



Rights, Regulatory Systems and Legal Revolution

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1. Ethical Frameworks and Philosophical Foundations
2. Regulatory Structure as Architecture for Legal Change
3. Evolution of "Legal Personhood"

Law and Moral Value

- Law is a reflection, within the structural constraints of a society's legal system, of the moral values of that society
- Since society is conflicted about the appropriate moral consideration given to animals, the law is conflicted as well
- Depending on the context, people have differing conceptions of the moral value of animals
- Law made in one arena can have important consequences for another, even when that consequence is unintended



Modern Philosophical Concepts of Animal Moral Value

Utilitarian Rubric

- **Peter Singer:** "If a being suffers, there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering of any other being."
- **Frey:** value of life contingent on quality

Virtue Ethics

- A virtuous person is said to hold these moral values:
 - Beneficence: doing moral good to others.
 - Justice: treating all others morally fairly.

Deontological Rubric

- **Tom Regan:** "To harm ... individuals merely in order to produce the best consequences for all involved is to do what is wrong - is to treat them unjustly - because it fails to respect their inherent value. To borrow part of a phrase from Kant, individuals who have inherent value must never be treated merely as a means to securing the best aggregate consequences."

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Different Results Based on Different Value Paradigms

In Vitro Meat

- Singer: Utilitarian
 - Seems like a "win-win"
- Some PETA members: wrong to promote any "animal" flesh

Animal Experimentation

- Singer: not automatically foreclosed (although would require willingness to use some humans)
- Deontological: wrong to use animals for human ends

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The best explanation for the prevalence of a moral judgment will be psycho-social in character.

Jonathan Haidt

- Moral judgments (in most ordinary contexts) arise from powerful emotional responses, not rational reflection.
- Commitment to evaluative judgment typically survives the failure of reasons and evidence to support them. Reasons and evidence are often supplied post-hoc.
- "The mere fact that friends, allies, and acquaintances have made a moral judgment" is more important to understanding someone's commitment to that judgement than the actual rational support for the judgment.

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Cultural Values

- "Nature Should Be Left Alone"
- "Dogs and Cats are People, Too"
 - Americans spend \$47.7B annually on pet products
 - 62% of U.S. households own a pet, which equates to 71.4M homes.
 - \$370M on pet costumes in U.S. 2012
 - 1M pets primary beneficiaries of owners' wills
- Primates are "almost" human



The Declining (Perceived) Value of Science

- Post-World War II era: the apex of scientific reputation and the rise of the expert administrative state
- U.S. experience: Bayh-Dole
 - Loss of scientific purity and the increasing view that science is opinion subject to interest group influence.
 - This originated with the political left, but it has recently (especially in the context of the environment and abortion politics) been taken on by the political right.
- Science vs. Democracy



Does philosophy matter? Yes, but in a way that is more subtle than it may appear.

- First: Philosophy sets the foundation for the cultural values. Typically it is a necessary first step. But philosophy is not necessarily crucial for the cultural value to become predominant in the society. That requires a situational and psychological step: "The power of an idea whose time has come."
- Second: Philosophy is crucial to the interpretation of laws that are in place or that are put in place. Especially within the courts (and to some degree the administrative agencies) that are trained to deal with philosophical and logical aspects.



Regulatory systems form the architecture for how law is made

While many of the interests are the same, the structure of the political system may dictate how law evolves—both in substance and speed.

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Policy Making

In Europe and Britain, policy is developed through parliamentary systems. This means that there is likely less blocking and legislative responses are more likely to pass.

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Global Aspects

- National rules will continue to reflect the legal architecture in which they exist
- This will affect both the direction and degree to which these rules are implemented
- Major changes in Europe—particularly for animal research—but beyond

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In the United States: Focus on the Courts

- Private rights of action
- New creative actions in the courts
 - Damages/Property
 - False claims actions (Agriculture)
 - Shareholders' suits (Chimps)
 - Agency petitions
 - *Habeas Corpus*

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In the United States, some of the most fundamental focus is on "rights"

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What are rights?

- Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states
- Can be moral rights or legal rights
- Rights are often not absolute
- Some legal rights may be no more than precatory

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Animals as Property

- For many Americans, this is an extension of “slavery.” Repugnant for humans, it also feels repugnant for animals.
 - This is an extension of moral norms to a legal classification.
- But the property designation may have more fundamental meaning for “legal personhood.”

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What exactly is legal personhood?

This is a debate of our time—in many contexts having nothing to do with animals:

- Are corporations persons?
- Is a fetus (or embryo—or blastocyst) a person?

- Not so long ago, are children “persons” under the law?
- But also not so much longer ago, animals could be tried for harming humans...

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Legal Personhood

- One meaning: an entity has the capacity to be granted rights.
- Another: an entity has been granted some rights—rights that might, but need not, include the power to enforce them.
 - At least since the 19th century, animals have some rights to be free from cruel treatment
 - Animals have rights to food and water
 - Habitat (Endangered Species Act)
 - Trusts
- These are not necessarily limited to living beings: art, historic places.

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The “Non-Human Animal Rights Project”

Stephen Wise

- An attempt to expand legal rights for certain animals —to change the common law status of at least some nonhuman animals from “mere things” to “legal persons”
- Focus on Chimpanzees
- *Habeas Corpus* actions brought in a number of state courts—focused on New York

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Legal Personhood

- BUT do any animals have rights of bodily liberty and autonomy under the common law writ of *habeas corpus*?
- If accepted by the courts, this would be a fundamental change—and it is likely to be an issue for the next couple of decades

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What would the consequences of legal personhood be?

- Changes in the legal relationships between humans and some animals
- Would have major consequences for biomedical research and biotechnology
- Much of it hard to gauge at this time

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Questions?



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