. In order to distinguish between humans and animals Descartes employed two criteria that is – the capacity to think and the capacity to use language. He believed that animals lacked both capacities which made him think that animals were not conscious beings. The moral implication of Descartes' view on animals is that as long as animals are mere automata they do not have welfare and interests whatsoever, therefore humans do not have any direct moral concern towards them.<sup>10</sup>

Voltaire criticized Descartes' view on animals by appealing to the learning skills of animals. He pointed out that a hunting dog knows more after the training for some time than he knew before the training. This, according to Voltaire, should mean that animals are not mere machines. He also argued that since animals have the same organs of feeling as humans do it would be absurd to believe that nature arranged all the means of feeling in animals in order for them not to (be able to) feel.<sup>11</sup>

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<sup>9</sup> See Aquinas, St. T., *Summa Contra Gentiles*, trans. into English by Dominican Fathers (1928). Third book, Part II, Chap. CXII, In: Regan, T. and Singer, P., (1976). *Animal Rights and Human Obligations*, Englewood Cliffs, New Jersey, pp. 118-19

<sup>10</sup> See Descartes, *Discourse on Methods in Philosophical Works of Descartes*, trans. by Haldane E. S. and Ross G. R. T. (1934). Cambridge University Press, vol. 1, pp. 115-18, In: Regan T. and Singer P., (1976). *Animal Rights and Human Obligations*, Englewood Cliffs, New Jersey, pp. 60-66

<sup>11</sup> See Voltaire, *Animals*, Philosophical Dictionary, In: Regan T. and Singer P., (1976). *Animal Rights and Human Obligations*, Englewood Cliffs, New Jersey, pp. 67-68

Unlike Descartes, David Hume believed that no truth was more evident than the fact that animals are endowed with thought and reason as well as humans. He argued by analogy that since internal and external actions of animals closely resemble internal and external actions of humans then the causes from which these actions are derived should also resemble.<sup>12</sup> Moreover, he also maintained that a capacity for sympathy and emotions like “pride and humility are not merely human passions, but extend themselves over the whole animal creation.”<sup>13</sup>

Immanuel Kant infamously argued that as animals are not rational, autonomous, and self-conscious beings we, humans, do not have any direct duties towards them. Though we have indirect duties to treat them humanely and the only reason for that is the worry that the cruelty to animals may lead or encourage the cruelty to humans, therefore animals should be treated humanely, but after all they are only a means to an end and this end is the human being. Therefore they can be used for the benefit of human purposes.<sup>14</sup>

Jeremy Bentham’s view on animals can be regarded as a reply to Kant. Bentham, being a utilitarian, believed that morally right action is the one that results in increased overall pleasure and decreased overall pain. Consequently, he argued that autonomy or rationality is not what matters morally in relation to animals but animal’s capacity to feel pleasure and pain – “the question is not, Can they reason? nor, Can they talk? but, Can they suffer?”<sup>15</sup>

Even though Charles Darwin himself was not a philosopher his influence on the philosophical thinking in relation to animals is immense. Darwin’s revolutionary ideas about the origin of species completely changed the way humans regarded themselves and their relationship with other animals. Darwin proposed the theory of evolution according to which humans were not the creations of god but rather they were the result of evolutionary process and had evolved from an ape-like ancestor. These ideas, for the most part, broke the old stereotypes and challenged the traditional beliefs that proclaimed a human as a unique and all-dominant supreme creature. Darwin argued that human beings are very similar to animals in many ways and that there is no fundamental difference between their mental

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<sup>12</sup> See Hume, D., (1739/1896). *A treatise of Human Nature*, Oxford: Clarendon Press, p. 128

<sup>13</sup> Ibid., p. 224

<sup>14</sup> See Kant, I., *Lectures on Ethics*, trans. by Infield L., (1963). New York: Harper and Row, pp. 239-41

<sup>15</sup> Bentham J., (1823). *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press, 1907 p. 245

faculties. Though, he did point out that intellectually humans are superior. But he noted that:

Nevertheless the difference in mind between man and the higher animals, great as it is, certainly is one of degree and not of kind. We have seen that the senses and intuitions, the various emotions and faculties, such as love, memory, attention, curiosity, imitation, reason, etc., of which man boasts, may be found in an incipient, or even sometimes in a well-developed condition, in the lower animals.<sup>16</sup>

In the 20<sup>th</sup> century another utilitarian and very influential contemporary philosopher Peter Singer, similar to Bentham, considers sentience or the capacity for suffering as a vital characteristic for moral consideration. He argues that the ability to feel pleasure and pain is a prerequisite for having interests at all and as most animals are sentient beings they are worthy of our moral concern. Moreover, Singer holds that if we accept the principle of equality then we should accept the equal consideration of interests too. Considering that all sentient animals have interests at least in avoiding pain and suffering then we need to extend the principle of equal consideration of interests to animals as well. Singer describes that principle as follows: “The essence of the Principle of Equal Consideration of Interests is that we give equal weight in our moral deliberations to the like interests of all those affected by our actions.”<sup>17</sup> Violating this principle and giving more weight to the interests of humans over the same interests of animals will qualify as speciesism – an attitude of bias against a being because of the species to which it belongs. Singer maintains that the fact that animals do not belong to the human species shouldn’t be the reason for discounting the like interests of animals – suffering should be counted equally with the like suffering.<sup>18</sup> The moral implication of Singer’s view is that as most of the animals are sentient and fully conscious beings they should be granted the interests respective to their capacities, particularly an interest in avoiding pain and suffering and humans are morally required not to violate these interests. This will mean abolition of most of the practices that involve animal exploitation where animal interests are constantly ignored and violated, and where human interests are not such as to justify such violation. It is also worthy to mention that according to Singer’s view some animals who are merely conscious (sentient, but not self-conscious) do not have an interest

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<sup>16</sup> Darwin, C., *The Descent of Man*, Chapters III and IV, In: Regan T. and Singer P., (1976). *Animal Rights and Human Obligations*, Englewood Cliffs, New Jersey, p. 80

<sup>17</sup> See Singer, P., (2011). *Practical ethics*, 3rd edition, Cambridge University Press, p. 20

<sup>18</sup> *Ibid.*, pp. 48-50



in continued existence and can be considered as replaceable. In that respect, from the utilitarian standpoint, killing a merely sentient (non-self-conscious) animal painlessly and without suffering can be morally permissible, *if and only if*, the animal will be replaced by another one leading an equally pleasant life, at least all other things being equal; for example, unless killing the animal makes other animals suffer.<sup>19</sup>

Unlike Singer, Raymond Frey holds that sentience is not a sufficient condition for having interests. He provides a complex account of interest and arrives at the conclusion that animals do not have interests. Frey argues that in order for the animals to have an interest they need to have mental states such as desires. In order to have desires one needs to have beliefs since without beliefs we do not have desires (e.g. my desire to own a Gutenberg Bible is connected with my belief that my book collection lacks a Gutenberg Bible and without this belief I would not have this desire), and having a belief means that one believes that a particular sentence that expresses a certain belief is true. Frey concludes that as animals lack language it is highly doubtful if they are able to regard a sentence as true. To sum up, animals do not have beliefs therefore they do not have desires. However, he points out that the denial of moral rights or interests to animals does not and should not leave them defenseless. Animals can be wronged without having interests. After all animals can feel pain and this way they can suffer unpleasant sensations and wantonly hurting them requires justification if not condemnation.<sup>20</sup>

In contrast to both Singer's utilitarianism and Frey's approach, Tom Regan takes a deontological or rights-based approach to this matter and argues that animals have moral rights in just the same way as humans do. The concept of inherent value plays the central role in Regan's view on the moral status of animals. Regan believes that we have no reason to deny animals (at least some) moral rights simply because the biological characteristics and features that grant humans moral rights are present in at least some animals. These characteristics give animals an inherent value. A Being that possesses an inherent value Regan calls a *subject-of-a-life*. According to Regan a being that is a subject-of-a-life will

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<sup>19</sup> See Lazari-Radek, K. and Singer, P., (2014). *Point of View of the Universe: Sidgwick and Contemporary Ethics*, Oxford University Press, p. 266

<sup>20</sup> See Frey, R., (1980). *Interests and Rights: The Case Against Animals*, Oxford: Clarendon Press

have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychological identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others, and logically independently of their being the object of anyone else's interests.<sup>21</sup>

Regan argues that as long as some animals meet these criteria they are considered as subjects of a life and therefore possess inherent value and beings who have inherent value have an equal basic right that is – the right to respectful treatment. Recognizing this right has its moral implications, in particular, Regan thinks that overriding or ignoring this right can never be justified and in all our moral dealings with beings who have inherent value we must always show respect and in order to show respect to such beings, we cannot use them merely as a means to our ends. Regan's view is different from that of Singer's and Frey's in the sense that Regan holds that some animals have interests and moral rights, while Singer maintains that animals have interests and avoids using the concept of moral rights, while Frey denies that animals have interests.

It may seem incompatible to be a devoted Kantian and at the same time hold a view according to which animals are ends in themselves, but contemporary philosopher Christine Korsgaard manages to do both. Korsgaard argues that our fellow animals are similar to us in many ways and this should question the grounds on which Kant made a claim that only rational humans are ends in themselves – beings with inherent value. Unlike Kant, Korsgaard thinks that animals are valuable beings with their own urgent concerns and interests. They, like us, are creatures for whom things can be good and bad and are capable of having their own welfare. As she puts it: “we take those things [that are good or bad *for us*] to be good or bad absolutely – and in doing that we are taking *ourselves* to be ends in ourselves. But we are not the only beings for whom things can be good or bad; the other animals are no different from us in that respect. So we should regard all animals as ends in themselves.”<sup>22</sup> Given this Korsgaard disagrees with Kant that humans do not have direct duties towards animals, rather considering the biological features discussed above she concludes that “[t]he other animals

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<sup>21</sup> Regan, T., (2004). *The Case for Animal Rights*, University of California Press, p. 243

<sup>22</sup> Korsgaard, C., (2012). *A Kantian Case for Animal Rights*, In: *Animals and Law*, Dike, p. 14

therefore have a claim both on our reason and on our feelings of solidarity. We should therefore respect them as ends-in-themselves.”<sup>23</sup>

### **1.3 GROUND OF MORAL STATUS AND MORALLY SIGNIFICANT BREAK**

It is said that a being has a moral status if she or her interests matter morally for her own sake, in other words, moral status is what makes a being morally considerable in her own right.<sup>24</sup> As long as a being has a moral status she can be wronged morally. Moral status of a being sets obligations for moral agents and defines the kind of treatment this being deserves.

As seen from the philosophical proposals above, various grounds or criteria had been proposed for according moral status to beings. Some of them are quite sound while some are implausible. In this section I will discuss four the most dominant candidates for the foundation of moral status of a being, such as: autonomy, rationality, self-consciousness and sentience.

*Autonomy*, simply speaking, is a capacity to make free choices. In other words, it can be understood as having authority over one’s actions or the capacity to be one's own person, to live one's life according to reasons and motives that are taken as one's own and not the product of manipulative or distorting external forces.<sup>25</sup> The idea behind the autonomy as a ground of moral status is that only autonomous beings can be moral agents and perform morally good or morally bad actions, therefore only autonomous beings matter morally. Considering the provided definition of autonomy and the biological characteristics of the non-human animals it is highly unlikely that any animal can meet this criterion, consequently all animals are excluded from the moral community and regarded as intrinsically worthless. But if we accept autonomy as a foundation of moral status then animals will not be the only beings left without moral consideration – human infants and severely mentally impaired adult humans also will fail to meet this necessary

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<sup>23</sup> Korsgaard, C., (2009). *Exploiting Animals: A Philosophical Protest*, In: Ethics and Animals, AV magazine, p. 15

<sup>24</sup> See Jaworska, A. and Tannenbaum, J., (2013, Summer). *The Grounds of Moral Status*, Stanford Encyclopedia of Philosophy. Retrieved March 12, 2016 from <http://plato.stanford.edu/archives/sum2013/entries/grounds-moral-status/>

<sup>25</sup> See Christman, J., (2015, Spring). *Autonomy in Moral and Political Philosophy*, Stanford Encyclopedia of Philosophy, Retrieved March 13, 2016 from <http://plato.stanford.edu/archives/spr2015/entries/autonomy-moral>

condition. As a result, we will be committed to accepting that together with all animals at least some humans also will be excluded from the moral community. But this is a result that is against our moral intuitions – no one will agree that human infants or severely disabled human adults do not deserve intrinsic consideration. Given this, autonomy as a candidate ground for according moral status to a being should be given up.

*Rationality* refers to the capacity to reason. Generally speaking, rationality can be understood as the ability to be aware of the grounds of one's beliefs and actions, also the ability to reflect on the reasons for actions.<sup>26</sup> According to this definition being rational requires sophisticated cognitive capacities that all non-human animals lack. Accepting rationality as a ground of moral status results in exclusion of animals from the moral realm. But this criterion shares the same fate as autonomy – not all humans are rational, meaning that at least some humans will not be accorded moral status, in particular, human infants and severely mentally handicapped people as mentioned above. It is difficult to believe that these kinds of beings should not be regarded as morally considerable. For that reason rationality like autonomy as a ground of moral status should be rejected.

It is worth to mention that some attempts can be made in order to still include some humans who failed to meet the criterion within moral community. The most common is the potentiality argument. According to this argument, despite the fact that human infants are not autonomous or rational beings, they should still be accorded moral status for the reason that they have a potential to become autonomous and rational beings. The main objection to this argument is that even though a being has a potential of becoming some kind of being we do not treat him as such kind of being in present time. In other words, actual cannot be derived from potential. For example, even though a prince has a potential of becoming a king he is not treated as a king before becoming an actual king. The same can be said about the presidential candidates, all of them are potential presidents yet they are not granted the rights or a status of a president. Similarly, despite the fact that a human fetus has a potential of becoming autonomous and rational being it cannot still be said that they should be granted the respective moral status. With regard to mentally disabled people the potentiality argument cannot apply, yet it is argued that since they are the members of the human species we owe them a

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<sup>26</sup> See Korsgaard, C., (2013, June). *Personhood, Animals, and the Law*, In: *Think: Philosophy for Everyone*, Vol. 12, Issue 34, p. 26

special obligation that is – we should take care of them and treat them as normal humans. But this argument is not plausible for the reason that it presupposes speciesism – a highly controversial concept which is often criticized for giving an unfair privilege to beings on the basis of species alone which, in its turn, is a morally irrelevant property.

*Self-consciousness* or self-awareness is the capacity of being aware of one's own existence. In other words, being self-conscious means being able to see oneself as a distinct entity existing over time. Studies show that at least some animals express the rudimentary forms of self-consciousness. For example, the mirror test that has been constructed to prove some degree of self-awareness has been successfully passed by great apes, dolphins, whales and elephants.<sup>27</sup> If self-consciousness is chosen as a foundation of moral status then at least some animals will acquire moral status while some humans (infants and mentally handicapped ones) will still fail. Again, this is a conclusion that many will find unacceptable and counterintuitive.

*Sentience*, generally speaking, is the capacity for experiencing sensations. In particular, it refers to the ability to feel pain and pleasure. Scientifically speaking, there is an overwhelming consensus and conclusive evidence that at least all vertebrate organisms are sentient beings.<sup>28</sup> This means that according to sentience criterion all vertebrates (humans and animals) will be granted moral status, including marginal cases such as human infants and mentally impaired human adults. The advantage of sentience criterion is that unlike the above-mentioned candidates of the grounds for according moral status to a being it is not unfairly restrictive or speciesist. The idea behind sentience criterion is that all beings who have the capacity to feel pain and pleasure will have an interest in avoiding the former and experiencing the latter. If a being has interests then these interests ought to be recognized morally, thus a being with those interests should be granted moral status. It should be noted that sentience criterion implies that sentience is a necessary and sufficient condition for having interests. In order to emphasize the importance of sentience as a prerequisite for having interests at all we need to

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<sup>27</sup> Animal Cognition, *List of Animals That Have Passed the Mirror Test*, (2015). Retrieved March 19, 2016 from <http://www.animalcognition.org/2015/04/15/list-of-animals-that-have-passed-the-mirror-test/>

<sup>28</sup> National Research Council (US) Committee on Recognition and Alleviation of Pain in Laboratory Animals, (2009). *Recognition and Alleviation of Pain in Laboratory Animals*. National Center for Biotechnology Information. Retrieved March 14, 2016 from <http://www.ncbi.nlm.nih.gov/books/NBK32655/>

describe the nature of non-sentient being. A non-sentient being has neither the capacity for having experiences nor its own welfare therefore there are no things that can be good or bad for it for its own sake. A non-sentient being does not have a good of its own; nothing that we can do it could possibly make any difference to its welfare. It has neither desires nor emotions hence it has neither welfare-interests nor preference-interests. Literally nothing matters to it. A Sentient being is the opposite – a being capable of having welfare and positive and negative experiences that matter for a sentient being for its own sake. Therefore a sentient being has welfare-interests and these interests impose certain duties on us. This makes sentience a necessary and sufficient condition for having interests at all. Given this, sentience seems to be the best candidate for the ground of moral status for the reason that it takes morally relevant features, such as: pain as intrinsically bad and pleasure as intrinsically a good thing, into account and doesn't show unfair bias against particular species. The key point for sentience criterion is that pain is intrinsically bad and pleasure is intrinsically a good thing, therefore if a being is able to experience these things he must be granted respective interests and these interests ought to be reflected in his moral status.

The ground of moral status is not only a ground for ascribing moral status to a being but it also serves as a morally significant break among living beings. If sentience is considered as a foundation of moral status then *only* sentient beings will acquire moral status and this will draw the line between the beings that matter morally and the ones that do not. But in order to draw this line we need to know what kind of beings are sentient. It was noted above that there are good reasons to believe that at least all vertebrates have the capacity to feel pain and pleasure. All humans and majority of the animals are vertebrates, hence only they will be regarded as morally considerable beings. In the case of invertebrate animals, there are two difficult questions: whether there is any evidence that some of them may be sentient, and what to do in the case of an uncertain answer to the first question. In this thesis I will leave the case of invertebrates aside.

#### **1.4 ANIMALS – MORAL AGENTS, MORAL PATIENTS OR MORAL SUBJECTS?**

After showing that sentience is a plausible minimal criterion for according moral status, we need to ask whether at least some animals may be said to possess moral

capacities, since this may prove important for the further question of whether we should accord legal rights to some of them. In particular, it is reasonable to discuss moral capacities of the animals, specifically, what are they – moral agents, moral patients or moral subjects? But before doing that we need to define these terms.

*Moral agent* is a being who has the capacity to make moral judgments, to distinguish between what is morally right and wrong action and to be held morally responsible. Moral agent is also able to critically reflect upon the grounds and reasons for his actions and hence can be a subject of moral praise or condemnation. Given the capacities a moral agent possesses we can conclude that it requires for a being to be autonomous and rational in order to qualify as a moral agent. I already discussed above that animals do not satisfy these criteria hence they cannot be moral agents. This view is quite prevalent among philosophers working in animal ethics.

*Moral patient* is a being who does not have the capacity for moral judgment but is a legitimate object of moral concern. Moral patient has interests and preferences that ought to be taken into consideration while making decisions that may affect them directly. All moral agents are also moral patients but not vice versa, due to the lack of certain capacities that are necessary for qualifying as a moral agent. Given the biological fact that all vertebrate animals are sentient and fully conscious beings capable of experiencing pain and pleasure, various kinds of positive and negative emotions, they are fairly regarded as moral patients.

*Moral subject* is an individual who is capable of acting for moral reasons. In order not to conflate moral subject with moral agent we need to make a clear distinction between these two concepts. A moral agent has the capacity to critically evaluate the reasons and motivations for his actions while moral subject has the ability to be motivated to act for moral reasons. Whether some animals are moral subjects is a highly contentious topic within the field of animal ethics. The philosopher Mark Rowlands tries to solve this question in his book “Can Animals Be Moral?”. The central thesis of the book is the claim that animals can be moral subjects in the sense that they act for moral reasons where these reasons take the form of morally laden emotions. In other words, Rowlands argues that animals can be motivated by emotions that are morally laden and this way they can be moral subjects. According to Rowlands an emotion is morally laden when it represents a moral concern or possesses a moral content. To illustrate his point Rowlands gives several examples. One of them is an example of how elephants show compassion in

face of death. He describes the scene where Grace, a female elephant, desperately tries to prevent Eleanor, a dying elephant, from falling. After her death Eleanor's family arrives and gathers around her quietly. Another family of elephants forces Eleanor's family to leave while allowing only Eleanor's daughter to stay with her mother's dead body. Grace and the rest of the elephants who quietly gathered around Eleanor's dead body seem to acknowledge the death of Eleanor and appear to be showing compassion towards Eleanor and her daughter.<sup>29</sup>

The main objection Rowlands faces is the claim that a moral subject has to have a control over his motivations and be able to reflect on them or subject them to a critical moral scrutiny in order for these motivations to count as moral. Since animals do not possess metacognitive abilities they are unable to survey and critically evaluate their motivations. Because of that their motivations belong to the space of causes and are not really moral. Rowlands responds that metacognition is not the sort of thing that can enable an individual to have a control over his motivations – supposing that metacognitive abilities allow us to control our motivations is what he calls a miracle-of-the-meta fallacy. He appeals to the situationist account of moral autonomy according to which a person's character is as malleable as the situations in which he finds himself. Change the situation, and the subject's dispositions to morally evaluate motivations in one way rather than another will also change. From that it follows that the idea that an individual's metacognitive abilities confer control and, via control, normativity on his motivations seems a hostage to empirical fortune. Given this, according to Rowlands, it is unclear how possession of metacognitive abilities can provide individual with control over his motivations; and therefore it is equally unclear how they can imbue these motivations with normativity.<sup>30</sup> Rowlands concludes that if animals can be moral, that is – they can act for moral reasons then they can be appropriate objects of a distinctively moral respect. In chapter 3 I will consider whether the capacity to be moral subjects, and not just moral patients, may be a ground for according legal rights to some animals.

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<sup>29</sup> See Rowlands, M., (2012). *Can Animals Be Moral?* Oxford University Press, p. 4

<sup>30</sup> *Ibid.*, pp. 170-86



## 1.5 CONCLUDING REMARKS

In the first and the second sections I provided an overview of the philosophical views on the moral status of animals covering the period from ancient times to contemporary era. I did so, first, in order to show the progress and historical developments of the views on the moral standing of animals and second, to emphasize the main shortcomings of these prevailing views. The ideas expressed by the philosophers were, for the most part, influenced or determined by the available scientific knowledge or popular beliefs at that time, which may explain the reason for discounting or disregarding animal interests.

Are animals beings that are made to serve human purposes like Aristotle argued or are they mere natural automata as Descartes believed? From the modern scientific perspective these claims are beyond absurd and do not correspond to reality whatsoever. The reality is that most animals are highly social beings with complex forms of sentience and consciousness for whom things can be good and bad, painful and pleasurable.

Kant was certainly right when he maintained that animals weren't rational and autonomous beings but he was mistaken about animal consciousness. He believed that animals were not self-conscious, which became the main reason for him to claim that humans didn't have direct duties towards animals. Recent studies and empirical data in ethology have shown that some animals such as: great apes, elephants, dolphins and whales have at least rudimentary form of consciousness and are able to pass the mirror test, while some other animals have shown the capacity for planning ahead. Whether the current knowledge on animal behavior would affect Kant's thought is difficult to guess but nevertheless given the biological characteristics of the animals the claim that humans do not have direct duties towards animals does seem very implausible.

Utilitarianism and its core principle that pain and pleasure are intrinsically relevant experiences made a huge progress in philosophical thinking in relation to animals. Similar to Bentham, Singer promoted and advanced the view that sentience is a morally significant feature and a sufficient condition for having interests, in particular, interests in avoiding pain and experiencing pleasure. But when it comes to developing the moral implications of sentience for our treatment of animals, Singer's approach has its shortcomings. For example, Singer argues that in order for a being to have an interest in continued existence she needs to have future-oriented desires, including a desire to live. In other words, having an

interest in future existence requires having a sense of one's own future. Considering that, unlike self-conscious beings, merely conscious beings do not have the sense of their own future they cannot have an interest in future existence. Singer concludes that killing a merely sentient animal painlessly and without suffering can be morally permissible, *if and only if*, the animal will be replaced by another one leading equally or more pleasant life.<sup>31</sup> I believe that this view is problematic. If we accept that it is morally permissible to take the life of an animal who is not self-conscious but leads a good life this will mean that a pleasant life has no value for that animal. But if life is enjoyable it is indeed valuable and whoever enjoys it has prima facie interest in continuing this enjoyment. Since continuing enjoyment is possible only by remaining alive then an animal acquires prima facie personal interest in continuing to live. Therefore, killing an animal will violate an interest of this particular animal. This argument can be more clearly formulated in the following way:

1. A merely conscious being has the capacity to experience good things;
2. Enjoyment and pleasurable experiences are good things;
3. A merely conscious being has prima facie interest in experiencing enjoyment;
4. A merely conscious being has prima facie interest in continuing enjoyment;
5. Continued enjoyment is made possible only by continued existence;

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Therefore, a merely conscious being has an interest in continued existence.

In order for this argument to be cogent it should be guaranteed that a merely conscious being will most probably continue experiencing enjoyment and will lead a pleasant life.

Unlike Singer, there are some philosophers who insist that animals cannot have interests even though they are sentient. One of them is Raymond Frey who argues that sentience is not a sufficient condition for having interests. Above I already discussed his complex account of interest via which he tries to show that animals do not have interests so I won't repeat myself, instead, I will just provide my criticism towards his account of interests. I hold the view that the concept of

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<sup>31</sup> See Lazari-Radek, K. and Singer, P., (2014). *Point of View of the Universe: Sidgwick and Contemporary Ethics*, Oxford University Press, p. 266

interest should not be generalized and each interest should be discussed individually. Frey talks about interests in a broad sense as if there was a certain definite feature that would guarantee the possession of interests in general. I argue that creatures may have one particular interest and lack the other depending on the respective capacity they have. For example, the capacity of feeling pain can only ensure having interest closely related to pain, like interest in not being inflicted a pain. If there is no capacity to feel pain then there is no interest in avoiding it. As most of the animals are sentient beings and have the capacity to feel pain and pain is intrinsically bad they acquire interest in avoiding pain. In that sense pain is sufficient and necessary condition for having an interest in avoiding it, therefore Frey is certainly wrong in assuming that animals do not have interests. Animals may not have all the interests that humans may have but they do have certain interests. For example, animals have the capacity to feel pain hence they have an interest in not being killed in a painful manner. On the other hand, the capacity to feel pain will not grant the interest in not being killed painlessly since pain is not related to taking life when it happens painlessly. As I have already mentioned, having an interest depends on the having the capacity respective to this interest. Furthermore, Frey's argument, according to which a being who lacks a language has no beliefs, desires and therefore no interests whatsoever, implies that humans without language (for example very young infants or severely mentally disabled adults) have no interests. If it is objected that human infants do have a rudimentary form of language, then it should be accepted that many animal species also have such forms of language, at least some great apes are capable of knowing a sign language. The potentiality argument cannot be used for the reasons I argued above.

Regan, despite the totally different approach from utilitarianism, arrives at the similar conclusion to Singer and argues that animals who are subjects of a life have an inherent value and deserve a basic moral right that is – the right to respectful treatment. While I agree that animals do indeed deserve respectful treatment I believe that subject-of-a-life criterion is unreasonably and unfairly strict. According to this criterion only self-conscious animals deserve moral rights while merely sentient beings are left out. I do not really see any good reason to limit the protection of animals to the ones who are subjects of a life. Regan, by setting such a high standard for granting animals moral rights runs the risk that the interests of humans who may fall below that standard will be considered not worthy of respect.

Korsgaard using a Kantian approach to animal ethics arrives at an interesting conclusion that animals, just like us, have desires, needs and emotions; that animals are valuable beings who matter for their own sake and cannot be treated as mere means. She believes that nothing can be good unless it is good for someone. If animals are the beings with the capacity for having welfare, the beings for whom things can be good or bad then this is enough to consider all sentient animals as ends in themselves and recognize their legitimate interests that need protection. Unlike Regan, Korsgaard thinks that sentience is a sufficient condition for having an inherent value. Also, by regarding animals as ends in themselves she distances her view from Singer who considers merely sentient animals as replaceable. I think these are the key points in her approach that make her view plausible and well-substantiated.

In the third section, I think, I already explained well enough why sentience is the most plausible and acceptable ground of moral status and why any criterion for the foundation of moral status stricter than sentience will not work, so I will not say more here.

If sentience is the foundation of moral status then all sentient animals are automatically considered as moral patients – beings that are worthy of moral concern. But are they moral agents? As I argued in the fourth section considering the biological characteristics of the animals it would be very implausible to answer positively. Animals certainly are not rational and autonomous beings with the capacity for moral judgment and the ability to evaluate the motives and reasons for their actions, hence they cannot be held morally responsible. Consequently, animals cannot qualify as moral agents. While all sentient animals are moral patients some of the most intelligent and social ones can meet the criteria for a moral subject that is, some animals can act for moral reasons that take the form of morally laden emotions. If animals can be moral subjects then this will force us to see animals from an entirely different perspective that is – animals are not just beings with mere capacities for experiencing sensations, rather they are capable of performing something that is admirable and respectable – they can act for moral reasons; they can actually be moral. As Rowlands himself notes if animals are moral subjects then they are worthy of a certain kind of respect. He further explains why animals might be worthy of moral respect. Because of what the subject does, the world is at least to that extent a better place. It is, therefore, a good thing that the world contains a subject like this, an individual who acts in this

way. This is not moral praise we normally give to an agent who is responsible for its actions. Rather, this is the sort of attitude one bears to something that can act, and acts for the good, but is not responsible for what it does. This is a form of moral respect. If animals can, and sometimes do, act for moral reasons, then they are worthy objects of moral respect.<sup>32</sup>

In the rest of the thesis, we will see how the Korsgaardian approach, enriched with the idea that some animals can be moral subjects, can provide the basis for thinking of animals as subjects of legal rights.

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<sup>32</sup> See Rowlands, M., (2012). *Can Animals Be Moral?* Oxford University Press, p. 254

## **2. LEGAL STATUS OF NON-HUMAN ANIMALS**

This chapter discusses the status of animals in the legal domain. Since in the previous chapter I concluded that only sentient animals matter morally, accordingly, this chapter will be concerned with sentient animals only. I argue that by the law animals are regarded as property of humans in almost all over the world and identify the problems with the property status of animals. I also critically examine the purpose and the effectiveness of the animal protection laws and conclude that under the existing conditions they cannot provide a sufficient protection of animal interests and we need to search for other legal means.

### **2.1 LEGAL STATUS OF ANIMALS AROUND THE WORLD**

Most of the states' modern legal system divides the entities into two categories: *persons* and *things*. The main distinction, in the law, between these categories is that a person is an entity that has rights and bears duties, while a thing is an entity that can be owned as property. This tradition of dividing objects into these categories was inherited from Roman law. As a result of this division the objects that exist in nature can only be qualified either as persons or as things. Since none of the laws contain the notion of non-human person animals are not regarded as persons in a legal sense, consequently, they are left with one option – they qualify as things. It should be noted that several attempts have been made by animal rights organizations to grant some animals (mostly great apes) legal personhood but all of them have been unsuccessful so far. So, if animals are not recognized as persons then they are automatically regarded as things and for that reason they are, in principle, treated by the law as mere commodities that can be owned and used for one's benefit. This, for the most part, determines the legal status of animals, which is generally as a form of property of humans throughout the world. This, as Gary Francione argues, allows humans “under the laws of property to convey or sell their animals, consume or kill them, use them as collateral, obtain their natural dividends, and exclude others from interfering with an owner's exercise of dominion and control over them.”<sup>33</sup>

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<sup>33</sup> Francione, G., (1995). *Animals, Property, and the Law*, Philadelphia: Temple University Press, p. 24

It is noteworthy that some countries felt an evident inconsistency between sentient animals' capacities and their property status, for that reason these countries took steps forward and attempted to reclassify animals as more than just mere things. For example, Switzerland, Germany and Austria have amended their Civil Codes to declare that sentient animals are not objects and that the laws relating to objects should not apply to them. Swiss civil code states that “[a]nimals are not objects. Where no special provisions exist for animals, they are subject to the provisions governing objects.”<sup>34</sup> In countries like United States and Argentina the issue of granting great apes legal personhood is very hot today.<sup>35</sup> New Zealand has legally recognized animals as sentient beings by amending animal welfare legislation.<sup>36</sup> Fishes and farm animals are also regarded as sentient beings by the EU.<sup>37</sup>

It should be noted that recognizing animals as sentient beings doesn't necessarily lead to the abolition of their status as property of humans. Even in countries where sentient animals do not have the legal status of things, they are still owned and therefore are considered as property. Hence, the laws that regard animals as things or property should be distinguished from the animal welfare and anti-cruelty laws. Protecting animals from unnecessary suffering and demanding assurance of their welfare are quite compatible with the property status of animals. Welfare laws aim at improving the living conditions of animals while anti-cruelty laws prevent unjustified cruelty to animals, without affecting their property status at all. The rationale behind welfare and anti-cruelty laws is that sentient animals have the capacity for suffering and we ought to avoid inflicting pain to them for no good reason. However, the strange implication of this legal paradox for the owned animal is that animal welfare and anti-cruelty laws will require the owner to provide humane treatment for his animal while the property status of the animal will allow the owner to destroy or kill his animal property. It should be noted that

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<sup>34</sup> See Swiss Civil Code, Art. 641a<sup>1</sup> A. *Nature of ownership / II. Animals*, retrieved April 8, 2016 from <https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#a641a>

<sup>35</sup> See Shyam, G., (2015). *The legal status of animals: The world rethinks its position*, In: *Alternative Law Journal*, retrieved March 21, 2016 from <https://www.altlj.org/feature-articles/980-the-legal-status-of-animals-the-world-rethinks-its-position>

<sup>36</sup> See New Zealand Government, *Animal Welfare Amendment Bill*, retrieved March 21, 2016 from [http://www.legislation.govt.nz/bill/government/2013/0107/latest/DLM5174807.html?path=bill%2fgovernment%2f2013%2f0107%2flatest&col=bill&fid=DLM5174807&search=sw\\_096be8ed81047b83\\_sentient\\_25\\_se&p=1](http://www.legislation.govt.nz/bill/government/2013/0107/latest/DLM5174807.html?path=bill%2fgovernment%2f2013%2f0107%2flatest&col=bill&fid=DLM5174807&search=sw_096be8ed81047b83_sentient_25_se&p=1)

<sup>37</sup> Official Journal of the European Union, *Treaty of Lisbon*, retrieved March 21, 2016 from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12007L/TXT>

this applies to companion animals as well. Owners are generally allowed to take down their pets, no matter the reason, as long as it is done humanely.<sup>38</sup>

Francione stresses that human interest in remaining the property status for the animals is so powerful that

even when people do not want to consider animals as mere “property” and instead view animals as members of their family (as in the case of dogs, cats, and other companion animals), the law generally refuses to recognize that relationship. For example, if one person negligently kills the dog of another, most courts refuse to recognize the status of the animal as family member and limit the owner to the same recovery that would be allowed if the property were inanimate.<sup>39</sup>

The above discussion has been so far concerned mostly with domestic animals including the animals that are farmed for different purposes. Ownership of wild animals or *Ferae naturae* (also *Ferae bestiae*) is a more complicated matter. In property law animals that are in the wild are considered as unowned property – property that does not have a definite owner at a given time, but nevertheless is susceptible to ownership. There are two ways of obtaining an ownership of wild animals: *first*, if a wild animal resides on the territory that is under the private ownership then the owner of this territory can claim an ownership of this animal as long as the animal stays on that territory, though in some cases an owner may need a state permission for such claim<sup>40</sup>, and *second*, assuming that there is no state restriction on killing or capturing a particular wild animal then the one who captures or kills the animal acquires the ownership.<sup>41</sup> It is noteworthy that there are certain endangered species ownership of which can be restricted or prohibited for private individuals, but still the state or relevant local authority exercises a form of control that may be regarded as public ownership.<sup>42</sup> In any case, the legal status of wild animals is still that of property.

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<sup>38</sup> See Reid, N., (2009, August 16). *Owner Roasts Family Pet in Barbecue*, In: National, retrieved March 28, 2016 from <http://www.stuff.co.nz/national/2756912/Owner-roasts-family-pet-in-barbecue>

<sup>39</sup> Francione, G., (1995). *Animals, Property, and the Law*, Philadelphia: Temple University Press, p. 24

<sup>40</sup> See *Bilida v. McCleod*, 211 F.3d 166 (1st Cir. 2000), retrieved March 28, 2016 from <http://www.freelawreporter.org/flr3d/f3d/211/211.F3d.166.99-1263.html>

<sup>41</sup> See Lehman, J. and Phelps, S., (ed.) (2008). *West's Encyclopedia of American Law*, 2<sup>nd</sup> ed., *Ferae naturae*, retrieved March 27, 2016 from <http://legal-dictionary.thefreedictionary.com/ferae+naturae>

<sup>42</sup> See California Natural Resources Agency, California Restricted Species Laws and Regulations – Importation, Transportation and Possession of Wild Animals - Manual 671, §2118, retrieved April 8, 2016 from <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=28427&inline=true>



## 2.2 PROBLEMS WITH THE PROPERTY STATUS OF ANIMALS

Now it should not be disputed that the legal status of animals is that of property virtually in all over the world. In order to identify the problems associated with the property status of animals we need to look at the consequences such status has for the animals.

The *first* problem with the property status of animals is that property status regards animals as property, which is not only immoral but also a category mistake. Moreover, as a result of this the law not only regards animals as property but also treats them as mere objects and reduces them to commodities. Hence, the property status diminishes the inherent value of the animals and objectifies them.<sup>43</sup> Given the biological fact that most animals are sentient and fully conscious beings capable of experiencing pain and pleasure, various kinds of positive and negative emotions, one may ask – does the property status of animals, allowing them to be a subject to cruel treatment, really correspond to their true nature? Animals obtained the legal status of property hundreds of years ago. Since then the majority of countries haven't even bothered to reconsider the compatibility of property status with the capacities of animals. In ancient times when the Roman law accorded property status to animals it was quite common to think of animals as non-sentient brutes and intrinsically worthless beings. Based on the prevalent religious-philosophical views and available scientific knowledge at that time ancient law-makers granted animals the property status. But since then the philosophical and scientific views on animals has changed a lot and the current legal status of animals, that is a remnant of ancient thinking, no longer reflects the progress in philosophical views and up-to-date scientific knowledge. As research has discovered, sentient animals have such physical and psychological features, on the basis of which they can be said to have interests, in the most direct and literal

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<sup>43</sup> See Nussbaum, M., (1985). *Objectification*, Philosophy & Public Affairs 24 (4), p. 257

Animals are treated as objects in so many ways that it satisfies almost all objectification criteria provided by Nussbaum. For example, *Instrumentality* – some animals are killed for human consumption meaning that they are simply used as an instrument to satisfy one's appetite. *Inertness* – most of the animals in intense factory farms are kept indoors for 24/7 completely neglecting their natural desire to walk freely. *Fungibility* – almost all domesticated animals who are used for food are considered as interchangeable. *Violability* – hunting and bullfighting are the cruel practices where animals are killed merely for the human enjoyment and entertainment. *Ownership* – wild animals are deprived of their natural habitat and are placed in the zoos where they are kept in captivity for the entertainment of visitors. *Denial of subjectivity* – circus is a place where usually wild animals are forced to learn various ridiculous acts by ignoring their true feelings and desires and this is all for the material benefit. Since animals are not autonomous *Denial of autonomy* does not apply to them.

sense of the term (differently, for instance, from other living things like trees). Whether these interests matter or not for their own sake, the simple presence of interests should put sentient animals in a category different from things. In other words, a sentient being is a being that has interests at least in avoiding pain and experiencing pleasure. A sentient being will also have an interest in having a pleasant life and therefore an interest in remaining alive. Property, unlike a sentient being, is a thing with no interests whatsoever that is – an inanimate thing that belongs to someone and can be used for one's own purposes. From that it follows that a sentient being cannot be property.

The *second* problem is that in a world like ours, property status encourages and facilitates animal exploitation. It is different from the first problem in the sense that the first problem would remain a serious problem even in an ideal world where animals were always treated humanely while the second problem is that we do not live in such an ideal world and the property status is largely responsible for animal exploitation. In everyday life most animals are used as food for consumption, as materials for fashion industry, as test objects for scientific experiments, as things for human enjoyment and entertainment, as tools for agricultural and heavy tasks. What makes all this possible is the current legal status of animals – they are property, reduced to mere commodities serving for human purposes. Of course, if on the one hand the legal status of animals as property currently legitimizes such uses, on the other hand the property status is nothing but the formal recognition of well-engrained practices of animal use and exploitation that have been present since the dawn of human civilization. The cruel and horrific nature of most of the above-mentioned practices should be enough to question the grounds on which animals obtained the property status. There are some philosophers who actively blame the violation of animal interests on the very property status of animals. One of them is Gary Francione who maintains that the property status of animals needs to be abolished because as long as animals are considered as property, they will have instrumental value and thus will be the subject of exploitation<sup>44</sup>. Christine Korsgaard also develops a similar view: "So long as there are profits to be made, and the tantalizing prospect of expanding the human lifespan by experiments on the other animals, there will be people who will

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<sup>44</sup> See Francione, G., (2000). *Introduction to Animal Rights*, Temple University Press, p. 33

do anything, no matter how cruel it is, to a captive animal. And what makes this possible is the legal status of animals as property."<sup>45</sup>

The *third* problem is that property status deprives animals of the opportunity to bear rights. Due to the fact that animals are categorized as things they cannot be legal persons and because of that they cannot be right holders (even in case we agree that they deserve some rights). One of the prerequisite for granting rights, according to current law, is that a being has to be recognized as a person in a legal sense. As long as animals retain the status of property they will always be considered as something that can be owned and used as a means to an end.

The first step of the solution for these problems must be giving up Roman law tradition of dividing entities in the world in two categories for the reason that it is wrong or at least irrelevant because first, animals are not mere things and second, it makes animal exploitation easy. The second step could be introducing a new term for describing the legal status of animals – an intermediate concept between persons and things, for example, a term ‘animal’ or a ‘sentient being’. While some of the animals like great apes, elephants, dolphins and whales may be qualified as persons<sup>46</sup>, the rest of the sentient animals can be regarded as sentient beings instead of just mere things.

### **2.3 ANIMAL PROTECTION LAWS**

After arguing that the property status of animals is the one to blame for allowing animal exploitation a critic may object by appealing to animal protection laws and insist that animal interests can still be protected without abolition of the property status of animals. In order to find out whether animal protection laws actually protect animal interests we need to examine how effective these laws are.

Animal protection laws can roughly be divided into two parts: animal anti-cruelty laws and animal welfare laws. The difference between these two lies in their purpose – welfare laws aim at improving or guaranteeing the proper living conditions of animals while anti-cruelty laws prevent or prohibit cruelty to animals. In contrast to welfare laws, anti-cruelty laws are mostly criminal laws and constitute a criminal offence. As I mentioned above, the strange implication of

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<sup>45</sup> Korsgaard, C., (2012). *A Kantian Case for Animal Rights*, In: *Animals and Law*, Dike, p. 24

<sup>46</sup> See Singer, P., (2011). *Practical ethics*, 3rd edition, Cambridge University Press, p. 101

animal protection laws alongside with the property status of animals is that the owner is forbidden to torture the animal while he is always allowed to kill or destroy his animal property.

Animal rights philosopher and dedicated abolitionist Gary Francione in his book “Introduction to Animal Rights – Your Child or the Dog”<sup>47</sup> provides extensive discussion on why animal protection laws fail to achieve their purpose – to protect animal interests. He gives several compelling reasons why these laws do not provide any meaningful level of protection for the animals.

The *first* and most common reason why animal protection laws are unable to guarantee animal welfare is that many of them do not cover most forms of institutionalized animal exploitation or explicitly exempt them from the scope of the law. These exemptions may include hunting, fishing, trapping, processing animals for food or for other commercial purposes, killing for humane purposes, killing animals for any authorized purpose, and dog training. Francione notes that the most frequent exemptions from anticruelty statutes involve scientific experiments, agricultural practices, and hunting.<sup>48</sup> Also, some statutes apply only to warm-blooded vertebrate animals and exclude cold-blooded ones that are as sentient as warm-blooded vertebrate animals.

The *second* reason is that even if the law itself doesn’t include the exemption of certain practices that involve animal exploitation from its scope the courts do so. Judges often interpret the law so that a certain practice that may qualify as a violation eventually falls within the scope of exemption. The common ground for that kind of exemption is when the act is an accepted practice of animal husbandry, as long as the particular method of husbandry is conventional and conforms with custom that it is not a cruelty or unnecessary suffering. As Francione puts it: “[o]nce we accept the legitimacy of eating animals, then whatever is necessary to facilitate that form of exploitation – even if it causes excruciating pain ... falls outside the scope of the anticruelty statute altogether.”<sup>49</sup>

The third reason is that sometimes animal protection laws rely on the presumption that self-interest will prevent the owner from inflicting more harm than necessary to an animal, because doing otherwise will diminish the value of the property animal. For example, Francione refers to a case where the man who fed his

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<sup>47</sup> See full discussion Francione, G., (2000). *Introduction to Animal Rights*, Temple University Press

<sup>48</sup> *Ibid.*, p. 57

<sup>49</sup> *Ibid.*, p. 59

chickens with grainless diet that caused chickens to become ill and die was found not guilty of animal cruelty. The court explained its decision by arguing that “[d]ead chickens, however, were the defendant’s loss, and as he was their owner, the natural inference would arise that he would not deliberately or with gross carelessness bring about a result that was disastrous to himself.”<sup>50</sup>

Francione sums up the rationale behind the presumption that property owners take care of their property, since it is in their best interest to do so, this way:

we assume that animal owners will act in their own economic self-interest and not impose any more pain and suffering than is necessary to achieve the efficient use of the animal as an economic resource. To impose more pain and suffering would be to damage and diminish the value of that animal property without any corresponding economic gain, which would be irrational. In a system of private property, we generally assume that property owners are the best judges of the value of their property and allow them to use that property as they see fit.<sup>51</sup>

It should be noted that Francione’s discussion, for the most part, was concerned with the animal protection laws that exist in the United States. Now we need to say a few words about European legislation and the laws that protect animals in the rest of the world. European legislation mostly consists of Directives issued by European Union and the national laws that regulate animal welfare within European countries. Since the national legislation can vary from country to country within Europe for the sake of convenience I will discuss only EU laws.

Most of the EU laws concerning animals are Directives that establish certain welfare standards for domestic, wild and farm animals. It would be fair to note that some of the significant improvements in relation to animal welfare in Europe are brought by EU Directives. For instance, EU law has prohibited some of the worst aspects of industrial livestock production: veal crates have been prohibited since 2007, barren battery cages for egg-laying hens since 2012 and sow stalls (gestation crates) are prohibited (except during the first four weeks of pregnancy) since 2013.<sup>52</sup> However, these Directives are way far from being perfect and more needs to be done to fully ensure the conditions that are necessary for the welfare of the animals. It is also noteworthy that one thing is what EU Directives require the member states and another is whether the member states actually implement these

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<sup>50</sup> Commonwealth v. Barr, 44 Pa. C. 284, 288 (Lancaster County Ct. 1916). In: Francione, G., (2000). *Introduction to Animal Rights*, Temple University Press, p. 67

<sup>51</sup> Francione, G., (2000). *Introduction to Animal Rights*, Temple University Press, p. 67

<sup>52</sup> See Stevenson, P., (2012). *European Union Legislation on the Welfare of Farm Animals*, Compassion in World Farming, p. 2

requirements in their national legislation. In that respect some European countries succeeded greatly while others failed to catch up.

In order to properly describe the current situation with regard to animal welfare all over the world below I will provide a figure representing the ranking of the countries according to their commitments to protect animals and improve animal welfare in policy and legislation. The information provided below is based on the data collected by the World Animal Protection organization.

Animal Protection Index<sup>53</sup>

Africa	N	Americas	N	Asia	N	Europe	N	Oceania	N
Algeria	F	Argentina	D	Azerbaijan	G	Austria	A	Australia	C
Egypt	F	Brazil	C	China	E	Belarus	G	New Zealand	A
Ethiopia	F	Canada	D	India	C	Denmark	B		
Kenya	D	Chile	B	Indonesia	D	France	C		
Morocco	F	Colombia	D	Iran	G	Germany	B		
Niger	F	Mexico	D	Japan	D	Italy	C		
Nigeria	D	Peru	D	Korea	D	Netherlands	B		
South Africa	D	Uruguay	D	Malaysia	C	Poland	C		
Tanzania	D	USA	D	Myanmar	F	Romania	D		
		Venezuela	E	Pakistan	F	Russia	F		
				Philippines	C	Spain	C		
				Thailand	E	Sweden	B		
				Vietnam	F	Switzerland	A		
						Turkey	E		
						Ukraine	E		
						United kingdom	A		

<sup>53</sup> World Animal Protection, (2014). *Animal Protection Index*, retrieved march 23, 2016 from <http://api.worldanimalprotection.org/>

*\* Countries are scored within seven bands, both for individual indicators and on an overall basis. These bands are A through to G, A representing the highest scoring and G the most room for improvement.*

As it seems Europe and its animal welfare policy takes the leading position while Americas follow as second with disappointing results. Africa and Asia fail miserably to ensure even a satisfactory level of animal welfare.

EU animal welfare policy does look promising but as one can see not every EU member states implemented its requirements in their national legislation. In any case, the problems noted above by Francione (in particular, court interpretations of anti-cruelty laws, and the presumption about the owner's self-interest) are structural, and so seem to apply to European laws as well.

After showing that animal protection laws fail to ensure protecting animal interests and guaranteeing animal welfare we need to examine other legal means.

#### **2.4 DEFENDING ANIMAL INTERESTS BY OTHER LEGAL MEANS**

The previous section has shown how animal protection laws fail to ensure the protection of animal interests. That urges us to look for other legal means of guaranteeing animal welfare. But before doing so we need to critically examine the very purpose of animal protection laws and identify the fundamental reason why they will not ensure total well-being of animals even if they are obeyed by humans. The main thesis is that animal protection laws do not prevent animal exploitation, they only make it humane. This is so because animal protection laws do not prohibit certain forms of animal exploitation; rather, they forbid only the methods of exploitation. But the very problem is that most forms of animal exploitation are against animals' basic interests and as long as they exist animal interests will always be violated no matter how humanely exploitation may be carried out. For example, using animals for food, specifically for meat production, will always mean the violation of animal interests in remaining alive and further enjoying pleasurable experiences.<sup>54</sup>

Animal protection laws justify most forms of animal exploitation on the grounds of their necessity. They only prohibit the forms of animal use that result in

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<sup>54</sup> See my general argument in chapter 1, p. 19

*unnecessary* suffering of the animals. The term ‘necessary’ or ‘unnecessary’ is so ambiguous that it is often a subject to interpretation. As usual, the term ‘necessary’ is interpreted as necessary for humans and for their own benefit. For instance, animal suffering during medical experiments is often (most of the times automatically without questioning their grounds) regarded as necessary no matter how pointless and useless they or their outcome can be. Some of the forms of animal exploitation, including animal experimentation, are unquestionably considered as necessary (for humans indeed) and on that ground justified. As Francione puts it:

we generally do not question whether particular institutions of animal use are necessary; rather, we inquire only whether particular practices that are part of those various institutions are necessary. We question not whether it is necessary to eat animals but whether the dehorning or branding or castrating of cattle is a necessary component of the process of bringing animals to our table—and we look to the commonly accepted practices of the food industry to answer the question. We question not whether it is necessary to use animals for sport, recreation, or entertainment but whether particular practices are necessary in order to use animals for those purposes; and again we look to the commonly accepted practices of those involved in such activities for the answer.<sup>55</sup>

Now it should be clear that animal protection laws show unfair bias towards human interests at the expense of neglecting animal interests and as long as these laws will be biased they will always fail to properly protect animal interests. As we have seen animal protection laws are based on the core principle that animal exploitation is justified for the benefit of humans as long as animals are treated humanely and this is the very problem of animal protection laws.

Since we cannot rely solely on animal protection laws we need to look for other options for ensuring the proper treatment that animals deserve according to their moral status. In the last chapter I am going to argue that granting animals legal rights is the best option for that purpose.

## **2.5 CONCLUDING REMARKS**

In the first section of this chapter it has been established that the legal status of animals is that of property virtually all over the world. The reason, as I explained,

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<sup>55</sup> Francione, G., (2000). *Introduction to Animal Rights*, Temple University Press, p. 55



is that since following Roman law tradition the whole world is legally divided into persons and things and animals could not be qualified as persons they had to be classified as things. As a consequence, animals are objectified and treated as mere commodities serving for human purposes. It has also been noted that some countries showed their concern for the well-being of the animals and legally recognized them as sentient beings but animals, nevertheless, retained property status. I also explained the difference between domestic and wild animal ownership. Domestic animals usually belong to private owners while animals in the wild are owned by the state. However, wild animal ownership can be transferred from the state to private owner by some agreement. After all, no matter the animal, wild or domestic and no matter the owner, the legal status is that of property.

After showing that animals have property status I critically examined its legal consequences for the animal. I concluded that the property status was the main factor to be blamed for the animal exploitation. I identified three problems that are associated with property status of animals – *first*, property status regards animals as things that can be owned – as property, which is not only immoral but also a category mistake; *second*, property status encourages and facilitates animal exploitation; *third*, property status deprives animals of the opportunity to bear rights. As a solution of this problem I suggested immediate abolition of the property status of animals and introducing a new term for describing the legal status of entities – an intermediate concept between persons and things.

In the third section of this chapter I argued that even the existence of animal protection laws cannot guarantee the sufficient protection of animal interests. These laws indeed improve animal welfare more or less and reduce unnecessary suffering of the animals but they are far from being perfect. Francione provided compelling reasons why animal protection laws fail to ensure the protection of animal interests. The common reason for that is that many of these laws do not cover most forms of institutionalized animal exploitation or explicitly exempt them from the scope of the law. Sometimes, even if the law itself doesn't include the exemption of certain practices that involve animal exploitation from its scope the courts do so. Another reason of the failure of animal protection laws is that they rely on the misconception that self-interest will prevent the owner from inflicting more harm than necessary to an animal, because doing otherwise will diminish the value of the property animal. Comparatively speaking, it was shown that European

countries provide better conditions for animal welfare than the rest of the world but it was also noted that not every member state implements EU Directives in their own national legislation, which turns out to be the primary reason for their failure to guarantee animal well-being.

What if we improve animal protection laws and make them perfect? Will this ensure the sufficient protection of animal interests? I argued that it will not. The main reason is that animal protection laws do not prevent animal exploitation, they only make it humane. There are some forms of animal exploitation that in essence violate animal interests no matter how humane they are. Therefore prohibiting only the methods of the animal exploitation will not ensure animal welfare. Moreover, animal protection laws unquestionably justify some forms of animal exploitation on the grounds of its necessity and often show unfair bias towards human interests.

Considering that animal protection laws, no matter how perfect they can be, will never ensure absolute protection of animal interests we need to search for different legal means to guarantee animal well-being. In the next chapter I will argue that granting animals some legal rights is the most effective option in that respect and that the proposal can be defended from a number of objections.

### 3. LEGAL RIGHTS FOR ANIMALS

This chapter critically analyzes the plausibility of arguments against legal rights of animals and gives the reasons why animals should have legal rights. I distinguish between animals who *deserve* legal rights and animals who *should* have legal rights. I give different reasons for each claim. I propose specifically which rights animals should be granted and discuss its implications.

#### 3.1 ARGUMENTS AGAINST LEGAL RIGHTS FOR ANIMALS

Before I argue why animals should have legal rights I think it necessary to consider some of the most common objections to that idea and attempt to refute them.

The *first* and probably the most formidable obstacle for granting animals legal rights is the argument from legal personhood. In the law only legal persons, unlike things, can have rights. Even if we succeed in showing that sentient animals are not and cannot be mere things considering their biological characteristics, this will by no means grant them legal personhood. For that animals will need to meet certain criteria enabling them to qualify as legal persons. According to the law only natural and artificial (juristic) persons can be legal persons, where natural person is exclusively a human being while artificial person is a corporation or other legal entity.<sup>56</sup> Since most sentient animals, if not all, cannot be legal persons in the provided sense, according to the argument, they cannot have legal rights.

The *second* argument is one from social contract theory. According to this moral theory moral norms derive their normative force from the idea of social contract made by mutually agreeing individuals.<sup>57</sup> From that it follows that only beings who can enter into social contract and agree on certain rights can actually have rights. Note that this theory does not necessarily imply legal rights but the principle is the same. As long as animals cannot be a part of agreement on what kind of rights (moral or legal) a being can have, they are deprived of the privilege to have rights.

The *third* argument goes like this – having rights usually implies having the capacity to have duties since, it is argued, for every right there is a corresponding

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<sup>56</sup> See Law. J., (ed.), (2015). A Dictionary of Law (8 ed.), *Legal Person*, Oxford University Press

<sup>57</sup> See Cudd, A., (Winter, 2013). *Contractarianism*, The Stanford Encyclopedia of Philosophy, retrieved April 8, 2016 from

<http://plato.stanford.edu/archives/win2013/entries/contractarianism/>

duty and every right holder should acknowledge the duty imposed by the same rights of others. It is an undeniable fact that animals are not capable of having duties and bear responsibilities for their actions. Hence, animals cannot have rights for the same reason they cannot have duties.<sup>58</sup>

The *fourth* argument is that animals cannot have legal rights for the reason that they cannot claim rights on their own. They do not even have an understanding of the concept of rights in general and therefore they are not aware of their rights being violated.

The *fifth* argument against the idea that animals should have legal rights comes from the judge Richard Posner. He argues that cognitive capacities should not be the primary factor while deciding whether a particular being deserves legal rights and maintains that “most of us would think it downright offensive to give greater rights to monkeys, let alone to computers, than to retarded people, upon a showing that the monkey or the computer has a greater cognitive capacity than a profoundly retarded human being.”<sup>59</sup> Posner’s point is that whether some animals are cognitively more developed than some humans should not matter for deserving legal rights and one cannot ground the argument for granting animals legal rights on that fact. He also insists on maintaining the sharp line between humans and animals because “we may end up by treating human beings as badly as we treat animals, rather than treating animals as well as we treat (or aspire to treat) human beings. Equation is a reflexive relation. If chimpanzees equal human infants, human infants equal chimpanzees.”<sup>60</sup> Posner also worries that “equating humans to animals will make us less considerate of human rights (remember Hitler's zoophilia) and ... that attention to animal rights may deflect our attention from human poverty, deprivation, and misery.”<sup>61</sup>

After presenting some of the most common arguments against legal rights for animals I will now try to refute them.

The fact that animals are not legal persons makes it impossible to grant them legal rights. In order for an entity to qualify as legal person it needs to be either a natural or an artificial person. Artificial person, as I noted, refers to a corporation

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<sup>58</sup> Coppens, C., (1835/1920). *A Brief Textbook of Moral Philosophy*, New York, Schwartz, Kirwin & Fauss, p. 70

<sup>59</sup> Posner, R., (2000). Animal Rights (reviewing Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (2000)), 110 *Yale Law Journal* 527, p. 532

<sup>60</sup> *Ibid.*, p. 535

<sup>61</sup> *Ibid.*, pp. 537-38

or an association and in that sense it is not applicable to animals. By natural person the law exclusively means a human being and no one else, therefore it is not applicable to animals either. It should be noted that the term natural person has nothing to do with the philosophical concept of person since all humans are regarded as natural persons by the law while not all humans meet the criteria for philosophical personhood. For instance, according to the law natural persons are required to have legal capacity in order to possess legal rights. The law distinguishes between passive and active capacities. Passive capacity refers to the ability *to have* legal rights and responsibilities, while active capacity (capacity to act) refers to the ability *to acquire and exercise* legal rights.<sup>62</sup> Passive capacity or the capacity to have rights begins on the completion of birth meaning that all humans, no matter the age and cognitive capacities, are granted passive capacity and therefore some basic rights that are applicable to natural persons with passive capacity. Active capacity arises from the age of majority and requires cognitive capacities of a normal human adult. Given this, infants and profoundly retarded adults are deemed to be legally incompetent or incapacitated but they nevertheless possess some basic rights since they are thought to have passive capacity – the capacity to have rights.

When we look at the grounds on which severely mentally ill humans obtain some basic rights, such as right to life and right to bodily integrity, and the grounds on which sentient animals are denied the same rights, the inconsistency of the law becomes apparent. Recall, in order to be regarded as natural person and granted passive capacity or the capacity to have rights one needs to be simply a human being, irrespective of the age and the mental capacities. Therefore animals are deprived of an opportunity to enjoy some basic rights simply because they are not human beings. Note that I am not arguing against severely mentally disabled people having legal rights, all I am trying to show is the inconsistency of the law that is – granting profoundly mentally impaired humans some legal rights and at the same time denying the same rights to animals who happen to have greater mental and cognitive capacities than some humans. If the interests of such humans ought to be protected with legal rights then there is no plausible reason to deny the same privilege to animals who are as sentient as profoundly mentally handicapped

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<sup>62</sup> See Civil Code of Georgia, Chapter I, Natural Persons, Article 11-12, retrieved April 9, 2016 from [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=209012#LinkTarget\\_4604](http://www.wipo.int/wipolex/en/text.jsp?file_id=209012#LinkTarget_4604)  
Civil codes of Estonia and Russia also employ more or less the same terms and definitions.

humans and as or more mentally developed than such humans. The principle of equality that is – likes should be treated alike requires the law to treat severely mentally disabled humans and sentient animals in the same way with regards to protecting like interests by the legal means. Failing to do so results in the inconsistency of the law, and it is difficult, if not impossible, to justify or make sense of this inconsistency without committing to speciesism. Given this, the argument from legal personhood should be rejected on the grounds of inconsistency and speciesism as the law's definition of a natural person is a clear expression of speciesism, and therefore philosophically controversial.

Arguments, such as one from social contract theory and the ones according to which animals should be denied legal rights due to their inability to have duties and to claim their rights on their own, can all be rejected by appealing to the marginal cases. If having rights requires the ability to enter into an agreement with a social community, as contractarianism demands, then animals are not the only beings who are unable to do so. Human infants and severely mentally ill adult people also lack the ability to contract hence they too should be denied rights. Such humans also lack the capacity to have duties and claim their rights independently. Are we ready to accept that these people, like animals, should not have certain basic legal rights? I really doubt. Therefore we should give up these arguments as implausible and counterintuitive. A critic may object that while contractarianism can be rejected by marginal cases not all theories of social contract can be refuted on the same ground. For instance, contractualism is another social contract theory that requires that moral principles be such that they can be justified to each person. The main difference between contractarianism and contractualism is that under contractarianism, one seeks to maximize one's own interests in a bargain with others, while under contractualism, one seeks to pursue one's interests in a way that one can justify to others who have their own interests to pursue.<sup>63</sup> Contractualism excludes animals from the moral community for the same reason that they cannot take part in agreement, though Scanlon in his version of this theory attempted to include animals by means of trustees arguing that trustees can act on behalf of animals.<sup>64</sup> But Rawls' contractualism<sup>65</sup>, according to which

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<sup>63</sup> Ashford, E. and Mulgan, T., (Fall, 2012). *Contractualism*, The Stanford Encyclopedia of Philosophy, Edward N. Zalta (ed.), retrieved April 28, 2016 from <http://plato.stanford.edu/archives/fall2012/entries/contractualism/>

<sup>64</sup> Scanlon, T. M., (1998). *What We Owe to Each Other*, Cambridge, MA: Harvard University Press, p. 183

morality is the set of rules that would be agreed upon by rational agents under the veil of ignorance, does not contain the concept of trustees and is not vulnerable to objection from marginal cases either. The reason is that every rational agent would agree to grant legal rights to severely mentally disabled humans assuming that, one day, they themselves may become profoundly mentally impaired. Given this, only humans will have legal rights while animals will be left out. Peter Carruthers provides two reasons why this Rawls-inspired attempt of granting all human beings the same rights will not work. First, not everyone wishes to enjoy the same moral protections if they become senile. Second, it is unlikely that personal identity will be preserved through cognitive changes as massive as the slide into senility since the resulting human being would not have the same beliefs, desires, interests, memories, or qualities of character that constitute his identity as a person. "If, following the slide into senility, the resulting person is not me, then I cannot now self-interestedly reject rules that affect that person."<sup>66</sup>

Posner's anxiety that some people may find it offensive to grant monkeys greater rights than severely retarded humans resembles the same prejudiced thinking of people who refuse to accept the evolutionary theory on the same ground – they feel offended to admit that they had evolved from the ape-like ancestor and that humans and monkeys share the same predecessor. The speciesist arrogance of this position should be obvious. Posner's worry is as groundless and unjustified as the irrational feeling of stubborn opponents of Darwinism who find it unacceptable to even have something in common with the monkeys. If having a certain right requires a certain capacity and if it happens that some animals have this capacity while some humans do not, then we should embrace the claim that sometimes some animals may have greater rights than some humans, no matter how awkward or unacceptable it may sound for some. On that note, it may be plausible to think that we should grant a greater right to freedom to great apes, if not all sentient animals, than to profoundly retarded humans. Moreover, there was a time when many found it offensive to grant equal rights to women or to people of African descent (not to mention to homosexuals), but that is obviously not an argument against those rights.

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<sup>65</sup> See Rawls, J., (1999). *A Theory of Justice*, revised edition, Harvard University Press, p. 118

<sup>66</sup> Carruthers, P., (1992). *The Animals Issue: Moral Theory in Practice*, Cambridge University Press, p. 160

Posner also thinks that “if we fail to maintain a bright line between animals and human beings”<sup>67</sup> this may result in treating humans as badly as we treat animals and not vice versa. Recall his warning that if chimpanzees equal human infants then human infants equal chimpanzees. Following the same logic, Posner would, I bet, have opposed the abolition of slavery, the emancipation of women and the elimination of racism on the grounds that we may treat the rest of the humans as badly as slaves, women and black people were treated. The absurdity of Posner’s claim should be apparent now.

According to Posner making humans equal to animals may make us less considerate towards human rights and focusing on animal rights may distract our attention from human problems. First, I think Posner exaggerates a lot here. Referring to Hitler’s feelings towards animals (“Hitler’s zoophilia”) is more than irrelevant because if one considers Hitler’s hatred towards Jewish people it would not be surprising to assume that he would do the same atrocities towards them even if he was not a “zoophile”. Second, even if Posner’s predictions (that granting some animals the same legal status as some humans may negatively affect humans) are not so improbable I strongly doubt that this is a good reason for not granting some animals legal rights. The main objection to Posner’s reasoning is that it is against the principle of equal consideration of interests, according to which similar interests should be treated similarly, regardless of the species these interests belong to. Posner shows an unfair and unjustified bias towards humans while arguing that we should not turn our attention to animal rights since this may lead us to our indifference towards human problems. Posner’s prejudiced thinking that human interests are always more valuable than those of animals is very clear. But this way of thinking has no justified moral basis, if beings belong to different species but they suffer equally then there is no good reason to give one’s suffering a preference over another, especially on the ground of species membership.

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<sup>67</sup> Posner, R., (2000). *Animal Rights* (reviewing Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (2000)), 110 *Yale Law Journal* 527, p. 535



### 3.2 WHY ANIMALS SHOULD HAVE LEGAL RIGHTS

In the previous section I critically examined the common arguments against the legal rights for animals and have shown that none of them is plausible enough to make the idea of granting animals some rights impossible. In this section I am going to explain why animals should have legal rights. But before that I would like to distinguish between why some animals *deserve* legal rights and why some animals *should have* legal rights. I give different reasons for each claim. Also I would like to note that my discussion of legal rights is by no means related to moral or natural rights. I hold the view according to which legal rights are not derived from moral or natural rights rather they are based on the welfare-interests of a being. From that perspective a legal right is an instrument for ensuring the protection of the most important legitimate interests of a being and hence it has an instrumental value only.

In the first chapter while discussing the moral status of animals I showed that Korsgaardian approach to that issue was the most plausible. According to that view all sentient animals are ends in themselves for the reason that they are animate beings with their own interests; beings who are capable of having a welfare that is – there are things that are good and bad *for* them and this imposes certain moral obligations on us. In that sense, all sentient animals matter morally in their own right and therefore are not replaceable. The moral implication of this view is that animals cannot be used for the benefit of humans and all form of animal exploitation that involves sacrificing animal interests for those of humans should be prohibited. Considering the capacities of different animal species I distinguished between animals that are moral patients and the ones that are moral subjects. Mostly relying on the work of Mark Rowlands I argued that some animals who are moral subjects can actually be moral that is – they can and sometimes do act for moral reasons and show emotions towards each other that have moral content. These kinds of beings by expressing their moral concern in relation to their family members or counterparts indeed make the world a better place and for that reason they can be the objects of moral respect. From that perspective, I believe, animals who are moral subjects should be valued and appreciated more, because of who they are and because of what they do. In the light of this discussion the inconsistency of the law I emphasized in the previous section is even more apparent. Irrespective of what reality is, even the idea that animals who can act for moral reasons are regarded as mere things by the law while the very same law

grants profoundly retarded humans some legal rights seems utterly preposterous. But it is a reality that the membership of human species is enough for having certain interests protected by the legal rights while the complex cognitive capacities of some animals are unfairly ignored or discounted by the law. In contrast to this I argue that an admirable ability of some animals to be motivated by the moral reasons and the willingness to put their moral emotions into actions should be reflected in the law. It is indeed a good thing that the world has animals who can be moral and because of that these animals *deserve* the highest level of protection of their interests that is – they *deserve* some basic legal rights.

This part of the section will be concerned with the animals who are moral patients only and I will be arguing why these animals *should have* legal rights. To make the distinction between ‘deserve’ and ‘should have’ clear I would like to note that animals who are moral subjects intrinsically deserve legal rights, given their complex sentient, social, and (if Rowlands is right) moral lives, while all sentient animals should have legal rights because in the light of granting some humans in marginal cases legal rights it would be incoherent to deny the same rights to sentient animals.

In the previous section I examined the grounds on which human infants and profoundly mentally impaired adults are granted certain legal rights. I indicated that the only reason such humans enjoy certain legal rights is their membership of the human species and the only reason animals are deprived of the same privilege is that they are not humans. It should be undeniable that humans and all sentient animals share some similar interests. Most of the important legitimate human interests are protected by the legal rights including the interest in remaining alive and not be a subject to torture and enslavement<sup>68</sup> while the very same interests of animals in some cases are not only ignored but also deliberately exempted from the scope of the animal protection laws. There has been made numerous desperate attempts to separate humans from the animals by appealing to uniquely human traits and this way to justify giving more weight to human interests compared to those of animals. But there are marginal cases where some humans such as infants and profoundly mentally disabled adults lack these uniquely human traits that make giving a preference to human interests arbitrary. It is indeed a stubborn partiality to protect the life or the bodily integrity of a severely mentally

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<sup>68</sup> The Universal Declaration of Human Rights, Article 4-5, retrieved April 2, 2016 from <http://www.un.org/en/universal-declaration-human-rights/>

handicapped human and at the same time deny more cognitively developed animals the same level of protection of similar interests. If it is assumed that humans in marginal cases still retain an interest in remaining alive that needs protection by the legal right then what is the reason for denying more cognitively complex animals the same interest and legal protection? I argue that like interests should be treated equally not only in a moral sense but also in a legal sense that is – if we protect some human interests by the legal rights then according to the equal consideration of interests we are also required to protect the like interests of animals by the legal rights. Given this, if human interests in marginal cases should be protected by the legal rights then we are committed to accepting that similar interests of animals ought to be protected by the same legal means. Hence, all sentient animals *should* have some legal rights.

### 3.3 WHAT KIND OF RIGHTS?

In the previous section I argued why animals should have legal rights. Now the question we need to ask is – what kind of rights? Various animal rights philosophers proposed their views on which rights animals should possess. For instance, Tom Regan argues that animals who are subjects of a life have an inherent value and therefore possess the equal right to respectful treatment. Gary Francione, who is a devoted abolitionist, maintains that the property status of animals is the primary source of animal exploitation and that all sentient animals should be granted the right not to be treated as property. James Rachels holds that sentient animals who suffer in captivity have an interest in being free and their prima facie right to freedom should be recognized.<sup>69</sup> Alasdair Cochrane argues that sentient animals have an interest in continued life in virtue of their ability to have future oriented desires and hence they should have a right to life.<sup>70</sup>

Regan believes that the right to respectful treatment encompasses the right to life. Animals who have an inherent value should be treated with respect and not merely as a means to benefiting humans. In contrast to Regan, Cochrane maintains that

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<sup>69</sup> See Rachels, J., *Do Animals Have a Right to Liberty?* In: Regan T. and Singer P., (1976). *Animal Rights and Human Obligations*, Englewood Cliffs, New Jersey, p. 212

<sup>70</sup> See Cochrane, A., *Life, Liberty and the Pursuit of Happiness? Specifying the Rights of Animals*, In: Visak, T., and Garner, R., (2015). *The Ethics of Killing Animals*, Oxford University Press, p. 211

the respectful treatment or an inherent value does not entail the right not to be killed. He argues that it is possible to kill a being while at the same time recognizing his inherent value.<sup>71</sup> The same can be said about the right not to be treated as property. This right proposed by Francione does indeed prohibit animal exploitation but does not necessarily protect animal's interest in remaining alive. We need to formulate the rights of animals more specifically in order to guarantee the protection of an interest which grounds this particular right.

In the first chapter I showed that the capacity of animals for having pleasurable experiences presupposes animals' interest in continued existence, therefore all sentient animals capable of experiencing pleasure should have a right to life.

Animals' interest in avoiding pain and suffering should not require much discussion. In the first chapter I think I have made it clear that all sentient animals have the capacity to feel pain and since pain is an intrinsically bad experience animal interests in avoiding suffering should be recognized. Thus, animals should have the right not to be treated with cruelty.

In order to satisfy their natural instincts and needs animals require, if not absolute, at least a reasonable degree of freedom. This is enough to acknowledge their strong interest in freedom which should be supported by the legal right. Alongside with the right to freedom animals should be granted the right not to be enslaved in any way as slavery is inherently inconsistent with freedom.

Relying on the discussion above, I argue, all sentient animals should be granted the following legal rights in order to ensure the protection of their vital and the most important interests:

1. Right to life;
2. Right to freedom;
3. Right not to be enslaved;
4. Right not to be treated with cruelty;
5. Right to bodily integrity.

These rights are absolute in the sense that they should not be violated unless the violation benefits the animal. Also they are negative in the sense that they require non-interference or inaction from others in contrast to positive rights which

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<sup>71</sup> See Cochrane, A., *Life, Liberty and the Pursuit of Happiness? Specifying the Rights of Animals*, In: Visak, T., and Garner, R., (2015). *The Ethics of Killing Animals*, Oxford University Press, p. 203

demand certain actions to be performed in favor of a right holder.<sup>72</sup> Moreover, these rights should be applied to all kinds of animals, domesticated as well as wild animals equally. However, in addition to these rights domesticated animals who live with humans should be granted the right not to be abandoned. The rationale behind this right is that most of the domesticated animals are more or less dependent on humans and human care and attention is essential for their welfare. As long as humans choose to establish companionship with certain animals, humans should be obliged not to abandon or neglect their companion animals.

### **3.4 IMPLICATIONS OF LEGAL RIGHTS OF ANIMALS**

If animals are granted the very same legal rights I discussed in the previous section, what will be the consequences of this change in a legal system?

The very first thing that will require to be adjusted to a new law reform will be the legal status of animals. It will be evidently ludicrous to grant animals some legal rights and still keep their property status. Animals certainly are not things but not all of them are legal persons either. I propose to introduce an intermediate concept between things and persons to describe the moral status of animals. That can be just 'animals' or 'non-human animals'. This category will distinguish animals from things and humans and avoid considering animals as property. If animals cannot be property then they cannot be owned either, therefore an ownership of animals as a practice should be prohibited, instead 'ownership' can be replaced by 'companionship' meaning that a mutually beneficial relationship of humans and animals will be based on caring. In that case, harming an animal will constitute a violation of a certain right of an animal that will be punishable and additionally, in some cases, the person an animal lives with can be compensated for the harm. I would like to note that I strongly oppose the idea of domestication of animals and pet ownership for the reason that domestication makes animals and their well-being totally dependent on humans. The problem with such dependence is that it leaves animals at the mercy of humans and this is morally problematic. But as long as domesticated animals still exist and abandoning them will have negative effects on their well-being then companionship can be justified.

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<sup>72</sup> Wenar, L., (2015, Fall). *Rights*, The Stanford Encyclopedia of Philosophy, retrieved April 10, 2016 from <http://plato.stanford.edu/archives/fall2015/entries/rights/>

Granting animals legal rights that I proposed in the previous section will mean the abolition of all forms of animal exploitation. The practices such as using and killing animals for food, clothing, entertainment, experiments and for other reasons that result in harming animals will violate their vital interests and legal rights that protect these interests.

When it comes to prosecuting animal abuse state prosecutors will still be the ones who will take the case to the court, though Desmond's law seems quite favorable in that respect. Desmond's law, which is still a bill, would allow law school students to represent animal interests in a courtroom during animal cruelty cases. The participation of law students in animal cruelty cases would greatly help prosecutors and alleviate their workload which, in its turn, would encourage them to take more animal abuse cases to court.<sup>73</sup>

To sum up, considering my proposed legal rights for animals, our interaction with animals should not be significantly different from our interaction with human infants and profoundly mentally retarded adults since all sentient animals and humans in marginal cases have very similar legal rights and legal status.

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<sup>73</sup> See Spicer, M., (2016, March 10). *Conn. Law Students May Be Enlisted to Represent Animals in Abuse Cases*, In: The Connecticut Law Tribune, retrieved April 8, 2016 from <http://www.ctlawtribune.com/id=1202751934802/Conn-Law-Students-May-Be-Enlisted-to-Represent-Animals-in-Abuse-Cases?mcode=0&curindex=0>

## CONCLUSION

The main objective of this thesis I intended to achieve was to show that all sentient animals should have legal rights. For that purpose I used the moral status of animals as a baseline for developing their proper legal status, from which by pointing at the inconsistency of the law I derived the obligation to grant them legal rights.

In the *first chapter* I critically examined the most prominent views on the moral status of animals throughout the history of philosophical thought and emphasized their failure to see an intrinsic value of an animal. I concluded that Korsgaardian view on the place of animals in the moral community was the most plausible, according to which all sentient animals are ends in themselves for the reason that they are beings with their own interests and their capacity for having a welfare and the fact that there are things that are good and bad for them impose certain duties on us. We, humans, need to act from these duties while interacting with animals.

The moral status of animals inevitably determines how they will be viewed in the eyes of the law. In the *second chapter* I critically discussed the current legal status of animals which is a remnant of ancient thinking that categorizes animals as mere things and regards them as the property of humans. I stressed the point that a sentient animal cannot be property simply because sentient animals are beings with their own interests while the property is a thing without any interest whatsoever. I suggested introducing a different concept for categorizing animals in the law, in particular, to refer to animals as who they are – ‘animals’ or ‘non-human animals’. Given the Korsgaardian approach I argued that the most important animal interests ought to be protected by the law. I critically examined different legal means that aim at improving an animal welfare and preventing an animal cruelty. I concluded that animal protection laws fail to provide sufficient protection of animal interests and regarded legal rights the best option in that respect.

In the third chapter, after showing that arguments against legal rights for animals do not stand, I distinguished between animals who *deserve* legal rights and animals who *should* have legal rights. I argued that some animals are moral subjects and because of their admirable ability to act for moral reasons and show moral concern towards their counterparts and because of who they are and what they do they *deserve* the highest level of protection of their vital interests that is – they *deserve* legal rights. I also contended that all sentient animals who are moral

patients should have legal rights for the same reason human infants and profoundly mentally impaired adults are granted some basic legal rights. I emphasized the inconsistency of the law according to which humans in marginal cases enjoy some legal rights simply in virtue of their membership of human species while more cognitively developed animals are denied the very same rights. I tried to show that principle of equal consideration of interests requires us to treat like interests alike that is – to protect the similar interests of humans and animals similarly. If we are to grant animals legal rights, which rights should they have exactly? I proposed that all sentient animals should enjoy the following rights: the right to life, the right to freedom, the right not to be enslaved, the right not to be tortured and the right to bodily integrity. Granting animals these rights will have its consequences, particularly, animals will no longer be property and therefore human-animal relationship should be based on companionship instead of ownership. Most importantly, granting animals legal rights will prohibit all forms of animal exploitation that routinely take place today.

Practically speaking, accepting the implications of the legal reformation I proposed in the presented thesis is quite challenging, especially, considering the fact that each year tens of billions of animals are killed worldwide for food alone. Obviously, the drastic changes in the lives of humans brought about by the abolition of animal exploitation will not be very welcome but at least recognizing the fact that all sentient animals and humans share some similar interests that need to be equally protected by the law should be the first step to make.



## SUMMARY

In the presented thesis I defend the claim that all sentient animals should have legal rights. The arguments I offer in support of this claim are based on the moral and legal status of animals. I try to show that all sentient animals are ends in themselves for the reason that they are beings with their own interests, and their capacity for having welfare and the fact that there are things that are good and bad for them impose certain duties on us. Our duties should be reflected in the law, that is – animal interests should be protected by the legal means.

I argue that some animals are moral subjects and because of their admirable ability to act for moral reasons and show moral concern towards their counterparts they intrinsically *deserve* the highest level of protection of their vital interests that is – they *deserve* legal rights. I also contend that all sentient animals who are moral patients *should have* legal rights for the same reason human infants and profoundly mentally impaired adults are granted some basic legal rights.

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