

Roots of Human Resistance to Animal Rights: Psychological and Conceptual Blocks

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Roots of Human Resistance to Animal Rights: Psychological and Conceptual Blocks

Animal law has focused attention on such interconnected issues as the property status of nonhuman animals, juristic personhood, and standing. These subjects are undeniably central concerns that dominate discussions of animal rights, but they do not relate to the most fundamental factors that are responsible both for human resistance to animal rights and for our species' well-entrenched, cruel, and self-righteous exploitation and destruction of nonhuman animals. In this comment, the author reviews recent advocacy of animal rights and offers the first study of human psychological and conceptual blocks that stand in the way of efforts on behalf of animal law and legislation. Paying long overdue attention to these obstacles provides a realistic framework for evaluating the effectiveness of attempts to initiate meaningful change.

I am in favour of animal rights as well as human rights. That is the way of a whole human being.

-- Abraham Lincoln

I. INTRODUCTION: ANIMALS AS PROPERTY--IS THIS THE PROBLEM?

Animals are property. These three words--and their legal implications and practical ramifications--define the most significant doctrines and cases . . . and the realities for current practitioners of animal law. [FN1]

For many people in our society, the concept of legal rights for other animals is quite "unthinkable." That is because our relationship with the majority of animals is one in which we exploit them: we eat them, hunt them and use them in a variety of ways that are harmful to the animals. The idea that these animals feel pain and that they have interests which call out for recognition is too close for comfort.

. . . [A]s long as animals are property, we will face severe limitations in our ability to protect them and their interests.

. . . In all legally relevant ways, other animals possess the qualities that compel us to put aside convention and convenience, and realize that we have ignored and violated their rights for far too long. Animals are not "things" and a legal system which treats them as mere property is intrinsically flawed. [FN2]

Advocates of animal rights and of change in the legal status of animals have been eloquent on animals' behalf, but they have tended almost universally to ignore the most fundamental forces that tend to compromise or block the realization of their goals. Efforts

on behalf of change that remain blind in this way are handicapped from the outset. They are likely to be ineffectual because they fail to confront, engage, and defeat the realities that define the experience and outlook of those who oppose these efforts. As will be made clear in this comment, these realities are deeply rooted both in the psychological mindset of the human majority and in the conceptual system that the majority accepts unquestioningly. [FN3]

To date, discussions of the legal status of nonhuman animals have focused on such issues as property and standing, but none has centered attention squarely upon the human psychological and conceptual frameworks that frequently are brought into play, as though by an automatic and uncontrollable reflex. Legislation and the common law are the products of human activity, and they bear the unavoidable imprint of human mentality.

One author has recently written that "[t]o label something property, is, for all intents and purposes, to conclude that the entity so labeled possesses no interests that merit protection and that the entity is solely a means to the end determined by the property owner." [FN4] Such a point of view brings attention to the issues of property and, ultimately, of legal personhood. However, we need to ask, are these issues the most basic if we wish to understand the difficulty of the struggle experienced by advocates of animal rights?

Another author recently has urged that legal discourse take shape around three concerns: "recognition of the social value of nonhuman animals through tort litigation, recognition in statutory language of nonhuman animals' self-interest in their own lives and breaking down the species barrier by challenging and restructuring standing doctrines." [FN5] Here, the perspective is widened further, but it is still not sufficiently basic in focus to be cognizant of the obstacles that often frustrate animal rights advocates.

What is at stake, according to another writer, is "one of the most urgent moral issues of our time." [FN6] It is an issue that certainly deserves our attention and care, and a deeper level of analysis. There are, as readers of these pages are well aware, legal and moral consequences that follow from a view that judges nonhuman animals to be no more than inanimate, disposable things. While many of the legal consequences have been articulately summarized, the fundamental problem has yet to be brought to light. [FN7]

A problem may be defined as a gap between a present state and a desired goal state. [FN8] For advocates of animal rights, the desired goal state is articulately expressed by Joyce Tischler, Executive Director of the Animal Legal Defense Fund, writing: Those of us at the heart of the animal law movement envision a world in which the lives and interests of all sentient beings are respected within the legal system, where companion animals have good, loving homes for a lifetime, where wild animals can live out their natural lives according to their instincts in an environment that supports their needs--a world in which animals are not exploited, terrorized, tortured or controlled to serve frivolous or greedy human purposes. [FN9]

This goal stands at some distance from the present state of affairs, and so a gap is identified and a problem defined. It is imperative that we understand what forces define the present state if we are to construct a bridge to the future described by Tischler. The present state of affairs is inadequately understood because it has only partially been

grasped in terms that have become familiar: the property status of nonhuman animals, the concept of juristic personhood, standing doctrines, and so on. [FN10]

The present state of animal law can be described on two levels: the first level, in terms of legal discourse; the second, in terms of the psychological and conceptual structures that influence and underlie the former.

In legal discourse, there has been a gradual increase in the number of cases in which the courts have ruled that an animal's value is not to be reduced and equated to property value. [FN11] In parallel, there has been some increase in the number of successful claims for emotional distress for tortious injury or killing of nonhuman animals. [FN12] And, finally, there have been occasional cases in which the plaintiff was a nonhuman animal whose standing was not challenged. [FN13] In many of these cases, changes in human attitudes and laws relating to the legal thinghood of nonhuman animals appear to be taking place. However, we need to discern whether these cases truly represent changes in the property status of animals, or whether they instead merely reflect increasing judicial recognition of human sentiment. [FN14] Justice Andell, in his concurring opinion in *Bueckner v. Hamel*, [FN15] appears to recommend that the value of a nonhuman animal be determined in terms of its value to people, and in doing this he primarily emphasizes the role of human sentiment:

The law must be informed by evolving knowledge and attitudes. Otherwise, it risks becoming irrelevant as a means of resolving conflicts. Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, society's recognition that animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live. In doing so, courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the only family members they have.

Losing a beloved pet is not the same as losing an inanimate object, however cherished it may be. Even an heirloom of great sentimental value, if lost, does not constitute a loss comparable to that of a living being. This distinction applies even though the deceased living being is nonhuman.

. . . As stated above, I concur in the analysis and disposition of the majority opinion. I hasten to add, however, that testimony that an animal is a beloved companion should generally be considered sufficient to justify a finding of damages well beyond the market value of the animal and its yet- unborn progeny. [FN16]

The courts have sometimes been willing to take explicitly into account a companion animal's special value to the owner, [FN17] and in so doing they continue a pattern of establishing value in homocentric terms. Seldom do courts consider nonhuman animals as ends in themselves, with interests of their own. When attention has been directed in this way, it has been in discussions that seek to situate the legal status of nonhuman animals somewhere between property and legal personhood.

"Property" has value solely as a means to an end, whereas "people" are ends in themselves. Property law is "a set of legal relations between persons governing the use of things." Legal theorists argue that there cannot be any legal relations between persons and things and that things cannot have rights. Being in the latter category, property is

understood as that which does not have any interests of its own that must be respected. [FN18]

The central legal issue in this context and at the present time is therefore simply put: "Animals are not humans and are not inanimate objects. Presently, the law has only two clearly separated categories: property or juristic persons." [FN19]

Settlements in tort cases have tended to be based not on the loss to the nonhuman animal, but on the human suffering that animal's loss engenders. [FN20] In such cases, "plaintiffs were awarded damages based on emotional distress over the loss of the companion animal while simultaneously acknowledging that such payment still occurs within the parameters of the animals' demise as property loss." [FN21] In these cases, "[r]ecovery is predicated upon an owner's reaction to the animal's injury." [FN22]

Closely paralleling this one-sided weighting of the human side of the equation in the majority of tort cases are the presuppositions that govern the Animal Welfare Act (AWA). [FN23] Standing in actions brought in connection with the AWA is tightly circumscribed: the plaintiff must immediately and actually see an animal treated in a manner that violates either a state anti-cruelty law or the AWA, allege a specific injury, establish a clear connection with the violation and the injury, and prove that the court's adjudication can redress the injury. [FN24] Even when these requirements are met, penalties have tended to be minor, [FN25] and enforcement of anti-cruelty statutes is comparatively lax. [FN26] Because, in this context, "[t]he only 'right' that is provided by anticruelty statutes is a 'right' of the animal to have animal interests balanced against human interests," [FN27] one may question whether the AWA establishes any sort of meaningful right. As a result, one author has justifiably concluded:

In virtually all AWA claims, legal failures result not from any deficiency of the merits of the cases brought before the courts, but rather from jurisdictional challenges to third parties. In particular, standing has become a near insurmountable difficulty for third parties seeking a hearing on the substantive claims they have brought under the statute. [FN28]

More important, from the standpoint of the thesis of this comment, is the central presupposition that the AWA statutes are intended to "regulate animal cruelty to prevent humans from becoming generally desensitized and committing cruelty against humans." [FN29] This reflexive centering of concern upon human interests, rather than upon those of nonhuman animals, is noteworthy and will be fundamental to the discussion that follows.

To understand clearly what the present state of affairs is, we need to understand something of its history. For reasons of space, this comment will discuss only two human claims that typify the history of mankind's relationship with other animals; for a detailed description of this history, the reader will find good summaries elsewhere. [FN30]

Throughout much of human history, nonhuman animals have had no rights. [FN31] Scholars have distinguished two familiar reasons for this--both are homocentric. One has a theological basis, [FN32] the other is a secular expression of species pride. [FN33]

The theological claim has been made in different ways by some of the world religions. In the western Judaeo-Christian tradition, the Bible propounds this claim when in Genesis man is given dominion over all nonhuman creatures. [FN34] Independent of religious

dogma, but bearing equally the imprint of homocentrism, the second, species-centered claim has pervaded human interactions with animals, who have been judged to be inferior to the human species in a wide variety of ways. According to this view, nonhuman animals are alleged to be deficient in, or to lack completely, traits for which human beings pride themselves: possession of reason, language and symbol use, reflective capacity, awareness of self, and so forth. [FN35] Historically, proponents of this view have manifested extreme agility in shifting their territorial claims from one putatively special human distinguishing trait to another, as biology and ethology have continued to march ahead, establishing empirically that one uniquely human trait after another is shared with members of other species. [FN36]

One of the unique characteristics of closed systems of belief is that they are immune to revision even in the light of empirical evidence. [FN37] They have, to use the phrase of one author, an "almost inconceivable hardihood" in resisting criticism, [FN38] and therefore "[t]here is a tendency to shift the ground when the buildings begin to totter." [FN39]

It is a distinctive characteristic of an ideology that it resists refutation. If the foundations of an ideological position are knocked out from under it, new foundations will be found, or else the ideological position will just hang there, defying the logical equivalent of the laws of gravity. [FN40]

Religions are essentially closed systems of belief, the truth of which cannot be legitimately questioned when a viewpoint is adopted from within such a system. When a viewpoint questioning the truth of the religious advocate's view is adopted from a position outside the system, the grounds for the outsider's challenge are seen by the religion's proponents as foreign and irrelevant. [FN41] Questions concerning the truth of beliefs that belong to a closed system cannot therefore in any truly fundamental sense be appropriately and meaningfully raised at all--that is, from the standpoint of its adherents. Empirical science, on the other hand, is a comparatively open system of belief, essentially subject to revision in the light of new evidence. [FN42]

Closed systems of belief are often called ideologies, and unmistakably there is an ideological dimension in both the belief system of animal rights opponents and that of animal rights advocates. Depicting the conflict between opposing views in this way can help to identify the most basic issues that serve to divide different sets of mutually exclusionary interests.

In the case of opponents to animal rights, historical precedent has supported their unquestioned commitment to human dominance and the exploitative use of nonhuman animals as chattel. This comment both raises the question and provides answers about why this has been so.

II. THE TWO COMPETING PRO-ANIMAL IDEOLOGIES

Theological dogma and species pride have been tangled together throughout human history. Each has served to reinforce the other and to deny nonhuman animals "humane" treatment. Recently, in legal discourse that opposes the continuation of such treatment, two competing ideologies have taken shape. [FN43] Each serves as a conceptual framework for its advocates, and each brings with it a set of preferred values.

On one side, there are what I will call the intrinsic value theorists. They include, for example, John Muir, [FN44] Christopher Stone, [FN45] Paul Taylor, [FN46] Lawrence Tribe, [FN47] and Tom Regan. [FN48] On the other side, there are the much more numerous homocentric theorists, of whom I will mention as representative William Baxter [FN49] and Peter Singer. [FN50]

Proponents of intrinsic value in environmental and animal law share the belief that nature and individual nonhuman animal species exist for their own sakes, have value in themselves, and ought not to be valued as a function of human interests. [FN51] This viewpoint has a long history. One of its early expressions was given nearly a millennium ago by Maimonides: "It should not be believed that all beings exist for the sake of the existence of man. On the contrary, all the other beings too have been intended for their own sakes and not for the sake of anything else." [FN52] More recently, Paul Taylor articulated a similar viewpoint, arguing that "wild communities of life are . . . deserving of our moral concern and consideration because they have a kind of value that belongs to them inherently." [FN53] This perspective, which Taylor calls a "biocentric outlook on nature," [FN54] stresses equality in the interdependent membership of different species in the total continuum of life, respect for the uniqueness of individual organisms, and the biological modesty on the part of man to acknowledge that his species has no intrinsically superior value in that continuum. [FN55]

Lawrence Tribe, writing a decade earlier, expressed a commitment that "encourage[s] the elaboration of perceived obligations to plant and animal life and to objects of beauty [without] insistent 'reference to human interests.'" [FN56] Tom Regan similarly has argued that nonhuman animals have intrinsic value, are subjects in their own right, suffer in ways that are morally relevant to ways in which human beings suffer, and have certain inviolable rights. [FN57]

For homocentric theorists, in contrast, the value of an individual nonhuman animal or species hinges on its value for man. [FN58] Homocentrist William Baxter therefore writes: "To assert that there is a pollution problem or an environmental problem is to assert, at least implicitly, that one or more resources is not being used so as to maximize human satisfactions." [FN59] Homocentric Peter Singer proposes a welfarist-utilitarian theory that asks people to balance their own needs against the needs of nonhuman animals, in a manner that avoids unnecessary animal suffering without compromising the priority of human interests. [FN60] For Singer, possession of differences in cognitive capacity can entail corresponding differences in degree of moral importance, and in saying this, he implicitly suggests a position that can be caricatured as insisting: the more like us they are, the more valuable they are. [FN61] In other words, the species barrier is softened-- but only up to the point where resemblance to the human species still remains distinct. This position is fraught with problems: for example, it may astonish some readers that Singer doubts that for animals en route to slaughter, their painless deaths are really a deprivation at all. [FN62]

The conflict between intrinsic value and homocentric theorists can be stark, or it can be muted. Ann E. Carlson, for example, opts for a middle-of-the-road view, which she calls "human-centered standing." [FN63] It combines both a certain degree of respect for the intrinsic value of nonhuman animals, buffered by ultimate adherence to homo-centrism. [FN64]

With some of the differences between these two ideologies before us, I want to step back reflectively to consider the different psychologies that underlie them. To this end, let us consider the very distinct emotional responses to nonhuman animals that human beings ordinarily have.

III. HUMAN EMOTIONS TOWARD NONHUMAN ANIMALS

In the traditional homocentric view, the rational and affective value of a nonhuman animal is nothing more than its value to human beings. [FN65] Among homocentric theorists, it is common to value the life of a nonhuman animal by means of a cost-benefit analysis "heavily weighted in favor of even the most frivolous human benefit." [FN66] Certainly, utilitarian seeing-eye dogs and military and police dogs are often deeply mourned by their owners/handlers at least in part because of their usefulness--but seldom, one must admit, solely because of it. Certainly, for many people, the emotional value of a nonhuman animal is inversely proportional to its human utilitarian value: the deaths of farm animals and barn cats are seldom mourned with extreme sorrow.

The utilitarian valuation of nonhuman animals, built on what one author calls "the rhetoric of human specialness," [FN67] characteristically leads to moral atrocities toward those animals to whom there is generally little to no empathetic human response. Some authors have found parallels to this psychically numbed outlook in the unaffected emotional response of bystanders to the Holocaust. One author has suggested, "[o]ur treatment of animals is, in disturbing ways, like the treatment of Jews in the Holocaust, particularly with respect to the capacity of normal, good people to rationalize and deny that suffering is taking place." [FN68] Another author has likewise remarked: What do they know--all these scholars, all these philosophers, all the leaders of the world--about such as you? They have convinced themselves that man, the worst transgressor of all the species, is the crown of creation. All other creatures were created merely to provide him with goods, pelts, to be tormented, exterminated. In relation to them, all people are Nazis; for the animals it is an eternal Treblinka. [FN69]

Hannah Arendt called the response of ordinary people to moral atrocity "the banality of human evil." [FN70] Ordinary people do in fact tolerate, avert their eyes, comply with, or deny atrocities of which they are aware. Psychologically oriented Holocaust studies make this normal though morally repugnant human characteristic compellingly evident. [FN71] Similarly, and without recourse to metaphor, there is an unmistakable banality of human evil in the relationship of the human species toward other species. Even the most morally thick-skinned will find it hard to read firsthand accounts of the meat industry's treatment of animals. [FN72]

The whole creation groans under the weight of the evil we humans visit upon these mute, powerless creatures. It is our hearts, not just our heads, that call for an end to it all, that demand of us that we overcome, for them, the habits and forces behind their systematic oppression. [FN73]

These descriptions of human atrocity toward other species provide some of the hardest evidence of the ordinary person's willingness to treat other creatures with unalloyed cruelty and disdain for their sentience, and of the emotional numbing that dulls compassion, which habitual atrocity produces. [FN74] Nothing will be found in these accounts that points to the existence of particular difficulties that the meat industry

encounters in recruiting individuals willing to carry out their orders, or of psychological injury claims made by slaughterhouse workers and meat packers. [FN75] The situation is entirely similar with respect both to the ease with which ordinary human beings can be inducted into the armed forces and ordered to commit acts of barbarity, or the absence of difficulty with which human executioners can be found to do their socially appointed work in prisons.

What needs to be called into question are these very phenomena that involve ordinary humanity's willingness to engage in acts of barbarism and cruelty, to which the majority has become psychologically habituated and deadened. The study of such phenomena is the focus of the psychology of human destructiveness, about which there is now a considerable body of literature. [FN76] However, to my knowledge none of the psychologists who have studied human destructiveness has extended the research conclusions in this field to our species' exploitation and abuse that result from humanity's diet, animal experimentation, fashion, sport, and religious practice.

Much of humanity's destructive psychological attitude toward animals is found in its purely utilitarian point of view, as expressed by the blind or dumb belief that "animals do not experience pain. Their cries are just like the squealing of a drill press." [FN77]

And so the suffering by nonhuman animals continues. Peter Singer has asserted: "The meaning of what we do to meat animals transcends hard statistics. The destructive impulses of the human spirit are grimly revealed in the suffering of these creatures, and most of us naturally recoil from the vision." [FN78] In Singer's book, *Animal Liberation*, a chapter entitled "Tools for Research" catalogs human atrocities toward animals that are no different in degree or in kind from those committed by the infamous Nazi doctors. [FN79] In the chapter "Down on the Factory Farm," human atrocities of another kind are described in the context of an account of mankind's "production" of animals for slaughter. [FN80]

Utilitarians excuse many of these human purposes to which animals are put, but they do not excuse in the same breath the sort of human destructiveness that was exemplified each year in the town of Hegins, Pennsylvania, where, until 1999, each Labor Day, a popular event was sponsored in which eight thousand pigeons were released from cages and shot at close range "for fun." [FN81] Those that were not killed outright but only injured were then dispatched with gleeful abandon by young children whose task it was to kill the wounded creatures by wringing their necks or smashing them repeatedly against the pavement or walls. [FN82] The attraction of the event to the perpetrating human members of the community is transparent. [FN83]

One more example of human destructiveness toward other species will suffice in this short list of atrocities. It is from an eye-witness account of animal experiments done at the Jansenist seminary of Port-Royal in the late seventeenth century:

They administered beatings to dogs with perfect indifference, and made fun of those who pitied the creatures as if they felt pain. They said the animals were clocks; that the cries they emitted when struck were only the noise of a little spring that had been touched, but that the whole body was without feeling. They nailed poor animals up on boards by their four paws to vivisect them and see the circulation of the blood which was a great subject of conversation. [FN84]

The author's purpose is not to immerse the reader in an inventory of horrors experienced by animals and accomplished by man, but rather to set at some distance the phenomenon of human destructiveness toward other species. The comparisons made with atrocities committed during the Holocaust by ordinary citizens refer to sobering facts that any psychologist who studies human destructiveness must consider.

What can we learn from such comparisons? As shall be discussed, the atrocities committed by the human species in both instances involve two psychologically based realities: narcissism and species selfishness. [FN85]

IV. HOMOCTRISM V. HUMAN AFFECTION TOWARD ANIMALS

Homocentrism, as we have seen, seeks to exalt the human species by directing attention to characteristics that identify the putative uniqueness of man. [FN86] One author, arguing for the need for homocentrism, quotes the following species-chauvinist passage with apparent satisfaction: "Screw the rights of nature. Nature will have rights as soon as it gets duties. The minute we see birds, trees, bugs and squirrels picking up litter, giving money to charity, and keeping an eye on our kids at the park, we'll let them vote." [FN87]

The human superiority movement is well entrenched and flourishing. Possessed with, or by, this mindset and the emotions associated with it, it makes perfect sense to believe that "the world was created for the benefit of humans who crown the natural hierarchy. Humans, being endowed with reason, are in an exalted place in the natural order and, thus, can without moral compunction, tyrannize the whole of nature." [FN88] Hence, the common assertion that "everything exists for the benefit of those who have reason--that is, humans." [FN89]

The difficulty with the homocentrist position is certainly not its persuasive force for the majority of people, but rather the questionable justification of its major premise: that the human species is unique, special, and self-justifyingly valuable. [FN90] As one author has commented, "[t]he true problem with deliberative rationality as a distinguishing characteristic is not that most animals are rational in this sense, but that some humans are not." [FN91] This observation can be made, *mutatis mutandis*, for any alleged distinguishing characteristic, except perhaps for one: that the human species happens, usually, to be at the top of the food chain. But from this fact alone, no moral consequences follow. To believe that our species enjoys a privileged moral position just because of our dominant evolutionary position may in the end be nothing more than pure prejudice. [FN92]

Very much in step with homocentrism is the interpretation that deep affection toward nonhuman animals is a psychological aberration. Readers who are not familiar with so-called "nosologies" of psychological pathology may not wish to know more than this: psychologists and psychiatrists have lacked unanimity among themselves as to what constitutes real psychological pathology--as opposed to traits, attitudes, and behaviors that are labeled pathologies only because they are socially inconvenient. [FN93] Unfortunately, the categories of psychological pathology have been extremely fluid over time, frequently embodying prior decisions that reflect prevailing social values. [FN94] It is no different in the present context, where some psychologists and medical practitioners have claimed that deep emotional attachment to a nonhuman animal "becomes pathologic

when the attachment interchange between human and pet assumes such significance for the human that it has greater priority than attachment interchange with other humans." [FN95]

This, of course, is a forthright statement of homocentrism of the psychiatric variety. The view it expresses is in part supported by the fact that in most contemporary societies there is no culturally acceptable way in which to mourn the death of a pet. [FN96] Thus, unexamined premises make their way into ordinary discourse, as when a psychologist writes that there "are a small number of people who, perhaps because of the inability to form healthy relationships with other humans, have unreasonable attachments to their pets." [FN97] The use of such words as "healthy" and "unreasonable" in this statement are flags of homocentrism.

Humanity's homocentric emotional response to nonhuman animals stands in stark contrast to the emotional response of those comparatively few human beings who value nonhuman animals intrinsically. To value nonhuman animals intrinsically is to break with the tradition of human exploitation of nonhuman animals, and perhaps to acknowledge that in many ways nonhuman animals are "better" than human beings. Two centuries ago, Madame de Staël commented, "The more I see of men, the more I like dogs." [FN98] Robert Louis Stevenson remarked: "You think those dogs will not be in Heaven! I tell you they will be there long before any of us." [FN99] Mark Twain, with incisive wit, wrote:

In studying the traits and dispositions of the so-called lower animals, and contrasting them with man's, I find the result humiliating to me. [FN100]

Man is the only animal that blushes, or needs to. [FN101]

Heaven is by favor; if it were by merit your dog would go in and you would stay out. [FN102]

Psychologist Wallace Sife has observed: "It is easy to believe that most pets are better than many humans. They are pure love, acceptance and trust. The many evils of humanity did not corrupt the purity of their spirit." [FN103] He has noted that the grief experienced by many people upon the loss of their companion animals is greater than when a fellow human is involved. [FN104] William J. Kay, D.V.M., Chief of Staff of the Animal Medical Center in New York City, has similarly noted:

The veterinary medical profession has long understood that to pet owners-- especially those faced with the loss of their pet--an animal is never merely "just a dog" or "just a cat." We have learned that for many clients no greater emotional attachment exists. [FN105]

A legal commentator recently wrote:

Many people who love and admire dogs as family members do so because of the traits that dogs often embody. These represent some of the best of human traits, including loyalty, trust, courage, playfulness, and love. . . . At the same time, dogs typically lack the worst human traits, including avarice, apathy, pettiness and hatred. [FN106]

He goes on to examine what he calls a "phenomenological argument" that "humans are not in some sense superior to other animals, but are instead inferior." [FN107] From this point of view:

[H]umans make mistakes in fulfilling their ends due to free will and self determination. Animals, on the other hand, cannot make such mistakes; they automatically fulfill their natures. Thus, our ability to fulfill our natures places us at a lower level than other animals. We are flawed, while other animals are not, and this counteracts the theory of evolutionary superiority. [FN108]

Another author has observed that "[I]nstead of the highest, man is in some respects the lowest of the animal kingdom. Man is the most unchaste, the most drunken, the most selfish and conceited, the most miserly, the most hypocritical, and the most bloodthirsty of terrestrial creatures." [FN109] This point of view departs so much from the traditional assumption of human evolutionary superiority as to seem counterintuitive. In this context, another author argues:

According to evolutionary theory, the difference between species is not one of distinct categories, but merely one of degree. There is nothing in this degree of difference that is so great as to justify the domination visited by our species upon other species of this planet. [FN110]

Supporting this perspective, District Judge Altimari, writing in *Kostiuk v. Town of Riverhead*, quoted humorist and dog lover James Thurber: "The dog has seldom been successful in pulling man up to its level of sagacity, but man has frequently dragged the dog down to his." [FN111] On the serious, scientific side, studies by renowned primatologists Dr. Jane Goodall and Dr. Roger Fouts have shown that chimpanzees are highly intelligent, self-aware individuals with complex emotional and social lives, that they express a broad range of emotions, including joy, sadness, grief, fear and even a sense of humor. . . . [G]reat apes and numerous other species are like humans in ways that are morally and legally significant--they experience pain and pleasure and possess the desire to experience pleasure and avoid pain. [FN112]

Indeed, some authors have taken courage in hand to buffet the counterintuitive response of their readers still further by claiming that, in terms of individual cognitive skills and capacities, an average adult chimpanzee is generally due more moral consideration than a human child, who is deficient in these cognitive abilities and can never reach the same quality and kind of awareness that characterizes the life-world of the chimp. [FN113]

An eloquent and perceptive summary of this kind of human emotional response to nonhuman animals was expressed by naturalist Henry Beston:

We need another and a wiser and perhaps a more mystical concept of animals. Remote from universal nature, and living by complicated artifice, man in civilization surveys the creature through the glass of his knowledge and sees thereby a feather magnified and the whole image in distortion. We patronize them for their incompleteness, for their tragic fate of having taken form so far below ourselves. And therein we err, and greatly err. For the animal shall not be measured by man. In a world older and more complete than ours they move finished and complete, gifted with extensions of the senses we have lost or never attained, living by voices we shall never hear. They are not brethren, they are not underlings; they are other nations, caught with ourselves in the net of life and time, fellow prisoners of the splendour and travail of the earth. [FN114]

The conceptual framework from which this kind of naturalistic observation is made need not remain, as Beston suggests, "mystical" in nature, for it has been explored in depth and

in detail by the comparatively little-known biologist Jakob Johann von Uexküll. Von Uexküll sought to reconstruct, based upon a careful study of physiological evidence, how individual nonhuman animals, ranging upwards in complexity from the simple amoeba and paramecium, are conscious of the world in which they live. His core study remains untranslated from the original German, in spite of the passage of nearly a century. [FN115] Von Uexküll was perhaps the earliest phenomenological biologist, describing the "surrounding world" (Umwelt) from the standpoint of the "inner worlds" (Innenwelten) of the wide variety of species he studied. [FN116]

Once the independence, the integrity, and the reality of the life-worlds of other species are accepted, on both an intellectual and an emotional level, it is only a single step further to recognize that they express ends in themselves, independently of human interests. Yet, sizeable blocks are placed in the path of anyone who would take that step; they are blocks set firmly in the way by normal and deeply rooted human psychology.

V. HUMAN NARCISSISM AND SPECIES-SELFISHNESS

All creatures are narcissistic to a degree. Human beings are self-absorbed in their experience of family life, work, and play. Self-absorption can be desirable and healthy, or it can become a clinical disorder. Clinical narcissism involves a degree of self-absorption that blocks an awareness of the personal needs, wishes, and feelings of others. [FN117] Such extreme narcissism interferes with compassionate awareness of this kind: from the perspective of the clinical narcissist, others--animals as well as people-- become mere extensions of self. [FN118] The separate integrity of another is neither perceived nor respected. [FN119]

Erich Fromm studied what he called "malignant narcissism." [FN120] Fromm claimed that narcissism becomes malignant when an individual's willfulness becomes intense and acute. [FN121] Malignant narcissism is characterized by the need to be always right, by pride, and by a denial of personal fallibility. [FN122] It is also characterized by dissimulation--by a tendency to lie, to hide from unpleasant truths, and to conceal potentially damaging truths from others. [FN123] The narcissist's willful pretense and refusal to acknowledge what is true make the psychological treatment of the condition somewhere between difficult to practically impossible. Narcissism is a condition that can involve extreme deviousness, as the individual prefers to dodge and distort rather than confront reality. [FN124]

It is clear that not only isolated individuals are narcissistic, but entire groups of people. [FN125] When a group becomes malignantly narcissistic, the collective will have an inclination to treat non-members as depersonalized objects. [FN126] The group will be unwilling--and in a psychologically fundamental sense, unable--to recognize the boundaries of others, to acknowledge their separateness, and the reality of their worlds of experience, and hence they will refuse to recognize that others are persons in their own right. [FN127] Nationalistic groups that are blinded by the grandiose self-love and self-absorption of narcissism characteristically repudiate the value of others who are not members of their group. [FN128] Others are perceived as dehumanized and without intrinsic worth. Numerous studies have been devoted to this phenomenon, [FN129] but

seldom has the hypothesis been advanced that an entire species can and has become malignantly narcissistic. [FN130]

This comment will consider that hypothesis only in the context of our species' firmly rooted habit of exploiting and destroying other species, while we willfully maintain the pretense that the suffering and extermination we inflict on other species are morally insignificant.

As has been observed, the human response to other species is marked by a grandiose belief that the human species is special and exalted, devoutly believed to comprise a unique and exclusionary source of moral value. [FN131] At the species level, mankind's unilateral psychological framework reserves compassion for application only to members of his own species and is willfully blind to the existence of animal suffering. The emotional outlook that is fostered is one of affective autism: in the same way as an autistic human child is walled in by a radically imprisoning form of narcissism, so is a malignantly narcissistic human group. In autism, there is an inability to form warm emotional relationships, extreme self-absorption, and an insistence upon perpetuating the sameness of an environment that has become familiar and habitual. [FN132] The self-interest of human groups which kill animals for food, sport, fashion, science, or religion is emotionally autistic in this sense. Attempts to change the attitudes and behaviors of such groups will predictably be met with an equivalent form of the infantile annoyance, impatience, and rage typical of the autistic child when the stability of his or her habits is upset.

Narcissism on the species level is perhaps most clearly characterized as an empathy deficit. Empathy is the capacity to feel another's feelings vicariously. Mankind's self-absorbed exploitation of other species, often perpetrated with cruelty and violence, is the expression of a species-wide deficiency of empathy. Unfortunately, as psychologists have observed in connection with malignant narcissism on the individual level, [FN133] when a species develops a self-image that is grandiose, proud, self-centered, and deficient in empathy toward other species, awakening its members to reality is the last thing the species desires. If anything, efforts to persuade or force people to confront reality will be vigorously resisted and fought by means of outright denial, intellectual deviousness, and dissimulation. [FN134]

Moral sensitivity, in contrast, is fundamentally not a matter of theoretical persuasion, but of personal capacity that varies from individual to individual. Although compassion has been made the keystone of some moral theories, [FN135] the unequal distribution of human empathy among individuals is generally overlooked. It is abundantly evident in the real world that the average, normal, ordinary capacity for empathy is of such a low degree of development that average, normal, and ordinary persons will typically and voluntarily comply with social policies, national expectations, and ideological principles that condone atrocities to other people and to other species. This is one of those facts that does not call for scientific proof. [FN136] Specifically in connection with other species, ordinary human beings--not a few exceptionally cruel or heartless humans, but the overwhelming majority of humans--take an active part in, acquiesce in, and allow their taxes to pay for practices that require the sacrifice of the most important interests of members of other species in order to promote the most trivial interests of our own species. [FN137]

The public does not welcome being told that its level of moral development is abysmally low and that it often will accept atrocities without blinking, and yet these truths are obvious and compelling to any psychologist who has studied the destructive behavior of human groups.

As yet, moral education appears to be only an ideal that is not realizable in fact. [FN138] It is not known why some individuals have a capacity to recognize the suffering of other species as though it were their own. There are no known methods of teaching that are effective in producing a capacity for empathy, for compassion, in significantly large populations. It is evident that reasoning by itself does not lead to compassion, although there has been hope among some philosophers that it might. [FN139] The religions of the world have for many centuries attempted in their diverse ways to inculcate compassion, among other things, and yet we find the world as it is. As yet, moral sensibility in the form of genuine compassion for others appears in human populations only among the smallest minority. [FN140]

From a psychologist's point of view, possession by individuals of high levels of compassion is reserved for the few in the same way as is the incidence of high intellectual ability. That the two do not go hand-in-hand is clear, for there is no automatic, necessary association between being highly endowed with intelligence on the one hand, and compassionate capacity and behavior on the other. [FN141] Individuals who have resisted war on moral grounds have always been in the minority. [FN142] So have vegetarians. So have those who actively oppose capital punishment. So are those who feel aversion toward violence on television and in the movies, news that is obsessed with crime, and the spectacle of contact sports. The psychology of the normal human majority is one which obtains pleasure, for example, in witnessing violence, at times participating in it, taking comfort in obeying the dictates of national pride, and obtaining gratification in self-exaltation by reason of belief in a preferred, collectively endorsed ideology. High sensitivity to the feelings of others, however, is a capacity found only in comparatively few individuals. [FN143]

Man's response to the suffering of other species is governed not only by his narcissistic emotional response to them, but by genetic selfishness. Elsewhere, [FN144] I examine the phenomenon of human genetic selfishness as part of the widespread ecological pathology for which our species is responsible, and therefore, I will discuss it only briefly here.

Our selfishness as a species results from a psychology committed to the same goals shared by all parasite species: selfish, self-serving preservation, environmental exploitation, and reproduction at the expense of their respective hosts. [FN145] In the case of mankind, the species has become parasitic-- that is to say, pathogenic--in relation to most of the world's ecosystems and the life they support. The proliferation of the human species and its ability to destroy many of the essential conditions of life for an enormous number of other species place mankind in the position of a global pathogen. [FN146] The psychology of parasite selfishness shares much with the psychology of narcissism, for in both parasitism and narcissism attention is confined to the immediacy of self-interest.

To see the human species in this way is to see mankind in a new light. We see the human species as one parasite species among many, recognizing that parasitism is the most

pervasive way in which forms of life--from viruses to bacteria to protozoa to plants and animals--meet the exigencies of living. Among the defining characteristics of parasitism that apply to the human species, one in particular stands out as we consider the massive extinction of species for which mankind is currently responsible. [FN147] It is genetic selfishness. In the human species, the genetic selfishness of the parasite has taken the form of our species' centrism, our opportunistic exploitation of environmental resources, and our species' disregard for the degree to which human activity and reproduction displace and exterminate other forms of life. Geneticist Richard Dawkins, much of whose research has focused on the phenomenon of genetic selfishness, has commented that "a human society based simply on the gene's law of universal ruthless selfishness would be a very nasty society in which to live. But unfortunately, however much we may deplore something, it does not stop it being true." [FN148]

The human species could, in a test of the imagination, approach the natural world differently. The opposite of parasitism is an approach to the world resembling altruism. If a species were altruistic in this sense, its behavior, or at least a relevant portion of it, would involve acting in the interest of another species, or of other species generally, even though doing so entails real cost to the altruist species. The cost would include self-restraint of the species' instinctual reproductive urges, a willingness to compromise its quality of living, and so forth--all on behalf of species not its own. [FN149]

Such an unselfish species, as far as we know, does not exist in the world. If one ever has, its self-sacrificing nature would not lend itself to competition and natural selection, and as a result, it is plausible to believe that it would soon die out in the evolutionary process. [FN150] It falls to individuals and occasionally to social groups to express altruism, usually toward members of their own species, at times toward members of other species. Ironically, human individuals who are altruistic toward their fellow man often are not altruistic toward other species. For human intraspecific altruism often rests on religious grounds that ennoble man while construing all other species as his chattel. Though altruism evidently exists among some individuals and groups, on the species level per se, altruism appears not to exist or to have evolutionary promise.

Perhaps someday it will, but if and when it does, the existence of species altruism will be a radical departure from the powerful self-centered and self-serving interests that have been vested with such intensity in parasite species, and which have acted as the motive force behind many millions of years of organic evolution.

If the majority of members of the human species can validly be characterized as having a collective narcissistic pathology and as genetically selfish, advocates of animal (or human) rights need to take this into consideration. To urge compassion and altruism upon ears that do not possess more than the rudiments of moral sensibility is for the most part an ineffective waste of energy, and success will always be limited. It is unclear how moral intelligence can effectively be cultivated in the average person; we cannot expect normal, average people to possess sufficiently and deeply felt general empathy (that is, empathy that extends beyond their preferred social collective) for others who suffer, whether human beings or members of other species.

Psychologists find it dishearteningly difficult to treat severely narcissistic patients. Psychology does not, at least at this time, possess a magic bullet to cure clinical narcissism; malignant narcissism is one of many psychological and physical pathologies

to which human beings are subject that does not yet have an effective treatment. And the same appears to be true of genetic selfishness. If mankind's attitudes and behavior toward other species are inherently controlled by a variety of selfishness that affects the majority of human beings from the species level, at present it is unclear what steps might be taken to oppose and change a dynamic with such deep roots.

Legal theorists need to recognize that fundamental changes in the ways normal human beings relate to members of other species require equally fundamental changes in human psychology. The fact that psychologists and educators themselves do not know how to bring these changes about is significant, and poses a problem in need of solution. Until a solution of the right kind is found, legal discourse concerning animal rights is made more intelligent by recognizing where the most basic problem lies.

VI. HUMAN CONCEPTUAL PATHOLOGY

Human attitudes, policies, and behavior are influenced not only by the species' underlying psychology, but by the vocabulary of ideas we use to make sense of the world. For nearly four decades, much of my research has involved a study of human conceptual pathologies, that is, forms of human thought that are intrinsically self-destructive on the level of their meaning or on the level of their practical application. Although such a study is theoretically abstract, I hope it may be possible to convey in the space available here something about this kind of analysis and the conclusions relevant to the subject of this comment that are to be derived from it.

The set of ideas in terms of which we construe events in the real world serves as a framework of interpretation in terms of which we, among many other things, express what we believe to be meaningful statements, check to verify their truth, and make predictions. In the mid-1960s, I proposed that our basic conceptual framework--the framework of interpretation that we presuppose as a common currency of communication--is subject to malfunction. [FN151] I advanced the claim that there exist pathologies of a conceptual kind that undermine our expressed intentions, usually in ways we do not recognize. Epistemological pathologies of this sort frequently make our desired goals unreachable, because we misconstrue reality in fundamental ways.

Gregory Bateson later introduced a similar notion of "pathologies of epistemology" to point to the human propensity to misapprehend and misrepresent reality, again, often in ways that are self-defeating. [FN152] Bateson presented his view informally, and did not develop his thesis. The view he proposed was general: "Epistemological error is often reinforced and therefore self-validating [sic]. You can get along all right in spite of the fact that you entertain at rather deep levels of the mind premises which are simply false." [FN153] He went on to say, "[W]e are most of us governed by epistemologies that we know to be wrong." [FN154]

When I first read Bateson's words, I believed they were wrong, and I still do. The most widespread pathologies of human thought are simply not known by most people to be wrong at all; in fact, they are presumed right, they are made the basis for belief, and they are acted upon. The results of such thinking are frequently self-destructive and tragic. With this conclusion, Bateson was in agreement: "epistemological lunacy . . . leads inevitably to various sorts of disaster." [FN155]

There is, of course, a relevant historical background for any idea, and the basic idea in view here is no different. Plato proposed through metaphor that the majority of people are imprisoned in a cave of ignorance, mistaking mere shadows for reality. [FN156] Kant spoke of "cognitive illnesses," which are "weaknesses and sicknesses of the soul in regard to its faculty of cognition." [FN157] About a century and a half later, in the 1940s, Wittgenstein suggested that human thinking--or at least its expression in language--is often confused and stands in need of therapy. [FN158] In the 1950s, biologist Garrett Hardin proposed another metaphor: "We can regard erroneous ideas as infections with which a people may be seized and from which they may recover. There are certain principles connected with bacterial infections that seem to have a parallel in the ideological field." [FN159] He went on to refer to "ideological pathogens" that are "infective," and which produce "ideological fever." [FN160]

The problem with talk of this kind is that it is metaphorical and tends to remain metaphorical. But a few scholars have made it clear that they had in mind real, nonmetaphorical illness--as when nineteenth century psychiatrist Hack Tuke classified what he called "diseases of the intellect." [FN161] But none of the authors who have intimated, metaphorically or otherwise, that human thought, intellect, or epistemology can go wrong in fundamental ways, and become inherently pathological, has formulated in any detail an account of how this happens, or what to do about it.

I have argued that human conceptual pathologies lead to self-undermining beliefs that, when acted upon, frequently lead to tragic results. [FN162] I am unable to give a comprehensive account in the space available here, but, in connection with the subject matter under consideration, would like to submit the following as tenable claims to the reader.

The human outlook, as we have seen from a psychological perspective, has a manifest tendency unduly to limit the scope of what mankind will accept as having importance and moral value. The myopic, uncompassionate, selfish perspective of the human species is further reinforced and made rigid by the human propensity to adopt exclusionary beliefs. On the one hand, often these are of the form, for example, that denies sentience to members of other species. On the other hand, human beliefs that tend especially to exacerbate homocentrism are of a different form, one that projects the concrete and independent reality of constructs, fictions, and myths, whose meaning is framework relative.

In the context of a discussion of animal rights, the first variety of belief may include such denials as that animals do not possess consciousness, nor feel pain, nor suffer. The second variety of belief may ascribe an independent, transcendent reality to what human beings believe to be their creator, the source of human goodness, and the moral justification for a human group's preferences. One form of belief expresses denial; the other involves positive ascription or attribution. We have encountered both of these varieties of belief in previous sections of this paper. [FN163]

I have argued elsewhere that neither variety of belief is meaningful, because both varieties make recourse to an epistemologically pathogenic move. [FN164] Both types of belief attempt to make use of a shared conceptual framework in order, first of all, putatively to refer from a position outside of that framework and independently of it; and, secondly, such beliefs use that conceptual framework to deny or to assert the existence of

referents that cannot be identified, known, or meaningfully spoken of independent of that reference frame. The conceptual error here, which I have called a projective misconception, involves the use of a frame of reference either 1) to predicate something of an object of reference, while intending to do this in a manner that loses sight of the reference frame that makes such a reference possible, or 2) to deny that a predication can be made to an object of reference--also in a manner that loses sight of the frame of reference that must necessarily be presupposed. [FN165] It is as though one sought to pull the carpet out from under one's own feet, and the harder the pulling, the more firmly implanted upon the carpet one's feet become. When human beings engage in this kind of illegitimate and fundamentally incoherent mental gymnastics, they are, as the old phrase goes, hoisted by their own petards. [FN166]

We may now bring this abstract reasoning to bear on the issues confronting advocates of animal rights. Characteristically, as we have noted, opponents of animal rights assert human priority over nonhuman animals by denying to animals traits that are believed to ennoble the human species and entitle its members to preferential treatment. In addition, opponents of animal rights often assert the transcendent--that is, epistemologically independent--existence of a source of human goodness, usually in the form of a deity, sometimes in the form of an overarching ideology. In the first instance, a denial is made of the existence of certain objects of reference (for example, conscious states, felt pain, reasoning, symbolism, and claimed not to exist within nonhuman animals), and this denial is by intention "projected" outside the human frame of reference that makes such reference possible. After all, the proponent of such a reference intends to make a claim about the real inner life, the deficient inner experience, of nonhuman animals. The result of these projective references is a denial, one that typically claims that nonhuman animals have no consciousness, do not feel pain, and so forth. [FN167] In the second instance, the existence of certain constructs (such as human goodness, or a god) is asserted to transcend the frame of reference that is required to refer to them.

Treatment for these epistemological pathologies is somewhere between difficult to impossible in practice, as it is in cases of malignant narcissism. A rigorous methodology can be devised to detect and eliminate these kinds of conceptual pathology, [FN168] but it obviously can be effectively implemented only by users who are both conceptually competent and willing to do this. In the case of clinical narcissism, we might say that the narcissist does not possess the emotional tools necessary to break with his or her hermetically sealed framework so as to be in a position to recognize the reality and integrity of the feelings of others. Similarly, in the case of conceptual pathology, the majority of afflicted individuals do not have or wish to use the conceptual tools necessary to perform the self-critical task that is in question. As a result, and for these reasons, the topic of animal rights is likely to remain a minority concern.

As biologist Garrett Hardin commented, "only optimism sells." [FN169] There is among human beings an almost categorical aversion to conclusions that do not buttress a group's optimism. In the context of our preferred values, we wish only to be encouraged. Unfortunately, blindness to the magnitude of a problem does not shrink its size. If we truly wish to solve the problem that animal rights poses, we need to recognize its real dimensions.

VII. CONCLUSION

From the point of view expressed in this comment, animal rights advocates are, in a certain highly estimable sense, seeking, like the endearing drunk, to find their lost keys beneath the streetlight, simply because there is more light there. They are not foolish, only perhaps too hopeful that the restricted scope of their focused efforts will solve a much larger problem. Legal discourse focuses on argumentation and case precedence, statutory law, and their underlying philosophy. Unfortunately, the most significant and the most fundamental issues raised by animal law lie elsewhere, and they are almost universally neglected. They are the most significant issues because they are larger and more overwhelming; and they are the most fundamental because they relate to the human roots of the problems involved. These issues have to do with the same deeply entrenched human pathologies that are responsible for cruel and depersonalized treatment of others--whether in human genocide, crime, collective warfare, or in the wholesale annual slaughter, medical killing, and species extinction each year of billions of individual nonhuman animals. When those times occur, as they must, that an animal rights advocate is discouraged by the magnitude of the opposition that he or she faces, this realization can have a bracing effect, for the struggle in which we are engaged is part of the same challenge to curb the many other sad and terrible expressions of human narcissism, species selfishness, and conceptual pathology.

The solution to the problems faced by the advocacy of animal rights requires a much more fundamental approach than the marshalling of animal case law precedents in noteworthy litigation, or impassioned and courageous attempts to insist upon more adequate statutory law. Such attempts are heroic and admirable. They are admirable because of the daunting task they seek to accomplish, and are heroic because they involve the dedication of men and women to a field of law for which deep-rooted changes are required in normal, average, and ordinary human feeling and thinking. Human species-level narcissism, genetic selfishness, and conceptual pathology together conspire to make mankind's resistance to animal rights somewhere between difficult to practically impossible, at least at this stage of our species' moral development. To reduce the issue to its oversimplification: as Einstein was once asked, "What can we do to get a better world?" He replied, "You have to have better people." [FN170]

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Dedicated to Heidi, who, although a member of another species, was a loving and beloved person in her own right. Her early death as a result of veterinary medical negligence motivated the writing of this paper.

Special thanks are due to attorneys Scott Beckstead and Stephan Otto, for their intelligence, compassion, and dedication to a cause that requires moral courage.

[FN1]. Pamela D. Frasch et al., *Animal Law* 67 (Carolina Academic Press 2000).

[FN2]. Joyce Tischler, *Toward Legal Rights for Other Animals*, in Frasch et al., *id.* at 747-49.

[FN3]. It is important to note that the roots of human resistance to animal rights are not only psychological. There are, for example, economic and political forces also at work. These forces can be studied from a psychological perspective, in terms of which the claim can be made that psychological dimensions of human reality are most fundamental. Or, from the perspective of an economist, it can be argued that the psychological factors are themselves manifestations of more elemental economic variables. What is identified as most basic is a function of a researcher's disciplinary framework.

[FN4]. Gary L. Francione, *Animals, Property, and the Law* 49 (Temple U. Press 1995).

[FN5]. Derek W. St. Pierre, *The Transition from Property to People: The Road to the Recognition of Rights for Non-Human Animals*, 9 *Hastings Women's L.J.* 255, 270 (1998).

[FN6]. Martha C. Nussbaum, *Book Review: Animal Rights: The Need for a Theoretical Basis*, 114 *Harv. L. Rev.* 1506, 1549 (2001).

[FN7]. Several authors have critically examined the centuries-long practice of classifying animals as property. See generally Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 *B.C. Envtl. Aff. L. Rev.* 471 (1996) [hereinafter *The Legal Thinghood of Nonhuman Animals*]; Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Books 2000) [hereinafter *Rattling the Cage*]; Gary L. Francione, *Animals, Property, and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 *Rutgers L. Rev.* 721 (1994); Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 *N.Y.U. Envtl. L.J.* 531 (1998); St. Pierre, *supra* n. 5; and Petra Renee Wicklund, *Abrogating Property Status in the Fight for Animal Rights*, 107 *Yale L. J.* 569 (1997). For relevant case law, see Frasch et al., *supra* n. 1, at 67-107, 175-276.

[FN8]. Steven Bartlett, *A Metatheoretical Basis for Interpretations of Problem-Solving Behavior*, 11 *Methodology & Sci.* 59, 72 (1978).

[FN9]. Tischler, *supra* n. 2, at 749.

[FN10]. See generally *supra* n. 7.

[FN11]. E.g. *Corso v. Crawford Dog & Cat Hosp.*, 415 N.Y.S.2d 182 (N.Y. Civ. Ct.

1979) ("This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.... A pet is not an inanimate thing that just receives affection; it also returns it.... This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog-that is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept.").

Similarly, in his concurring opinion in *Bueckner v. Hamel*, Justice Andell wrote: "The majority cites *Arrington v. Arrington* for the proposition that animals are treated as property in the eyes of the law. I agree that this is an established principle of law. But animals are not merely property." 886 S.W.2d 368, 376-77 (Tex. Ct. App. 1994) (citation omitted).

[FN12]. See generally Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 *Animal L.* 33 (1998); Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 *N.Y.U. L. Rev.* 1059 (1995); Joseph H. King, Jr., *The Standard of Care for Veterinarians in Medical Malpractice Claims*, 58 *Tenn. L. Rev.* 1 (Fall 1990); Peter Barton & Francis Hill, *How Much Will You Receive in Damages from the Negligent or Intentional Killing of Your Pet Dog or Cat?*, 34 *N.Y.L. Sch. L. Rev.* 411 (1989); Jay M. Zitter, *Measure, Elements, and Amount of Damages for Killing or Injuring Cat*, 8 *A.L.R.4th* 1287 (1981); Robin Cheryl Miller, *Damages for Killing or Injuring Dog* 61 *A.L.R.5th* 635 (1998).

[FN13]. E.g. *Marbled Murrelet v. Babbitt*, 83 F.3d 1068 (9th Cir. 1996); *Mt. Graham Red Squirrel v. Yeutter*, 930 F.2d 703 (9th Cir. 1991); *Palila v. Haw. Dept. of Land & Nat. Resources*, 852 F.2d 1106 (9th Cir. 1988); *Cabinet Mts. Wilderness v. Peterson*, 685 F.2d 678 (D.C. Cir. 1982); *N. Spotted Owl v. Lujan*, 758 F. Supp. 621 (W.D. Wash. 1991); *Northern Spotted Owl v. Hodel*, 716 F. Supp. 479 (W.D. Wash. 1988); *Marbled Murrelet v. P. Lumber Co.*, 880 F. Supp. 1343 (N.D. Cal. 1995); *Loggerhead Turtle v. County Council of Volusia County*, 896 F. Supp. 1170 (M.D. Fla. 1995); *Hawaiian Crow ('Alala) v. Lujan*, 906 F. Supp. 549 (D. Haw. 1991); *Frasch et al.*, *supra* n. 1, at 341.

[FN14]. "Consider whether the decisions represent a partial undoing of the property status of animals; or whether the courts are simply giving formal recognition to the feelings a human can develop for his or her animal companion without any shift in the property concept." *Frasch et al.*, *supra* n. 1, at 175.

[FN15]. 886 S.W.2d 368 (Tex. App. 1994).

[FN16]. *Id.* at 377-78 (emphasis in original).

[FN17]. See King, *supra* n. 12, at 9.

[FN18]. St. Pierre, *supra* n. 5, at 257 (quoting Bruce A. Ackerman, *Private Property and the Constitution* 27 (Yale U. Press 1977)).

[FN19]. David Favre, *Equitable Self-Ownership for Animals*, 50 *Duke L. J.* 473, 502 (2000). See Robert R. M. Verchick, *A New Species of Rights-- Rattling the Cage: Toward Legal Rights for Animals*, 89 *Cal. L. Rev.* 207 (2001).

[FN20]. See e.g. *Corso Cat & Dog Hosp.* 415 *N.Y.S.2d* 182, 182 (*N.Y. Civ. Ct.* 1979).

[FN21]. Adam M. Roberts, *Book Review: Animals, Property, and the Law*, 18 *Hous. J. Intl. L.* 595, 600 (1996).

[FN22]. Francione, *supra* n. 4, at 34-35.

[FN23]. 7 U.S.C. § § 2131-2159 (2000).

[FN24]. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); Joshua E. Gardner, *At the Intersection of Constitutional Standing, Congressional Citizen-Suits, and the Humane Treatment of Animals: Proposals to Strengthen the Animal Welfare Act*, 68 *Geo. Wash. L. Rev.* 330, 347 (2000).

[FN25]. Kelch, *supra* n. 7, at 541. See Steven M. Wise, *Of Farm Animals and Justice*, 3 *Pace Env'tl. L. Rev.* 191, 206 (1986).

[FN26]. See Laura G. Kniaz, *Animal Liberation and the Law: Animals Board the Underground Railroad*, 43 *Buff. L. Rev.* 765, 790, 793-94 (1995). On a proposal to strengthen the Animal Welfare Act, see Gardner, *supra* note 24, at 330.

[FN27]. Alan Watson, *Book Review: Legal Protection of Animal Rights?*, 7 *Crim. L. Forum* 691, 695 (1996).

[FN28]. Joseph Mendelson, III, *Should Animals Have Standing? A Review of Standing under the Animal Welfare Act*, 24 *B.C. Env'tl. Aff. L. Rev.* 795, 796 (1997). On this point, see *Animal Legal Defense Fund v. Espy*, 23 *F.3d* 496, 498-99 (*D.C. Cir.* 1994).

[FN29]. Carole Lynn Nowicki, *Student Author, The Animal Welfare Act: All Bark and No Bite*, 23 *Seton Hall Legis. J.* 443, 477 (1999). See generally Kelch, *supra* n. 7, at 531-532; Watson, *supra* n. 27, at 692.

[FN30]. See e.g. *Animals and Their Legal Rights: A Survey of American Laws from 1641 to 1978* (4th ed., Animal Welfare Inst. 1990); *The Legal Thinghood of Nonhuman Animals*, supra n. 7; St. Pierre, supra n. 5; Susan L. Goodkin, *The Evolution of Animal Rights*, 18 Colum. Hum. Rights. L. Rev. 259 (1987); Frasch et al., supra n. 1, at 69.

[FN31]. See e.g. *The Legal Thinghood of Nonhuman Animals*, supra n. 7.

[FN32]. Genesis 1:28.

[FN33]. See e.g. infra nn. 49-50.

[FN34]. Genesis 1:28.

[FN35]. The sources behind this sentence refer to much in the history of Western thought, and cannot be listed comprehensively here for reasons of space. Readers interested in the topic of humanity's conception of itself as essentially distinct from nonhuman animals will find several hundred references to major Western thinkers in the seldom cited but highly useful work, *The Great Ideas: A Syntopicon of Great Books of the Western World* vols. 1-2 (Mortimer J. Adler ed., Encyclopedia Britannica 1952).

For an index of works specifically treating this subject, see Chapter 51, "Man," in vol. 2, § 1a, at 15-16 (that human beings are essentially distinct from nonhuman animals with respect to the characteristics of rationality and freedom), and § 1b, at 16 (that human beings are distinguished by abstract thought, language and law, art, and science).

Among the earliest contributions to this subject by a biologist is the work of Carl Linnaeus (Carl von Linn[♠]), who was responsible for naming our species "Homo sapiens." He identified reason--in the form both of human self-knowledge and reflective capacity--as a distinguishing trait of our species. In his *Systema naturae* I:7 (10th ed., Trustees, British Museum 1758), Linnaeus used a column in which to list the distinctive characteristics of each species. In the column next to *Homo sapiens* Linnaeus wrote "self-knowledge" (*nosce te ipsum*). In his Introduction, he added the distinctive characteristics of human language use and reflective choice. *Systema naturae* I:8 (13th ed.).

Later and in a similar way, Henri Bergson characterized the human species in terms of language use when he named the species *Homo loquax*. See Henri Bergson, *La pens[♠]e et le mouvant* 105-06 (F. Alcan 1934); Mortimer J. Adler, *The Difference of Man and the Difference It Makes* (Holt, Reinhart & Winston 1967); G[♠]nter Dux, *Nachwort* in H. Plessner, *Philosophisches Anthropologie* (S. Fischer Verlag 1970). Both Adler and Dux deny that there exist important valid commonalities between human beings and animals. Closer to the present, Noam Chomsky has claimed that syntactic language use has evolved exclusively in the human species. See Noam Chomsky, *Language and Mind* (Harcourt, Brace, Jovanovich 1972). Concurring in this view is ethologist Konrad Lorenz. See Konrad Lorenz, *Conceptual Thought and Syntactic Language in The Foundations of Ethology* 342-43 (Konrad Z. Lorenz & Robert Warren Kickert trans., Springer-Verlag

1981).

For a discussion of mental faculties often reserved for human beings but increasingly believed to exist in nonhuman animals, see Wise, *Rattling the Cage*, supra note 7, at chapters 8-11.

Important pioneering contributions to the psychological study of the animal mind include, among others: George John Romanes, *Animal Intelligence* (D. Appleton 1883); Leonard T. Hobhouse, *Mind in Evolution* (Macmillan 1901); Margaret Floy Washburn, *The Animal Mind: A Textbook of Animal Psychology* (Macmillan 1908); Wolfgang Köhler, *The Mentality of Apes* (Ella Winter & K. Paul trans., Trench, Trubner 1925); G. S. Gates, *The Modern Cat: Her Mind and Manners* (Macmillan 1928); Frederik J. J. Buytendijk, *The Mind of the Dog* (Houghton Mifflin 1936); Harold Munro Fox, *The Personality of Animals* (Penguin Books 1947); Karl von Frisch, *Bees: Their Vision, Chemical Senses, and Language* (Cornell U. Press 1950); Nikolaas Tinbergen, *The Social Behavior in Animals* (Wiley 1953).

[FN36]. See Konrad Lorenz, *Concerning Homo Sapiens*, in *The Foundations of Ethology*, supra n. 35 at 338-346; A. G. N. Flew, *The Structure of Darwinism*, in *Philosophy of Biology* 70, 82 (Michael Ruse ed., Oxford U. Press 1989). For the general thesis that differences between human beings and nonhuman animals are differences of degree and not of kind, see Charles Darwin, *The Descent of Man*, reprinted in Charles Darwin, *The Origin of Species by Means of Natural Selection and the Descent of Man* 494 (Modern Library 1936).

[FN37]. For a more detailed analysis of the dynamic of such frames of reference, see Henry W. Johnstone, Jr., *Philosophy and Argument*, 105-122 and passim (Penn. St. U. Press 1959); and Steven J. Bartlett, *Conceptual Therapy: An Introduction to Framework-Relative Epistemology* (Crescere 1983).

[FN38]. John Passmore, *Philosophical Reasoning* 63 (Scribner's 1961).

[FN39]. Steven J. Bartlett, *Philosophy as Ideology*, 17 *Metaphilosophy* 2 (Jan. 1986).

[FN40]. Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* 220 (2d ed., Avon 1990).


[FN41]. Rudolph Carnap made a relevant distinction between internal and external questions in his now famous essay, *Empiricism, Semantics, and Ontology*, 4 *Revue Internationale de Philosophie* 20, 20-40 (1950), in *Readings in Philosophy of Science* 509-22 (Philip P. Wiener ed., Charles Scribner's Sons 1953). See Rudolph Carnap, *Meaning and Necessity: A Study in Semantics and Logic* 205-21 (2d ed., U. of Chi. Press 1956). For a discussion of closed belief systems, ideology, and external questions, see Steven J. Bartlett, *Philosophy as Ideology*, 17 *Metaphilosophy* 6-7 (Jan. 1986). Arthur Koestler's related concept of a "closed system of thought" should also be noted: By a closed system I mean a cognitive matrix, governed by a canon, which has three

main peculiarities. Firstly, it claims to represent a truth of universal validity, capable of explaining all phenomena, and to have a cure for all that ails man. In the second place, it is a system which cannot be refuted by evidence, because all potentially damaging data are automatically processed and reinterpreted to make them fit the expected pattern. The processing is done by sophisticated methods of casuistry, centered on axioms of great emotive power, and indifferent to the rules of common logic; it is a kind of Wonderland croquet, played with mobile hoops. In the third place, it is a system which invalidates criticism by shifting the argument to the subjective motivation of the critic, and deducing his motivation from the axioms of the system itself.

Arthur Koestler, *The Ghost in the Machine* 263 (Macmillan 1967).

[FN42]. This understanding of empirical science is by far the consensus view among scientists and philosophers of science today. For discussions relating to this topic, see generally Thomas S. Kuhn, *The Structure of Scientific Revolutions* (U. of Chi. Press 1962); Bertrand Russell, *Our Knowledge of the External World* (George Allen & Unwin 1972); Carl Hempel, *Fundamentals of Concept Formation in Empirical Science* (U. of Chi. Press 1952); *Aspects of Scientific Explanation and Other Essays in the Philosophy of Science* (Free Press 1965); *Philosophy of Natural Science* (Prentice Hall 1966); Rudolf Carnap, *The Logical Structure of the World and Pseudoproblems in Philosophy* (U. of Cal. Press 1967). For a more comprehensive listing of relevant sources, see A *Bibliography of the Philosophy of Science 1945-1981* 87-293 (Richard J. Blackwell ed., Greenwood Press 1983).

[FN43]. See *infra* nn. 44-50.

[FN44]. See John Muir, *A Thousand-Mile Walk to the Gulf* 98-99 (William Frederic Bad  ed., Houghton Mifflin Co. 1916).

[FN45]. See Christopher D. Stone, *Earth and Other Ethics: The Case for Moral Pluralism* (Harper & Row 1987); Christopher D. Stone, *Should Trees Having Standing? Revisited: How Far Will Law and Morals Reach? A Pluralist Perspective*, 59 *S. Cal. L. Rev.* 1 (1985); Christopher D. Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 *S. Cal. L. Rev.* 450 (1972).

[FN46]. See Paul W. Taylor, *Respect for Nature: A Theory of Environmental Ethics* (Princeton U. Press 1986).

[FN47]. See Laurence H. Tribe, *Ways Not to Think about Plastic Trees: New Foundations for Environmental Law*, 83 *Yale L.J.* 1315 (1974).

[FN48]. See Tom Regan, *The Case for Animal Rights* (U. Cal. Press 1983); Tom Regan, *The Case for Animal Rights*, in *In Defense of Animals* 13 (Peter Singer ed., Harper & Row 1985).

[FN49]. See William Baxter, *People or Penguins: The Case for Optimal Pollution* 17 (Columbia U. Press 1974).

[FN50]. See generally Singer, *supra* n. 40; Peter Singer, *The Expanding Circle* (Farrar, Straus & Giroux 1981); Peter Singer, *How Are We to Live?* (Prometheus Books 1995).

[FN51]. See *supra* nn. 44-48.

[FN52]. Maimonides (Rabbi Moses ben Maimon), *Guide for the Perplexed*, in Jon Wynne-Tyson, *The Extended Circle: A Commonplace Book of Animal Rights* 191 (Centaur Press 1989).

[FN53]. Taylor, *supra* n. 46, at 13.

[FN54]. *Id.* at 245. (Though Taylor argues for the intrinsic value of nonhuman animals, he still finds it hard to pull away from the adhesions of homocentricity. His view retains vestiges of homocentricity as he argues that nonhuman animals cannot be considered to be potential bearers of moral rights, although he nevertheless believes they can be bearers of legal rights.).

[FN55]. *Id.* at 99-100.

[FN56]. Tribe, *supra* n. 47, at 1341.

[FN57]. See *supra* n. 48.

[FN58]. See *supra* nn. 49-50.

[FN59]. Baxter, *supra* n. 49, at 17.

[FN60]. Singer, *supra* n. 40, at 3-6.

[FN61]. See *id.*

[FN62]. See Peter Singer, *Animals and the Value of Life*, in *Matters of Life and Death: New Introductory Essays in Moral Philosophy* 338, 358-59 (Tom Regan ed., 2d ed., Random House 1986); Nussbaum, *supra* n. 6, at 1542.

[FN63]. Anne E. Carlson, *Standing for the Environment*, 45 *UCLA L. Rev.* 931, 935 (Apr. 1998).

[FN64]. *Id.*

[FN65]. See *supra* nn. 49-50.

[FN66]. St. Pierre, *supra* n. 5, at 260. As George Bernard Shaw remarked of his country: "[t]he English nation is not in the habit of allowing considerations of humanity to interfere either with its interests or its pleasures." George Bernard Shaw, *Address to the National Anti-Vivisection Society* (London, 1900), in Wynne-Tyson, *supra* n. 52, at 326.

[FN67]. Nussbaum, *supra* n. 6, at 1544.

[FN68]. *Id.* at 1511. See Boris M. Levinson, *Grief at the Loss of a Pet*, in *Pet Loss and Human Bereavement* 61 (William J. Kay et al., eds., Iowa St. U. Press 1984).

[FN69]. Isaac Bashevis Singer, *The Letter Writer*, in *The Collected Stories of Isaac Bashevis Singer* 271 (Saul Bellow trans., Farrar, Straus & Giroux 1982).

[FN70]. See Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (2d ed., Viking Press 1964).

[FN71]. For books that focus particular attention upon this phenomenon, see Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (Harper Collins 1992); Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (Knopf 1996); Eric A. Johnson, *Nazi Terror: The Gestapo, Jews, and Ordinary Germans* (Basic Books 1999); George Victor, *Hitler: The Pathology of Evil* (Brassey's 1998); Eric A. Zillmer et al., *The Quest for the Nazi Personality: A Psychological Investigation of Nazi War Criminals* (L. Erlbaum Assoc. 1995).

[FN72]. See Ruth Harrison, *Animal Machines: The New Factory Farming Industry* (V. Stuart 1964); Singer, *supra* n. 40; Jim Mason & Peter Singer, *Animal Factories* (Crown 1980); Gerald Carson, *Men, Beasts and Gods: A History of Cruelty and Kindness to Animals* (Scribner 1972); Albert Leffingwell, *An Ethical Problem, or Sidelights upon Scientific Experimentation on Man and Animals* (2d ed., C.P. Farrell 1916); Hans Ruesch, *Slaughter of the Innocent* (Civitas 1983); Richard D. Ryder, *Victims of Science: The Use of Animals in Research* (2d ed., Natl. Anti-Vivisection Socy. Ltd. 1983); E. S. Turner, *All Heaven in a Rage* (St. Martin's Press 1964).

[FN73]. Singer, *supra* n. 40, at 25.

[FN74]. See *supra* n. 72.

[FN75]. One of the rare explicit references to psychological damage experienced by a slaughterhouse worker is found in this passage, which refers to nineteenth century children put to work in a Chicago slaughterhouse:

Occasionally one is found too sensitive to endure the sights and sounds of that ceaseless awful battle between man's cruel lust and the right of every creature to its own life. I read how one boy, for whom a minister had secured a place in the slaughter-house, returned home day after day pale and sick and unable to eat or sleep, and finally came to that minister of the gospel of the compassionate Christ and told him that he was willing to starve if necessary, but that he could not wade in blood another day. The horrors of slaughter had so affected him that he could no longer sleep.

C.W. Leadbeater, *Vegetarianism and Occultism*, in Wynne-Tyson, *supra* n. 52, at 171. Isaac Bashevis Singer devoted one of his short stories to a description of the horrors experienced by an animal slaughterer:

Yoineh Meir could find no consolation. Every tremor of the slaughtered fowl was answered by a tremor in Yoineh Meir's own bowels. The killing of every beast, great or small, caused him as much pain as though he were cutting his own throat. Of all the punishments that could have been visited upon him, slaughtering was the worst. Singer, *supra* n. 69, at 208-09.

[FN76]. Much contemporary research in this area rests on the foundation provided by Karl Menninger's *Man Against Himself* (Harcourt Brace 1938), and Erich Fromm's *The Anatomy of Human Destructiveness* (Holt, Rinehart & Winston 1973). For recent books, which give further references, see Leonard Berkowitz, *Aggression: Its Causes, Consequences, and Control* (Temple U. Press 1993); Robert I. Simon, *Bad Men Do What Good Men Dream: A Forensic Psychiatrist Illuminates the Darker Side of Human Behavior* (Am. Psychiatric Press 1996); Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge U. Press 1989).

[FN77]. Kelch, *supra* n. 7, at 556-57. See Lorin M. Suber, *Out from under the Microscope: A Case for Laboratory Animal Rights*, 2 *Det. C.L. Rev.* 511 (1987). The human belief that animals lack consciousness involves a high degree of depersonalization and psychic numbing. The same has been true of perpetrators of genocide. The metaphorical suggestion that animal pain is no more than "the squealing of a drill press" brings to mind a terrible, ugly, and illustrative incident that took place within a nonmetaphorical machine shop. It bears recounting because it exemplifies the degree to which human beings can become inured to another's pain. Such examples, alas, are far from rare.

One of the Holocaust survivors has testified to an experience in forced labor in a concentration camp machine shop at Mauthausen. At one point, a fellow prisoner made a mistake cutting a piece of wood on a band saw. The Nazi officer in charge walked over to teach him a lesson, grabbed his arm, and fed it through the saw. He then took the severed arm and tossed it into a corner. The poor man ran in a fit of terror to recover his arm and tried desperately to put his arm back on. He died shortly afterwards from loss of blood. No one would help him. This is based on the testimony by Herbert J., U.S. soldier in the 11th Armored Infantry Division, born in Maine, 1921. Fortunoff Video Archive for Holocaust

Testimonies (Yale U.) (The Archive contains more than 4,000 testimonies recorded since 1979 by surviving victims and other witnesses to the Holocaust). See *Witness: Voices from the Holocaust* (Joshua M. Greene & Shiva Kumar 1999) (videotape).

[FN78]. Singer, *supra* n. 40, at 69.

[FN79]. *Id.* at 76-77.

[FN80]. *Id.* at 92-162.

[FN81]. Environment News Service, Labor Day Pigeon Shoot Called Off <<http://ens.lycos.com/ens/aug99/1999L-08-17-03.html>> (accessed Nov. 21, 2001). One is reminded of Norman Cousins' observation: "The heart of the matter is that some people like to cause injury or death to living things. And many of those who do not are indifferent to those that do." Norman Cousins, *In Place of Folly* 156 (Harper & Brothers 1961).

[FN82]. See Environment News Service, *supra* n. 81.

[FN83]. See Gary L. Francione, *Ecofeminism and Animal Rights: A Review of Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals*, 18 *Women's Rights L. Rep.* 95, 98 (1996); Francione, *supra* n. 4, at xiii-xv.

[FN84]. Nicholas Fontaines, *Mémoires pour servir à l'histoire de Port-Royal* (1738), 2:52-53, in Leonora Cohen Rosenfield, *From Beast-Machine to Man-Machine: Animal Soul in French letters from Descartes to La Mettrie* (Oxford U. Press 1940); Singer, *supra* n. 40, at 209.

[FN85]. See *infra* nn. 117-148.

[FN86]. See *supra* nn. 35-36; Rowan, *infra* n. 90.

[FN87]. David R. Schmammann & Lori J. Palacheck, *The Case Against Rights for Animals*, 22 *B.C. Env'tl. Aff. L. Rev.* 747, 751 (1995) (quoting P. J. O'Rourke, *Save the Planet? We're All Going to Die Anyway*, *Providence Phoenix* 6 (Sept. 8, 1994)).

[FN88]. Kelch, *supra* n. 7, at 534.

[FN89]. *Id.* at 556.

[FN90]. For examples of the many attempts to identify the uniqueness of the human

species, see *supra* notes 35-36; Andrew N. Rowan, *Of Mice, Models, and Men: A Critical Evaluation of Animal Research* 74-90 (St. U. of N.Y. Press 1984); and Singer, *supra* n. 40, at 8.

[FN91]. Kelch, *supra* n. 7, at 565-66.

[FN92]. See *id.* at 561; Singer, *supra* n. 40, at xiii.

I ask you to recognize that your attitudes to members of other species are a form of prejudice no less objectionable than prejudice about a person's race or sex ... [T]o discriminate against beings solely on account of their species is a form of prejudice, immoral and indefensible in the same way that discrimination on the basis of race is immoral and indefensible.

Id. at 255.

[FN93]. Interested readers might begin with Herb Kutchins & Stuart A. Kirk, *Making Us Crazy: DSM: The Psychiatric Bible and the Creation of Mental Disorders* (The Free Press 1997).

[FN94]. See *id.*

[FN95]. E. K. Rynearson, *Owner/Pet Pathologic Attachment: The Veterinarian's Nightmare*, in *Pet Loss and Human Bereavement* 143, (William J. Kay et al. eds., Iowa St. U. Press 1984).

[FN96]. See Marc A. Rosenberg, *Clinical Aspects of Grief Associated with Loss of a Pet: A Veterinarian's View*, in Kay et al., *supra* n. 95, at 123.

[FN97]. Herbert A. Nieburg & Arlene Fischer, *Pet Loss: A Thoughtful Guide for Adults and Children* 3 (Harper & Row 1982).

[FN98]. Madame de Staël, *Memoirs*, in Wynne-Tyson, *supra* n. 52, at 68.

[FN99]. Robert Louis Stevenson, *Familiar Studies of Men and Books*, in Wynne-Tyson, *supra* n. 52, at 191.

[FN100]. Mark Twain, *Following the Equator*, in Wynne-Tyson, *supra* n. 52, at 382.

[FN101]. *Id.*

[FN102]. Mark Twain, *What Is Man?*, in Wynne-Tyson, *supra* n. 52, at 383.

[FN103]. Wallace Sife, *The Loss of a Pet* 58 (Howell Book House 1993). One is reminded of Dostoevsky's similar reflection: "Man, do not pride yourself on your superiority to animals: they are without sin, and you, with your greatness, defile the earth by your appearance on it, and leave the traces of your foulness after you." Fyodor Dostoevsky, *The Brothers Karamazov*, in Wynne-Tyson, *supra* n. 52, at 71.

[FN104]. Sife, *supra* n. 103, at 125.

[FN105]. William J. Kay, Foreword, in Nieburg & Fischer, *supra* n. 97, at xi (emphasis added).

[FN106]. Kelch, *supra* n. 7, at 539.

[FN107]. *Id.* at 562.

[FN108]. Kelch, *supra* n. 7, at 562. For elaboration on this point, see Michael Ruse, *Philosophy of Biology Today* 53 (St. U. of N.Y. Press 1988); Michael W. Fox, *What Future for Man and Earth? Toward a Biospheric Ethic*, in *On The Fifth Day: Animal Rights and Human Ethics* 219 (Richard Knowles Morris & Michael W. Fox eds., Acropolis Books 1978); Charles Hartshorne, *Foundations for a Humane Ethics*, in *On The Fifth Day: Animal Rights and Human Ethics* 169 (Richard Knowles Morris & Michael W. Fox eds., Acropolis Books 1978); James Rachels, *Darwin, Species, and Morality*, 70 *Monist* 98, 100-01 (1987).

[FN109]. J. Howard Moore, *The Universal Kinship*, in Wynne-Tyson, *supra* n. 52, at 216.

[FN110]. St. Pierre, *supra* n. 5, at 257-58.

[FN111]. 570 F. Supp. 603, 604 (E.D.N.Y. 1983).

[FN112]. Tischler, *supra* n. 2, at 749.

[FN113]. See James Rachels, *Created from Animals: The Moral Implications of Darwinism* 129-72 (Oxford U. Press 1990); Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* 11-19 (Carus Publ. Co. 1999).

[FN114]. Henry Beston, *The Outermost House* 19-20 (Ballantine Books 1928).

[FN115]. Jakob Johann von Uexküll, *Umwelt und Innenwelt der Tiere* (J. Springer 1921) [hereinafter *Umwelt und Innenwelt*]. See Jakob Johann von Uexküll, *Theoretical*

Biology (D. L. Mackinnon trans., Harcourt Brace 1926); Jakob Johann von Uexküll, *A Stroll through the Worlds of Animals and Men: A Picture Book of Invisible Worlds*, in *Instinctive Behavior: The Development of a Modern Concept* 5-80 (Claire H. Schiller ed., Int'l U. Press, 1957) (first published as *Streifzüge durch die Umwelten von Tieren und Menschen*, 1934).

Related to von Uexküll's research is the work of Dutch physiologist- philosopher F. J. J. Buytendijk. Buytendijk sought to reconstruct from known data the conscious world of the dog. See F. J. J. Buytendijk, *The Mind of the Dog* (Unwin Brothers, Ltd. 1935); F. J. J. Buytendijk, *Pain: Its Modes and Functions* (Eda O'Shiel trans., U. of Chi. Press 1943).

[FN116]. See *Umwelt und Innenwelt*, supra n. 115.

[FN117]. See Steven J. Bartlett, *Narcissism and Philosophy*, 19 *Methodology & Sci.* 16, 17 (1986) [hereinafter *Narcissism and Philosophy*].

[FN118]. Id.

[FN119]. Id.

[FN120]. See Erich Fromm, *The Heart of Man: Its Genius for Good and Evil* (Harper & Row 1964); Erich Fromm, *Anatomy of Human Destructiveness*, supra n. 76.

[FN121]. See id.

[FN122]. Id.

[FN123]. M. Scott Peck has focused on the tie between narcissism and lying. See M. Scott Peck, *People of the Lie: The Hope for Healing Human Evil* (1st ed., Simon & Schuster 1983).

[FN124]. See *Narcissism and Philosophy*, supra n. 117, at 19.

[FN125]. See e.g. Robert Waelder, *Lettre sur l'Étiologie et l'Évolution des psychoses collectives*, 3 *Correspondance: Esprit, l'Éthique et la guerre* 85-150 (Institut International de Coopération Intellectuelle, Société des Nations 1934); Fromm, supra n. 120, at 82-87 and passim; Karl A. Menninger, supra n. 76, at 437-38.

[FN126]. See supra n. 125; Otto F. Kernberg, *Hatred as Pleasure*, in *Pleasure Beyond the*

Pleasure Principle, in *The Role of Affect in Motivation, Development, and Adaptation* Vol. I, 177-88 (Robert A. Glick and Stanley Bone eds., Yale U. Press 1990).

[FN127]. See Kernberg, *supra* n. 126.

[FN128]. *Id.*

[FN129]. See e.g. Waelder, *supra* n. 125, at 85-150; Robert Waelder, *Psychological Aspects of War and Peace*, 10 *Geneva Studies* 2 (1939) (monograph volume); Otto F. Kernberg, *supra* n. 126, at 177-88; Nathan Schwartz-Salant, *Narcissism and Character Transformation: The Psychology of Narcissistic Character Disorders* (Inner City Books 1982); Quincy Wright, *A Study of War 1461-62* (U. of Chi. Press 1942).

[FN130]. This thesis and the evidence for it are presented in Steven J. Bartlett, *The Pathology of Man: A Study of Human Evil* (Charles C. Thomas Publisher, Ltd. forthcoming 2004) (on file with author).

[FN131]. See *supra* nn. 87-90.

[FN132]. See e.g. Bryna Siegel, *The World of the Autistic Child: Understanding and Treating Autistic Spectrum Disorders* (Oxford U. Press 1996), Frances Tustin, *Autism and Childhood Psychosis* (Sci. House 1972); Bruno Bettelheim, *The Empty Fortress: Infantile Autism and the Birth of the Self* (Free Press 1967). On the more general application of the concept of autism to the human species, see C. Fred Alford, *What Evil Means to Us* 9, 39 (Cornell U. Press 1997); Richard L. Evans, *Konrad Lorenz: The Man and His Ideas* 24 (Harcourt Brace Jovanovich 1975); *Rattling the Cage*, *supra* n. 7.

[FN133]. See *supra* nn. 117, 120, 123.

[FN134]. On the intellectual deviousness involved in clinical narcissism, see *Narcissism and Philosophy*, *supra* n. 117.

[FN135]. Thomas G. Kelch, for example, has argued that the primary emotional response that humans beings should have to animals is compassion for their suffering, and that this should be the basis for our recognition that animals have legal rights. Thomas G. Kelch, *The Role of the Rational and the Emotive in a Theory of Animal Rights*, 27 *B.C. Env'tl. Aff. L. Rev.* 1, 38-41 (1999). Historically, his account has much in common with Schopenhauer's. According to Schopenhauer, compassion is, or ought to be, the basic motivation for human action, first, by preventing injury to another, and, second, by encouraging a wish to aid others who suffer. Arthur Schopenhauer, *Philosophical Writings 207- 08* (Wolfgang Schirmacher ed., E. F. J. Payne trans., Continuum Intl. Publg. Group 1994).

Other works from authors who have made compassion central in their studies of moral

theory include Victoria Moran, *Compassion: The Ultimate Ethic* (Thorson's Publ. 1985) and Esm ◆ Wynne-Tyson, *The Philosophy of Compassion* (2d ed., Centaur Press Ltd. 1970).

[FN136]. In his book, Bernard E. Rollin supports George Romanes' now century-old thesis that there are certain meaningful and factual observations about the world that do not need experimental confirmation from empirical science. In this context, Rollin quotes an unnamed source, who articulately even if not eloquently makes this point: "There are lots of things we don't need to prove or explain scientifically.... For example, I know very well that when someone drives with the emergency brake on, the gas mileage will decrease. I can't explain it scientifically; I've seen no literature in the area, and I don't need to!" Bernard E. Rollin, *The Unheeded Cry: Animal Consciousness, Animal Pain, and Science 3* (2d ed., Iowa St. U. Press 1998).

For Romanes' studies, see George Romanes, *Mental Evolution of Animals* (D. Appleton & Co. 1895) and George Romanes, *Animal Intelligence* (D. Appleton & Co. 1883).

[FN137]. Singer, *supra* n. 40, at 9.

[FN138]. That the human species should seek to educate for compassion has nevertheless been urged by outstanding and clearly idealistic men:

Why is compassion not part of our established curriculum, an inherent part of our education? Compassion, awe, wonder, curiosity, exaltation, humility-these are the very foundation of any real civilisation, no longer the prerogatives, the preserves of any one church, but belonging to everyone, every child in every home, in every school.

Yehudi Menuhin, *Just for Animals*, in Wynne-Tyson, *supra* n. 52, at 200.

All education should be directed toward the refinement of the individual's sensibilities in relation not only to one's fellow humans everywhere, but to all things whatsoever.

Ashley Montagu, *Growing Young*, in Wynne-Tyson, *supra* n. 52, at 209.

The attitudes necessary, and the sensitivities to be nurtured, have to be practised not only through a revised aesthetic and appreciation of the arts, but through a new relationship to nature, matter, object, work and entertainment. A course in natural philosophy, so popular with the Victorians, should once again have a place in every curriculum, so reconciling art, aesthetics and science.

Frank Avray Wilson, *Art as Revelation*, in Wynne-Tyson, *supra* n. 52, at 410.

[FN139]. Steven J. Bartlett, *Conviction and Rationality* (unpublished research paper, Center for the Study of Democratic Institutions 1969-70) (copy on file with author). "I know that reason excites our compassion but faintly." Bernard Mandeville, *The Fable of the Bees*, in Wynne-Tyson, *supra* n. 52, at 192.

[FN140]. "It is a very small minority of people who now perceive animals as beings deserving of rights--and a large majority who have little interest in being convinced." Goodkin, *supra* n. 30, at 287.

Within psychology, Milgram's famous empirical obedience studies have attested to the

fact that moral sensibility is a minority concern. "With numbing regularity good people were seen to knuckle under to the demands of authority and perform actions that were callous and severe." Stanley Milgram, *Obedience to Authority: An Experimental View* 123 (Harper & Row 1974). But independent of psychological investigation, the fact that the majority lacks a high level of moral sensibility is evidenced by the universal human propensity to engage in war, and to exploit and exterminate other species. These phenomena are theoretically and practically incompatible with the possession by a species of a high level of interpersonal and interspecific empathy. See Arthur G. Miller, *The Obedience Experiments: A Case Study of Controversy in Social Science* (Praeger 1986); Don Mixon, *Obedience and Civilization: Authorized Crime and the Normality of Evil* (Pluto Press 1989); Staub, *supra* n. 76; Israel W. Charny & Chanan Rapaport, *How Can We Commit the Unthinkable? Genocide: The Human Cancer* (Bowker 1982).

[FN141]. Convincing evidence for the lack of close association between high intelligence and empathy for others may be found in psychiatrist Douglas M. Kelley's study of Nazi prisoners. Douglas M. Kelley, *22 Cells in Nuremberg* (W.H. Allen 1947) (The measured IQ of the prisoners placed the majority in the very high range of intellectual ability.). Indeed, as Ashley Montagu notes, "The world stands greatly in need of men and women who are both compassionate and intelligent." Montagu, *supra* n. 138, at 211 (emphasis added).

[FN142]. The proportion of conscientious objectors to the ordinary population has historically always been quite small. In the case of Britain in WWII, for example, the percentage of conscientious objectors to the rest of the population was a mere .028%: "[F]or among 5.7 x 10⁶ men called for military service... there were 16,100 genuine conscientious objectors." Lewis F. Richardson, *War-Moods* (pt. 1), 13:3 *Psychometrika* 147, 151 (1948).

Richardson understood that "The best general description of conscientious objectors is... that they have an intense aversion from inflicting cruelties." Lewis Fry Richardson, *Arms and Insecurity: A Mathematical Study of the Causes and Origins of War* 233 (Nicolas Rashevsky & Ernesto Trucco eds., Boxwood Press 1960) (Richardson conducted extensive psychological studies of the history of war).

[FN143]. I am unaware of any empirical tests that have been conducted to determine what percentage of the normal human population is averse to the above-mentioned pleasures of the majority. Certainly, even without such studies, one can say with confidence that it is quite small.

The recognition that only the small minority is highly sensitive to the feelings of others is recognized in passing in the writings of several great men. Leonardo da Vinci, for example, wrote: "I have from an early age abjured the use of meat, and the time will come when men such as I will look upon the murder of animals as they now look upon the murder of men." Leonardo da Vinci, *Notes*, in Wynne-Tyson, *supra* n. 52, at 65. French author Romain Rolland similarly wrote: "To a man whose mind is free there is something even more intolerable in the suffering of animals than in the sufferings of men. For with the latter it is at least admitted that suffering is evil and that the man who causes

it is a criminal." Romain Rolland, Jean-Christophe, in Wynne-Tyson, *supra* n. 52, at 280. Albert Schweitzer, too, was aware of the limited number of compassionate people: "The man who has become a thinking being feels a compulsion to give every will-to-live the same reverence for life that he gives to his own. He experiences that other life in his own." Albert Schweitzer, *Civilization and Ethics*, in Wynne-Tyson, *supra* n. 52, at 315.

[FN144]. Bartlett, *supra* n. 130. The remainder of this section contains excerpts from the chapter entitled "The Ecological Pathology of Man II." Grateful acknowledgment is made to Charles C. Thomas, Publisher, Ltd., for permission to include these pre-publication excerpts here.

[FN145]. *Id.*

[FN146]. *Id.*

[FN147]. See generally Michael J. Novacek, *The Biodiversity Crisis: Losing What Counts* (New Press 2000); Norman Myers, *The Sinking Ark: A New Look at the Problem of Disappearing Species* (Pergamon 1979); *Global Biodiversity: Status of the Earth's Living Resources* (Brian Groombridge ed., Chapman & Hall 1992) (a report compiled by the World Conservation Monitoring Centre); *Animal Extinction: What Everyone Should Know* (R. J. Hoage ed., Smithsonian Instn. Press 1985); Timothy Fridtjof Flannery, *The Future Eaters: An Ecological History of the Australasian Lands and People* (G. Braziller 1995).

[FN148]. Richard Dawkins, *The Selfish Gene*, in *From Gaia to Selfish Genes: Selected Writings in the Life Sciences 197* (Connie Barlow ed., Oxford U. Press 1991).

[FN149]. One of the few ecologists courageous or idealistic enough to espouse this degree of species unselfishness has been biologist Dan Janzen, who has worked to conserve the diversity of species in Costa Rica's Guanacaste Conservation Area. See Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, *supra* n. 45. Janzen has been one of the few to resist linking the desirability of survival of a species with its benefits to man, in a way that is reminiscent of Christopher Stone's respect for the legal rights of natural objects in the environment, independent of human interests, benefits, and profit.

Janzen has said, "yes, you want to save this forest because you might find a new drug or new pest control or attract tourists, but none of these are (sic) the reason for wanting to keep this a wildland. For me, there's only one objective: that this biodiversity survive." Virginia Morell, *In Search of Solutions*, 195:2 *Natl. Geographic* 83 (February, 1999).

[FN150]. See Charles Darwin, *On the Origin of Species by Means of Natural Selection* (Harvard U. Press 1995).

[FN151]. Doctoral research proposals presented to the Department of Philosophy,

University of California, Santa Barbara in 1965-1966, and carried out under the direction of Paul Ricoeur, Université de Paris, 1966-70 (on file with author). See generally Steven J. Bartlett, *A Relativistic Theory of Phenomenological Constitution: A Self-Referential, Transcendental Approach to Conceptual Pathology*, *infra* n. 162.

[FN152]. Gregory Bateson, *Steps to an Ecology of Mind* 478-87 (Vern Carroll ed., Ballantine Books 1972) (chapter entitled "Pathologies of Epistemology").

[FN153]. *Id.* at 480.

[FN154]. *Id.* at 485.

[FN155]. *Id.* at 487.

[FN156]. See Plato, *Republic* ch. XXV (F. M. Cornford trans., Oxford U. Press 1941) (allegory of the cave).

[FN157]. Immanuel Kant, *On the Cognitive Powers*, in *Anthropology from a Pragmatic Point of View* 73 (Mary J. Gregor trans., Martinus Nijhoff 1974) (originally published as *Anthropologie in pragmatischer Hinsicht*, 1798; the quoted phrase is Kant's title to a section of Book I). See Karl A. Menninger et al., *The Vital Balance: The Life Process in Mental Health and Illness* 441 (Viking Press 1963) (providing the English translation of the phrase).

[FN158]. See Ludwig Wittgenstein, *Philosophical Investigations* (G. E. M. Anscombe trans., Macmillan 1953).

[FN159]. Garrett Hardin, *Nature and Man's Fate* 255 (Rinehart 1959).

[FN160]. *Id.* at 223.

[FN161]. John Charles Bucknill & Daniel H. Tuke, *A Manual of Psychological Medicine* 46-54 (4th ed. Churchill 1879).

[FN162]. See generally *Reflexivity: A Source-Book in Self-Reference* (Steven J. Bartlett ed., Elsevier Sci. Publishers 1992); *Self-reference: Reflections on Reflexivity* (Steven J. Bartlett & Peter Suber eds., 1987); Bartlett, *supra* n. 37; Steven J. Bartlett, *Self-Reference, Phenomenology, and Philosophy of Science*, 13:3 *Methodology & Sci.* 143-167 (1980); Steven J. Bartlett, *The Idea of a Metalogic of Reference*, 9:3 *Methodology & Sci.* 85-92 (1976) [hereinafter *The Idea of a Metalogic of Reference*]; Steven J. Bartlett, *Towards a Unified Concept of Reality*, 32:1 *Etc.: A Review of General Semantics* 43-49 (1975); Steven J. Bartlett, *Metalogic of Reference: A Study in the Foundations of*

Possibility (Max-Planck-Gesellschaft 1975) [hereinafter Metalogic of Reference]; Steven J. Bartlett, A Relativistic Theory of Phenomenological Constitution: A Self-Referential, Transcendental Approach to Conceptual Pathology (unpublished Ph.D. dissertation, Universit  de Paris 1970) (available at Univ. Microfilms Intl. #7905583) [hereinafter A Relativistic Theory of Phenomenological Constitution].

[FN163]. See supra nn. 35 and 34, respectively.

[FN164]. See supra n. 162.

[FN165]. Id.

[FN166]. See Steven J. Bartlett, Hoisted by Their Own Petards: Philosophical Positions that Self-Destruct, 2 Argumentation 221-32 (1988).

[FN167]. Epistemological pathologies, like psychiatric pathologies that are their kin, can additively compound in complexity. When reference is made to a nonhuman animal's inner experience, a projection is made, one that seeks to transpose a reality with which the human claimant is familiar, outside the boundaries of his own reference frame. When the human referrer then denies that the animal is self-aware, or denies that it possesses other specific inner attributes necessary for personhood, or fails to have any number of sensations or cognitive states that are characteristic of human beings, a second, negative projection is superimposed on the first. A claim that nonhuman animals do not, for example, feel pain will commonly involve such a compound projective misconstruction.

[FN168]. See A Relativistic Theory of Phenomenological Constitution, supra n. 162; Metalogic of Reference, supra n. 162; The Idea of a Metalogic of Reference, supra n. 162.

[FN169]. Garrett Hardin, Naked Emperors: Essays of a Taboo-Stalker 196 (W. Kaufmann 1982).

[FN170]. Esm  Wynne-Tyson, The Philosophy of Compassion, in Wynne-Tyson, supra n. 52, at 422.