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EVOLVING ANIMAL LAW TOWARDS JUSTICE

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Synopsis:

This paper explores the legal status of animals and considers what entities if any should be considered "legal persons" in the interest of justice and best policy.



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Abstract

This paper explores the legal status of animals and considers what entities if any should be considered “legal persons” in the interest of justice and best policy. Ironically groups or classifications of persons historically have not been considered legal persons or have not been given full rights as legal persons under the law, and non-human entities have been considered legal persons under the law for policy reasons. Over time, the rights and legal status of persons as legal persons have become more inclusive and more just. Similarly, animal laws including addressing legal requirements to take a life should evolve to better reflect science, truth, and justice. A more just evolution of laws regarding the status and protection of animals is the best policy that legislators and law makers should implement.

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Evolving Animal Law Towards Justice¹

¹ This article is dedicated to Whiskey Dog, the smartest dog I have had the honor to know. Compassion is invincible!

**By James Headley²
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At first glance it may sound outlandish to suggest that animals could be legal persons. But consider that the law defines “legal persons” quite broadly to include non-human beings. Corporations present the classic, controversial, and legally acceptable example of a fictional and strained definition of legal persons that are not human beings. If corporations can exist as “legal persons”, why can’t animals exist as legal persons? Current legal definitions support accepting that animals could be legal persons, and there are more compelling policy reasons to consider animals as legal persons.

Remember, in the United States classes of human beings were not always considered “legal persons” under the law. Slaves were not legally recognized as persons, but were considered property³. Segregation of races was allowed.⁴ American Indians were not considered full persons under the law, only three-fifths persons for census purposes.⁵ Women didn’t get the right to vote until the early 1900s.⁶ Human beings have been variously legally classified and given or denied a broad set of legal rights through the legislatures over time. Controversy around the term “legal person” is nothing new, and the definition has evolved over time toward a more broad and largely more just definition. The point is that the term “legal person” has been so narrowly construed in recent history as to deny humans rights

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³ *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

⁴ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁵ United States Constitution, Article 1, Section 2, 1787.

⁶ United States Constitution, Nineteenth Amendment, 1920.

as persons, and that was wrong and unjust. Now, the term “legal person” includes some non-human entities like corporations but does not include other more deserving candidates like animals. This mistake too is wrong and unjust, and violates the concept of equal protection under the law as did the mischaracterization of human beings before the law years ago. It was a moral and legal mistake to categorize animals as “property”. Sentient beings can be wards, but sentient beings cannot be “property” in the sense that gold or coal is property. The march towards a more just society requires that the definition of a “legal person” and “property” evolve as society evolves.

ANIMALS ARE SENTIENT BEINGS WITH NATURAL RIGHTS UNDER NATURAL LAW

Animals are not human beings, but they are sentient beings and as such should be dealt with fairly by human beings as a matter of public policy. Sentient is defined as “to perceive by the senses...of, having, or capable of feeling or perception; conscious.”⁷ Animals are clearly capable of perception. Pet owners know that pets, animals, are capable of feeling. The love of a pet is as self-evident as the flame of a candle. Can anyone seriously contend that animals are not perceptive and not emotional? Does there really need to be any more evidence than a happy dog wagging her tail? By the way has anyone seen a corporation wag its tail out of sheer happiness? Or a corporation jump for joy like a cow seeing a real pasture for the first time?⁸ Has anyone seen a gold coin or lump of coal wag its tail because of love?

⁷ See *Webster's New World Dictionary*, second college edition, New York: Simon & Schuster, 1982, p. 1297.

⁸ This video of cows jumping for joy is evidence of sentience:

Animals are feeling sentient beings and not mere chattel or artificial beings like corporations. Corporations, creatures of a perverted positive law, are not sentient beings yet considered to be legal persons for some purposes. Animals have a stronger case to be treated as legal persons. Animal behavior expert Temple Grandin observed “All animals and people have the same emotion systems in the brain.”⁹ Animal brain structures differ from human brain structures but animals are still sentient beings. Consciousness of any kind, human or animal, is hard to measure in a definitive scientific way. But consciousness seems to follow the ability to perceive and the ability to feel emotion.¹⁰ Animals are sentient, conscious beings, as humans and as such have natural rights under natural law- unlike corporations.

Natural law derives from moral law. Arguably all law derives from moral law in one way or another. There is a distinction to be made between natural law and positive law. Natural law stems most directly from moral law, and positive law is more attenuated. The law of corporations presents the perfect example of positive law. Corporations are considered to be legal persons- that is quite a fiction and illogical, yet the distinction serves the purpose of allowing certain legal organizations certain rights as humans for commercial interests. Positive law tolerates and even promotes such legal fictions for the benefit of at least some in society and is “man-made” so to speak. The treatment of corporations under the law

<http://www.youtube.com/watch?v=kUZ1YLhIAg8>

⁹ Grandin, Temple, and Johnson, Catherine. *Animals Make Us Human*, (New York, NY: First Mariner Books, 2010.), 5.

¹⁰ Steven Wise does a thorough job exploring the concept of animal consciousness, primate consciousness in particular, in his fine book *Rattling the Cage Toward Legal Rights for Animals*, (Cambridge, Mass: Perseus Publishing , 2000).

is much like the concept of mala prohibita law in criminal law in which something is bad because we say it is bad, not that it is inherently bad. Natural law is more like the mala in se concept in criminal law in which we all know something is bad by its very nature- like murder. Murder is mala prohibita, inherently bad, and prohibited by law in all societies. The flip side to murder being mala in se is that therefore life, at least human life, is naturally and inherently worth protecting by law- it is a given. This same logic and morality should apply to animals lives too as they are sentient beings that naturally have valuable lives worth protecting by law.

Natural law follows morality closely. The famed William of Ockham's logic applies to the issue of recognizing that animals are sentient beings and that it is proper to find rights in moral law.

...William of Ockham observed that *jus* speaks of cognitive ability to recognize the moral law, which is given by nature, and to act according to what it dictates. For him, to have a right to act is to act rightfully, consistently with what the moral law requires...¹¹

Applying William of Ockham's logic (of Ockham's razor fame) animals are naturally sentient beings and have natural rights associated with the natural right to life, and perhaps to an extent liberty. Ockham's razor applies also, in that the simplest explanation for why animals appear to be conscious beings like humans is because they are in fact conscious sentient beings. It is much more complicated to try to explain why animals are so different from humans, not as sentient or not sentient in the "right way", so the claim that they are vastly different from humans must be

¹¹ Curnutt, Jordan. *Animals and the Law A Sourcebook*, (Santa Barbara: ABC-CLIO, Inc., 2001), 19.

wrong according to Ockham's Razor. Either way, animals have natural rights as sentient beings as morality requires.

The greatest document in American history, the Declaration of Independence, enshrines natural rights derived from natural law. The Declaration of Independence holds life, liberty, and the pursuit of happiness as unalienable rights- natural rights that apply to all. ¹²When the Declaration was written, not all human beings were seen as equal, yet the document champions the ideal of equality and over time the concept of equality grounded in natural rights to life, liberty, and the pursuit of happiness has expanded justly to become more and more inclusive. Some see the Declaration of Independence as an American document, but it states basic human rights and is a human rights document too. Further, it applies to sentient beings- not just to human beings. All sentient beings have the right to life, liberty, and the pursuit of happiness. **The definition of a "legal person" should be "a sentient being or entity with rights recognized and protected by law."**

The obvious problem is that many human beings view animals as food, instruments of labor, things to provide amusement, or even threats to human safety. While true, this does not mean that animals do not have rights to life, liberty, and the pursuit of happiness. It does mean that animals may not be afforded the same rights as human beings. Realistically, animals should have reasonable rights to life, liberty, and the pursuit of happiness as sentient beings. Animals should not be subjected to torture, unnecessary brutality, and overly restrictive confinement. All

¹² Jefferson, Thomas, Declaration of Independence, 1776.

sentient beings deserve at least a reasonably happy life considering relevant circumstances. Traditional constitutional guidelines can be applied to animal rights.

THE LEGAL CASE: DEFINITION OF A LEGAL PERSON

Consider the following legal definition of “Person” under Washington State Law: “The term ‘person’ may be construed to include the United States, this state, or any state or territory, or any public or private *corporation* or limited liability company, as well as an *individual*.”¹³ Amazingly, the legal definition of a person includes a variety of entities, and individuals. For an animal to have rights as a legal person under the above definition, an animal would have to be legally an “individual”, and there would likely have to be good policy reasons to support honoring animals with legal rights as persons. If both points can be satisfied, then animals should be afforded rights as legal persons.

The law above says that a legal person is an “individual”. One might think that an individual is a human being- nothing more, nothing less. That would be wrong as one might think that a legal person is a human being, nothing more and nothing less. That is obviously wrong as corporations and non-human entities are considered to be legal persons under the law. Looking to the legal definition of “individual” supports the position that animals are individuals under the law. Black’s Law Dictionary defines an individual as “Existing as an indivisible

¹³ Wash. Rev Code, Title 1.16.080 (1), (2013).

entity.”¹⁴*An animal exists as an indivisible entity and is therefore a legal individual. If an animal is a legal individual, an animal is a legal person under the law.*

DUE PROCESS AND EQUAL PROTECTION

If an animal is a legal person, and we showed that to be the case, then an animal has rights under the Fourteenth Amendment of the Constitution. The Fourteenth Amendment states “...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” As a legal person, an animal has rights then to due process and equal protection. Animals can be reasonably afforded the right to due process and the right to equal protection, and these constitutional rights should be extended to animals in a just and reasonable way. I am not suggesting that non-human animals have the right to vote or the right to bear arms! Rather, I am suggesting that animals be afforded a basic right to due process. The heart of due process is fairness. All sentient beings have a right to life and fairness.

One major problem is that animals have been and are viewed as food by many people. Vegetarians and vegans do not eat the flesh of sentient beings, so it is easier for them to honor the sentient beings right to life. The clearest and easiest first step towards honoring animal rights, the rights of sentient beings, is to eat a diet as a vegetarian or vegan. Vegetarians and vegans only have to then be concerned with the fair treatment of animals. Most humans eat some amount of animal flesh, and this omnivore diet has strong historical and cultural roots. A

¹⁴ See *Blacks Law Dictionary*, seventh edition, St. Paul, Minn: West Group, 1999, P. 777.

challenge is how to balance an animals right to life and the tradition of humans eating animal flesh- assuming that all people do not become vegetarian or vegan.

There are existing laws that require that animals in some circumstances, sometimes limited circumstances, be treated “humanely” or fairly and this is a start. Under all circumstances, animals, even those chosen to be eaten, should be treated fairly. All animals deserve at least a fair and reasonable life, as they are sentient beings and not lifeless commodities like coal and gold. Each animal should be able to live free from unreasonable fear, have decent place to live, be treated with respect, have a reasonable length of life(for example a chicken should live long enough to see the seasons and experience natural sunshine and life as chicken), before it is slaughtered for food. If an animal is slaughtered for food the method should be such that minimizes the animal’s pain and suffering. Best to eat a vegetarian or vegan diet. Next best is to treat animals fairly.

If animals, as legal persons, are treated unfairly it can be argued that the unfair treatment violates the animal’s right to life or liberty and that amounts to a violation of substantive due process- at least if the government is the actor denying due process. The spirit of the law of due process should apply to private actors as well. Fair is fair!

There is an equal protection argument here as well. Generally the concept of equal protection requires that people, and legal persons, be treated equally under the law unless there is a good, valid, legal reason to treat different classifications differently. It may serve a valid, legitimate purpose of public safety to set age and license requirements regarding driving a car for example. When it comes to animals,

it might make sense to treat them differently from humans and to treat different classifications of animals differently.

Animals most closely resemble children in their mental capacities, so it makes sense to treat them more like children. At one point in history children were even considered property, as were women. Over time the concept of “property” has evolved to a more just and realistic definition, one that moves away from classifying sentient beings as “property”. *Animals should be considered more wards with guardians, rather than more strictly property.* Children have parents or guardians that make important decisions for them. Domesticated animals should be treated this way. Wild animals are property of no one and they have no guardian except the state. Some animals may reasonably pose a danger to humans and they might have to be captured or killed- this is addressed in more detail later. We do share this planet, this life, with animals- fellow sentient beings. Absent good reason, animals should be treated equally with humans with fairness and respect. Treating some sentient beings differently than others under the law without good reason may under some circumstances violate equal protection.

THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT, AND THE FIRST AMENDMENT

The Eighth Amendment prohibits cruel and unusual punishment and is silent as to whether it applies to humans or a broader class of sentient beings.¹⁵ When the Eighth Amendment was ratified slavery was in practice, so at one point *only some* humans were protected by the Eighth Amendment. The text of the Eighth Amendment is short, simple, and clear- it expressly prohibits cruel and unusual

¹⁵ Eighth Amendment, United States Constitution, 1791.

punishment. Arguably the spirit of this concept applies to all sentient beings. Cruel and unusual punishment of sentient beings may be unconstitutional at least where government action is involved. Where the government is not the actor but a private citizen cruelly and unusually punishes an animal that action should be criminal. In many jurisdictions various forms of animal abuse is criminalized and that is just. But the concept should apply more broadly and consistently to include “factory farms” if they mistreat animals. Animals raised for food should not be exempted from legal protections. As Michael Pollan pointed out quoting Emerson in part,

... most of us, including most of the farmers who raise food animals, do our very best to avoid thinking about, let alone having anything directly to do with, their slaughter. ‘You have just dined,’ Emerson once wrote, ‘and however scrupulously the slaughterhouse is concealed in the graceful distance of miles, there is complicity.’ The killing of the animals we eat generally takes place behind high walls, well beyond our gaze or ken.¹⁶

The spirit of the Eighth Amendment is clear and it is to protect all sentient beings. Sentient beings should not be food. If they are, they should be raised in a respectful and responsible way and allowed to live a good life, and then be killed in as painless a way as possible. Sentient beings should be free from cruel and unusual punishment whether the actor killing the animal is governmental or private.

Jurisdictions should not pass laws making it a crime to investigate and report on the practices of factory farming. But some jurisdictions are making such activities illegal, and that is unjust and likely violates the First Amendment.¹⁷ People should be free to speak out against industrial farming and free to investigate industrial

¹⁶ Pollan, Michael. *The Omnivore’s Dilemma A Natural History of Four Meals* (New York, Penguin Books, 2006.), 226-227.

¹⁷ See “Taping of Farm Cruelty is Becoming the Crime”, Richard A. Opperl Jr., *The New York Times*, April 06, 2013.

farming. People should be free to protest cruel “factory farming” methods and other miss-treatment of animals. All protest methods employed should be peaceful protest methods in the tradition of Gandhi and Martin Luther King, Jr.

If industrial farming or “factory farming” has nothing to hide it should have nothing to worry about if people find out about how it works. The opposite appears to be true, as some believe industrial farming interests have caused trouble to those who oppose industrial farming methods.¹⁸ We need First Amendment Freedoms to protect all of our rights including those of the Eighth Amendment!

PROPOSED LEGAL STANDARDS FOR TAKING A LIFE

Sometimes it will be necessary for a human being to take the life of another sentient being. When and under what circumstances a life can be taken matters, as does the method of taking the life. As non-human animals are often killed and eaten for food and considering that this practice is based on thousands of years of custom and is engrained as a practice in society, and considering that it may be necessary for some to eat non-human animals, human killing of non-human animals for food should be legally tolerated if those non-human animals are not treated cruelly- that is to say that non-human animals legally should have a right to live a life , reasonable in length and quality, as their species normally would. More specifically, all animals raised for food should have the chance to see the sun and moon, to see outside of a building, to move about freely in an area big enough to actually stand in, turn around in, even walk and run in, reasonably. Such animals should have a life span at

¹⁸ See Pollan, Michael. *Cooked* (New York, 2013), 85.

least 25% of the life expectancy typical of the species. For example, it should be illegal to grow a chicken in a factory farm, not show it daylight, and execute it 6-7 weeks after it was born.

A model statute regarding animal rights is needed, such as:

A human can kill a non-human animal for food as reasonably necessary and reasonably and customarily allowed, provided that such animal is afforded a reasonable life to include adequate and appropriate food, shelter, space to live, and care. The method of killing must not be cruel and should be as painless as possible. The law intends that all beings suffer the least amount that is reasonably possible while alive and in manner of death. If a non-human animal reasonably poses a threat of causing death or serious harm to a human, or serious risk of meaningful harm or suffering, then it is legal for a human to take the life of a non-human animal and the killing of the non-human animal must be carried out in a reasonable manner. This statute applies to all animals, including but not limited to any and all farm animals.

This suggested statute would be subject to usual rules of legal interpretation, meaning that the “reasonableness” would be measured both subjectively and objectively. The person claiming that the taking of the life was legal, would have to actually believe that it was necessary or appropriate to kill the animal in the manner applied, and, objectively a reasonable person in that person’s position would have to believe the same. This type of statute, interpreted and applied reasonably, would better protect non-human animals rights, and would be a big step in the right direction towards eliminating “speciesism” by treating human and non-human animals more alike.¹⁹

¹⁹ Peter Singer describes the concept of speciesism at length in his seminal work. Singer, Peter. *Animal Liberation*, (New York, NY: A New York Review Book, 1990.)

CONCLUSION

Corporations are not sentient beings, yet they are recognized as legal persons. Animals are sentient beings and not yet recognized as legal persons. Animals could be recognized as legal persons based on existing law and legal definitions. Under a natural law theory, animals should be recognized as legal persons and corporations should not be so recognized. Under a positive law theory corporations are so recognized and animals could be too. Animals have a stronger case to be recognized as legal persons than do corporations. It is time to recognize animals as legal persons and afford animals rights appropriate to their status as fellow sentient beings. If it sounds outlandish to suggest that it is now time to give animals rights because animals are not human beings then it is time to stop treating corporations as legal persons too. To allow corporations more legal rights and recognition than animals is wrong and unjust.

Justice and fairness requires that sentient beings be awarded appropriate legal rights by society. Corporations and business entities do not deserve such recognition as legal persons. Humans evolved from animals and are in fact a type of animal, broadly speaking. Human rights are animal rights, and animal rights are human rights, as both humans and non-human animals are animals. Animals are entitled to equal protection of the law. Animals could be legal persons, and animals should have legal rights if any non-human entities should have legal rights at all! Animal law needs to evolve to be more just.