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Extending Human Compassion by Implementing Legal Rights for Animals

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Extending Human Compassion by Implementing Legal Rights for Animals

An Honors Thesis

Presented to

the Department of Philosophy
of the University of New Orleans

In Partial Fulfillment

of the Requirements for the Degree of Bachelor of Arts,
with Honors in Philosophy

by Lindsey Childers

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Abstract

The purpose of this essay is to critically examine the current legal status of animals in the United States and offer possible alternatives to the current legal rights for animals. This essay examines the failures of the legal system in protecting animals that have abilities very similar to our own. With an examination of these types of animals, this essay will explain why some animals merit the status of legal personhood to protect them from being carelessly used by others. Ultimately, this essay is an attempt to open the field of legal protection for many animals starting with a few through legal personhood.

Key Words: animal rights, animal legal personhood, ethics, philosophy, animal intelligence, animal suffering, humans and animals, non-human animals

Part One: The Issue

“True philosophy consists in relearning to look at the world.” - Maurice Merleau-Ponty¹

In today's American society, we often interpret numerous aspects of our lives as commodities, including the lives of those around us. Because of this, animals are often subject to the desires of humans. Many animals lack the legal protection they deserve simply because they are not an animal that is of interest to society. While anti-cruelty laws are in place to protect some animals, this is only true for animals that are regarded with value. The legal system disproportionately attributes legal privileges to some animals over others. For example, while cruelty laws are in place for many pets, animals used in factory farming have essentially little to no legal protection from mistreatment. Society's interest in the use of animals for food, clothing, entertainment, and companionship has trumped the animals' individual qualities and needs.

Because of this, animals encounter a 'standing problem' within the legal system. They lack the legal standing required to merit protections based on their own attributes. Legal protection for an animal often requires lawyers to find a way to connect the animal's suffering to that of a human, and hopefully reduce the animal's suffering in the process. As an example, Animal Legal Defense Fund (“ALDF”) sued the United States Department of Agriculture (“USDA”) in 1998 on the grounds of the well-being of the primates in the Long Island Game Farm Park and Zoo (“Game Farm”). To do so, ALDF used a plaintiff's allegations that his regular visits to the Game Farm caused “aesthetic

¹ Aaron Gross and Anne Vallely, Animals and the Human Imagination: A Companion to Animal Studies, (New York: Columbia UP, 2012) 281.

injury in observing animals living under inhumane conditions.” He claimed this injury based on the primates' unnatural solitary confinement and placement next to cages of predator animals.² Similarly, the American Cetacean Society won the case against the Japan Whaling Association on the terms of 'injury in fact'. The injury in this case was not the whales being killed, but humans having to watch such a thing. A sufficient holding for the whales was accepted with the notion that “the whale watching and studying of their members will be adversely affected by continuing whale harvesting.”³ The legal strategy used in both cases show that they understood there would be no chance to make a case for the rights of individual animals. To rectify the needs of the animals with the law, they turned to helping protect animals through human interests.

The former of the two cases above ultimately did not succeed in their trial. Something must change to help these animals. The issue is that people have separated themselves from animals so much that they fail to understand them. This results in problems such as the failure of the ALDF's case. Unlike the whales, which had regular viewers, the primates were kept in solitary cages that few people ever had to encounter other than workers. With few people around to understand the problem, people are able to distance themselves from the primates being injured in the Game Ranch and other secluded animals enclosed in businesses around the country. The proposed new legal protections for animals that are explained in this essay will not be vulnerable to the ever changing desires of society. Instead, I will prove that for at least some animals, there is

2 Sonia S. Waisman, Bruce A. Wagman, and Pamela D. Frasch, Animal law: Cases and Materials, (Durham, NC: Carolina Academic P, 2002) 247.

3 Waisman, Wagman, and Frasch 240-241.

enough evidence to warrant their need for legal personhood. This will provide the needed protections to animals based on their inherent qualifications for rights entitlement.

Part Two: Design of the Argument

In this essay, I will explore the ways in which we may proceed in extending legal rights and personhood to certain animals. In Section Three, I will examine the counter arguments to legal rights for animals. The two arguments I will reference are the differential argument, and the degradation argument. The differential argument rests upon the inherent differences between humans and animals. This approach denies animals the possibility of legal personhood with the assertion that our innate differences make it impossible to extend the human-derived notion of rights to animals without entailing catastrophic problems. The degradation argument asserts that giving animals rights would not protect animals more, but protect humans less.

In Section Four, I will rely on my argument that rests on what I believe is the fundamental problem for animals' lack of rights – human perception. As seen with the court cases listed in Section One, our current laws, focusing on the desires of humans, fail to protect animals. I will explain why some animals receiving legal rights will not entail the pandemonium that critics assume will follow. Contrary to the degradation argument, I will assert that more legal protection for animals will result in helping not only animals, but people as well. I will prove that a change in human perception is required for the law to undergo any of the changes suggested. I will complete my argument with an examination of how humans can come to see animals in a way that is beneficial to humans, yet also in line with the needs of the particular being.

Part Three: The Arguments Against Legal Rights for Animals

In *A Dubious Grail: Seeking Tort Law Expansion and Limited Legal Personhood as Stepping Stones Toward Abolishing Animals' Property Status*, Richard Cupp develops his stance against giving animals legal rights outside of property rights of their owner. Cupp claims that the field of animal rights has changed its methods over time. While Peter Singer's *Animal Liberation* was the defining mark of the 1970's, the movement today has transgressed from this previous ethical era of rights. Today, we are involved in a "pragmatic, increasingly sophisticated legal action" era.⁴ These changes can be observed by the classes offered today in law schools. In 1997, two schools taught courses in animal law.⁵ Today, 144 schools do.⁶ The interests of animals' protection through the law has thus grown tremendously in the past twenty years. This is why the works of Steven Wise, such as *Rattling the Cage* and *Drawing the Line*, may have now supplanted Peter Singer's work.⁷ Wise, in contrast to Singer, is a prominent lawyer able to communicate with this new pragmatic generation in ways Singer does not. Wise is able to systematically explain the need for animal rights with the rhetoric of today's thinking. Wise makes the argument for progressive change through gradual legal steps. Cupp calls these steps "stepping stones" toward the eventual elimination of animals as property through the gradual progression of their legal status.⁸ This is the movement against which Cupp argues.

4 Thomas S Kuhn, *The Structure of Scientific Revolutions*, (Chicago, IL: University of Chicago, 1996) 1.

5 Richard Cupp, *A Dubious Grail: Seeking Tort Law Expansion and Limited Legal Personhood as Stepping Stones Toward Abolishing Animals' Property Status*, (Texas: SMU Law Review, 2007) 2.

6 "Animal Law Courses," 3 Mar. 2013 <http://aldf.org/userdata_display.php?modin=51>.

7 Cupp 2.

8 Cupp 2.

Cupp challenges Wise's assertions with the use of the degradation argument. Wise claims that scientific proof of a high level of autonomy and a level of intelligence comparable to humans warrants at least limited legal personhood. Cupp disagrees with Wise's statement. He finds the route of using law to protect animals as ultimately counterproductive to the movement; not only will it fail to help animals, it will also negate some of the rights of humans. Rights, as Cupp points out, are not free; they come with societal costs bearing upon their usage.⁹ As an example, he notes that legal personhood for an ape would thereby enable it freedom from slavery, thus destroying property rights as we know them, and also limiting previous use of the First Amendment, the ability for scientists to use animals freely for their research.¹⁰ Rights come at not only monetary costs, but also at the costs of others and their rights. Therefore, if animals are entitled any amount of legal personhood, this comes at the cost of humans' rights.¹¹ Cupp relates his thoughts of giving animals legal rights to the philosopher A.M. MacIver's quote, "The ultimate sufferers are likely to be our fellow men, because the final conclusion is likely to be, not that we ought to treat the brutes like human beings, but that there is no good reason why we should not treat human beings like brutes."¹² For Cupp, the entitlement of legal rights to animals comes at simply too high of a cost to humans. This method of attaining protection for animals will only result in the loss of our own accomplishments as humans.

The rejection of animal rights comes with ease to Cupp, as he finds that rights

9 Cupp 11.

10 Cupp 11.

11 Cupp 12.

12 Cupp 12.

may be linked with responsibility. “They [animals] do not have rights but, correspondingly, they do not have responsibilities in human society.”¹³ Since those of the animal rights movement would be unlikely to say that we should afford moral responsibilities to animals, it is accordingly fit that we do not afford them legal rights either. This is exactly why Cupp believes we should not give animals legal rights. He believes that “the cost to humans of receiving rights is the heavy burden of responsibility, including responsibility for preventing inappropriate treatment of socially powerless animals”.¹⁴ Consequently, animals cannot have their own rights. Yet humans' rights, in his view, entail the obligatory protection of animals. Humans are therefore given rights with the assumption that they are to treat animals with accordance to their needs.

David Schmahmann and Lori Polacheck argue that “it would be both implausible and dangerous to give or attribute legal rights to animals because such extension of legal rights would have serious, detrimental impacts on human rights and freedoms.”¹⁵ They support another version of the degradation argument. They maintain that giving rights to animals would devalue human life in a multitude of ways. By expanding the meaning of rights to include animals, the structure of society would crumble.¹⁶ They reference the fact that rights are not hierarchical in humans. In accordance, they explain that legal rights for animals would result in a lack of hierarchy between humans and animals. This equates to a legal system wherein “no rat could be harmed, chicken cooked, or rabbit

13 Cupp 12.

14 Cupp 12.

15 David Schmahmann and Lori Polacheck, The Case Against Animal Rights, (Boston: Boston College Environmental Affairs Law Review, 1995) 2.

16 Schmahmann and Polacheck 4.

dissected without government permission or the prospect of government scrutiny.”¹⁷ We are again facing a loss of human rights and autonomy with the possibility of the emergence of animals’ legal rights.

Schmahmann and Polacheck also use the differential argument to assert their position that animals cannot attain legal rights. They believe that we cannot divorce ourselves from the differences between ourselves and animals. These differences entail why animals are not given a legal status outside of property rights. They point out that it is humans that have these arguments over rights. That is precisely why we have rights and obligations, while animals do not. The different quality that humans have, “this ability to recognize gradations and competing interests is what defines the rules that we live by and the system of rights and responsibilities that comprise our legal system.”¹⁸ Ultimately, bringing animals into the field of legal rights would entail an inevitable chaos in our legal system, because it is not framed to work with the abilities of animals. It is a system based in language and reason that these animals do not exhibit.

They conclude with the statement that while many activists like to relate animal suffering to that of previous rights movements such as the women's rights movement and the civil rights movement, these inevitably fail because they lack the grounds of comparison. They point out that while no society has ever had the liberation of animals, “human history abounds in instances of enslavement and liberation [of humans], and the political fortunes of women have varied from cultures that are matriarchal to those with

17 Schmahmann and Polacheck 6.

18 Schmahmann and Polacheck 4.

prevailing attitudes quite different.”¹⁹ Animals, according to this argument, must be protected from within the framework of human interests. Anything else would cause the failure of our entire legal system. Further, Schmahmann and Polacheck assert that human interests are ultimately “the only perspective from which any of us are truly qualified to analyze an issue.”²⁰

Part Four: The Defense of Legal Rights for Animals

As explained in Section One, a current problem for animals' rights is its dependence upon people's values. Through the economic, aesthetic, or psychological desires of humans, we determine the way animals should be treated. As it stands, animal legal protection is quite limited in its scope. Steven Wise asserts that the legal problem for animals is that they are labeled as things within the law. Consequentially, animals are dependent upon the values of society. They have no more legal standing than any other type of property.²¹ Therefore we fail to ever view them with the possibility of autonomy and needs of their own. We fail to see *them* at all; we see our own needs projected outwardly. Cass Sunstein explains why animals may need to be granted legal rights. He believes that changes in legal discourse may be required “to destroy the idea of ownership in order to make, simply and all at once, a statement that the interests of animals count, and have weight independent of the interests of human beings.”²²

To simply assert that human rights entail the obligation of taking care of other

19 Schmahmann and Polacheck 16.

20 Schmahmann and Polacheck 15.

21 Steven Wise, Drawing the Line: Science and the Case for Animal Rights, (Cambridge, MA : Perseus Books, 2002) 21.

22 Emma A. Maddux, Time to Stand: Exploring the Past, Present, and Future of Nonhuman Animal Standing (North Carolina: Wake Forest Law Review, 2012) 7.

sentient beings such as Cupp argues with his degradation argument, is to forget that the majority of humans already do not accept the notion of obligations without the law demanding they do so. The entitlement of responsibility does not equate to the notion that they will act accordingly. If we believed it would, we would not have so many laws in place to protect children and others that are under the responsibility of someone else. In the past we have made humans the property of other humans through slavery. To reverse these actions, we eventually gave every person legal personhood. Wise describes personhood as “the legal shield that protects against human tyranny; without it, one is helpless.”²³ Animals, like the human slaves of the past, must gain legal personhood before the sentiment toward them can fully change.

Animals’ legal protections require a hierarchy in accordance to the species’ specific qualities. Many critics of the animal rights movement have a tendency to lump together the vast animal kingdom in defense of human rights. The degradation argument in Section Three asserts that our current legal system is not hierarchical, thus entailing that legal rights for animals would equate with animals’ rights being equal to our own. This argument is a slippery slope that fails to comprehend what animal rights advocates are trying to accomplish. The current animals in question for legal personhood are generally limited to primates and cetaceans. Few would argue that the government should intervene on someone setting a mouse trap in their home. Giving rights to one species does not require all animals to be provided with the same. Furthermore, the assertion that the system we currently have is not a hierarchical one is nonsensical. The legal system is

²³ Wise 21.

designed to fluctuate depending on the abilities of the person in question. Babies are never asked to defend themselves in court. Corporations have legal personhood, which is also handled in ways entirely different from that of humans. Therefore, if we grant cetaceans, primates, or any other species legal personhood, we can assume that their abilities will be taken into consideration with their legal standing. If we as a society extend our compassion to animals, it need not entail the destruction of our legal system.

The similarities between humans and animals should not be disregarded as often as it is in today's society. While the differential argument is right in saying that we may not divorce ourselves from our differences from animals, we also do not need to exclusively focus on them. Understanding the animal's intrinsic needs requires us to see both the ways we share qualities, and ways we do not. The problem that I believe is the source of animal mistreatment is human perception. The law is only bound to grant animals protection under the fluctuating desires of humans. If humans are bothered by the sight of animals in pain, as in the case of the whaling lawsuit, the animals are protected. If, however, humans are not around the animal in question, as in the case of factory and fur farming, then the animals are left voiceless. Similarly, if an animal is culturally deemed more useful as food or entertainment, then that is what is allowed.

As a society, we give rights to babies and other humans that are not able to voice their own concerns. The underlying belief is that they deserve rights because they are a part of the human species. They are believed to at least hold the potential of having qualities that other humans do. Humans often perceive themselves as being the most important and most deserving of rights. They treat other animals as disposable property

as opposed to understanding that the animals may have their own thoughts and desires. Myra Hird argues that seeing the larger scale of life and understanding humanity's actual insignificance is vital. She says that "this is not to belittle that which is of crucial importance to us, but rather to situate it within a broader perspective that emphasizes our shared condition of animal life, rather than our differences."²⁴ Instead of creating meaning for animals, humans can see them for what they are. People can learn to appreciate the similarities between themselves and animals while also being able to bond with more beings than they ever thought possible.

With an understanding of our similarities to animals, we may be able to form assumptions about their needs and requirements. In contrast, we can understand our actual differences outside the previously biased view that depicted animals in accordance to their utility in society. We can then determine how to modify rights depending on the animal's abilities. This would be a simple extension of the way we currently amend the rights of humans that have less abilities. The differential argument equates giving legal rights to animals with affording them moral obligations as well. However, we currently give many people rights that we do not regard as capable of making moral decisions. For example, while children can be charged with crimes, they are held to different standards in court than adults are. This is because society recognizes that children cannot comprehend things the way we do. Similarly, even adults can be acquitted from charges when found to be mentally challenged. If we can understand these gradations between human abilities and obligations while permitting them legal standing, why can we not do

²⁴ Gross and Vallely 262.

the same for animals?

Also, while the critique of animal rights has often tried to convey the animals' inability to achieve rights, there are now examples that prove otherwise. Germany and Switzerland have both enacted laws that include animals' rights.²⁵ Schmahmann and Polacheck's statement asserting the lack of historical reference for animal rights quoted in Section Three can now be scrutinized. When the *Case Against Animal Rights* was written, there was no history of the law ordaining animals with rights of their own. Seventeen years later, we can now regard the legal changes implemented in Germany and Switzerland as a historical landmark that sets the precedent for future ways in which we may regard animals. With this example, we can see that the differential and degradation arguments in Section Three may be wrong. Countries manage legal changes differently from one another, so we cannot assume that what happened in Germany and Switzerland would necessarily work here. We can however regard these legal changes as examples of how far the animal rights movement has come, and subsequently, where it may lead.

The incident that sparked the legal change in Germany was a court decision that allowed a Muslim to perform a religious sacrifice that entailed an act that many people believed to be unnecessary cruelty to an animal. This action sparked media attention about the already large religious debate occurring in Germany at the time. Erin Evans reports that “animal activists utilized the public outcry to increase awareness of the

25 Erin Evans, "Constitutional Inclusion of Animal Rights in Germany And Switzerland: How Did Animal Protection Become An Issue Of National Importance?" *Society & Animals* (2010) 231.

constitutional amendment and to swell favorable public opinion toward it.”²⁶ They used the problems already inherent to the society to attach to their cause. Instead of blaming Muslims for the incident, animal rights groups targeted the legal system. The groups asserted that the legal system, not Muslims, was to blame for allowing this cruelty to happen. The practice of this kind of act toward animals was not an average occurrence. By animal rights groups blaming the law, Muslims were able to avoid people blaming their religion for the crime. Animals now found sympathy with not only Muslims, but every person in Germany that was bothered by this incident. The tensions between Muslims and Christians in Germany created a route for animal rights advocates to gain national attention for animals' protection.²⁷ This created the chance for the possibility of animals attaining legal rights. The problem with this type of change is its connection to other ideologies. Evans explains that “[the media] claimed that allowing this cultural practice further isolated Muslim citizens, and so the campaign was framed as an attempt to be helpful to alienated Muslims, rather than condemning them.”²⁸ While this political move was immediately effective, the long term implications may be questioned. Moreover, “alignment with oppressive ideologies is both socially irresponsible and probably detrimental to the animal rights movement in the long run.”²⁹

Instead of finding political opportunities to gain attention for animal rights, the focus should be on finding a long term solution for animals' wellbeing. If society can place value on animals without its' own interests or political motives attached to it, the

26 Evans 236.

27 Evans 236.

28 Evans 237.

29 Evans 238.

field of animal rights can gain long term stability. We must change the way we perceive animals to initiate this societal change of course for animals. To accomplish this, one must realize how the perceptions are formed. *Animals and the Human Imagination* explains that nature is a construction; humans create their own ‘intentional worlds’. Further,

For the inhabitants of such a world, things do not exist “in themselves,” as indifferent objects, but only as they are given form or meaning. And when people act toward these objects [...] their actions respond to the ways they are already appropriated, categorized, or valorized in terms of a particular, preexistent design.³⁰

Animals are not culturally seen as beings with their own rights. They are seen according to the use of the society that is depicting them. With this current view of animals, we are unable to learn from them. By opening our minds to the things we can learn from animals, and extending our compassion to them, we can help them have more meaningful lives; subsequently, we help ourselves to fulfill meaning in our own lives.

Michelle Superle explains that kids' literature often depicts the struggle of human and non-human relations. Dogs are often portrayed in these books “as benevolent creatures that can straddle the distance between binary oppositions such as wilderness

³⁰ Gross and Valley 32.

and civility... dogs represent mythological heroes.”³¹ While still a fictional work, children's books may be an insight to how people feel at a basic level that connects with children. This concept of not rejecting one way of life for another as humans have done represents the struggle that humans face in their perspectives. They have lost their tie to nature and while they believe they are superior to other beings, they also lack some of the things those animals are portrayed as having. By animals often not imposing unfounded hierarchies on those around them, they are able to connect with anyone who wants to connect with them. This is in contrast to the children's books that depict adults as people “who distance themselves through a rigidly imposed hierarchy in which the children have little power.”³² Kids in these books feel that the animals understand them better. The children are in a middle ground between coming into the world with few perceptions, and the adults that have fully defined their world. Animals, in this case, seem to offer something that adults cannot. They are able to be with others that understand things differently while regarding them seemingly without judgment. This difference is another example of why there may be much to gain in humans sharing their lives with animals instead of distancing themselves entirely.

Another compelling reason to reconstruct our view of animals is the realization that our treatment of animals provides us with a direct insight into our society's ethics of handling humans as well. Industrial society has taken away our contact with other humans and animals. Ritzer's notion of “McDonaldization” explains this perfectly:

31 Gross and Vallely 175.

32 Gross and Vallely 190.

Factory farming makes possible the standardized production of meat portions and other inputs that enable the fast food industry to flourish. The industry, in turn, imposes tight controls over its human workers, subject to massive deskilling, and its consumers, whose choices are limited and whose feeding takes place in a rigidly industrialized manner.³³

Everyone is losing in the oppression of animals. Our societal values have led to faster gratification with the consequence of losing the very essence of being human. David Hume asserted that distancing from others “would produce a 'weaker and more imperfect' moral connection.”³⁴ In this case, we have begun to distance ourselves from all other beings. We have less understanding of the morality of our choices because we do not see them. We buy clothes, food, electronics, and many other things, without knowledge of how they were made. This explains why some companies with sweat-shop labor continue to exist. Animals are also being hurt from our distant connection to them. Since we generally do not interact with many animals on farms or in the entertainment industry, we do not know that there are intelligent beings that are harmed. Reconnecting with animals is one major step of progression in our moral evolution. If we try to understand animals, we can make rational decisions on how we treat them and leave our mechanistic actions behind us.

33 Gross and Vallely 141.

34 Gross and Vallely 135.

As it stands, science is still dependent upon the way society sees animals. A paradigm shift is needed to be able to see animals in a way that reflects their individual needs instead of those of humans. The current system has failed animals. Society's regard for animals we cherish for aesthetic or companionship purposes in contrast to animals we use for food and clothing, displays the biases of our treatment of animals. Animals, such as pigs, that are used in factory farming, have very high intelligence levels. Yet, we do not regard them with the same treatment as the animals we categorize for our companionship desires. The average way of thinking makes understanding animals only possible through the ways we can use them. Scientists are thus left with a biased perception of the animal. We have ever changing perspectives of animals because our needs are changing over time as well. Given this, we cannot attain the level of compassion and breadth of understanding that we could if we were to view animals in regard to their own needs.

Normal science, as explained in *The Structure of Scientific Revolutions*, is what most scientists work within. It is necessary within normal science to assume that science already understands what the world is like.³⁵ To change one of the fundamental concepts of our environment – how we view animals, requires something more than normal science. Normal science assumes that the paradigm scientists are in is correct. The paradigm depicts the puzzles that may be solved. This means that some questions cannot be approached within normal science because there are no tools available to attain the answer. Kuhn explains that paradigms may “even insulate the community from those

³⁵ Kuhn 5.

socially important problems that are not reducible to the puzzle form, because they cannot be stated in terms of the conceptual and instrumental tools the paradigm supplies.”³⁶ For some animals, the puzzle pieces for the answers to understand them may simply be unavailable in this scientific era. We have confined ourselves to the belief that an animal is an 'it' rather than a 'she' or 'he'. Our approach toward animals is mostly based on the comparison to the measurements of human intelligence. While this may be adequate enough for some animals, it discredits many animals that may have forms of intelligence we do not know how to measure.

Anomalies such as animal intelligence in science, can with persistence, open the possibility for a paradigm change. Concepts may change as long as people are aware of the anomalies. Over time, we can come to expect the anomaly that formerly we were not capable of seeing.³⁷ While many animals lack the evidence of having qualities similar to our own, there are instances that prove otherwise. Further, Steven Wise explains that a single animal's case that proves autonomy is sufficient for extending the notion to the species as a whole.³⁸ If we can find a single proven example of intelligence in a specific animal, we should give them rights in accordance. As with humans, we assume the possibility of human intelligence even in the people that show no visible signs of thought. We still give rights to humans in vegetative states. Since we do not know for sure how far their intelligence extends, we allow them the benefit of the doubt. Why should we not do the same for animals?

36 Kuhn 37.

37 Kuhn 64.

38 Wise 25.

Although it may seem like begging the question to assert the prospects of a new paradigm that would recognize the abilities of animals while currently placed in a paradigm that makes this illogical, Kuhn sees this as a legitimate approach to paradigm change. To him, arguments fashioned like this are not wrong. “The man who premises a paradigm when arguing in its defense can nonetheless provide a clear exhibit of what scientific practice will be like for those who adopt this view of nature.”³⁹ The grounds that I believe are sufficient for the paradigm change regarding animals' abilities are the instances that demonstrate certain animals' cognition levels as being far greater than we assumed possible for the species. I believe that these are some of the few cases we can currently observe. With a higher regard for the animals we are able to find signs of intelligence in, we can begin to fully understand even more animals because of the break in the barrier between ourselves and all other animals.

To initiate the process of animals acquiring legal standing, we have to find a level of autonomy that should merit legal personhood to a being regardless of its species. This autonomy is the difference between persons and things. Further, we should be hesitant to grant legal personhood only with the appearance of full autonomy. If we did, “many human beings don't make the cut. Normal adults lack it. Infants, children, the severely mentally retarded, autistic, senile, and those in a vegetative state never come close.”⁴⁰ If we accept legal personhood for those people, it stands to reason that we should grant animals with higher autonomy levels the same privileges. Primates may be the easiest to

39 Kuhn 94.

40 Wise 30-31.

begin with, as they are known to share a majority of the same DNA as humans. Also, they look and act more like humans than other animals. Similarly, we can observe qualities in elephants, dolphins, and other large mammals that are generally accepted to have higher intelligence levels than other animals.

The reason many other animals are disregarded is simply because with the acknowledgment of intelligence in some animals, may come with an uncomfortable realization about our lifestyle choices. If we come to understand chickens as having qualities similar to our own, our dinner choices may confuse us. Likewise, if we believe that pigs deserve legal protections based on their intelligence and cognition levels, not only would it be likely to change our meal choices, but also scientific testing, and medical training; all of these areas of our lives depend on people to conceive of animals as commodities. Changing this perspective will take time. If we start with animals that are already regarded with higher autonomy, we can begin to reanalyze these other animals with more favor.

The differential argument in Section Three is right in stating that the law is facilitated around humans. Wise explains:

The liberty rights to bodily integrity and bodily liberty are imbedded in the law precisely because they are basic to human wellbeing, and the autonomy values we assign to nonhumans will be based upon human abilities and human values... For the present, I accept that the law measures nonhuman animals with a human

yardstick.⁴¹

Hopefully in the future, the law will have evolved a broader definition of intelligence that is not restricted to human abilities. For today, we must work with this system, and use the ‘human yardstick’ to the best of our abilities to gain animals the protection they deserve. To do this, we can look toward the larger mammals mentioned earlier and compare their abilities to our own.

In *Drawing the Line: Science and the Case for Animal Rights*, Steven Wise explains his interactions with a gorilla named Koko. Koko is said to have learned the ability to use “about 500 signs and gestures in American Sign Language.” Koko has learned a human language, a feat thought to be only reserved to humans. Wise recognizes that “experts are divided over whether apes can use language; critics maintain apes who use gestures or symbols are merely imitating researchers to get rewards or are responding to humans’ unconscious cues.”⁴² While this may be true, this is exactly how children learn language as well. They mimic those around them to achieve their desires. Even the intelligence tests used on Koko put her at the mental age of a near five year old child. Thus, while Koko may have many abilities beyond the scope of human intelligence measures, she also surpasses the ‘human yardstick’ evaluations. Humans with much lower IQs than Koko are given legal rights every day. She should not be rejected this privilege because she is of a different species any more than we should treat people of a

41 Wise 45.

42 Wise 207.

separate race differently than our own.

Elephants are an animal often left out of studies on animal cognition and rights. However, they are one of the very few types of animals that can pass Mirror Self-Recognition tests (MSR). Humans were once thought to be the only beings capable of this. However we have come to find that apes, and recently dolphins and elephants, are also capable of this test. “MSR is thought to correlate with higher forms of empathy and altruistic behavior.” Further, elephants exhibit the signs of empathy that are often limited to humans. Along with dolphins, elephants have been found to use “targeted helping”, which means they physically help humans and animals with their specific needs.⁴³ Animals such as primates and elephants exhibit clear signs of intelligence far greater than the intelligence of some humans we give legal rights to. It seems evident then, that the aforementioned species merit at least limited legal personhood. They deserve the right to their livelihood just the same as humans do.

In contrast examples above, another example of intelligence in animals is the empathetic behavior of rats. Studies have found that rats will release another rat from confinement without the benefit of a reward. Science magazine reports that “the rats released their cage-mates even when further social contact was precluded, or when their preferred food items, such as chocolate, were shared (rather than hoarded) with those they had liberated.”⁴⁴ While there may not be enough scientific studies, or societal desire for a change in the legal rights of rats, it is an example of the larger scale of animal

43 Joshua M. Plotnik, Frans B. M. de Waal and Diana Reiss, "Self-Recognition in an Asian Elephant", *Proceedings of the National Academy of Sciences of the United States of America*, 103 (2006): 1.

44 Jaak Panksepp, "Empathy And The Laws Of Affect" *Science* 334.6061 (2011): 1358-1359.

intelligence. Society must start by changing the laws for the animals they already respect, such as primates. With time, we can also reevaluate our actions toward other animals that we previously did not consider worthy of rights. We can regard each being as worthy of the thorough consideration of our actions toward them.

Section Five: Conclusion

With the changes suggested in my argument, animals may begin to have the legal standing they require to matter in society. Without the emphasis on human desires that have previously controlled animals' lives, we as a society can learn to regard our environment with more respect. As in the abolishment of slavery, society has the ability to evolve past the horrific mistreatment of others. With legal standing being given to animals with intelligence levels at or above those of humans we give legal standing to, we can create a more just legal system. With time, legal problems may arise with animals' rights. There will have to be a change in thought to accommodate these problems. Society may have to reevaluate which animals can be used for entertainment or research purposes. Without the ability to gain consent from most animals, this may take time to resolve. I do not claim to solve all the future problems for animals' rights. However, I believe that this essay summarizes the steps we must take to begin the process. Further, it explains why there must be such a change in society.

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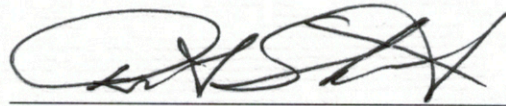
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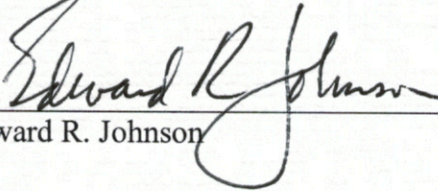
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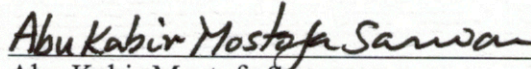
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