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Thumbadoo, Beulah Dhevioum

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ETHICAL REASONS TO LEGISLATE FOR STRONGER PROTECTION OF ANIMALS FROM PAIN, SUFFERING AND OPPRESSION

Beulah Dhevioum Thumbadoo

A thesis submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Arts, Applied Ethics for Professionals

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Abstract

In spite of dedicated institutions and campaigns for their protection, animals suffer in vast numbers around the world. This study explores the potential for animals to be candidates for stronger legal protection and the barriers to actual protection becoming widespread. It engages with arguments for excluding animals from ethical consideration claimed for human beings since support for 'equal consideration' of animals is found in the history of philosophy. Drawing on rights discourse, virtue ethics, and the critique of some humanistic positions, including "speciesism", the study concludes that the case for ethical concern is strong enough to support far greater protection against the oppression of animals. It argues that human denial and tyranny is at the root of animal suffering; changing mindsets is therefore essential for a permanent improvement in the consideration of animals. However, such change must be backed by legislation *and* powerful regulatory organisations, as has been the case for subsets of humankind.

Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts, Applied Ethics for Professionals, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.



Beulah Dhevioum Thumbadoo

21st day of March 2011

Human Rights Day in South Africa

For Fudge

23/12/00 - 23/03/10

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The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for whites or women for men.

Alice Walker

(Spiegel 1997: 13)

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1. Context

Despite long-standing acknowledgment that animals other than human beings are the kinds of creatures that should be afforded consideration, they are still persistently treated in many countries around the world with immense cruelty, both legally and illegally, and often beyond the purview of the public. Arguments for appropriate animal protection need therefore to start from their material conditions to demonstrate why human practice in relation to them must change. In this section I provide a few facts on the excessive use and ill-treatment of animals in order to desist from referring to them throughout this paper.

> Approximately 9.5 billion animals die annually in food production in the United States. This compares with some 218 million killed by hunters and trappers and in animal shelters, biomedical research, product testing, dissection, and fur farms *combined*. Approximately 23 million chickens and some 268,000 pigs are slaughtered every 24 hours in the US. That's 266 chickens per second, 24 hours a day, 365 days a year (Wolfson and Sullivan 2004: 206).

It is not simply the volume of animals used as our resources that is the problem, but it is also true that in the US "...farmed animals have no legal protection at all. As far as the law is concerned, they simply do not exist" (Wolfson and Sullivan 2004: 206). This allows for cost-cutting labour practices that cause large-scale suffering to animals, against which they are unprotected by the law.

Lori Gruen writes that:

> Most chickens, pigs and calves raised for food never see the light of day. These

> animals are often so intensively confined that they are rarely able to turn around or spread a wing. An estimated 200 million animals are used routinely in laboratory experiments around the world annually. A large portion of the research causes the animals pain and discomfort while providing absolutely no benefit to human beings (Gruen 1993: 343).

The tolerance society extends to factory farming and animal testing laboratories the world over leads one to conclude that people believe that animals should, or perhaps need to, suffer to serve human interests. Yet some believe that the moral standing of animals should afford them protection from oppression, exploitation, and pain. In practice, fulfilling human non-essential desires for hunting-pleasure, fur, leather goods, and superfluous scientific data outweighs the primary interests of animals for life and freedom from suffering. There is ample evidence that, running parallel to efforts to entrench stronger protections for animals, intolerable torture and butchering continue in closed laboratories and open seas around the world. Yet, our instinct for avoiding pain and staying alive is a fundamental one humankind shares with non-human animals (Singer 2009:11). Is it therefore morally acceptable for us to stifle this instinct in healthy animals because we can, or because we brought them into being, or because it serves us in so many ways that to stop doing so would seriously change the content of our lives? Is this not iniquity turned to oppression on far too unacceptable a scale *even* for the "brash, brilliant, arrogant, violent *homo sapiens*"? (Best 2009: 20). Jeff McMahan elaborates on this propensity as follows:

> Just as the darker side of national solidarity is a tendency to denigrate or even dehumanize the members of certain other national groups, so the other side of species partiality is a tendency to treat the interests of animals as morally insignificant. If we compare the number of radically cognitively impaired human

> beings who benefit from our partiality with the number of animals who suffer from our tendency to regard them primarily as means to our ends, it is hard to believe that the effects of species partiality are desirable overall from an impartial point of view (McMahan 2005: 361).

"Species partiality" and "speciesism" might be new terms to some, but the latter was coined by Richard Ryder over three decades ago (Wise 2004: 26) and is located within the spectrum of prejudices like racism or sexism. Some people have succeeded in overcoming certain prejudices while others keep them in check only because the "prejudiced", whether slaves, women, or homosexuals, fought back and gained institutional protections in organised ways that animals are incapable of. As a result, at least some cultures have legislated improved conditions for "the other" when particular freedoms are fought for, bringing emancipation to previously oppressed groups.

An earlier draft of my proposal to work on this report was entitled "Caught between a rock (the environment) and a hard place (humankind)" because I believe this to be the plight of animals in the world today. While long overdue efforts to reverse climate change, halt genocide, increase humanitarian aid, and bring education for all are laudable, as moral agents we must also bring an end to the worse cruelties we currently *choose* to actively perpetrate – not to gain anything in return, but because it would be the right thing to do. These worse cruelties are the physical, organised and ongoing harms perpetrated by human trafficking and enslavement, intensive farming practices, and laboratory experimentation on animals. Woman and child abuse is now considered a crime in many countries and the broader public is increasingly aware of international crime-fighting efforts to eliminate human trafficking. Similarly, more people are recognising that human life is organised around crimes against animals which are as deserving of punishment and penalty as are

crimes against humankind.

This notwithstanding, animal ethics literature in general can be disheartening about the prospects of rising to the challenge of a revolution for animal emancipation, partly because philosophical writings complicate rather than simplify what can be achieved, to the detriment of the animal in general. The attainment of animal rights in a world that is still unevenly considerate of human rights may smack of wishful thinking, but it might not be as unachievable as it seems. David Brion Davis, writing in *The Enduring Legacy of the South's Civil War Victory*, as quoted by Steven Wise (2004: 41), offers hope that is not without precedent:

> The obstacles to basic legal rights for any nonhuman animal... are major and real. Considering that slavery had been globally accepted for millennia, it is encouraging that people were able to make such a major shift in their moral view, especially when a cause like abolition conflicted with strong economic interests. We can still learn from history the invaluable lesson that an enormously powerful and profitable evil can be overcome.

How might this 'invaluable lesson' serve animal emancipation? Well, firstly, if a moral case can be made to support stronger legal protection for animals, how each of us, or groups of us, *view or value* animals will affect particular considerations but shouldn't affect the overall achievement of their emancipation any more than how different human views on slavery affected its abolition.

An evolving humanity should influence moral change alongside the pragmatic and since our treatment of animals arguably lies amongst the worst things we do from a moral point of

view, it makes little moral sense to perpetuate wrongs that we actively perpetrate, while struggling to implement good elsewhere as in schemes to bring education for all or save humankind from the effects of climate change. I am not alone in this intuition that mankind needs to work on all of its moral failings simultaneously in order for any of its good works to take root and flourish. According to Steven Best, "The systemic institutional changes needed to avert social and ecological catastrophe must be accompanied by a parallel conceptual revolution that involves the construction of new values and species identities" (Best 2009: 22). I read this as an obligation to realise animal emancipation.

2. Introduction

The question being asked by this research report must of necessity also answer whether humankind has *a moral obligation to accede to potential legislative measures such as the Universal Declaration of Animal Rights which sets out the minimum standards via which animals might be liberated from pain, suffering and the limiting of lifespan and purpose.* While pain and suffering are primary concerns, their deliberate infliction is usually too closely tied-up with limiting lifespan for these oppressive practices to be ignored. All animals including the human animal have no choice but to embrace some form of pain, and ultimately death, since that is how life here works. But the gratuitous pain and suffering of particular animals that are *also* denied the freedom to experience a natural lifecycle is an undesirable and unacceptable fate for any sensitive, sentient creature.

Historical lines of thinking that have shaped our treatment of animals hail from the Old Testament God of the Judeo-Christian tradition. In the story of creation in the Book of Genesis, God is said to have given man exclusive rights over nature, including animals, a concept that has come to be known as dominion theory (Callicott 1993: 340).

"Cartesianism" is the reasoning expounded by philosopher René Descartes (1596-1650) that "because animals possess no rational […] souls, they cannot think, they cannot possess self-consciousness and language, and, therefore, cannot experience pain" (Linzey 2009: 45). Together with dominion theory, Cartesianism has strongly influenced why animals occupy a space which those who know Descartes' description of animals to be wrong for reasons described below, find unacceptable. Since Rogers and Kaplan (2004: 193) comment that Cartesianism is "one of the most enduring standpoints in science and popular culture", I offer the following.

> Our review of the literature on frontal cortex development enables us to conclude that all mammals, including rats, have a sufficiently developed prefrontal cortex to suffer from pain. In birds and reptiles which have some analogous frontal lobe structures and functions (Nottenbohm, 1977; Jerison, 1997), suffering from pain may be more likely to be overridden with fear, but they appear to suffer from pain, especially chronic pain (Grandin & Deesing 2003:1).

Pain and suffering are not desirable, and McMahan (1993: 529) describes the latter thus: "Suffering is bad primarily because of its intrinsic nature: it is bad in itself. It may also be bad because it precludes activities or experiences of positive value." Humankind therefore deliberately perpetrates "badness" against animals by limiting their natural tendencies and causing their suffering. In attempting to militate against animal suffering, we are not starting from scratch since at least some protective legislation has been in existence since the end of the 18th century (Posner 2004: 53).

But since animal protection legislation to date hasn't succeeded in its quest, this paper will offer reasons why animals are appropriate recipients of the same basic legal protections we consider necessary for humankind. Although what happens in practice may have very little to do with getting an argument right in theory, ethical justification for appropriate universal consideration of animals is surely worth pursuing. Since all animals including human beings experience pain and suffering in similar ways, we need to have valid moral reasons for treating animal suffering differently from human suffering.

The literature on animal liberation is rich with examples of immoral and unreasonable differentiation in the treatment of animals and human beings (see Singer 2009: 17) and I

would now like to flag the arguments that I will NOT pursue and why.

1. Arguments for animal consideration often deploy the individual characteristics of particular species as a starting point to demonstrate how these are similar to those of human beings, and hence why particular animals should be afforded moral status. These studies are eminently useful for educating the reader about how random consideration of animals is. However, an overarching argument to revitalise protection based on morality should stretch to include all animals and should be penned in more general strokes. Even if a fish feels less pain than a sheep, it has a fish's interest in living a full life and killing it for food (or for no reason at all as often happens with nets that scour for everything on the seabed and then discard most), deprives it of this life. I have therefore avoided talking about specific animals and which practices in relation to them I seek to reduce the severity of or ban. Peter Singer has been referred to as neo-Cartesian because *The Great Ape Project* focuses on intelligence (Rogers and Kaplan 2004: 195). While Singer does not advocate that primates deserve more consideration than other animals because they possess greater intelligence, I can see how this conclusion can be arrived at if we accord animals differing treatment based on characteristics that human beings identify with and value, over a general position on the sacredness of all life and life free of interference. It also leads to a fragmentary approach to animal consideration that is lamentable.

2. Tom Regan (2003: 70) believes that those of us who are concerned about animal rights and animal liberation would concur on the following:
    - The philosophy of animal rights calls for an end to the use of animals in cosmetic-testing in particular and product-testing in general.

- The philosophy of animal rights calls for an end to the coercive use of any animal in military research, or in such research topics as the deleterious effects of smoking, maternal deprivation and drug addiction.
- The philosophy of animal rights calls for an end to the traditions of 'sport' hunting and trapping of wildlife.
- The philosophy of animal rights calls for an end to the capture and training of wild animals for purposes of entertainment.

I concur. However, Regan also believes that an individual's or organisation's position on 'meat-eating,' so-called, should be regarded as the decisive litmus test of their moral credibility. To the extent that individuals and organisations still support or tolerate meat consumption, they are part of the moral problem, not part of the moral solution.

Regan is correct as far as philosophical argument is concerned in its quest for absolute answers about right and wrong. But I don't believe this to be the applied ethics agenda. Applied ethics should try to bring about the best moral solution given the circumstances in which the dilemma exists. I believe that eating meat is wrong in the sense that it causes pain and loss of life. Nevertheless, I think meat consumption is fundamental to a number of animals, and *so* enjoyed and loved by the human animal, that the argument to convert man to vegetarianism will always draw a limited audience because its basis is moral and mankind's propensity towards behaviour change based on moral argument is similarly limited. I believe man to be very much like any other omnivore in his desire for meat, but much more cruel in its procurement and greedy in his levels of consumption. To recognise this and want to work within the current moral limitations of human beings to reduce the suffering of

animals does not to my mind test one's moral credibility. I will take this point up further in Section 3.

3. I have refrained from anything but a fleeting reference to the argument from marginal cases (AMC) which focuses on the lack of capacity in some human beings which makes them less competent than some animals. The AMC argues that there is no sound moral basis to treat normal, healthy, intelligent animals who exhibit more physical and intellectual ability as less valuable than babies or children who are severely brain damaged. The AMC has been more than adequately expanded on in relevant literature (see Anderson 2004: 279; Singer 2009: 18) and, while it is essential to elucidating the illogic of speciesism, it is not the primary argument I wish to build my case upon. Capacities or the lack of them is one strand in the case needed to counter the widely held view that mankind does *not* owe other sentient beings the *same* consideration we owe human beings. People who hold this view are often both 'speciesist' and not inclined to logical analysis, so comparing brain damaged human children to healthy functioning animals to illustrate our misguided treatment of the latter, is likely to bring about an abreaction. Despite not relying on the AMC to the extent a paper like this might be inclined to, I nevertheless provide support for the very rights based case for animal emancipation that it is commonly used to reinforce.

4. Similarly, I have generally and deliberately resisted discussing whether animals should acquire consideration on the basis of being declared "persons" or whether those who currently bear property status could remain property and still acquire particular basic rights. This is another one of the main debates presented in the literature (see Francione 2004: 125). But its resolution did not appear at first to be

something that would take place through extending a description commonly associated only with people to animals. Delving more deeply into the arguments has taught me that acquiring personhood *is* likely to be *essential* to winning increasing legal stature for animals because we depend on the law to regulate human behaviour. Daniel Defoe wrote:

> Nature has left this tincture in the blood,
>
> That all men would be tyrants if they could.

Steven Wise wrote:

> Humans are tyrants over things because they can be. Personhood is the legal bulwark that protects everybody, every personality, against human tyranny. Without it, one is helpless. Legally, persons count; things don't. Until, and unless, a non-human animal attains legal personhood, she will not count (Wise 2004: 251).

The attainment of legal personhood for animals must therefore intensify alongside other remedies that show promise of accelerating animal emancipation.

3. Animal Suffering

English jurist, philosopher, and legal and social reformer Jeremy Bentham (1748-1832) wrote the following, which has appeared in one form or another in a number of papers on the position of animals. I include it here because it is central to my argument.

> The day *may* come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognized that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose they were otherwise, what would it avail? The question is not, Can they *reason*? nor Can they *talk*? but, Can they *suffer*? (Quoted by Singer 1971)

It is the last question that seems to me and many philosophers to be the most relevant. The answer is yes, and there are no longer any credible views to the contrary. More than this, causing animal suffering has been considered an offence serious enough to have been legislated against since 300 BCE (Ryder 1989: 1). If animals were considered worthy recipients of legal protection (against more than suffering) thousands of years ago, why is it necessary to pose such a redundant question in 2011? Why is it that our treatment of

animals remains contradictory, in that we recognise that they deserve protection and have instituted laws to this effect, yet continue to abuse them in a number of ways? I think we do so for more than one reason as outlined below, since matters that present themselves as serious issues can be said to be "over-determined".[1]

1. Substantial monetary and other benefits accrue to humankind as a result of treating animals as resources.
2. Animals cannot defend themselves or mobilise themselves into unified action in order to challenge how we treat them.
3. The kinds of animal suffering which would incur public outcry do not occur openly within the public domain. It is not hidden away either since factory farms, abattoirs and laboratories are sanctioned institutions, but hardly any evidence of the conditions of animals in these places is regularly made public.
4. Humankind is confused (because of a variety of interpretations of dominion theory, amongst other reasons) about what animals owe us and in denial about what we (as moral custodians, for example) owe them.

As *consumer societies* incorporating a dominant focus on money and profit, we abuse animals for all four reasons outlined above with emphasis on (3) – being ill-informed about their conditions and (4) – deep-seated confusion around the morality or immorality of what we do to them. The latter is partially because of the shift from pre-industrial co-dependency on animals, which acknowledged relationship, to industrial era mechanised exploitation which denies it. Historically, our survival as a species has depended on animals: hunting them, eating meat, wearing fur and leather to survive sub-zero temperatures, and putting every part of them to use. More recently we have benefited from medical research in which

[1] A concept argued by M Scott Peck throughout *In Search of Stones: A pilgrimage of faith, reason and discovery*, Hyperion Press, 1996.

animals have been experimented on to test medicines and procedures that have saved human lives precious to us. So, while we acknowledge that animals feel pain and suffer through our uses of them, we have *come to accept* that the suffering, of at least some animals, is *necessary,* or their lot. Believing this has allowed us to grow different levels of concern and systems of treatment for different animals: broadly speaking, one which covers the pets and working animals some societies have domesticated over time who are protected by law against some human mistreatment of them; others in which the animals we wish to consume or use as means to other ends have little or no protection against us; and others still which allow us to campaign vigorously for protection of those threatened with extinction, and those who exhibit characteristics that we identify with, such as intelligence and the ability to socialise and communicate, as do dolphins, elephants, primates and certain other animals.

It may be important here to distinguish the pain and suffering of *death* considered "necessary" for human diet and the unnecessary and unacceptable pain and suffering which are the conditions under which too many animals *live out their whole lives and then die*.

A paramount impediment to animal liberation is human investment in animals as food. Many people who eat animals would join the anti- vivisection/animal experimentation, poaching, and possibly even hunting lobbies. They would do so because they are against cruelty to animals, and are in denial or do not know that the animals they eat endure comparably unacceptable conditions of pain and agony to those in laboratories. In touching on this most fraught subject I would like to sound a cautionary issued by David Favre (2004: 236) in his paper entitled, *A new property status for animals*: "It is a burden of the animal rights movement that so many of its leaders will support only the purest philosophical position, regardless of political feasibility."

I think it would be difficult to convince a great deal of humanity that it is always wrong to kill for food. In some instances, it will be clearly morally wrong to kill if you are surrounded by a food already and in others it might be justified if you are hungry and have nothing else to eat. *Homo sapiens* are consumers of meat; and while we might be complex in different ways to animals we are also simply another omnivorous animal. We made the transition from hunter gatherer to intensive farmer in a relatively short period of time and, to cut a long story short, are now – in some parts of the world at least, referenced below – reconsidering whether the rearing of animals for consumption need necessarily translate into lifetimes of abject pain, suffering and misery which has largely been the lot of farm animals this past century. Countries in the European Union, for example, are revising the conditions of, and the laws that govern, factory farm animals (Singer 2009: x). Despite these flickers of light in the overwhelming darkness, the plight of too many animals we feed on remains unacceptable, and the reader is encouraged to read the updated version of the Peter Singer classic *Animal Liberation* (2009) to get a fuller picture.

While minimalist and piecemeal change for some animals in some countries is under way, some people will become vegetarian or vegan, not always because they're morally against meat eating, but because they are convinced by a Singer (2009: 162) argument that to decrease the demand for meat and dairy products while the conditions of animals remain untenable, is a significant weapon in the animal liberation arsenal. I think he's right. But meat consumption is unlikely to come to an end in the foreseeable future, and the present material conditions of too many animals are too unbearable to amalgamate their struggle for liberation from daily pain, suffering, and drastically curtailed lifespan and purpose, with an ultimatum to humankind to become vegetarian. While the consumption of meat is no longer necessary to the survival of many people on the planet who have access to alternative food sources, the call to veganism is based in a hope that humankind would

choose to desist from a pleasure that it both loves and is convinced is necessary for its well-being, so that animals should live. To kill to eat is a different sort of choice from killing in vivisection. It is primal, and to convince the vast majority of humankind to stop eating meat would be, to my mind, the same or as difficult as trying to get any other omnivorous animal to choose to be herbivore. I am, however, also convinced that the number of meat eaters who would prefer to eat animals that have not suffered all their lives is significant enough to have a dramatic and positive effect on reducing animal suffering. In other words, that animals and animal liberation might be greatly boosted by people who support its basic tenets as enunciated by Regan but who might not yet be or might never become vegetarian.

Appropriate consideration of animals can only emanate from holding animals in proper esteem: valuing their physiology, teleology and psychology for what it actually is. References to 'teleology' in this paper are meant to raise the fact that animals too have goals and purposes which are frustrated or ended by human practices that intervene in and dominate their lives. For example, some people wish to ban animals being objectified in circuses as one kind of animal abuse. This study seeks to argue for active support of universal legislation that will ensure that no animal is neglected, starved, hurt or subjected to any form of deprivation or suffering including as a result of having their natural inclinations frustrated.

Following this trajectory of thinking, pain-inflicting animal experimentation in all its forms, whether to perpetuate the evils of nuclear and germ warfare or the good of curing cancer, must first be outlawed. Thereafter, applications may be made to an international animal protection ombudsman by interested parties who wish to commit crimes against animals in the interests of humans or other animals. I hope this broad explanation will go some way towards explaining why this study advocates support for the Universal Declaration of Animal

Rights rather than advancing animal protection laws for specific animals or species of animal.

Therefore my main arguments going forward are:

(1)

1. Both animals and humans feel pain and suffer, also when lifespan and purpose is deliberately curbed.
2. All humans are declared legally protected against the deliberate infliction of such pain and suffering by the Universal Declaration of Human Rights.
3. None of the differences between animals and humans matters from a *moral* point of view where such pain and suffering is concerned.
4. Therefore, animals are appropriate candidates to be declared universally and legally protected from such pain and suffering.

(2)

1. The law has proved essential to advancing struggles for human protections and freedoms, employing 'rights' as a basis.
2. Animals have interests in similar protections and freedoms.
3. Therefore, legislation for animals as outlined in, but not limited to, the Universal Declaration of Animal Rights is essential to advance animal protections and freedoms.

(3)

1. Human tyranny accounts for much deliberately inflicted suffering, including animal suffering.
2. Educational, legal and regulatory institutions that work well together to reduce suffering, also serve to limit human tyranny.

3. Therefore educational, legal and regulatory institutions are necessary to limit human tyranny over animals.

If current treatment of animals does not rest in the realm of tyranny, then the quest to show that none of the differences between animals and humans matters from a *moral* point of view where pain and suffering are concerned, must fail. Conversely, animal suffering must clearly be shown to be of less moral significance than human suffering.

Inflicting the sort of pain and suffering on animals that it would be legally unacceptable to inflict on human beings, must be grounded in essential differences between animals and non-human animals that justify such differing treatment. The next section will discuss the most commonly held reasons for justifying differing treatment and show them to be false, misleading or crucially lacking in moral substance.

4. Four Fingers on the Hand of Tyranny that Keep Animals in their Place

In this section, I hope to demonstrate with substantial help from Andrew Linzey (2009) that a significant proportion of mankind has by and large taken the absence of particular qualities in animals together with certain religious claims as justification to view animals as inferior to human beings. Holding this position does not always bring about morally unacceptable situations. We have reason to believe shepherds and herders in rural villages and some farmers around the world care for the animals in their keep and that the relationship between them does not routinely result in moral conflicts until such time as an animal is killed to be eaten, a different moral matter from a lifetime spent in misery.

The moral problem arises when traditional ways of thinking about animals are used to serve industrial intensive practices so that even minimal concern for the pain and suffering of animals gives way to the pressures of maximising profit. The consumer of meat in modern society does not carry any direct moral responsibility for the decisions taken on factory farms. As I wrote much earlier on in this programme:

> The post-industrial society we now live in finds people far too separated and unaware of what goes into, and how certain products arrive, on the shop shelves from which we harvest. If we could watch the processes from beginning to end, including all the animal experimentation involved, I don't believe there would be as much of a market for the resultant products. In a similar vein, I think that if we were to go on an AEP class excursion to one of the laboratories that conduct such experiments, [...] rather than write an essay based on reading articles about it, the impact might elicit different arguments to ones we might currently be drawing (Thumbadoo 2008a: 3).

If we were to gaze upon animals afresh what might we make of the four traditional views expanded on below, that keep them oppressed?

4.1 Animals are not moral agents

According to Linzey (2009: 22), Samuel [von] Pufendorf (1632-1694) is an exponent of the view that injuring animals for human purposes is acceptable because animals lack moral agency. In his 1688 publication, *Law of Nature and Nations,* Pufendorf notes that "Roman jurisconsults defined the law of nature as 'what nature taught all animals', and not just human beings". He rejected this idea of a law of nature common to animals and human beings because he believed our actions could be traced back to different sources: simple inclination, in the case of animals, and a sense of obligation in the case of man. Linzey asks whether possessing a sense of obligation is a morally relevant difference between humans and animals, and hence whether not possessing it should stand in the way of extending moral consideration to animals. For the purposes of this discussion, I take Pufendorf's "sense of obligation" to mean an obligation to do the right thing; to exercise moral sense.

Moral agency is understood to be the ability to distinguish wrong from right and to act appropriately on this recognition. It is commonly held that only human beings possess moral agency. I find this a very perplexing explanation for why animals, or animal suffering, matter/s less than do humans, or human suffering. On the one hand, it does not distinguish a capacity to drive a car with an intention to go from point A to point B, but via a circuitous route, the result of which should be that only humans should be allowed the opportunity to drive. The possession of a moral conscience, that one may *or may not* exercise, does not, to my mind, provide a reason for why the suffering of humans should be taken more seriously than that of animals. We cannot report that *the result of having this ability called moral*

agency is that human beings are the only beings capable of doing right things; or even that *being able to distinguish wrong from right has had the fortuitous result of the human species committing many more right acts than other animals*. Some humans do do what is right, some humans do not but, what is more, most humans dispute which actions are morally right, and which wrong. One might argue that if humans were exemplary moral agents, this would not be of relevance to the question of why animal suffering should matter less. I agree. But it would, in my view, form a sound basis for arguing that humankind might be superior on the consequentialist understanding of humans bringing about more good than animals. It would also be reasonable to extrapolate that if humankind did excel on the quality of moral agency, animals would then not be enduring the current "daily holocaust"[2] (Coetzee 2003: throughout). Also, certain justifiable benefits accrue to agents who are genuinely superior. Superior activists and writers, for example, sometimes gain more accolades, or sell more books. Humankind presently accrues goods – such as respect for the possession of moral agency – to which it cannot justify entitlement since the possession of moral agency, on its own, does not make us superior to animals.

Animals, on the other hand, who are said not to possess moral agency, go about their business, by and large, taking responsibility for protecting and feeding their young; avoiding unnecessary conflict unless it is mating season or unless their territory is under threat; helping each other fend off danger; and sharing food. With ever increasing human populations and rampant child abuse, it is reasonable to identify more strongly with the hippopotamus's instinct on reproduction, which ensures that its environment can provide for, at most, a single offspring before procreating. Or the African wild dog's babysitting regimen in which one dog, not necessarily a mother, does the care giving, while the rest are on a hunt. Some animals do not subscribe to all of these instincts: lion packs have been

[2] A position argued by J.M. Coetzee in various writings, including *Elizabeth Costello* (Penguin Books, 2003)

observed on television wildlife shows killing even when there is no immediate need, it is thought to limit the competition for food. (No doubt the reason we named him king of the jungle: a little anthropocentric partiality.) Why they do or do not subscribe to all of these instincts is beyond the scope of this paper, but it is probably the subject of studies like those conducted to discover why man sometimes chooses to do the wrong thing. So why should a quality that, on dissection, shows animals to generally perform better with "simple inclination" than mankind does with "a sense of obligation" or a moral sense, be a legitimate reason for it to be acceptable for animals to suffer for humans? Or for animal suffering to matter less than human? Pufendorf's explanation goes thus: "It is a safe conclusion from the fact that the Creator established no common right between man and brutes, that no injury is done brutes if they are hurt by man, since God himself made such a state to exist between man and brutes" (quoted by Linzey 2009: 23). Whether there is a Creator or not, animal and human behavioural studies of the past couple of centuries testify against Pufendorf's belief in "no common right" between human and animals. Indeed, Best reminds us that:

> The rich science of cognitive ethology supports Darwin's theory that humans differ from animals in degree, not kind, such that human forms of thinking, self-awareness, intentionality, communication, language, and social interaction are products of evolution that stem from our primate ancestors and are shared by numerous other species to varying degree (Best 2009: 16).

And Alasdair MacIntyre similarly reports that:

> ...[A]lthough our differences from all other species are certainly of crucial importance, it is also important that both initially in our earliest childhood activities

> and to some significant extent thereafter we comport ourselves towards the world in much the same way as other intelligent animals. In transcending some of their limitations, we never separate ourselves entirely from what we share with them (MacIntyre 2008: 8).

This would seem to argue for there being much more in common between humans and animals than Pufendorf knew, or was prepared to admit. Nevertheless, this "sense of obligation" does throw up the possibility that humans who act kindly or well on it might reach a more reasoned view on the status of animals. One such view put forward by Linzey is this: "While animals are not moral agents, they are, nevertheless, 'moral patients', in that while they cannot choose morally, they can be harmed by the deliberate choices of moral agents" (Linzey 2009: 23).

One might disagree with Linzey on considering findings in a Gallup study which testify to a chimpanzee securing bananas for the trainer it liked, but not for the one it didn't like[3] (Hurley and Nudds: 2006). Wiliness or favouritism is perhaps not the same as exercising moral sense but, if it were, then some animals clearly possess it too because not rewarding the trainer one does not like cannot be dismissed as "simple inclination". However one chooses to define the possession of moral sense, its absence in sentient subjects does not make deliberately keeping them in discomfort and pain for prolonged periods of time morally acceptable, whether they are animals or children.

[3] Chimpanzees who were shown videos of an actor facing a problem (leaving a room) and presented with cards depicting items that were relevant to the problem (bent key, broken key and regular key) reliably chose the right cards in multiple trials and in different scenarios. A chimpanzee chose the card that would secure bananas for the trainer it liked and the wrong card for the trainer it did not like, showing intention towards another. These studies provide evidence of rationality in animals; rationality which covers a sense of self, meta-cognition, memory of experience, coming to conclusions, making decisions based on these conclusions, therefore reflection; the possession of goals in social contexts as well as an understanding of agency and intention in others. The very same bases are covered to support human rationality (Hurley and Nudds: 2006).

4.2 Animals are lower in the natural order

In *Why Animal Suffering Matters*, Linzey (2009) discusses why he believes Aristotle confuses *natural* hierarchy with *moral* hierarchy. Linzey quotes Aristotle from his work *The Politics of Aristotle* thus:

> [S]o it is naturally with the male and the female; the one is superior, the other inferior; the one governs, the other is governed; and the same rule must necessarily hold good with respect to all mankind…It is evident then that we may conclude of those things that are, that plants are created for the sake of animals, and animals for the sake of men…As nature therefore makes nothing either imperfect or in vain, it necessarily follows that she has made all things for man (Linzey 2009: 12).

Whether or not one accepts Aristotle's description of the natural hierarchy (some of which has since been turned on its head) or some sort of natural ordering via which human beings come out on top, does this necessarily imply that we can treat animals however we choose? Aristotle was not a power-hungry human supremacist; he was a philosopher trying to understand how things are and why they should be this way. He was not intent on relegating women, animals, and plants to a lower position, but was attributing them a place in virtue of what he observed in practice along with the knowledge and logic available to him. If this resulted in man taking up the highest position, it would follow that as a philosopher who existed at a time when the most illustrious aim of people was to live well or fare well, man would have to strive to act well *in all ways*. This would preclude treating animals with cruelty, or deliberately causing them suffering as we do today, because this behaviour would reflect badly on man himself. Aristotle's natural hierarchy theory cannot therefore be relied

on to endorse cruelty to animals – or even to trees – by ranking them as inferior to man.

4.3 Animals do not speak

If one could show that possessing communication skills in the evolved manifestations that human beings do has had a direct impact on the reduction of suffering amongst our own species, then one could at least make tangential links between the possession of language, the lessening of suffering, and hence the moral superiority of possessing language. Language has been beneficial to humans in many ways; from literacy to literature to lyrics – written, read, spoken and sung, it has been the paramount building block for advancing human societies. No fit homage can be made to its value and extrinsic worth on these pages; it is simply an incredible advantage or good. *But it is not an undiluted good.* Thomas Hobbes writing in *De Homine* as quoted by Linzey (2009: 18), pointed out that, "... man, alone among the animals, on account of the universal signification of names, can create general rules for himself in the art of living just as in the other arts; and so he alone can devise errors and pass them on for the uses of others. Therefore man errs more widely and dangerously than can other animals".

This may not be a complete or valid argument in and of itself, but language is our primary source of power over our environment, enabling us to manipulate material reality in a way that no entity without language can. But it equally alienates us and can be a source of serious damage. From Descartes' position on animal inability to feel pain to Hitler's on the inferiority of Semitic people, man creates false notions, spreads them, and causes great damage. "The apparent inability of animals to deceive *themselves* (emphasis mine) might on a less prejudiced understanding of the world, place them in a higher moral category" (Linzey 2009: 20). Hobbes described the value of language in this way: "Therefore by speech man is

not made better, but only given greater possibilities" (quoted by Linzey 2009: 19). One such possibility of direct relevance to this study is the role of language as a vehicle of consent. Women do not consent to rape, but it has taken a long time and much suffering to have this understood and accepted by some. Yet, rape occurs commonly *within* a community so the rapist and victim usually share a language. Animals do not provide linguistic feedback but they struggle, wrestle, whimper, and cry out in agony in almost exactly the same way a rape victim might do, yet these *clearer* non-linguistic signs have for centuries been disregarded or belittled because, it must be deduced, mankind is adept at denial and misrepresentation and is willing to administer pain.

The capacity for denial is the palm in the 'hand of tyranny' and explains why mankind is able to sanction animal suffering on the scale it does. To illustrate this, I quote in full Linzey's reference and comment on Noam Chomsky's encounter with a gravestone inscription in *De Homine*. It reads:

> "Here lies an Indian woman, a Wampanoag, whose family and the tribe gave of themselves and their land that this great nation might be born and grow." As Chomsky rightly comments: "she and her family didn't give of themselves and their land." Rather they were murdered by our forefathers and driven out of their land. However we may rewrite the history of human losers, the point is that animals never even have the chance of consenting (Linzey 2009: 20-21).

If possession of language does not provide humankind with a superior-making feature – and to my mind it does not since our propensity for misrepresentation balances out gains made by striving for truth or goodness – then absence of a spoken language understood by human beings cannot make animals inferior. Even if they are misguidedly considered to be inferior

by some for lack of literacy, this could not diminish the gravity of their physical suffering.

4.4 Human life is more valuable than animal life

Theories that describe and contrast the value of human and animal life are generally vexed by the subjective bias of writers enamoured with the wondrous aspects of human characteristics or accomplishments. When I first encountered this frustration I wrote the following:

> All the literature I have read about the value of life and which lives are to be valued and why (and I accept that I have barely scratched the surface), speak mainly of the pursuits that [David S] Oderberg refers to as the value of complex relationships and family bonds and the advanced things that man has achieved. Yet, many in the developing world are by and large not living the good life so often written about. Nearly all of the references to why human life is more valuable than any others are prefaced with statements such as 'few would disagree that'; 'most people hold that; 'we would find little disagreement with the view that' and so on (Thumbadoo 2008b: 7).

I disagree that all human lives are more worthy of being lived than all animal lives, and I compare my own dog's chances of getting his desires met on a daily basis with those of a beggar I encounter regularly on a street corner – a beggar whom I suspect often does not fare as well as my dog did. Having desires met is one strand in the value of life debate, and this comparison is not meant to do any more work than flag the fact that millions, if not billions, of human lives do not contain the elements of value which many philosophers who write on this subject have foremost in their minds when they argue that the lives of animals

are always less valuable than the lives of humans. Both human and animal lives can have intrinsic value and a number of common factors can detract from this value for both.

Tom Regan's accounting of value is much more promising for the cause of animals because it includes them equally. "According to him, all beings who have inherent value [i.e. subjects of a life] have it equally. Inherent value cannot be gained by acting virtuously or lost by acting evilly" (Gruen 1993: 346). Even if we would like to believe that we value all people equally in principle, in practice those who are considered more evil are less valued, while those who are more virtuous are more valued. So society imprisons and sentences to death many who commit crimes and lauds and rewards those who pull off miracles for the good like Nobel Peace Prize winners. Regan's "inherent value" and my notion of incremental value in virtue of escalating goodness or decreasing value in virtue of increasing badness represent two entirely different kinds of valuing. If I support mine, it seems that I cannot support Regan because his is absolute and mine relative. While I am not certain that they *have* to be mutually exclusive, I agree with Regan that all living beings have inherent value and should *start off* on an equal footing. My hesitation in making absolute pronouncements on 'value' might underscore the unsatisfactory nature of particular ways of establishing value and therefore of 'value' as an instrument for establishing candidacy for moral concern. Kai Horsthemke (2010: 246) echoes this concern: "...the notion of inherent value is not very useful in philosophical discussion. If it remains unsubstantiated, it is vague and obscure."Yet even with substantiation which brings clarification in the way Immanuel Kant does, the matter remains unsatisfactorily resolved, at least for me. "But suppose there were something *whose existence in itself* had absolute value. […]*There is* such a thing! It is a human being!"[4] (Bennett translating Kant 1997: 28). He stakes this claim because only human beings exercise rationality and as I have written elsewhere, "Kant would have us

[4] Immanuel Kant, *Groundwork for the Metaphysics of Morals*, translated by Jonathan Bennett, p.28. http://www.earlymoderntexts.com/philosophers/info.php

believe that Josef Fritzl [for example], the Austrian who pleaded guilty in March [2009] to imprisoning his daughter in a dungeon for 24 years, and fathering seven children with her, is of absolute value. To me it would seem as though something has gone very, very wrong if we must believe this" (Thumbadoo 2009: 3).

Conversely, then, would *some* humans – the morally exemplary ones like, say, Archbishop Emeritus Desmond Tutu – be of greater value than animals? I would be inclined to say yes, but in the same way that certain animals who have adopted and taken care of animals not related to them would be of greater value than other animals and many human beings. Does valuing good in this way tell us anything about the supposedly greater significance of good people's pain and suffering? Is their pain more important than the pain of animals or less "valuable" humans? No. Because any alleged human/animal difference in value is irrelevant to any supposed difference in the significance of their pain.

Flaws in the reasoning that all human beings are always more valuable than any or all animals weaken humankind's case for radically different treatment from animals. Bridging the exaggerated distance set up between humans and animals therefore strengthens the argument for animals to assume the same basic protections which humans receive. No further justification should be required because everything else on this planet is not like us. Mountains, rivers, "valuable" things, beautiful things, surely all deserve some kind of protection, but not for the same reasons sentient beings would share. If lower animals or certain organisms cannot suffer, then this argument will not address them. But if an animal feels – and so very many do – then it becomes a moral imperative not to cause them unnecessary pain and suffering such as we have come to accept we should not cause humankind.

Since drawing this conclusion seems rather elementary, I would like to conclude this section with one possible explanation for why humankind chose (instead) to exaggerate the differences between it and animals.

> As a strong reaction to theism, the hegemony of theology, and the oppressive and hostile stance the Christian Church took toward scientific and technological advance, humanism sought the unleashing of the powers of science and industry, it sought to replace the domination of nature over humans by the domination of humans over nature, and urged humans to seize command over the natural world and use it to improve human life. This Promethean outlook tended to further separate culture and nature, and despite an expanding scientific optic it further polarized the "animal" and "human" worlds, such that animals were unthinking beasts contrasted to the luminescence of human reason. The rationality, technology, culture, and other core attributes of humans were defined not as elaborations of the animal world but as arising *ex nihilo* as singular phenomena utterly and radically new in history (Best 2009: 4).

Whether or not the reader accepts this explanation of how we arrived at present day human/animal relations, it nevertheless sheds light on a number of questions related to our present circumstances. For example, humankind is reminded almost daily that forces of nature are capable of displacing and annihilating us and, that while this might have occurred at other points in history, this is the first time we are grappling with the likelihood that the survival of future generations is dependent on an *opposite* approach to the one described by Best: the coming together of the best attributes that 'rationality, technology, culture' and morality offer while discarding that which perpetuates the polarisation of humankind from everything else. If it were scientific evidence that went beyond the intuition of Bentham we

required, we now know much more about the many ways in which animals are like us than we did even a few decades ago. We also know much more about how and where *we* come from as a species and that we are much less significant than we once believed. In beginning to admit to the devastating effects of our attempts to dominate nature, we are finally seeing where excessive uses of natural resources and industrial-intensive action have led.

> The MEA [Millennium Ecosystem Assessment] concludes that human activities have taken the planet to the edge of massive ecosystem destruction and have weakened nature's ability for the purification of air and water and climate regulation, resulting in drastic changes in the Earth's climate and environment, further threatening humanity's own well-being (King 2009: 22).

Parallel to putting in place a variety of urgent measures to avert catastrophe, while some still believe this is possible, the status and treatment of animals is also the subject of increasing debate and activism. Several factors complicate a reversal of attitude towards the non-human animal, not least amongst them the fact that animal activists differ about how best to characterise animal interests, and their diverse views impact on unified action in defence of animals. These views range from being against cruelty to animals, to being concerned about animal welfare, to believing animals matter because they are sentient or "subjects of a life" (Regan 1985), with an increasing number of animal activists at the more militant end of the spectrum: for example, by blocking ships carrying slaughtered cargo from leaving harbours as a breakaway group of *Greenpeace, Sea Shepherd,* does. Against this background, the best reasons to offer animals more appropriate protections will now be considered.

5. Interests, Rights, Laws, and Virtues

5.1 Equal Interests

Bentham has suggested a formula, analysed here by Singer that might support a moral imperative to offer animals the same basic protections as humans, without resorting to a judgement of characteristics or value:

> "Each to count for one and none for more than one." In other words, the interests of every being that has interests are to be taken into account and treated equally with the like interests of any other being. Other moral philosophers, before and after Bentham, have made the same point in different ways. Our concern for others must not depend on whether they possess certain characteristics, though just what that concern involves may, of course, vary according to such characteristics (Singer 1971).

According to Gruen (1993: 350), "Regan and Singer argue that giving greater weight to the interests of members of one's own species is indefensible. They suggest that animals and humans share the same morally relevant characteristics which provide each with equal claims." Some philosophers – when faced with a moral dilemma that their instincts rally against resolving on the equal interests principle – resort to last ditch scenarios to illustrate how human interests should always trump animals' interests. What would one do if a house was burning and one had to choose between saving a child and saving a dog? Last ditch scenarios are dangerously unhelpful at resolving serious moral dilemmas that would have broad impact. In real life they hardly ever arise, and who is saved is not as *morally* significant as the fact that someone risked his own well-being to save another being who (a) valued

his/her life; (b) would have suffered but for the act of bravery; and (c) might have been mourned in death.

I have noted that people often respond to the equal interests' principle with jibes about animals not requiring voting rights and freedom of expression. While rights accorded animals will need to fit sensible purposes, it is not difficult, once you put your mind to it, to imagine groups of people voting on behalf of animals for political dispensations that animals would prefer (see 5.4.2). Embracing the equal interests' principle is essential to understanding how animals might acquire similar rights to people within a legal system that is accustomed to treating them as property; with any rights they accrue vesting in their owners.

5.2 Human rights and animal rights

The past century saw women, people of colour, children, and homosexuals acquire legal rights previously denied to them because it was agreed, amongst other things, that they were being prejudiced in some way, and that their interests in being protected should triumph. Since people do not necessarily relinquish their prejudices as a result, and many continue to act on them, this proclivity is the impetus behind the *legalisation* of protection. The law prohibits certain actions but also enforces penalties if the laws are transgressed because it anticipates the actions of those who do not ascribe to it. So, we have laws against woman and child abuse, racist or heterosexist acts, and concomitant punishments. Such laws are not always promulgated on the impetus of broad-based recognition of the prejudice. If a moral case can be made for why certain freedoms (such as homosexuality with regard to the South African constitution – a gain which was made as a result of a timely and strategic intervention rather than majority consensus) should be protected, or particular practices banned,

legalising the protection and the ban can follow. By so doing the law displays its particular capacity amongst societal institutions to act as both a procurer and enforcer of moral positions. The law has been playing this role, as far as the protection of animals goes, since at least as early as the third century BCE (Ryder 1989: 1).

> "No living beings are to be slaughtered or offered in sacrifice" (*The Fourteen Rock Edicts*, 1) professes Asoka, as emperor of India who "became a Buddhist and a vegetarian and, in accordance with the doctrine of 'ahimsa' (nonviolence), suppressed the royal hunts and ordered the curtailment of the slaughter of animals throughout his empire" (Ryder 1989: 1).

Since we do not live in times when a benevolent, visionary dictator can simply impose the moral high ground (a controversial but increasingly attractive notion), we need to look elsewhere to do so if we agree that animals have interests in much more comprehensive protection than they currently receive the world over. National constitutions or Bills of Rights are the places one might look to and, since 1994, the South African constitution is said to be an exemplary model of human protection. In order for constitutional applications to legitimately exclude animals, they must arise out of concepts which naturally exclude animals or have relevance for humankind only.

Dignity is seen by the legal community to be the *grundnorm* or a founding principle of the South African constitution. Roman law contains the concept *dignitas* which is roughly interpreted nowadays by lawyers to mean the right to self-respect to which every individual is equally entitled because they are said to possess equal moral value. Any fact about individual human identity, such as hair colour or IQ, is irrelevant to the moral status of that person since it is an inherent quality or a birthright. Where do we draw the line on the

possession of dignity? In the legal sense mere biological life does not bring direct moral value which is why people in persistent vegetative states can have their lives ended – because *experience* is seen to be the first threshold for being morally considerable[5] (McConnachie 2010: presentation). Animals have the same capacity to experience and, like human beings, they display *interest* in having more positive than negative experiences. The possession of dignity by animals (the root reason why a number of legislative instruments for greater protection of animals have been instituted in several countries in recent years) (Singer, 2009: xiii), taken together with equal interests considerations, entitles animals to the same protections the South African constitution seeks to accord previously disadvantaged groups of people. Such protections for animals would go beyond pain and suffering to embrace lifespan and purpose too.

Where there is a conflict of interests between animals and people, Kirsten Youens (2001: 2) suggests that these be resolved by the law taking the lead to enforce change by "granting animals" legal standing. Moral and legal standing are not the same thing, but as Kai Horsthemke (2010: 274) notes "… it may well be the case that common moral goals, such as freedom from exploitation and abuse, would be more readily attained if rights, especially legal rights, were extended to all powerless individuals, in other words, to animals as well".

South Africa is home to both human rights activists and animal activists, with some of the latter being champions of animal rights. The struggle against apartheid and the experience of living in a fledgling democracy for the past 17 years has taught South Africans that while promulgating laws is not a panacea for gaining meaningful protections for people, it can be a powerful *starting point*. Rape, for example, is a punishable crime in South Africa, but a

[5] A position argued by Chris McConnachie at the Hunterstoun Symposium, 'Non human animals – where do we go from here?', 29-30 May 2010, University of Fort Hare.

woman is still raped every 17 seconds[6] (Rape statistics South Africa and Worldwide 2010: 1) because laws are not entities that necessarily effect change in behaviour. Nevertheless, having the law in place presents an opportunity for activists to rally to make the right more meaningful. The men and possibly women who are responsible for women remaining at risk are the perpetrators of the rape, as are the police and prosecutors who do not treat it as a serious crime, and the judges who have frustrated activist groups such as People Opposing Women Abuse (POWA) by handing down minor sentences and insignificant bail charges to rapists, thereby setting a precedent that rape is not a serious offence. This overall societal attitude to rape makes it much harder to exact justice for rape victims and survivors.

Similarly, those who have taken up the struggle for animal emancipation have come to realise that activism without laws is unlikely to bring about urgent and appropriate redress for animals and that, *as with human struggles,* the law must play a greater role.

> There can be no doubt that change is in the air in relation to the legal status of animals. The philosophical debate is growing, and there is increased acceptance of the idea that the law must recognize that animals have intellectual, emotional, and physical attributes that entitle them to certain basic rights beyond protection from egregious cruelty (Wolfson and Sullivan 2004: 205).

5.3 Laws, ambiguity, and attrition

Laws that protect farm animals for example against certain kinds of cruelty have been in place for a few centuries in many countries, but these laws do not provide adequate protection, and ways have been devised to legally circumvent them.

[6] http://www.rape.co.za/index2.php?option=com_content&do_pdf=1&id=875

> In a rapidly growing trend, as farming practices have become more and more industrialised and possibly less and less acceptable to the average person, the farm-animal industry has persuaded the majority of state legislatures to actually amend their criminal anticruelty statutes to simply exempt all “accepted”, “common”, “customary”, or “normal” farming practices (ibid: 212).

The cause of this regression in moral and legal practice is due to the pressure of profit imperatives, and the reason it continues is the fact that, by and large, consumers do not know that the standards of confinement applicable to the animals they eat are criminal and excessively cruel. Both reasons point to the moral problem lying with people, and not with factors that support animals being less worthy of consideration. Some societies eat dogs and cats, and other societies protect them. Societies that protect dogs and cats do everything in their power to circumvent anti-cruelty legislation that regulates how they treat cows, sheep, and pigs.

Since in practice people cannot be trusted to uphold the law and yet, without it, the case for entitlements to rights cannot take off, this study has struggled to pin down one ethical basis from which the overall case for institutionalising protections for animals can be grounded without the threat or indeed the guarantee of erosion. We have witnessed this happen time and time again when protections stand on one of these ethical pillars, whether the equal interests formula, or moral consideration, or even legal rights entitlements. While a philosophical argument to ground animal consideration on ethical bases need not address erosion of animal law in practice, as an *applied ethics* paper it would be remiss to make a moral case and not at least signal that which is likely to undermine it.

The oppressive conditions of animals are not that different from those of women and children in some parts of the world, which is to say that a variety of protections need to be entrenched, not that the response needed to animals is less critical. Recognising that the cause of animal emancipation is rightly placed within a set of interrelated struggles for dignity and freedom further strengthens the case for animals to acquire the same basic rights as humans. Horsthemke (2010: 244) suggests that, "An *evolutionary* analysis of the recognition of rights might focus [...] on the consideration that evolution has undermined our belief that human beings are 'special'[...] and thereby pave the way for the recognition of the moral rights also of others who are not human."

Horsthemke's analysis of rights in *The Moral Status and Rights of Animals* shows how rights are the sort of entities that in and of themselves draw animals under the banner of their protection: "I do not pretend to be able to *prove* that animals *have* rights. What I think *can* be shown, however, is that *if* there are any rights, that is to say, if rights 'exist', in the sense of being attributable to humans, then they cannot plausibly be withheld from animals" (ibid: 247). This breakdown underscores the outcome of my analysis in section 4 (that the differences between humans and animals are not morally relevant to their suffering) and supports a strong resistance I have had throughout this paper to illustrate why hurting animals is the kind of thing that warrants legal redress in the way murder might, but adultery does not. Indeed, I think there may well be particular cases when murder should not warrant legal redress and adultery could. Since this sort of distinction might be obscure, let me try to make clearer here what I mean. Horsthemke (2010) is not claiming to be able to prove that animals have rights. As much as I can see the value of and have argued for the notion of rights, I am not claiming that human beings 'have' rights because they are enshrined in the Universal Declaration of Human Rights. Rights are only as real as the efficiency and sensitivity of the justice system in a given country. But if they can be made to

exist and operate on behalf of human beings, then they can be made to exist and operate on behalf of animals at least as far as suffering goes since we have shown that the differences between humans and animals are not morally relevant to their suffering.

Further, human beings have the right not to be murdered as can be assumed from Article 3 of the Universal Declaration of Human Rights: Everyone has the right to life, liberty and security of person (http://www.un.org/en/documents/udhr/index.shtml).

This does not detract from the fact that there are many who would *not* view as a crime, the assassination of, for example, a handful of world leaders who are viewed as oppressive tyrants despite their right to life.

Similarly, take the example of a man who has been hurt by infidelity in a first marriage and vowed never to marry again. If he adhered to this vow for 20 years only to finally give in to the endless remonstrations of his decade-long girlfriend who promised never to be unfaithful and who subsequently was, then some might agree that her act warrants legal sanction while the assassins of the tyrants do not.

By so saying, I am acceding that rights and their upholding and what constitutes illegal action is a murky area. Therefore, instead of elaborating on specific laws which might for example allow domestic animals the right to life and therefore never to be euthanised, but might also bring counter claims to the validity of said law in light of the actions of a vicious pit-bull who has hurt other animals, I have chosen to argue for universal entitlements for animals based on the declared universal entitlements of human beings.

In an ideal world, one in which doing the right thing (whatever that may be) flourished,

"natural rights" would suffice. All creatures would abide by some perfect code in which no bad was done to another. The existence of man is at the root of what makes this impossible. Yes, nature is cruel, and some animals are cruel to others, but perpetual subjugation to cruel and painful conditions is man's forte. The discourse of moral rights came into being to establish particular protections which themselves had to be upheld as "legal rights". Rights discourse attempts to enshrine certain notions as sacred and worthy of protection. Amongst these notions is dignity, the freedom to express the purposes for which one is born, and freedom from pain and suffering, because we have established that violating these is wrong. If it is wrong for the goose then it is wrong for the gander. Wrong is not wrong that becomes less wrong when the subject being violated is not human. So the moral rights that Horsthemke (2010) speaks of as being equally applicable to animals and humans can be transposed into legal rights for animals, if they do for humans. This supports a perennial claim that causing pain to animals requires legal redress simply *because they are sufficiently similar kinds of entities to humans* and not because we have to scour them for a quality that would make them worthy. If humans are deemed appropriate candidates to acquire basic protections there can be no moral reason for animals not to be.

According to Horsthemke (2010), Thomas Young and John Lawrence revived Bentham's notion of the possibility of animal rights because they argued that, "'Life, intelligence, and sentience necessarily imply rights', a verdict they took to apply to humans and non-humans alike" (ibid: 248). Some people believe that animals are moral subjects deserving of rights and many others have written tomes to justify why they are not candidates for the same kind of moral consideration humankind deserves. Thomas Berry's description of the earth community's "right" to exist as quoted by Cormac Cullinan in *Wild Law* is both simple and radical by comparison and supports my analysis above.

> Referring to rights in their original (as opposed to legal) sense, Berry equates the having of rights with existence – 'rights originate where existence originates' and that every member of the Earth Community has the right to be, the right to inhabit and the right to fulfil its role in the ever-renewing processes of the Earth Community (Youens 2001: 8).

According to Berry, then, just being should earn one rights. I agree that having evolved over millennia should earn one protection as part of a bio-community, but I am not sure that existence on its own earns rights. "The idea of rights seems to draw its strength from the existence of adverse conditions [...] moral rights almost always precede *institutional rights* [emphasis mine]. Once instituted, rights function as [...] protective measures in order to prevent previously dominant predicaments from once again becoming the norm" (Horsthemke 2010: 317). Such "adverse conditions" are now the daily lot of many more times the number of animals than it was for people seven decades ago.

> Just as the framers of the Universal Declaration of Human Rights acted both in the long established philosophical traditions of the Enlightenment and in response to the horrific events of the first part of the twentieth century, so the framers of the Declaration on Animal Rights were motivated both by the humanist philosophical tradition and by the unprecedented nature and extent of animal exploitation at the end of the 20th Century[7] (uncaged.org 2010: 3).

Animals who, at the very least, exhibit "life, intelligence, and sentience" and experience adverse conditions deserve to be drawn under the banner of basic rights in the "extensionist" way described by the designers of the Declaration of Animal Rights.

[7]http://www.uncaged.co.uk/declarat.htm "Human and Animal Rights: One Struggle – One Fight", p.3

> We believe that the future belongs neither to the entrenchment nor the consolidation of the ideals of 1948 [when the Universal Declaration of Human Rights was ratified] but to their extension. Specifically, we believe that the time has come to recognise the moral imperative to include non-human animals within the sphere of protection that the Declaration establishes. The human race has long recognised that animals are not merely the instruments of our desires or will, and that the reality of their capacity to experience pleasure and pain, happiness and suffering, compels us to recognise that moral limits must apply to our treatment of non-human as surely as to human[8] (uncaged.org 2010: 1).

5.4 Extending appropriate legal instruments

To take off from Horsthemke's (2010: 371) point that "moral rights almost always precede institutional rights", one purpose that would be served by according animals rights would be the benefit that would accrue to them via institutional protection, including the law. "Under traditional conceptions of law, animals were typically regarded as objects of rights vested in their human owners but not as the holders of rights against human beings. Even as objects, animals historically occupied a large place in the overall system of legal rights and social relations" (Epstein 2004: 144).

In order for animal protection laws to play a relevant role *today*, we need to reconsider the material conditions of animals as outlined in the Context (which barely scratches the surface of what animals currently endure). The following are two specific types of legal argument and one legal principle that are particularly suited to extending human law to animals, rather

[8]http://www.uncaged.co.uk/declarat.htm "Human and Animal Rights: One Struggle – One Fight, website title page.

than treating animal law as legitimately separate. As such, they describe the kind of normative legal position most helpful to entrenching protections for animals in the ways this study advances.

5.4.1 The case from arbitrary discrimination

According to David Bilchitz, "One of the important elements of moral legitimacy is a commitment to a basic principle of non-arbitrariness: similarly situated individuals must not be treated differently unless there is a justifiable reason to do so" (Bilchitz 2009: 4). Left to their own devices, even under trying environmental conditions, animals tend to show a will to live, a desire to grow families; some live communally sharing hunting and security tasks and in general they show themselves to have and to pursue interests. It is much the same with humankind. James Rachels, in *Created From Animals* as quoted by McMahan, put it thus: ''if we think it is wrong to treat a human in a certain way, because the human has certain characteristics, and a particular non-human animal also has those characteristics, then consistency requires that we also object to treating the non-human in that way" (McMahan 2005: 354). If there were an animal that felt no pain, could not be made to suffer, and had no wish to express desires – this would be an appropriate animal to exclude from this protection. Giving teeth to this legal imperative on behalf of animals will require an *overhaul* of *all* laws that govern animals. It is for this sort of radical global shift in thinking that this paper aims at making the case.

5.4.2 The cases from assent/consent

"Both ethically and legally, the notion of informed consent has become indispensable in assessing the acceptability of a given act" (Linzey 2009: 21). How might "informed consent"

be made to work in the interests of animals who cannot be "informed" of the kinds of things they may be subject to, nor refuse consent? Moral concern for animals entrenches the notion of their consent and consent in their best interests. "The inability of animals to consent cannot imply a diminished moral obligation on our part. On the contrary, our responsibility increases as we recognise that the relevant factor is absent" (ibid: 22). Whether individual countries execute this responsibility by including animals in their Bills of Rights or award protections under separate and new legislation, appropriate consideration necessitates re-examining whether animals currently regulated would be likely to consent to the treatment they endure.

Bilchitz (2009: 4) raises another possibility of redress for animals in writing about *hypothetical* consent: "... a Constitution is legitimate if its terms *would* have been agreed to by the groups in question (who do not have the capacity to assent to its terms) should they have had the capacity to agree." The notion of "hypothetical consent" might as easily be deployed in the interests of animals (as human) by allowing a mix of legitimate animal rights organisations to "stand in" for animals to determine whether they would be likely to consent to being subjected to certain acts.

5.4.3 The principle of non-regression

"There is a principle of international law which human rights advocates hold dear. It is the principle of non-regression. This principle of state practice requires that the norms already adopted should not be undone at a later date – in other words, we should not go backwards in the standards of protection of the individual."[9] A strand of frustration running through this paper has been noting how effectively laws traditionally depended on to protect animals

[9]http://www.righttowater.info/code/introduction_4.asp-openingpage

are rendered ineffectual. For as long as humankind exists, reproduces, encroaches and requires a never-ending supply of resources, animals and the rest of the natural world will be at risk. Laws and legally established institutions alone will never be sufficient to permanently safeguard animals because it is in man's nature to subjugate anything that serves an interest or purpose. The writing of this principle into the animal legislation of all countries might provide some resistance to anticipated attrition in animal rights law.

5.5 Virtuous agents on animal emancipation

"Perhaps one man 'cannot help' but believe that he can enslave others of another race, gender, religion, nationality, or species, while another 'cannot help' but believe that he can't" (Wise 2004: 25). If this is true, and it does appear to be, then the ultimate challenge for animal emancipation is twofold. One lies in the strengthening of appropriate universal legislation for which this paper has so far argued. The other lies in getting people to act well or against their lower nature while accepting that an innate quality is one that sometimes cannot be put right. Actively working against our propensity to hurt and subjugate will require education systems that teach ethics and nurture the virtues by also entrenching particularly progressive positions on animals from philosophers of various traditions. I refer here to perspectives that leap-frog our thinking and shift paradigms about what is both good and right in the way Martha C. Nussbaum agrees some philosophers have been able to. "Both Bentham and Mill in their time and Peter Singer in our own have courageously taken the lead in freeing ethical thought from the shackles of a narrow species-centred conception of worth and entitlement" (Nussbaum 2004: 302). Bentham, Singer, Regan, and Best are not virtue ethicists but their arguments for animal consideration provide new starting points to review the position of animals.

"Animals prey on, eat, and kill one another, but, with the rare exception perhaps of chimpanzees – not coincidentally our closest biological relatives – they are not pathologically obsessed with control, power, domination, violence, killing, warfare, status, and wealth" (Best 2009: 19). Stilling these human tendencies, which is our only hope of voluntarily dismantling *all* oppressive systems in the long run, must surely also involve ongoing education. Including education that starts with the individual and moves outwards; that starts with the best understanding of *ourselves* we can muster. We cannot hope for things to change for the good out in the world if we have not worked hard at properly understanding what is good ourselves, and how we ourselves are bad.

> The realisation of animals' rights and 'animal emancipation' can be seen to imply 'human liberation', the act of humans freeing themselves from the role of subjugators, from the dominant relationship they have with the rest of animate nature, and from dependence on animals at the expense of the latter's lives, freedom, and well being (Horsthemke 2010: dust jacket).

Many people might not agree with this statement, but this paper argues that it is the correct intuition. If it is a virtuous disposition that provides impetus to distinguish correct intuitions from incorrect ones (and I am not certain that it is, since not falling victim to denial seems equally necessary to this quest) then education in the virtues, including testing for its assimilation in the individual and its expression in conduct, would be an obligatory step to realising all of humankind's good endeavours with some permanence.

6. Notes before concluding

The reader might question how animal experimentation might be altogether circumvented when this work has been vital to developing medicines that have healed and helped human beings and animals for centuries. Before conceding to its benefits, we should first acknowledge that experimentation, vivisection and similar practices are morally wrong and cast them as crimes of a particular sort. This might follow on the heels of animals acquiring personhood or basic rights or rights based on equal consideration but it might equally occur as a separate process. Once this is done, we need to publicly table the many ways in which animal experimentation is more wrong in current times than it was when first embarked on (which the Johns Hopkins Centre for Alternatives to Animal Testing and FRAME (Fund for the Replacement of Animals in Medical Testing) amongst others, acknowledge).[10] They do so because humankind is now in possession of a store of scientific data from which it may extrapolate information, as well as synthetic alternatives to animals. Over and above this, volunteer human beings, whether in or outside of prison, provide more appropriate candidates for procedures and drugs intended for human usage. With human populations and unemployment at excessive levels, a fair fee should ensure there would be no need to look beyond human beings who provide the additional benefit of being able to consent. I would hope that a concomitant sense of human responsibilities would stem any human rights violations claims this suggestion might attract.

"Speciesism" as a term and as a label acknowledging prejudice might never muster the level of disapproval that some of the other "isms" do. If this proves true, it will not do the work that being accused of racism or sexism does, firstly because no animal is going to accuse one of being so and, secondly, because many people might not mind being so. I see this

[10] http://www.geari.org/alternatives-to-animal-testing.html

weakness in the term as strengthening the case to ground virtues, as far as right action in relation to animals is concerned.

7. Conclusion

The greatest impediment to animal liberation is not that people do not believe that animals suffer. It is instead that they do not believe animals *matter* as much as human beings. In consequence, animal suffering counts only to the extent that an individual or community or society values animals. I wrote in Section 3 that humankind has come to believe that animal suffering is *necessary,* but I have found no sound reasons to support this in my investigation. Instead I have discovered that animal suffering more than just matters, and that it matters, for the most part, in the same way that human suffering does. Whether to increase pleasure and decrease pain from a preference utilitarian perspective; to refrain from committing unacceptable harms from a deontological position; or because a virtuous agent would not willingly and intentionally cause preventable harm, if human beings are entitled to protection from physical harm then animals should be entitled to the same basic protections for the same reasons. Those who do not accept this conclusion, I believe, do so from a propensity for tyranny noted all those years ago by Bentham. It would be difficult to convince them otherwise because their reasons for believing as they do are not rooted in "universalisable" morality or logic, but in their opposites. Those who do not share this resistance, identify with a higher moral intuition coming down in philosophical writings which dictates that much more must done to bring animals under the same banner of moral concern as human beings.

My study of what constitutes appropriate consideration of animals has both frustrated and appeased me. In the beginning I felt that an evolving humanity should have been much further along the road to treating animals with the respect and dignity many feel they deserve. It took me a while to understand that this depended, perhaps too heavily, on an

intuition or personal position regarding animals, and that the concepts of respect and dignity towards humans are unnecessarily complicated within an applied ethics discourse.

Considering the evidence, it is difficult not to agree that the treatment of animals around the world constitutes a 'daily holocaust'. I had originally taken for granted that the existence of Societies for the Prevention of Cruelty to Animals and Humane Societies around the world indicated that animals were receiving progressively evolving consideration. That – as with many human struggles for freedoms or better living conditions – the cause of animals was likely to be advancing in similar ways. The most cursory investigation revealed that I had been naïve and that, in fact, some animals, in greater numbers than ever before, are being subjected to unprecedented cruelty.

Why did I think certain practices were so wrong when they were so widely accepted? "Because animals feel pain", was my first reaction, but this was followed by a second, deeper acknowledgement that many animals were not that different from me. I was quite sure that most ordinary people accepted that animals feel pain, so what was bothering me so deeply about this situation that did not seem to bother most people and, indeed, had not bothered me for much of my life? One answer is that I had not known the extent of the suffering involved in intensive-industrial farming practices, and the other is that I had not realised the vast number of animals used in painful scientific and nuclear experiments. These are just two of a number of ways we abuse animals. Admitting to being ill-informed was the first step. Uncovering methods that have been devised to get around animal anti-cruelty legislation, and learning that a number of research experiments are considered superfluous, came next. It seemed to me, then, that the underlying fault lay within the character of humankind, and not with inadequate data on which animals feel pain, and to what degree this pain is experienced. For this reason, I have refrained from being sidetracked by the

volume of research that examines animal intelligence, ability, and feeling. The extent to which animals possess these characteristics seems to me to be irrelevant: *that* so many do should be sufficient to warrant them more consideration than we might muster for a brick.

With this realisation came the discovery that there is a difference between people who find it relatively easy to accept that animals are simply our resources, with pain and drastically curtailed freedoms being part of this lot, and those whose intuitions rally against this – even if people within both sets hold a range of views on what they believe to be acceptable treatment. If human beliefs and shortcomings are at the nub of what is wrong with how we treat animals today, it seemed to me that I needed to examine what had shaped these. Linzey's (2009) sketch of our relationship with the animal world, from the Aristotelian natural order theory to the Judeo-Christian tradition, helped to expand this knowledge and brought Darwin's theory of evolution into consideration, but it did not answer my question about humanity's propensity for cruelty. We have been trying to still this tendency and grow our potential to be kind, perhaps since the beginnings of religious and ethical consciousness. Some of us, with the benefit of good parents, are taught to be kind when we are little children, and this involves not doing bad things like hurting our siblings, friends, or the family pet. Some children respond well to this sort of teaching because, I would like to believe, it speaks to something inside of them that wants to be kind. Others do not. Accepting that behaving decently cannot be left to individual whim, we have instituted laws to regulate human conduct. Following this line of thinking, has confirmed that only the law is uniquely placed to enforce notions of appropriate treatment of animals as it has done for the appropriate treatment of humankind. The broader education system, advocacy organisations, and consumer forums are also powerful allies in bringing about changed attitudes and practices respectively within society, but these institutions are not enough.

In exploring the moral imperative to institutionalise animal protection, I have not come up with any fresh or distinctive answers, since the answers have always been with us. However, I am now convinced that there should be a stronger drive to get individual countries to sign the Universal Declaration of Animal Rights to provide animal legislators and activists a broad and well conceived minimal basis from which to strengthen animal protection. While this is underway we need to better ourselves in order for anyone or anything around us to receive a fair deal. We need to nurture the virtues in ourselves or we will not know how to apply them in relationship to any 'others'. Parallel to doing this, though, we will need legal *and* other institutions to help us regulate our basic tendencies.

This report concludes, therefore, that humankind has a moral obligation to free animals from pain, suffering, and human practices that drastically limit their lifespan and purpose because the differences between human beings and animals are not morally significant in this regard. Arguments from actual practice with regard to securing human protections and freedoms indicate that we need to establish permanent legal institutions to realise this obligation. Individual countries therefore need to become signatories to the Universal Declaration of Animal Rights as outlined here:

"Inasmuch as there is ample evidence that many animal species are capable of feeling, we condemn totally the infliction of suffering upon our fellow creatures and the curtailment of their behavioural and other needs save where this is necessary for their own individual benefit.

"We do not accept that a difference in species alone (any more than a difference in race) can justify wanton exploitation or oppression in the name of science or sport, or for use as food, for commercial profit or for other human gain.

"We believe in the evolutionary and moral kinship of all animals and declare our belief that all sentient creatures have rights to life, liberty and natural enjoyment.

"We therefore call for the protection of these rights."

http://www.uncaged.co.uk/signudar.php

The full version of the Declaration of Animal Rights is appended.

Appendix

UNIVERSAL DECLARATION OF ANIMAL RIGHTS

Preamble

Considering
that Life is one, all living beings having a common origin and having diversified in the course of the evolution of the species;

Considering
that all living beings possess natural rights, and that any animal with a nervous system has specific rights;

Considering
that the contempt for, and even the simple ignorance of these natural rights cause serious damage to nature and lead man to commit crimes against animals;

Considering
that the coexistence of species implies a recognition by the human species of the right of other animal species to live;

Considering
that the respect of humans for animals is inseparable from the respect of man for another man.

IT IS HEREBY PROCLAIMED:

Article 1
All animals are born equal and they have the same rights to existence.

Article 2
a) Every animal has the

Article 3
a) No animal should be submitted to bad treatment or cruel actions.
b) If the death of an animal is necessary, this should be sudden and without fear or pain.

Article 4
a) All animals belonging to a wild species have the right to live free in their natural environment, and have the right to reproduce.
b) Each deprivation of freedom, even for educational purposes, is in opposition to this right.

Article 5
a) Every animal that usually lives in a domestic environment must live and grow to a rhythm natural to his species.
b) Any change to this rhythm and conditions dictated by man for mercantile purpose, is a contradiction of this law.

Article 6
a) All animals selected by man as companions must have a life corresponding to their natural longevity.
b) To abandon an animal is a cruel and degrading action.

Article 7
Working animals must only work for a limited period and must not be worked to exhaustion. They must have

Article 9
In the eventuality of an animal bred for food, it must be fed, managed, transported and killed without it being in fear or pain.

Article 10
a) No animal should be used for entertainment.
b) Animal exhibitions and shows that use animals are incompatible with an animal's dignity.

Article 11
Every action that causes the unnecessary death of an animal is cruel, which is a crime against life.

Article 12
a) Every action that causes the death of a lot of wild animals is genocide, that is a crime against the species.
b) Pollution and destruction leads to the extinction of the species.

Article 13
a) Dead animals must be treated with respect.
b) Violent scenes, where animals are the victims, must be forbidden at the cinema and on TV, unless they are for the demonstration of animal rights.

Article 14
a) Protection and safeguarding associations

right to be respected.
b) Man, like the animal species, cannot assume the right to exterminate other animals or to exploit them, thereby violating this right. He should use his conscience for the service of the animals.
c) Every animal has the right to consideration, good treatment and the protection of man.

adequate food and rest.

Article 8
a) Experiments on animals that cause physical and mental pain, are incompatible with animal rights, even if it is for medical, scientific, commercial or any other kind of experiment.
b) A substitute technique must be investigated and developed.

must be represented at government level.
b) Animal rights must be defended by law as are human rights.

The text of the UNIVERSAL DECLARATION OF ANIMAL RIGHTS has been adopted from the International League of Animal Rights and Affiliated National Leagues in the course of an International Meeting on Animal Rights which took place in London from 21st to 23rd September 1977.

http://jose.kersten.free.fr/aap/pages/uk/UDAR_uk.html

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