

THE ANIMAL RIGHTS MOVEMENT IN THE UNITED STATES: SOME THOUGHTS ABOUT A NEW ETHICS

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(Resumen)

El artículo describe, en primer lugar, las posibles razones por las que el actual y universal movimiento “derechos de los animales” sería considerado genuinamente americano. Segundo, analiza las dos vertientes del movimiento: una moderada y otra radical. La moderada, llamada “bienestar animal”, tiene su máxima figura en el filósofo Peter Singer, autor del famoso libro “Liberación Animal” (1975) que dio origen al movimiento. “Bienestar animal” tiene el objetivo a corto plazo de eliminar todo sufrimiento innecesario al “utilizar” animales. “Dolor” es la palabra clave de este subgrupo del movimiento. La otra rama, la radical, se denomina “derechos de los animales” (*strictu sensu*), y su figura más importante es el también filósofo Tom Regan. El objetivo principal, a largo plazo, de este otro enfoque es el de suprimir completamente todas las formas de explotación animal e, incluso, conceder los derechos básicos y status legal a los mamíferos superiores. El artículo también incluye una referencia al “Proyecto Simio”, programa para conceder derechos básicos legales y morales (vida, libertad, no tortura) a chimpancés, bonobos, orangutanes y gorilas, a la vez que analiza la recepción de esta teoría de “derechos de los animales” en el sistema legal estadounidense.

1. INTRODUCTION

The main goal of this article is to describe the content and evaluate the impact of the American Animal Rights movement. On the one side, I would like to make it clear that, although I will mostly refer to this social movement as “animal rights,” all other ways of naming different approaches to the animal liberation movement are included. As we will see later in Section II, “animal rights” has a very specific meaning, as one of the possible approaches to the protection of animals. There are clear-cut distinctions among all the different approaches and movements, many of which do not go as far as to pretend the award of legal rights to animals. Nevertheless, in many instances they are all referred to as “animal rights” because, notwithstanding those distinctions, all of them ultimately support the final goal of ending animal abuse and exploitation.

On the other side, there is no doubt about the fact that this movement is universal by its own nature, so why do we pretend to consider it an “American” movement? A first answer to this question could be the following: although American in origin, the movement is becoming universal due to its own internal strength, and to the globalization patterns that nowadays rule our world. It could even be said that, developed in the US, it is already becoming global as has happened with many other American ideas (starting with the idea itself of “constitutional government”) or popular culture. But this assertion is not entirely true. The origins of the idea of awarding legal protection to animals is as old as humanity, and its practical consequences (a strong philosophical and ideological background, strong enough to generate a social movement capable of influencing the enactment of animal protection laws) have also an origin alien to the US (mainly British, which explains why this background was made “American”). This is the reason why Section I starts with a brief review of the origin of the ideas and social movement, and why Jeremy Bentham’s works on the subject are given such an importance as the predecessor of the first properly American development, the “Animal Liberation” movement.

There is, nevertheless, a second answer. Although American scholars recognize that the animal welfare movement arose in the early 19th Century in England (Finsen and Finsen 24-25) some of them perceive the first real results of the movement, and the enactment of anti-cruelty laws, as American. Independently of whether this is a true fact, the important thing is that this statement is part of the general understanding. It is easy to find assertions of reputable scholars in the sense that “the United States was the first country in the world to enact legislation aimed at protecting animals from cruel and abusive treatment” (Frasso 1003, Leavitt and Halverson 1, Cohen 143). Certainly, it has been documented that as early as 1641, the Puritans of the Massachusetts Bay Colony forbade cruelty against any brute creature kept by man (Leavitt and Halverson 1).

A third response is also possible. All fifty States of the US have enacted some form of criminal statute to protect animals notwithstanding the differences in the level of protection afforded, the species of animals protected, or the types of foreseen penalties, which range from small faults (“petty misdemeanors” in the legal language) for the disturbance of the peace to serious offenses (“felonies” in the legal language) (Frasch et al 69, Frasso 1005). But what is even more important, only in America has the proposal to suppress the property status of animals been seriously considered and even submitted to the ballot, as it happened in Rhode Island. This state submitted to the electorate the switching of the status of domestic animals from “ownership” to “guardianship,” and it became the first state in the US (in addition to the cities of Boulder, Colorado, and Berkeley, California) in enacting legislation recognizing individuals as guardians of their companion animals: not owners. Only US Law Schools have courses on animal rights as part of the curriculum, including Law Schools such as Harvard or Georgetown (Kolber 163); and only in the US is there a current serious debate at legal scholarship level and in the most renown law reviews, about the legal implications of attributing legal personality and fundamental rights to animals, especially apes, as we will see in Sections II.B and III..

Fourth answer. Although statistical data about the number of organizations and their membership are almost impossible to obtain, philosopher Tom Regan, states that, only the radical part of the animal rights movement, in the narrow sense, that is, not including animal welfarists, is “ten million strong in the US and among the fastest-growing progressive causes in America.” Allen 1-2, quoting Jasper 130-133, states that “by the end of the 1980s as many as one million Americans had joined “animal rights” groups, and millions of other Americans belonged to the more traditional “animal welfare” organizations.” The fact is that it constitutes a social movement under all the sociological standards used to categorize social initiatives as movements (McAdam and Snow, Introduction and Part III.30), and the activism of the organizations is so important, and in many cases, so radical and extremist (Strand and Strand)¹, that some States of the US (such as Illinois, Alabama, Louisiana, Massachusetts, Missouri, New York, North Carolina, North Dakota and Oklahoma) have enacted specific statutes against animal rights extremists, making some of their activities criminal offense (significantly the destruction of research facilities and the release, or attempt to release, of animals [Hannah 576]).

This fifth response explains also why this is part of an “American” debate. The base of the movement relies on serious scientific and philosophical grounds, covering, thus, all areas of knowledge: humanities, social sciences, and hard science. In these three areas, the researchers and spreaders of their developments either are Americans, work for American institutions, or use the American media: Hollywood, the National Geographic Society, the Public Broadcasting System,

1. The whole book is about the radicalism and extremism of the animal rights movement.

or commercial T.V Channels. All of them contribute to define the animal rights debate as typical American, notwithstanding its present global character. The works and issues raised by Peter Singer, *Animal Liberation*; Tom Regan, *Defending Animal Rights*; Gary Francione, *Civil Disobedience as an Animal Rights Tactic*; Steven Wise, *Rattling the Cage*, are bestsellers that can be found in any Barnes and Noble Bookstore. The scientific development in the knowledge of our pre- or para-human cousins reached the cover of *Time Magazine* on July 23, 2001, and the animal rights debate has been the subject of monographic issues of reviews such as the reputable *Scientific American* (297th issue, February 1997). Moreover, the scientists who devoted their lives to the scientific research of the emotional lives of animals such as gorillas, Dian Fossey; chimpanzees, Jane Goodall; or bonobos, De Waal, are real media stars, sometimes even more worldwide known than the Nobel Prizes. Films such as *Gorillas in the Mist*, *People of the Forest*, TV series such the PBS *Speaking with Koko*, or *In the Company of Whales* are among the most popular in American cinematography.

Sixth answer. It has been the enactment by the US of some animal welfare laws, such as the Marine Mammals Protection Act and some Amendments to the National Fisheries Act, which created one of the most serious challenges to the new world economic system represented by the World Trade Organization. The conflicts between the US and Mexico (US boycott of tuna and fish imports) because of the unnecessary slaughter of dolphins caused by the Mexican tuna fisheries, and between the US and Norway and Japan because of the decision of these countries to continue whaling have questioned the new global economic order. It seems a paradox that the country that has pushed more for this new order has been the one challenging its limits. It was the US that had offered the main arguments against globalization because of its environmental effects. The North American Free Trade Agreement (NAFTA) was signed with Mexico and Canada in 1994 only after deciding that it would be followed by a North American Environmental Cooperation Agreement, and when explicit interpretations of article XX of the General Agreement on Trade and Tariffs (GATT), in order to safeguard environmental issues, were introduced in NAFTA itself.

And, finally, a seventh response. As we will see in Section II, only in the US the animal rights debate has become a divisive and enduring topic in normative ethical theory. Until the seventies, the discussion of the moral status of non humans had always been present in the works of moral philosophers. From the seventies onwards, however, there has been an unprecedented interest in philosophy and theology to explore in depth the issue of the morals ties between humans and non human animals and, clearly, it will intensify in the near future. Although these contributions neither mean that a social-political movement will take place, nor that its activism will be shaped following those moral principles, obviously, the contributions that philosophers make can help shape the political debate by clarifying the major theoretical options available to an informed public (Regan 23). This debate, which could also be considered part of a more general debate about the 21st Century ethics and religions, or about the new area of "environmental ethics" (see Wenz ²), although intrinsically universal, has taken place, precisely, in the US. The revisiting of Aristotelian perfectionism, Kantianism, utilitarianism (Benthamism), contractarianism (Hobbesianism), and the development of new ethical arenas such as gaianism, deep ecology, or ecofeminism have taken place there and not, at least in its origins, somewhere else.

2. Peter W. Wenz, *Environmental Ethics Today*. New York: Oxford Univ. Press, 2001. Chapters 4 and 5.

In short, this explosion of intellectual renewal of the analysis in the way humans look into themselves, although universal by its very nature, and without doubt in the near future, can be considered one of the important contributions of American culture to global society.

Section 2 will describe the animal rights movement in America, going in depth into the analysis of the differences between animal welfare and animal rights, as well as into the ethical issues involved in the different approaches. Section 3 will introduce the reader into the debate as framed by the “legal scholars.” This last part is not properly the content or goal of this essay. My intention is to describe and evaluate the debate in political, social, scientific, and philosophical/ethical terms. Pretty much as the original debate on Human Rights during the 18th Century, and the debate on slavery, or on the liberation of women during the 19th and 20th Centuries, were not “legal theory” debates, but rather, social-political ones, the animal rights movement is not a “legal” movement. However, it must be assumed that, similar to what happened with those social movements, ultimately the legal establishment reacted “giving form” to social pressures and changing its own notions about how the legal system should be reformed in order to affront those social challenges. Since this “starting-to-move” of the always conservative legal establishment has also taken place once more, mainly, and even only, in the US, the purpose of this final part will be exclusively to introduce the reader to the legal scholars debate with a brief note. Finally, the appropriate conclusions will be addressed in Section 4.

2. THE ANIMAL RIGHTS MOVEMENT IN THE USA

The very beginning of the animal rights movement in the US dates also back to the late 18th Century and early 19th Century in an effort, like in England, to abolish cruelty to animals. Its evolution, consequently, was originally linked to that taking place in England. New York (1828), Massachusetts (1835), Connecticut and Wisconsin (1838) were the first States in passing anti-cruelty laws.

Some facts about how the movement evolved in the US are the following: in 1866 was formed the American Society for the Prevention of Cruelty to Animals (ASPCA). Years later, in 1892, the American Humane Association proposed laws were passed. These laws prohibited the repetition of experiments on animals for the purpose of teaching or demonstrating well known accepted facts. As in England, during the 19th Century, philanthropists and philosophers worked and wrote about human and non human welfare. The use of anti-slavery arguments was commonly accepted, as seen in the writings of the famous editor of *The National Anti-Slavery Standard* (1841-1849), Lydia Maria Child, and the author of *Uncle Tom's Cabin*, Harriet Beecher Stowe.

In the 1950s the American Welfare Institute and the Humane Society of the United States (a dissident group, which left the American Humane Association because they thought that it was not strong enough in its fight against cruelty to animals) were incorporated. In 1958 the first Humane Slaughter Act was passed with the purpose of avoiding unnecessary suffering to farm animals. In the meantime, all States kept regulating their own use of animals under humane treatment.³ But indeed, the most important law in the United States, regarding cruelty to animals, is the one that regulates the use of animals in research: the Animal Welfare Act, signed by President Johnson in 1966. This meant a great success for the animal welfare movement because vivisection had always been, I would say, the primary focus of the activists due to the fact that a

3. See www.nal.usda.gov/awic/legislat/usdaleg.1.htm

great number of the animals used in labs are primates, mostly chimpanzees and bonobos, with only 1% of genetic difference with humans.

Another big issue is that regarding cruelty to farm animals (it should be kept in mind that currently there are 8 billion farm animals killed in the US for food every year). People do not have to stop eating meat to understand that killing animals for food does not imply the need to torture them previously, so it is an animal issue that also raises emotions. In 1975 Peter Singer, a philosophy professor, published the already cited book *Animal Liberation*, that was to become the bible of the movement. Singer was one of the first persons who started using public means to attract people to the animal rights movement. One of the book's main ideas is that "the ethical principle on which human equality rests requires us to extend equal consideration (this consideration is moral, which does not mean that we consider them our equals) to animals too" (5).

It was precisely during the 70s, with the growing support of more advocates, when the modern animal rights movement emerged, a movement that included different groups. But this article does not intend to describe all the various existing groups nor its methods. They differ so much even from one another that, instead of listing the acronyms of the existing organizations, and the "who's who" of the movement, I would like to highlight a work recently done, with very valuable annexes and tables, by Harold D Guither in *Animal Rights: History and Scope of a Radical Movement* (1998). Instead, I will rather focus on the mainstream philosophical constructions which constitute the bottom line of the movement.

At this point, and to understand why the social movement in the US was, and still is, the way it is, I believe that it is important to point out the meaning of environmental values in American culture (we only have to take a look at the so abundant environmental organizations and organizations in defense of animals that exist in this country). To begin with, American culture bases the relationship between nature and humanity, rights of other species, humanity's right to control nature, and the responsibilities to the following generations, upon moral and religious views. Their environmental values are not isolated; they are tied to other values which sometimes are in conflict with each other: anthropocentrism (utilitarianism, linked to Judeo-Christian religious traditions: only those environmental issues that affect humans are taken into consideration); and biocentrism (focused in all living creatures and it gives intrinsic values, and sometimes rights, to these creatures). Although it is believed that most Americans hold a utilitarian view, statistics show that they overwhelmingly reject that nature's only function is to serve man and they believe that nature has rights in itself (Kempton, Boster, and Hartley 110). The biocentric values are based on Aldo Leopold's "Land Ethic:" "We are part of nature; all species have a right to continue; and nature has intrinsic values and rights."⁴ With respect to the second, "species have a right to continue," Willett Kempton, James S. Boster, and Jennifer A. Hartley collect in their book *Environmental Values in American Culture* (110) some of these statistics regarding species rights. They show that important environmental organizations such as Earth First or the Sierra Club, concede high importance to this value: E.F, 100%; S.C, 82%; and the general public, 87%. Summing up, Americans primarily support the philosophy of Mark Sagoff (1991) who thinks that utilitarianism, which has a more environmental than ethical and philosophical (like animal rights) perspective, is not enough to support environmental protection;

4. The "Land Ethic" changes the role of Homo Sapiens from conqueror of the land-community to plain member and citizen of it. Aldo Leopold, *A Sand County Almanac*.(1948) Oxford Univ. Press, N.Y. 1987.

he states that non utilitarian values (ethical values) are required, and his assertion seems to be backed by public opinion surveys. To understand this main difference between utilitarianism (or animal welfare, anthropocentrism) and animals rights (biocentrism), we could say that utilitarianism focuses in maintaining the different species because they sustain ecosystems (something with a high environmental value for humans), while animal rights theory would support the defense of the animals because of their individual essence.⁵

American environmentalism goes deeper than just an opinion, an attitude, or a voting behavior. It is at the core of cultural beliefs and values. It is popular environmentalism.⁶ Since the beginning of the formation of the country, the conquest of nature and its utilitarian use, as well as the expansion of its borders, was the philosophy of the formation of the US. But at the same time that process led to the increasing appreciation of its values, and to the emergence of a strong conservation movement when the disastrous effects of the free use policies showed their face. Henry David Thoreau in the East, as a precursor, and many others in the West later on, embedded into the American culture the idea that wilderness and nature are intrinsic to American culture (Oelschlaeger). It is important to have present this mixture of religious, moral, and cultural values (among which it is also essential to include the role played by the "sanctification" of the relationship between Native Americans, animals, and nature that took place in the early seventies with the "rediscovery" of the famous Chief Seattle speech) in order to understand why a strong animal rights movement has developed in the US, especially from the sixties onwards, and why it did not reach, for instance, Spain or other European countries. There is no need to say, of course, that the first premise for the development of a social movement like animal rights in a Western country is that the country must be a democracy always trying to expand more and more rights to the weakest individuals. Countries with such a socioeconomic and political development can devote money, time, and energy to fight for others' causes.

These environmental values are so intrinsic to American culture that even those who oppose the environmental movement base their identity on a special way of framing the relationship of humans to nature. This is what happens with a group (formed by some subgroups) that, although small and growing slowly, has many adepts within its ranks. This anti-environmental group is called the *Wise Use* movement, and it is constituted by a coalition of industrial, agricultural, and conservative political interest groups which consider themselves a "property rights movement." They interpret that only productive uses of nature are appropriate.

5. This is one of the main arguments between environmentalists (instrumentalists) and animal rights defenders (just a philosophical theory). The last sustain that no individual deserves to be killed even if it helped to the maintenance of ecosystems (which they considered having been manipulated by humans), or even if the "carrying capacity" (the capacity of an ecosystem to maintain all its living and non living members interconnecting in a healthy and sustainable way) of that ecosystem has been surpassed. Rightists would allow grazing animals to starve to death or die of diseases, destabilizing the ecosystem, if they were more in numbers than predators.

6. I have to highlight here that environmentalism is rooted in popular culture while Earth Day is not. Why? In my research paper on American Popular Culture for my master degree in North American Studies I came to the conclusion that Earth Day was not popular because although it had been initially an American celebration, it began to loose its momentum when it became a worldwide celebration. American thought that it belonged to them because it was rooted in their culture and we know that if a celebration becomes universalized it loses a great deal of its identity. The more universal a festivity (or a person) is, the less attached to a single place becomes.

They do not support humane or environmental views; much to the contrary, they fight environmental regulations stating that, following them, constrains their livelihood. Since they have social and economical power (they are a strong mixture of wealthy company executives and very poor, mostly white, rural communities) they try to influence politics in order to assert the anthropocentric cultural American tradition of overexploitation. This is a more politically active group than most of the environmental groups.⁷

I have described previously the main differences between “animal welfare” and “animal rights.” In fact they belong to the same social movement, the animal rights movement in a broad sense, but the first, animal welfare, is instrumentalist, while animal rightists is more idealistic. Animal welfarists do not condemn the use of animals but they reject their abuse. They have a short term goal: to have the use of animals completely regulated in order to prevent and to avoid their abuse. In particular they cherish their more important goal: the abolition of their unnecessary suffering. They condemn practices that imply suffering and abuse, mostly those for entertainment (sports, games, circus, and shows), although not the slaughter of animals for human use, as means to an end, and as resources, for food or research, as soon as the least cruel means are employed.

It could be said that moderate oriented advocates belong to these welfarist groups. Activists of these groups are, in fact, I believe, more realistic than those who are part of the animal rights groups. It is not that welfarists do not pursue the goal of the complete extinction of animal use and abuse, but they are more realistic in the sense that they are conscious that they cannot put all the economic and social system (based on animal use) upside down from one day to another. They believe in public awareness campaigns that educate people step by step, working little by little to make society more responsive to animal concerns so that, in the future, this society will be able to enact improvements (even legal improvements) for animals. They think that it is more practical going step by step, first regulating, and afterwards trying to eliminate, the use. For many of these welfare groups ending with the abuse is the short term goal, and the suppression of all animal uses is, then, the long term goal. Animal welfarists do not concentrate on the debates about the philosophical or ethical values regarding animal issues. They accept the property status of animals and focus their main goal in the total suppression of animal suffering. This issue of the abolition of animal suffering (either physical or emotional), or as Richard Ryder (1989) puts it, “painism,” is what is mostly embraced by welfarists. The main representative of this welfarism is the American Society for the Prevention of Cruelty of Animals (ASPCA).

At the other end of the animal rights movement, in the broad sense, are the most radical activists: the animal rightists. To start with, they believe that welfarists are too soft in their activism, and that through the regulation of animal use the only result achieved is the total legitimizing of both animal use and abuse, and that regulation will never change the animals’ property status, neither help to reach the ultimate goal of attributing moral dignity (and rights) to animals. Rightists believe that animal use in general must be abolished, that animals have inherent values in themselves, and that people should never use animals for their interests regardless of the benefits obtained.

Animal rights activists believe that even when animal physical suffering is not at stake (some zoos, some pets), animal use should be completely abolished. They do not pay much

7. There is an interesting article by Phil Brick, “Determined Opposition: The Wise Use Movement Challenges Environmentalism” (1995) in the book *Landmark Essays on Rhetoric and the Environment* (1998, edited by Craig Wadell.195) which perfectly reflects the consistency of this movement and its way of interfering and acting in social life.

attention to animal suffering; they go beyond. They think that animal concerns are a question of fairness, dignity, and morality, and that focusing only in their suffering would never really help their cause (neither animals' cause nor theirs).

Regarding their activism, animal rightists are "fundamentalist." Actually, the main reporters of the evolution of the animal rights movement after the seventies, the sociologists Jasper and Nelkin, categorized the 1970s as the "pragmatist" period, and the 1980s as the "fundamentalist" one (Jasper and Nelkin Chaps 5-7). The animal rightists believe that through public awareness, education, consciousness, and regulation the problem will never be solved. They think that the welfarists are wasting energy and time. The rightists reject the existing animal protection laws, because they are based on the property status of animals. Almost all of them are also radical vegetarians (vegans is the new term for the most radical vegetarians, although there are also in the US many vegans which simply reject all sort of animal food, including eggs and milk, for other reasons such as personal health). The rightists even reject clothes and things made from animal parts or derivatives of animals. Their main goal is precisely the elimination of the property status of animals, at least in superior mammals, so they can have their own rights.

They use sometimes violent methods like assaulting labs or pet shops to liberate animals, or even physical attacks on people. The Animal Liberation Front (ALF) could be cited as one of the main representatives. Actually, for many Americans, the animal rights movement has as main characteristic, after the seventies, the hijacking –the taking over- of many longstanding humane organizations. Their tactics, in extreme cases, include fire-bombing or burglary, and in the more moderate cases, the covert infiltration of organizations with different views, redirecting their agendas and treasuries (Patti Strand and Rod Strand). In any case, it is also true that, what those who emphasize the illegitimacy of animal rightists because of their tactics (with which many animal rightists also disagree) ultimately hate is the idea of having the use and ownership of animals brought to an end: no farm animals for food, no zoos and circuses, no animals in biomedical research and so on. These critics, instead of discussing the underlying philosophy of the movement, prefer to discredit them simply because of the methods used by some of the most extremist groups.

These differences between the two groups inside the movement (welfarists and rightists), although very deep in the beginning, in the 70s, because of the radicalism of the rightists, have been diminishing in recent years when both positions have come closer. Rightists have realized that the only way of obtaining gains was to act more like welfarists, and the latter have assumed that their final goal is not only to eliminate suffering to animals but to make them subjects of rights because, in many instances, this is the only way to have effective implementation of many of the laws and regulations already enacted. Welfarists have suppressed some of their instrumentalism and they have turned a little more philosophical in their concern for animals. They are learning that only treating animals humanely is not enough. That is only a first stage. The result of this mix, where American society is reaching consensus, is the modern animal rights movement, also known by "New Welfarism." But although currently the animal rights (or new welfarists) advocates work together in pursuing the recognition of rights and welfare status for animals, there is still a profound controversy between them, and usually all authors and scholars involved in this issue try to clarify their respective positions.

Although we will go much more in depth into the analysis of their philosophical and ethical theories in the next Section, we now need to advance that there are two main authors who define perfectly both positions: Peter Singer and Tom Regan. Welfarism (beyond the simple original anti-cruelty movement) has its bible, as it has been mentioned before, in the book by Peter Singer *Animal Liberation* (1975), which meant the raise of the consciousness of people about animal

suffering. Singer centered all his strategy on the question “Can animals suffer?” On the other hand, the rightist Tom Regan, a professor of philosophy at North Carolina State University, has been universally recognized as the intellectual leader of the modern animal rights movement, and the question that has inspired his defense of animals is “Do animals have rights?” Tom Regan’s book *The Case for Animal Rights* (1985) is considered a classic with hard philosophical and scientific references, and a second bible in this movement but with much deeper philosophy than Peter Singer’s. Both the previously cited book and his last release, *Defending Animal Rights* (2001), are leading books –and bestsellers, as Singer’s *Animal Liberation*– in clarifying why animals must have rights.

Both theories, I believe, are complementary and non exclusive, although animal rights advocates must be alert because, in many cases, under animal welfare some of the biggest animal exploiters are uncovered. For instance, the SPCA was, during years, the first provider of animals to labs for experimentation. Other industries, like research labs, usually want to comply with the law that prevents animals from suffering, so they try to build coalitions with some of the welfare groups in order to ensure that these animals receive a fair treatment during their exploitation or slaughter. Their main goal, obviously, is to prevent their products from getting discredited in the market. Another example is the hypocritical situation in which some important animal organizations are immerse under the cover of the “humane treatment” label. One of the biggest organizations, the Humane Society of the United States (HSUS) supports “humane” vivisection or humane animal farming.

And a final example of ambiguity is Animal Rights International (ARI), whose leader Henry Spira, a famous advocate of the movement, joined with the Foundation for Biomedical Research in its promotion of animals in labs but keeping in mind the three “Rs” that animal rights endorse: reduction of the number of animals, refinement of the experiments to minimize the pain, and replacement of animals with other non-animal models when available. Spira has also joined with the American Meat Institute in the “improvement” of slaughtering methods. These examples show that in many cases, most animal rights advocates are willing to make concessions, that mean very loose improvements, as long as the concern in society keeps growing.

We can also say that one thing is the theory of animal rights (ideological and a little unrealistic) and quite another the animal rights movement, more pragmatic and realistic. The “new welfarism” assumes that animal welfare reforms do work, that there is an increasing number of regulations about ethical treatment to animals, and that animal rights (the radical part) is incapable of making a short-term program. They just have the long one of abolishing animal exploitation and freeing them of their property status. In terms of their tactics, since both groups perceive that the issue of animal rights/animal welfare is, even as a whole, somehow unknown for most people, they prefer to make just one common front for the defense of animals. They appreciate the combination of both ideologies to make the defense strong, not to one another, but in front of the general public; in front of people who never thought that animals should also have their own interests/rights recognized.

Before getting deeper into the analysis of both groups’ respective reasoning, it should be remarked that the movement understands its role as one that runs parallel to other liberation movements, in particular, to the 19th Century antislavery movement, and, after the sixties, to feminism and to civil and human rights. All these movements fight for the same type of rights, both procedural (right to have one’s own rights recognized by law enforced by the courts) and substantive rights (right not to be tortured, right to life, right to security, right to live in one’s own habitat, to one’s own project of life and so forth). When rights are specified in this way it is easier to understand that they are not necessarily to be limited to humans, especially when the

intelligence and the emotional capacity of many animals has been scientifically proven to be equivalent to a two-year old child and much more developed than that of a mentally disabled human. It is based on the idea that there are some fundamental rights expandable also to non-humans. Many people have tried to draw a parallel with the antislavery movement precisely because slaves also gained their rights after being considered property –as animals are nowadays– for many centuries. They were not considered persons (entitled to have rights). Legally, they were also means-to-an-end and things for their exploiters who could use them as resources. Just like animals. The only main difference is that the “anthropocentric wall” had historically drawn the line in philosophical terms between animals and humans, and not between masters and slaves, so slaves had the basic potential for equal standing as other persons, which made easier (although in America it meant one of the most cruel wars) the recognition of rights to be granted. In historic terms, it is also true that even slaves had some very basic rights, although only enforceable through their masters, such as food and shelter, which made it easier to frame the issue as one of expansion of the sphere of rights to a broader one.

The case is even more clear for women who, although had fundamental rights denied until the 20th Century, always kept a core of minimum rights (also on most cases only enforceable through the representation of their male master, whether father or husband).

In any case, the issue of animal rights can be perfectly visualized as an expansion of the subjects progressively entitled in historical terms as “right-holders,” and this paradigm is very appealing to animal rights activists because it also recaptures the myth of Americans as the “inventors” of Human Rights, and the champions of antislavery and feminism. This is also the reason why the term “speciesist,” that has been framed among others by Peter Singer and Richard Ryder to describe in pejorative terms those who favor the discrimination against animals, has spread so easily. Calling people “speciesist” as labeling them as racist or sexist, reminds them, in not easily acceptable terms, that they endorse the discrimination of animals, regarding them as inferiors without any real scientific or moral ground, only for the sake of asserting their own white, male (or human) biased superiority. In the same way that there is no gender or race superiority, there cannot be a species superiority.

2.1. THE THEORETICAL BASE OF ANIMAL WELFARE: PETER SINGER’S ANIMAL LIBERATION

I will now discuss how utilitarianism is at the core of animal welfare. This theory, mainly supported by Peter Singer (modern), and by Jeremy Bentham (18th Century) bases the ethical foundation of society on the respect of one’s own interest in the same terms as the interest of other persons. In *Animal Liberation* (7) Peter Singer quotes the main passage upon which Bentham built the connection of animal suffering and interests:

The capacity for suffering and enjoyment is a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in a meaningful way. The capacity of suffering is a vital characteristic that gives a being the right to equal consideration. Stones do not have that capacity, but animals do.

In other words, human and non human animals have interests if they have the ability to experience pain or pleasure. The question is not “Can they reason?” Neither “Can they talk?” but rather, as stated before, “Can they suffer?” The capacity to be a “sentient” being (which clearly distinguishes, based on our present knowledge, the mammals, birds, and perhaps other animals

from the rivers, streams, and canyons) is what brings the interests to existence. The “capacity for suffering and enjoying things is (even) a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in any meaningful way” (*Practical Ethics* 21). This is the reason why nobody denies the interests of a child or a mentally disabled. This leads to the better understanding of Singer’s structure for resolving conflicts (the principle of “equal consideration”): give equal weight in our moral deliberations to the like interests of all those affected by our actions. It does not imply that all humans and all animals have the same interests. It only tells us how to compare the relevantly similar interests of beings. It tells us that a sentient cow has the same interest as a human being in avoiding painful electric shocks during a scientific experiment, but it does not imply that humans might have an additional interest in the result of the experiment, if it really exists.

What is more, the importance of the interests of the whole group involved in the conflict (how many cows have their interests and how many humans may be saved by the results of the research) also counts (this is one of the things that Tom Regan, a rightist, does not admit since he believes that animals, like humans, are not a group, they are individuals with their own personal interests, not the group interests). Singer states that if the sum of interests of individual animals in not suffering and being slaughtered is bigger than the interests of the humans affected by a given action, then the first must be respected. To the contrary, if the interests of two animal individuals are minor than the interests of humans benefiting from them, then human interests should be respected. In this last case, the action is good for humans because their interests are bigger.

Peter Singer’s utilitarianism balances animal and human interests, and those interests are pleasure and pain or suffering. He is very concerned with farm animals, who are almost not protected under the law. They are considered just meat, and like meat they are treated (the US is especially cruel in the processing of these animals because of the traditional intensiveness of animal farming during the second half of the 20th Century for chicken and beef production. Steinberg 190-205). He believes that these animals have interests in not being eaten and in not suffering, and that those interests are greater than those of the people who want to eat them. Animal pain is bigger than the humans’ loss of pleasure for not using them. If Singer reaches such conclusions concerning the killing of animals for food, which many humans perceive as a strong necessity, we can assume what he thinks about the use of animals for trivial uses (interests) like, for example, entertainment (bullfights, rodeos, fox hunting, furs, trapping) or cosmetics (furs, creams, ointments). He believes that the net value of fair and good treatment to animals is highly superior to all the prejudices that not using them can cause to humans. Singer states that the interests of humans for using animals for their own entertainment will never surpass those equivalent of animals in not being tortured, and that humans should deviate their amusement, or pure aesthetic interests, towards other activities in which animal interests are not at stake and so clearly unbalanced.

But he does not stop here in his consideration of what animal interests are. He also maintains that, for instance, abolishing meat eating will bring benefits not only, of course, to animals, but to the whole world. It is a fact that farm animals consume tons and tons of grain and water to obtain just a few pounds of meat. Hunger in the world probably would be extinguished by the consumption by humans of all that grain and water which now is being consumed by animals. Animal farms are, in addition, point sources of pollution. The waters running over these zones go to the rivers dragging with them biocides, excrements and fertilizers, thus polluting superficial waters first, and then ground waters, and the gases from animal farms contribute to global warming and climate change. These are some adverse side effects of animal farming. Moreover,

people would also benefit from not eating meat directly since cardiovascular diseases probably would decrease to a minimum.

But Peter Singer goes too far with this theory and I find him too radical, from an ethical point of view, although not from an instrumental point of view. He believes that animals should not be used in research and experimentation (even less if it is vivisection) because the benefit for humans is minimal (only 1% of all experimentation is useful), mostly in cancer, because the results can almost never be applied to humans. They cannot be extrapolated. So he even states that experimentation should use dying humans, whose interests almost do not exist because they are about to die, or mentally handicapped people who do not have interests because they are not conscious of their existence, in the great benefit of humanity. He argues that, of course, he understands that our society cannot sacrifice a dying child to save maybe two other sick children, and he uses this example to make society understand that the same occurs with animals; we cannot use a baboon, and sacrifice his interests, just for saving two people, although we could do it if we saved as much as twenty people.

Singer states that as long as animals interests have the same consideration as human interests, the utilitarianism would justify the use of animals. In fact, he is not an advocate of rights for animals, he believes that there is no need to go that far. But the problem is, as we will see later, that animal interests never have the same consideration as human interests.

Actually, the main limitation to the utilitarian welfarist approach is that the measurement of interests is not an objective tool. The most important philosophers who deal with environmental ethics have reached the conclusion that there is no way to equalize the interest of a human, in looking nice, with the interest of a rat in not been inoculated. And much more difficult would be to measure the interests of both parties regarding quantity. How many rats should be required in order to have the addition of all their individual interests in not being harmed equalized to the interest of how many women using cosmetics? There is no ethical response to that comparability. One cannot compare interests in an objective way, they are like oranges and apples (Wenz 98), and net pleasure cannot be the basis of all morality. We also value individual rights and social justice. Pleasure and preference satisfaction is a valuable tool for most moral decisions, but they should be included in a pluralistic moral outlook, along with other values such as liberty, privacy, political participation, or justice (Wenz 102). This is the reason why in environmental ethics, the animal rights (not animal welfare) theory takes us to a more clear and reasonable solution.

But before we go into its analysis there is one question which cannot be denied and which ultimately has made Peter Singer's approach so powerful: in many cases, humans, consciously and unconsciously, make those choices of interests, and these are the type of choices made by the legislators when they decide to enact animal protection laws. Most of the present legislation is a clear reflection of Singer's approach. Originally anti-cruelty legislation was even justified in those terms: the interest of most citizens in not suffering by seeing a neighbor torturing his pet is clearly larger than the interest of the pet owner in asserting his domain by inflicting suffering to the pet. When it was argued that the law would be applied even if no one had seen the action, the response was that the mere knowledge of the existence of the action was a collective interest which overruled that of the owner. But even in that case, it was asserted that the law should be enforced even if only the prosecutor, the judge, or jury did get to know about the action. Ultimately, the only response is Singer's approach: it was recognized that it was the interest of the animal himself what was in fact protected by the law.

The same thing could be said about why we enact legislation prohibiting animal research for the cosmetic industry while we respect biomedical research, or why, while prohibiting the killing of an animal, we might authorize the control of wild populations that may have surpassed

the carrying capacity of an ecosystem. We could also ask ourselves why, ultimately, the animal rights debate, and the legislation produced, is becoming sectorial: the debate on animal rights and farm animals is different from the one that takes place regarding animal rights and research (and research with or without vivisection), and it is different from that of using animals for entertainment, from the use of domestic animals, from the implementation of species conservation policies, or from the rules that should govern zoos and so forth. It is astonishing to see that the debates, each of which could be the subject of different essays and have led to the publishing of many books and articles, as well as to the establishment of many specialized activists groups, are entirely refined in particular ways, depending on the "sector" of animal use subject to discussion. The bibliography on animals and entertainment, or on animal experimentation, for example, is simply immense.

The same can be said of the law. The statutes protecting companion animals from abuse are entirely different from those regulating animal transportation, slaughter houses technology, farming requirements, the import of furs of seal pups, the high-tech used by fisheries, the protocols for research, the requirement for parks, zoos or circuses and so forth. Ultimately, we cannot get around the fact that most decisions regarding the status of animals are based on this approach.

2.2. ANIMAL RIGHTS STRICTU SENSU: ABOLITION VERSUS REFORM

I shall now focus on the animal rights theory in the narrow sense. The so-called animal rights movement, whose universally recognized intellectual leader is the philosopher Tom Regan, and whose first work *The Case for Animal Rights*, published in 1983, immediately captured the imagination of legal philosophers such as the "institutionalizer" of "Animal Rights Law", Gary L. Francione (Rutgers University School of Law) and author of the book *Introduction to Animal Rights* (2002), as well as by many other legal scholars.

Contrary to the instrumental animal welfare ideology of Peter Singer, animal rights theory believes that, although Bentham and Singer assert that animals have "morally significant interests," they really do not mean it seriously. That is the reason why they grant the same moral consideration to all animals (we have seen that welfarists grant same consideration to a mouse than to an ape), while, as we will see, the animal rights theory considers that, probably, only superior mammals are entitled to have rights. Rightists believe that what animals need is justice, not charity. In an article printed in the journal *Animal Law*, Susan Finsen (activist and author of the movement) states the following about Francione's theory that only regulating animal welfare is not enough:

Francione has already begun this important discussion, arguing that genuine progress toward animal rights cannot be achieved through welfarist means. In his view, it is necessary to dismantle the moral and legal framework which treats animals as property rather than persons. It is not possible to achieve the ends of animal rights by continuing to elaborate and support the frame of animal welfare.⁸

8. <<http://www.lclark.edu/>> Animal Law is the only law journal in the US devoted exclusively to animal rights issues. It is edited by the Lewis and Clark College, in Portland, Oregon, and it is a forum for scholarly discussion of legal issues related to animals.

Francione dismisses the welfarists' assertion that rightists attribute moral significance to animals because ultimately they, the rightists, do not dispute the attribution of property status to them. When someone asserts that an animal can be used as a means, as a resource, as a property, it is locating the object of that assertion in a scale radically different from that of a human who can never be used in such a way. Similar interests are to be given similar consideration, and the fact that welfarists do not question the animals status as mere economic commodities implies a completely different treatment. As Francione has put it:

The Bentham/Singer position ends up being no different from the positions of those, like Kant or Locke, who maintained that animals have no morally significant interests and that we have no direct obligations to them, but that we ought not to impose "gratuitous" harm on animals because such conduct will make us more likely to act in an unkind way toward other humans and thereby violate our moral obligations to those humans. Either way, animals are ultimately excluded from the moral community (Francione 148).

The property status is what should be abolished in order to grant animals moral consideration. But the animal rights theory is not only a legal issue. It is also based in new philosophy and ethics.

In the world of ethics two groups are the main actors: moral patients (recipients: old people, mentally handicapped, children) and moral agents (providers: regular adults). Tom Regan considers that large mammals are certainly moral patients, and he maintains that both moral patients and moral agents have inherent value. By inherent value, it is meant the kind of value possessed by certain individuals, after the fashion of Kant's idea of something existing as an "end in itself" (Regan 48). It is logically distinct from other kinds of values such as (1) well-being (understood as quality of life, welfare, or happiness), (2) intrinsic values (including various mental states, such as pleasure or satisfaction), (3) utility (understood either as what is useful; as what exists as a resource relative to someone's purposes or interests, as the aggregation of values such as welfare or pleasure), and (4) merit or excellence (Regan 48.). Inherent value, for example, implies that a woman's moral status as an end in herself, as one who possesses inherent value, is logically independent of her happiness, talents, usefulness, and so on.

It is a categorical concept, meaning that it does not come in degrees; an individual either has it or not (...) All those individuals who are subjects-of-a-life have inherent value and thus enjoy an equal moral status, the subject-of-a-life criterion constituting a sufficient condition for the possession of inherent value. (Regan 48-49)

This means that Regan's attribution of inherent value denies that "sensations," either painful or pleasant, are not at the core of the value system. For welfarists, animals are unable to reason, plan or intend, so that is the reason why "pain" and "suffering" become the core of their theory (the "interest" that needs consideration). The welfare approach calls for quality of lives analysis while the animal rights theory claims for the value of the one living a life. It implies that moral patients and agents have the same inherent values, because a lot of them are subjects-of-a-life, but have different intrinsic values such as welfare, pleasure or pain. Basically, Regan does not separate moral agents from moral patients and he does not separate either non human patients from human patients because it cannot be done without falling in speciesism.

One of the main counter-arguments is philosopher John Rawls' statement in the sense that only moral agents are to be considered by ethics and the law because they are the machines of

society, and he thinks that children are included because they are potential moral agents. The strongest minority (adults) is the one granting rights to others because of that potentiality. But as the animal rights philosophers claim, what about the perpetual mentally handicapped or the old people? Conventional philosophers, who do not want to recognize that inherent values are the ones that should count for ethics and the law, do not know how to respond to the reality that their value system ends up forgetting a place in law and ethics for those groups whose potential is zero. "Might makes power" is the theory ultimately defended by most conventional philosophers and absolutely rejected by animal rightists.

For animal rights theory, higher intelligence, rationality, emotions, life-planning ability and so forth cannot be the standards to determine who should be the recipients of ethical treatment, moral consideration, and rights entitlement. All those possessing minimal inherent values, being subject-of-a-life, are part of the moral community. As Tom Regan says:

Of course the defenders of animal rights consider that some non human animals resemble normal humans in that, like us, they bring the mystery of a unified psychological presence to the world. Like us, they possess a variety of sensory, cognitive, conative, and volitional capacities. They see and hear, believe and desire, remember and anticipate, and plan and intend (...) Physical pleasure and pain –these they share with us. But they also share fear and contentment, anger and loneliness, frustration and satisfaction, and cunning and imprudence; these and a host of other psychological states and dispositions collectively help define the mental lives and relative well-being of those humans and animals who (...) are "subjects of life." (43)

But the animal rights theory does not stop there. It carefully analyses all the standards that humans have used in order to try to defend that humans and non human animals are not equally subject-of-a-life. What are the standards on which humans have leaned to justify animal exploitation for our ends?

Intelligence is not a valid one. There are many animals, not only primates, but dogs, cats, or others, who have demonstrated to be more intelligent than the mentally handicapped and, of course than little children. Animal experimental psychology has demonstrated that some superior animals do have freedom to choose and that they behave not by pure instinct when given different options. Animals under experimentation choose the option in which they have more interest. Primates have clearly shown even moral consideration to others. Reliable experiments have been documented in which a chimp obtains food only when he presses a handle but, when he realizes that every time he does it a colleague close to him receives an electric shock, with obvious effects such as shouting and convulsion, the former decides even to starve for days. He immediately linked his act of pressing the handle to the suffering of the other chimp so he quit eating and almost starved (Wenz 110). We, among humans, do not have that empathy among us in many cases. Humans with some mental disease, such as autistic persons, do not have at all not only that degree of empathy but any type of closeness to other humans. They do not understand love and some of them only relate to others through a very primitive way: the fear of punishment or the anxiety of the reward, usually, food.

If we speak about other standards for granting moral consideration and rights, like language and abstract thinking, again, they are not valid standards. It has been demonstrated that language is not required in order to have abstract thinking (although Descartes thought precisely the other way around) either for people or animals. Again, deaf people, small children, mentally handicapped, or aged people would fall away of having moral consideration and rights. And what

can we say about murderers, rapists, etc? Even after their immoral actions they still they their rights.

Other standards, such as culture or the possibility of enjoying a project of life (which even many humans have difficulty in expressing) have also been demonstrated as being possessed by many animals, especially apes.

In fact, even dead people retain their right to be respected. The fact that humans can express and do better abstract thinking does not mean that animals do not have this quality. As with of the rest of abilities only attributed to humans, animals have these qualities but in a smaller degree. It is not a question of quality, therefore, but a question of degree. Humans can have more or stronger rights than animals, but we cannot say on this basis that animals cannot have rights. They need, at least, the basic rights, those in which additional rights are leaned on, if we want to start to provide them not only with charity, but with justice. That is why we cannot speak about furthering their rights because they have none.

Through history, and by overcoming ignorance, humans have enlarged their dignity every time they expanded their moral consideration and rights to other cultures, social groups, races, religions and countries. What keeps us from furthering this to animals? The "wall" is completely unexplainable if the present status of scientific knowledge is assessed. As Wise puts it, it is astonishing why Darwin is still contested by moralists and lawyers as if our society would have decided to remain schizophrenic recognizing its scientific explanations but remaining deaf to its moral and legal consequences.

How can we deny, at least for primates, that consideration and rights by calling them just animals, and placing them at the same level as an oyster, when we are only 1% genetically different from them and when our grand-, grand-, grand parents and theirs where exactly the same person only 6 million years ago? If an australophytecus tribe would be found, would we find it ethical to commit genocide and make them disappear, using vivisection on them or even using them for our own means?

With such a minimal difference in the gene sequence separating apes from humans, how can we say that they must not have rights?

Tom Regan insists that animals have inherent value individually and that animal rights philosophy must have a universal basis away from cultures, countries, or religions. He really believes that the superior ones are conscious of their existence, self awareness, and it has been demonstrated that primates even hold that "human" characteristic of planning the future. He thinks that only mammals, mostly apes, are subjects-of-a-life, like people, and that they should be granted human rights, those of life, liberty, and security. In his book *The Case for Animal Rights* he summarizes the inherent value of individuals:

Individuals are subjects-of-a-life if they have beliefs and desires, perception, memory, and a sense of future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desires and goals;....and an individual welfare. (243)

One of the most difficult questions addressed by the animal rights movement is where to draw the line about which animals should be granted rights. Do they mean that rights should be given to all subjects of life? The answer is clear for them. The quality of having inherent values (Regan) or to be "sentient" (Francione) implies that, with the present knowledge, the line can be drawn where science can tell us with certainty that the animal possesses those inherent values.

That is the reason why superior mammals protection is at the core of the animal rights movement (Francione, *Introduction* 173-174).

Of course, this idea of awarding to subjects-of-a-life inherent value or non-property status (and, of course, rights) is the reason why the animal rights theory and movement believe that anti-cruelty laws are not enough, and that we have the obligation of going further and promoting animals' good. That does not mean that those animals who are subject-of-a-life should have the same rights as humans. Even philosophers who, as Peter S. Wenz, are critical with the animal rights theory concede that animal rights are valuable:

We could say, for example, that animals have rights, but lesser rights than human beings. Their rights are less because they have in a lesser degree the characteristics that justify ascribing rights in the first place (...) As a result, people have stronger and/or more rights than animals. In sum we could say that human rights generally have a greater moral clout than animal rights (...) However that does not require abandoning rights altogether (...) Rights are never absolute (...) (121-122)

We have spoken about the differences between animal welfare and animal rights, but the theory of animal rights has also helped in drawing clear distinctions between both movements and the first in time, more simple, and most extended one among humans: the anti-cruelty movement. Anti-cruelty is passive, it only pursues avoiding pain to animals but it does not promote their welfare. For instance, in labs, while welfarism is active in seeking the regulation of animal welfare in labs, the anti-cruelty movement simply prevents physical harm. That is why although practically the same, welfarism is more controversial, because it requires active measures and regulation to favor non humans.

The animal rights theory and movement has led to two further developments. It is so compelling that the legal establishment has started to internalize its consequences, reviewing, in very serious legal terms, the legal practical consequences of this social-political claim. Its focus on inherent values has built bridges between the legal and the scientific communities, specially with the scientists who were doing research on animal behavior, and particularly, primate studies. I do not intend to go fully in depth into the evaluation of these two new developments, but the article would not be complete if it does not mention them. Moreover these are not isolated developments. The main construction of the legal reform is based, almost entirely, on the recent developments on primatology. Steven Wise's *Rattling the Cage*, the year 2000 best seller of the Harvard Law School Professor, devotes five of its twelve chapters to the description of the recent primate science discoveries. The Great Ape Project,⁹ launched in 1993 by scientists was from its very origins a Rights Declaration document.

9. See Paola Cavalieri and Peter Singer, *The Great Ape Project* (1993). Thirty-six people contributed to the book, including philosophers Peter Singer and Tom Regan, primatologist Jane Goodall, evolutionary biologist Richard Dawkins, and novelist Douglas Adams.. The book triggered the creation of an international organization with the same name, founded to work for the removal of the non human great apes from the category of property, and for their immediate inclusion within the category of persons". See <www.greatapeproject.org>. This project is different from a similar one, GRASP (Great Apes Survival Project), a United Nations Environmental Program (UNEP) initiative which, independently of the animal rights issue, tries to

In 1993, a number of scholars, scientists, and activists organized to demand recognition of moral and legal rights for great apes¹⁰ (Chimpanzees, bonobos or “pigmy chimpanzees”, gorillas, and orangutans). Calling this effort the Great Ape Project, they asked for radical changes in the way apes are treated. The Project seeks nothing less than moral and legal “personhood” for great apes. The cluster of rights that would ultimately be recognized and that constituted the “Declaration on Great Apes” are the three basic ones of the right to life, the right to be free from unlawful confinement (individual liberty, that would keep most great apes out of laboratory cages and zoos), and the general prohibition of torture, thus creating “a moral community” among the five species (including humans). The simplicity as reasonableness of the three basic rights on which the project is based had produced an immediate support of a large number of world citizens favoring, consequently, the possibility of a revolutionary breakthrough in Western thought. Of course, the literature about the similarities of human and non human great apes goes beyond the animal rights issue into the mainstream of behavioral studies (see Stanford).

3. THE RECEPTION OF THE ANIMAL RIGHTS THEORY AND MOVEMENT IN THE US LEGAL ESTABLISHMENT

As previously stated, from the very beginning part of the legal establishment joined the movement. Gary Francione’s works were simultaneous to the immediate aftermath of the movement. But it was not until the mid 90s that the idea of animal rights appeared in the pages of US law reviews and bibliographies to the extent that today it constitutes a standardized topic of discussion. Not only the first Animal Law Review was founded (Lewis and Clark College, Portland, Or.), but lawyers started to bring real cases before the courts, acting on behalf of their animal clients, and monographs were published and submitted to serious critical reviews, not falling into oblivion, as it usually happens when new legal topics do not capture the mainstream of legal science.

The first wave of the reception consisted in a revision of the classic anti-cruelty laws and why their implementation had been so poor during the past century. The second one challenged the present regulation of “legal standing” (the ability to appear before a court of law in order to defend the right awarded by a regulation or a statute), given that the problem of Animal Law is not so much that animals may need rights but that the present notion of standing is too limited. This means that the enforcement of most laws that protect animals is attributed to administrative agencies whose agenda, usually, obeys other interests (Hannah). The fact that the implementation of the main federal law, the Animal Welfare Act, is in the US Department of Agriculture’s hands helped to frame the debate in these terms. Many consider that the debate could be solved simply by allowing any citizen to bring cases to court on behalf of animals (Mendelson III, Joslyn). But

save the great apes from extinction by putting in place appropriate conservation policies, including the eradication of property that has led to their use as meat (“bush meat”) as the main threat.

10. There is no equivalent in the Spanish taxonomic jargon for such a group. In fact there is no natural category that includes these four groups but excludes humans. They are much closer to humans than to the other apes and monkeys. The intelligence and the closeness to humans in the % of the DNA, and in the recent evolutionary departure from the common ancestor to humans (starting, with the orangutan 20 million years ago), as well as other physical characteristics such as the lack of tail, the way they usually seat, and that sometimes stand upright, is what motivated their inclusion as a group called “great apes.”

the arguments have gone further, and a review of the origins of the animals' property status has been called for in an intent to prove that the said property status is a legal mistake (Francione, Wise, Kelch, Wicklund). Many scholars, lawyers, and even judges have started to examine how the system should be changed through the enactment of legislation and through judicial decisions, which are the basis of the common law system (Wise). The concepts of "person" and of "legal personhood" have been reviewed bringing to the light absurd historical developments such as the fact that a bunch of money (a corporation) has been granted such privilege while other persons (slaves) were denied it, and when, still, sentient and intelligent animals do not benefit from it (Note in the April 2001 *Harvard Law Review*, Wise).

Ultimately, the famous and widely recognized great legal scholars and law professors (Rawls, Judge Posner), have "been forced" to participate in the debate, curiously not rejecting the idea itself that animals should be granted some rights but questioning the legal methodology used by less known legal scholars, proponents of animal rights recognition. Needless to mention the fact, addressed in the Introduction, that serious Law Schools have introduced courses in the curriculum.

The legal debate has prepared the situation for major changes in the law, notwithstanding the very complicated and detailed issues that the change in a traditional anthropocentric legal principle implies (Francione, Wise, Frasso, Hannah, Kelch, Kniaz, Kolber, Wicklund, Nussbaum, Posner, Sunstein, Cohen, Chambers, Verchick). Animal rights theory is now so extended, and so much rooted as a serious one in the American psyche that its defenders have achieved the federal recognition that a parody against its ideas is being considered by a federal judge as a defamation (which implies the compensation right for the affected). This means a small gain because it limits the possibilities of attacking the movement using one of the most cherished freedoms of America, freedom of speech. A federal judge has recently ruled that it is illegal by meat eaters to parody the work of People for the Ethical Treatment of Animals by using their .org internet domain (*Computer and Internet Lawyer Weekly*, Nov. 2001, 22).

4. CONCLUSION

The animal rights movement, although alien in its origins to American thought, was rooted from the very beginning, as an intrinsic value, to American identity because of its connection with the idea of wilderness and environmentalism. It was not, however, until the seventies that it captured the imagination of many Americans, thus leading to the development of a real social movement.

In spite of the fact that the tactics of many of its radical, even extremist, activism alienated the movement from the general population, the movement permeated the worlds of the humanities, and of the social sciences (including the law), bringing them closer to the mainstream of scientific discoveries. The philosophical analysis that constitutes its backbone has revolutionized the American theory of ethics and values, starting to bring the world of morals in line with the logical ultimate consequences of the Darwinian revolution. Thus, the animal rights theory, whether in its utilitarian or in its more radical version (animal welfare/animal rights; reform/abolition of animal use and abuse), is intimately connected to the new ethics that is supposed to govern the Twenty first Century, the relationship among humans and between humans and the rest of the living creatures.

The depth of said analysis and the social-political strength of the movement has reached the always conservative US legal establishment. Some lawyers think that granting standing right to animals might be enough to enable the already quite favorable laws and regulations. However,

many others consider that granting personhood at least to great apes, and changing the property status, from ownership to guardianship of other, especially domestic animals, is a mandatory requisite to acknowledge that they have interests that should be respected, and that these animals deserve moral consideration (and justice). The fact that the fundamental rights animals would be entitled to (right to life, right to individual freedom, right not to be tortured in the case of the great apes) are in line with the recent scientific discoveries about the level of their intelligence and emotional lives, makes more feasible than ever the fall of "the wall" that has separated for centuries humans from non humans, in particular regarding the very near future status of superior mammals.

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