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The Anthropomorphic Hegemony of Subjectivity: Critical Reflections on Law and the Question of the Animal

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Citation

Villiers, J. de. (2019, December 16). *The Anthropomorphic Hegemony of Subjectivity: Critical Reflections on Law and the Question of the Animal*. Retrieved from <https://hdl.handle.net/1887/82072>

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Issue Date: 2019-12-16

Examining the similarity principle and language of (animal) rights as a foundation for animal liberation*

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1 Introduction

With the animal liberation movement gathering academic steam I believe it is more important than ever that proponents of the movement ask themselves the same question that Alice in Wonderland asks the Cheshire cat upon reaching a fork in the road: 'Would you tell me, please, which way I ought to go from here?' The cat replies: 'That depends a good deal on where you want to get to'. Upon answering that she does not much care where she is going, so long as she gets somewhere, the cat's response to Alice is quite insightful: 'Then it doesn't matter which way you go ... you're sure to do that if you only walk long enough'.¹

In this passage Lewis Carroll calls attention to the importance of critically reflecting on the route you choose to travel to your final destination and the reciprocity between a course of action and the emanating outcome. If the ultimate aspiration of the animal liberation movement is to free animals of human domination and exploitation and to develop an ethical relationship to the animal Other, we need to ask ourselves if the approach we utilise is consistent with, and allows for, such an outcome.

Within a society characterised by an uneven balance of power and ensuing oppression and domination, we find various approaches that seek to remedy this structure and strive towards the ideal of 'equality'. The most prominent approach is grounded in rights theory and aims to reach a state of equality by allocating certain rights to subjects. The modern concept of animal rights was developed less

*This article is based on research conducted for my LLM dissertation entitled 'Thinking outside the cage: Sacrifice, equality and the plight of the animal' for which I am currently registered at the University of Pretoria under the supervision of Prof Karin van Marle.

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¹Carroll *Alice's adventures in wonderland and through the looking glass* (1993) 52.

than 40 years ago and finds theoretical, ethical and philosophical grounding in the pioneering work of scholars like Peter Singer,² Steven Wise,³ Gary Francione⁴ and Tom Regan.⁵ Although an approach based in rights theory is easily distinguishable from a more conservative welfarist theory, the rights movement has inherited the human rights movements' continuing battle to advance a united, terse conception that captures the essence of the rights advocacy movement. Whilst it may not be possible to provide a single coherent definition of animal rights, the approach is undeniably characterised by a leitmotif of 'similarity' or 'same-as', the argument that animals should be granted legal rights because they share certain human traits or characteristics that warrant consideration and protection. The rationale behind the similarity argument is that animals who possess capacities and characteristics similar to that of humans should receive equivalent protection, as a just society requires that similar entities be treated alike.⁶

The similarity argument is problematic, as it is essentially anthropocentric and manifests in a hierarchical ordering of animals based on their perceived similarity to humanness. In this article I will examine the way that animal rights talk has developed, specifically focussing on the same-as characteristic as facilitator of a human/animal dualism that deprecates the animal to subhuman Other and supports the continued disfranchisement of animals. As an appreciation of animal rights requires an understanding of the concept of 'rights' in general, the first part of this article will be devoted to a short philosophical discussion of the notion of rights. In the second part I will argue that the current conception of animal rights precludes the possibility of an ethical encounter with the animal Other and manifests in a hierarchical ordering of animals. Finally I will illustrate why this approach to animal liberation is irreconcilable with the ideals it strives to realise and consequently internally paradoxical.

Firstly, a note on terminology. Although the term 'animal' strictly speaking refers to all beings belonging to the kingdom Animalia and thus includes human beings, for the purposes of this article the term 'animal', unless otherwise stated, will be used to denote animals that are not human. I have come to reject the term 'nonhuman animal' that is commonly used in literature on animal ethics, due to the subordinate connotation that the term engenders.

The term 'animal rights', and specifically the phrase 'animal rights movement', is often used loosely to depict any attempt at addressing and

²See Singer *Animal liberation* (1975).

³See Wise *Rattling the cage: Toward legal rights for animals* (2000) and Wise *Drawing the line: Science and the case for animal rights* (2002).

⁴See Francione *Animals, property and the law* (1995) and Francione *Rain without thunder: The ideology of the animal rights movement* (1996).

⁵See Regan *The case for animal rights* (1983) and Regan *Defending animal rights* (2001).

⁶Bryant 'Similarity or difference as a basis for justice: Must animals be like humans to be legally protected from humans?' (2007) 70 *Law and Contemporary Problems* 207 at 207.

bettering the plight of animals. For the purposes of this article the terms 'animal rights' and 'animal rights movement' specifically refers to a theory or approach based on the notion that animals should be rights-bearers in order to entitle them to (legal) protection against violation. In reference to the social movement aimed at liberating the animal, irrespective of the underlying theoretical or philosophical foundation, I will use the phrase 'animal liberation (movement)'.

2 The language of rights

We need firstly to understand why it is indeed possible to extend rights to animals. As we will see, the very nature and make-up of rights which allow for animals to be rights-bearers also poses a challenge to the conceptualisation of an equable animal rights theory. The notion of rights is part of the symbolic order of language and law and it is within this sphere that the scope and capacity of rights is determined. Rights do not stand in concrete relation to any specific thing or entity but rather comprise of legal and linguistic signs, words, symbols and ideals.⁷ Consequently, 'no person, thing or relation is in principle closed to the logic of rights [and] any entity open to semiotic substitution can become the subject or object of rights; any right can be extended to new areas and persons, or, conversely, withdrawn from existing ones'.⁸ Accordingly, we have seen civil rights being extended to socio-economic rights, and further to cultural and environmental rights and what were once the rights of the white, heterosexual males can now also be claimed by blacks, homosexuals and women. Anything that's accessible to language can become the object of rights and as Costas Douzinas jokingly remarks, 'the right to free speech or to annual holidays can be accompanied by a right to love, to party or to have back episodes of Star Trek shown daily'.⁹

It is thus clear that it is indeed possible to extend rights to animals. But what would be the basis of animal rights? Who would be entitled to them? What is an animal? Despite just quoting Douzinas on the possibility of ceaselessly expanding rights, my questions here are not meant to echo the superficial and ill conceived critique that the realisation of animal rights would require that we grant animals the right to vote and marry. Of course it is a *non sequitur* to argue that the extension of *some* existing rights to animals requires the extension of *all* existing rights. I am not concerned with the specific rights that animals would (or should) have and what the scope of these rights would be. The question of including animals in the community of rightsholders should not be confused with (related, yet distinguishable) issues pertaining to the scope of rights.

Rather, I want to argue that we need to think through the implications of using terms like 'human' rights and 'animal' rights, each inherently embodying a

⁷Douzinas 'The end(s) of human rights' (2002) 26 *Melbourne Univ LR* 445 at 456.

⁸*Ibid.*

⁹*Ibid.*

problematic generalisation that affects the way we define our relationship with the Other. Just as the term 'human' includes men and women and absorbs racial, historical and gender differences, 'animal' refers to everything from lions to caterpillars, chimpanzees to mice.¹⁰ These terms bring about instability, 'not just because of species diversity, but because its obvious supposed unimportance makes us realise that these terms are, to put it bluntly, metaphysical categories requiring all sorts of police work, and not simply useful conceptual tools, biological generalisations, etc'.¹¹ The point, as David Wood articulates it, is that 'there are no animals "as such", rather only the extraordinary variety that in the animal alphabet would begin with ants, apes, arachnids, antelopes, aardvarks, anchovies, alligators, Americans, Australians ...'.¹²

Reference to the 'animal' of rights already connotes a problematic disengagement that perpetuates a human/animal dualism. The philosopher Jacques Derrida has also rejected rights language as a way of advancing our relation to animals and emphasised that rights theory signifies an attempt to separate ourselves from other animals and even disavow our own animality:

The axiom of the repressive gesture against animals, in its philosophical form, remains Cartesian, from Kant to Heidegger, Levinas or Lacan, whatever the differences between these discourses. A certain philosophy of right and of human rights depends on this axiom. Consequently, to want absolutely to grant, not to animals but to a certain category of animals, rights equivalent to human rights would be a disastrous contradiction. It would reproduce the philosophical and juridical machine thanks to which the exploitation of animal material for food, work, experimentation etc, has been practiced (and tyrannically so, that is, through an abuse of power).¹³

Having no fixed, concrete meaning, the 'animal' of rights, just as the 'human' of rights, is a floating signifier, 'a word and discursive element that is neither automatically nor necessarily linked to any particular signified or meaning' and consequently 'it cannot be fully and finally pinned down to any particular conception because it transcends and overlaps them all'.¹⁴ As there is no undeviating connection between signifier and signified, meaning constantly shifts as it is passed on from one signifier to another. Rights therefore do not belong to humans or animals, but rather construct humans and animals.¹⁵ Within the rhetoric of rights, a human 'is someone who can successfully claim human rights',¹⁶ and the same holds true for the 'animal' of animal rights. And therein lays

¹⁰Wood 'Comment ne pas manger – deconstruction and humanism' in Steeves (ed) *Animal others: On ethics, ontology and animal life* (1999) 16.

¹¹*Ibid.*

¹²*Id* 29.

¹³Derrida and Roudinesco *For what tomorrow: A dialogue* (2004) 71.

¹⁴Douzinis (n 7) 456.

¹⁵*Id* 457.

¹⁶*Id* 456.

a major challenge for the proponents of the rights movement. Rights theory needs to be conceived in a manner that is inclusive, respects difference and advances the ethical relation without perpetuating hierarchy. The current conception, I will argue, unfortunately has several shortcomings in this regard.

3 Rights theory, the ethical relation and hierarchy

The current conception of animal rights theory is founded on the same idea that propelled the civil rights movement, women's rights movement and disability rights movement: The idea that the striving towards the ideal of justice requires that similar entities are treated alike.¹⁷ As Gary Francione explains, the idea of animal rights is underpinned by the notion that (at least some) animals possess rights that normatively correspond to the rights possessed by humans.¹⁸ The rationale supporting this inference is at least twofold:

First, there is no characteristic or set of characteristics that is possessed by all humans (whom we regard as persons) that is not possessed by at least some animals. To put the matter a different way, those who support animal exploitation argue that animals are qualitatively different from humans so animals can be kept on the 'thing' side of the 'person/thing' dualism; animal rights advocates argue that there is no such difference because at least some nonhumans will possess the supposedly 'exclusive' characteristic while some humans will not possess the characteristic ... There is another related, more 'positive', reason to view animals as persons. Although there will undoubtedly be borderline cases, it is clear that at least some animals possess the characteristics that we normally associate with personhood.¹⁹

From this exposition we can identify two tenets that are central to the current concept of animal rights. Firstly, the human (and personhood) is the standard against which animals are to be measured to determine their worthiness of rights. Secondly, only 'some animals' that embody and exhibit the essential humanlike characteristics will be included in the community of rights holders. There are several problematic consequences to this approach and I will henceforward discuss three of these repercussions; the disavowal of otherness, the perpetuation of hierarchy and the tension emanating from the dissonance between the practical implications of this approach and the philosophy underlying animal liberation.

3.1 *The animal as symmetrical Other*

Drucilla Cornell defines the ethical relation as 'the aspiration to a nonviolent relationship to the Other, and to otherness more generally, that assumes responsibility to guard the Other against the appropriation that would deny her

¹⁷Bryant (n 6) 207.

¹⁸Francione 'Ecofeminism and animal rights: A review of *Beyond animal rights: A feminist caring ethic for the treatment of animals*' (1996-1997) 18 *Women's Rights Law Reporter* 95 at 98.

¹⁹*Ibid.*

difference and singularity'.²⁰ An ethical encounter requires that we transcend the self and engage with the otherness of the Other from outside a framework that employs the self as central point of reference. The Other is not similar to me and she is not the opposite of me, we are absolutely separated. This means that I cannot articulate my relationship to the Other in terms of sameness or opposition, the Other exists outside of myself and my egocentric understanding of the world. We are not of the same genus and consequently 'I cannot compare [the Other] to anything that I know, because then [the Other] would be in relation to me and denied its absolute otherness'.²¹ Rather than centralising the self, the focus should be on the Other and her qualities of singularity and otherness.

Because the Other is an irreducible individual entity, the distance separating the self and the Other is characterised by asymmetry. We can never eradicate this distance, as it is this otherness of the Other that makes her other. Emmanuel Levinas describes this asymmetrical characteristic of the Other as alterity. Respect for the alterity of the Other requires that we not identify with her in terms of the self, as this would 'neutralise' and reduce the Other to an object that cannot affect me and create a state of 'totality'.²² The Other has an individual face that resists possession and it is this characteristic which, for Levinas, is fundamental to being other: 'Stranger means the free one. Over him I have no power. He escapes my grasp by an essential dimension, even if I have him at my disposal'.²³

In advocating that (some) animals are worthy of legal protection in the form of rights, proponents of the rights movement articulate their claims by drawing comparisons between the capacities of these animals and those of humans. Steven Wise, for instance, argues that the test for personhood should be an enquiry into three criteria, namely whether the person '(1) can desire; (2) can intentionally act to fulfill her desires; and (3) possesses a sense of self sufficiency to allow her to understand, even dimly, that it is she who wants something and it is she who is trying to get it'.²⁴ As apes possess the mental capacities that allow them to meet these criteria, Wise argues that they should be regarded as persons under the law. As we have seen, Francione also refers to the characteristics that some animals embody that are associated with personhood and Peter Singer finds common ground when it comes to a human's and animal's ability to suffer. Following in the footsteps of fellow utilitarian thinker Jeremy Bentham, Singer argues that 'the nervous system of animals evolved as our own did [and that it is] surely unreasonable to suppose that nervous systems that are virtually identical

²⁰Cornell *The philosophy of the limit* (1992) 62.

²¹Smith 'Incommensurability and alterity in contemporary jurisprudence' (1997) 45 *Buffalo LR* 503 at 523.

²²Shepherd 'Face to face: A call for radical responsibility in place of compassion' (2003) 77 *Saint John's LR* 445 at 484.

²³Levinas *Totality and infinity* (1969) 39.

²⁴Wise *Rattling the cages: Toward legal rights for animals* (2000) 32.

physiologically, have a common origin and common evolutionary function, and result in similar forms of behaviour in similar circumstances should actually operate in an entirely different manner ...'²⁵

Bentham's famous call for the equal consideration of animals based on their capacity to suffer is a golden thread that runs through literature on animal ethics. For Bentham, a being's ability to suffer is a precondition for having any protectable interest.²⁶ The question, he argued, 'is not Can they *reason*? nor Can they *talk*? But, Can they *suffer*?'²⁷ This threshold requirement is clearly more inclusive than a criterion of sex, race, sexual orientation or membership to a specific specie, criteria used to marginalise women, blacks, homosexuals and animals. The problem is that Bentham's contribution is weakened when applied as the basis of a comparative appraisal. The question 'Can they suffer?' can only be meaningful when the suffering is registered on the sufferer's terms.²⁸ Animals do not suffer like humans do, they suffer like animals do. And that should be enough to grant them equal moral consideration.

In drawing these comparisons between the self and the Other, these theorists fail to respect the asymmetry that characterises the ethical relation and consequently preclude the possibility of an ethical encounter:

Once I attempt to impose a logical relation between myself and the other, I will have connected the other to me within my schematic thought. Once this connection, this grasping, is made, I hold the other hostage by denying its very qualities of otherness or alterity. I renounce its identity as other. In order to be other, it must be wholly other, without relation or connection to me. Once I introduce a relation to the other, I exterminate its identity as an other by rendering it an object of phenomenon within my world. In order to preserve alterity, the terms I and Other cannot be brought together.²⁹

The Other is thus absolutely other to the self. In order to appreciate this otherness, I firstly need to recognise and conceptualise myself as an individual and thereafter grant the Other the same recognition. The interplay between ethical asymmetry and phenomenological symmetry that I elsewhere³⁰ articulated is once again evident and emphasises that 'I' am the point of departure to the ethical

²⁵ Singer *Animal liberation* (2009) 11. It is important to note that, whilst Singer's approach to animal liberation is grounded in utilitarian theory and not rights theory, his work has provided a moral foundation for animal rights theorists and played a vital role in the creation of many animal rights organisations, including People for the Ethical Treatment of Animals (PETA), the world's largest animal rights organisation.

²⁶ Singer (n 25) 8.

²⁷ *Id* 7.

²⁸ MacKinnon 'Of mice and men' in Sunstein and Nussbaum (eds) *Animal rights: Current debates and new directions* (2004) 271.

²⁹ Smith (n 21) 524.

³⁰ See De Villiers 'Towards an ethical relation to the nonhuman Other: Deconstruction, veganism and the law' (2012) 1 *SAJHR* 18.

relation. As Levinas explains, 'alterity is possible only starting from *me*'.³¹ This does not mean, however, that 'I' am the central point of reference for my relation to the Other. To relate to the (animal) Other in terms of the (human) self is to appropriate the Other and disregard the absolute distance separating the self and the Other. The other cannot be minimised to an articulation of the self, because 'what is absolutely other does not only resist possession, but contests it'.³²

Simone de Beauvoir has emphasised the dangers of women being subjugated to man's Other 'from being considered not positively, as she is for herself, but negatively, such as she appears to man'.³³ For De Beauvoir, this strips the woman of her singularity and denounces her to an object that is 'devoid of meaning without reference to the male'.³⁴ Similarly, animal rights theory appropriates animals as man's Other by defining animals in relation to humans. When we ground our ethical responsibility in the likeness between the (human) self and (animal) Other, we 'privilege similarity over difference and selfness over alterity' and thereby fail to heed the call of the Other.³⁵ Ultimately we do not recognise the singularity of the Other but rather appropriate her as a reflection of the self and thereby collapse the ethical relation into absolute symmetry. The ethical relation should rather, as Levinas emphasises, remain 'a relationship to the other as other, and not a reduction of the other to the same. It is transcendence'.³⁶ Otherwise the question becomes: Is the Other like me? The dominant figure becomes the norm and 'that women are like men and animals are like people is thought to establish their existential equality, hence their right to rights'.³⁷ To be clear, I am not disputing that there are similarities between humans and animals. The question, rather, is why do animals have to be like us to escape the gross acts of barbarity that we inflict on them? The recognition of women's rights on male terms has done little to recalibrate the social status of women as sub-male and one can ask how much being seen as sub-human will benefit the animal liberation movement?³⁸

3.2 Hierarchical ordering

An approach that measures animals against a standard of humanness is clearly anthropocentric as it reflects a deeply imbedded perception that we are the centre and most important creatures on earth, the measuring-stick against which all other creatures' needs, interests and abilities are to be measured. The hierarchy

³¹Levinas (n 23) 40.

³²*Id* 38.

³³De Beauvoir *The second sex* (2009) 167.

³⁴*Id* 6.

³⁵Lopez Lerma 'Law in high heels: Performativity, alterity and aesthetics' (2011) 20 *Southern California Interdisciplinary LJ* 290 at 300.

³⁶Levinas *Entre Nous: Thinking-of-the-Other* (1998) 173-174.

³⁷MacKinnon (n 28) 267.

³⁸*Id* 271.

emanating from this approach manifests on various levels: humans occupy a space at the top tier of the speciesist ladder with other animals being subordinately ranked below us. The similarity argument however also creates a pecking order amongst animals based on their proximity to humanness, thereby perpetuating both a human/animal divide and an inter-species hierarchy.

Catherine MacKinnon argued some eight years ago that animal rights, like women's rights, 'are poised to develop first for a tiny elite' because of the 'like us' analysis.³⁹ In retrospect her words were prophetic, as recent legal developments realised her prediction. The Spanish parliament passed a resolution in 2008 which granted legal personhood to the Great Apes. The resolution makes the killing of an ape,⁴⁰ our closest nonhuman relative, a crime and bans their use in medical experiments, circuses and films and television commercials. Whilst the resolution brings about a vital crack in the species barrier that we have erected between ourselves and other animals, it also illustrates the hierarchical materialisation of the similarity argument.

Once we deem certain animals to be 'more equal than others' based on their propinquity to humanness, we can forecast the outcome. George Orwell illustrated the dire consequences of that mindset in *Animal farm* more than half a century ago.⁴¹ That was a contradictory ending to the egalitarian uprising in the book and, likewise, it will be an antithetical ending to the animal liberation movement. After decades of research the Great Apes (or at least the few that are lucky enough to find themselves within the Spanish borders) enjoy legal protection similar to humans, because they have been proven to be similar enough to humans to merit such protection. One can only wonder how long the road for dogs, rabbits, chickens and fish will be, how long it will take to prove that they are sufficiently similar to humans to be granted rights.⁴²

The extension of rights to dogs, rabbits, chickens and fish is of course not a definite progression of animal rights theory under the same-as characteristic. Because no specific (human) characteristic is logically prescribed the choice remains arbitrary and can be changed to include or exclude certain animals as we see fit. The same argument used to grant rights to some animals, can thus be used to deny others of the same protection:

Animals may feel pain, but cognitively process it differently or manage it more effectively. Animals may think, but not in the way humans do. If an animal lacks self-consciousness or the cognitive ability to anticipate his life in the future, the loss of his life may be deemed less meaningful than the loss of a human's life because humans do have self-consciousness and can project themselves into the future.⁴³

³⁹*Ibid.*

⁴⁰Includes gorillas, chimpanzees, bonobos and orangutans.

⁴¹Orwell *Animal farm* (2004).

⁴²Bryant (n 6) 216.

⁴³*Id* 211-212.

When animals are proven to possess certain (humanlike) characteristics that are not valued by humans, this can even have an adverse effect. In a patriarchal society that favours masculinity over femininity and everything that is traditionally associated with this, the ability to suffer might actually be seen as a sign of weakness and not of communality that puts animals on equal footing with humans.

Ultimately then, it seems there are right (and wrong) capacities to possess and a right (and wrong) way of feeling, being and thinking. JM Coetzee accurately illustrates the absurdity of this anthropocentric way of valuing animals. Through his alter ego, Elizabeth Costello, Coetzee gives a fictional account of the story of Sultan, one of the apes used by psychologist Wolfgang Köhler in his experiments into the mental capacities of primates.⁴⁴ After being caught on African soil and shipped overseas to participate in a scientific experiment, the apes underwent a process of training aimed at humanising them.⁴⁵ To this end, Sultan was placed in a cage and one day, without warning or any apparent reason, deprived of the food that he was previously fed at regular intervals. A wire was then spun over his cage and bananas attached to the wire. After being supplied with three wooden crates, he was left to his own devices:

Sultan knows: Now one is supposed to think. That is what the bananas up there are about. The bananas are there to make one think, to spur one to the limits of one's thinking. But what must one think? One thinks: Why is he starving me? One thinks: What have I done? Why has he stopped liking me? One thinks: Why does he not want these crates any more? But none of these is the right thought. Even a more complicated thought – for instance: What is wrong with him, what misconception does he have of me, that leads him to believe that it is easier for me to reach a banana hanging from a wire than to pick up a banana from the floor? – is wrong. The right thought to think is: How does one use the crates to reach the bananas?⁴⁶

Realising this, Sultan positioned the crates under the dangling bananas, stacked them on top of the other, climbed to the top and brought down the bananas. After passing the first test, Sultan was faced with an increased challenge the next day. The exercise was repeated but this time the crates were filled with heavy rocks, rendering them immovable. Once again Sultan had to respond:

One is not supposed to think: Why has he filled the crates with stones? One is supposed to think: How does one use the crates to get the bananas despite the fact that they are filled with stones?⁴⁷

Sultan then emptied the crates and repeated the process of stacking the crates so that he could reach the bananas. It was clear to Sultan that he was

⁴⁴Coetzee *The lives of animals* (2001).

⁴⁵*Ibid.* 27.

⁴⁶*Ibid.* 28.

⁴⁷*Ibid.*

being tested and it was a test that he had to pass if he wanted to silence his hunger. The test was of course not over and the next day, the bananas were placed a metre outside of his cage and a stick thrown into his cage.

The wrong thought is: Why has he stopped hanging the bananas on the wire? The wrong thought (the right wrong thought, however) is: How does one use the crates to reach the bananas? The right thought is: How does one use the stick to reach the bananas?⁴⁸

These tests, as Coetzee remarks, propelled Sultan away from interesting, speculative thought and towards lower, practical reason.⁴⁹ What he (really) thought or wanted to think was not only indeterminable, but irrelevant. What mattered is that he thought and acted as Köhler wanted him to. Sultan's value was measured against his ability to demonstrate a predetermined capacity possessed and valued by humans. That predetermined capacity, in this case the ability to transfer insight and solve a problem, is of course arbitrary and can be changed to one that animals cannot possess.

Through this deconstruction of Köhler's experiment, Coetzee firstly illustrates the pragmatic limitations of research into the cognitive capacities of animals.⁵⁰ This approach of measuring and comparing animals is thus fundamentally unstable, as there can be no definitive data upon which to ground any affirmative or dissenting conclusion of similarity. Secondly, Coetzee highlights how this approach can, depending of the capacity employed for comparison, as easily be used to prove dissimilarity to animals as it can be used to prove similarity. Finally, Coetzee also exposes an internal contradiction to an approach that seeks to liberate animals by way of a *modus operandi* that requires that research be done on animals. In her closing remarks on Sultan, Coetzee has Costello say the following:

In his deepest being Sultan is not interested in the banana problem. Only the experimenter's single-minded regimentation forces him to concentrate on it. The question that truly occupies him, as it occupies the rat and the cat and every other animal trapped in the hell of the laboratory or the zoo, is: Where is home, and how do I get there?⁵¹

4 The same-as characteristic and animal experimentation

The use of animals for the purpose of research has always been a concern of animal advocates. Yielding to public outcry against the inhumane treatment of animals in laboratories, Britain adopted the first anti-vivisection law in 1876 and

⁴⁸*Id* 29.

⁴⁹*Ibid.*

⁵⁰Bryant (n 6) 213.

⁵¹Coetzee (n 44) 30.

the anti-vivisection movement formed soon after during the 1880s.⁵² The use of animals in science remains a primary concern of animal rights organisations to this day. *People for the Ethical Treatment of Animals (PETA)* is synonymous with the landmark 'Silver Spring monkeys' case, a battle against animal exploitation that gained momentum and transformed a group of friends committed to animal liberation into the world's largest animal rights organisation.⁵³

The similarity argument requires that research be done on animals in order to prove that they are sufficiently similar to humans to warrant protection. The dissonance between this approach and the goal of freeing animals from exploitive research is obvious. Mere observations of animals avoiding painful stimuli and limping have in the past not been seen as sufficient evidence to prove that animals experience – and react to – pain in a way similar to humans.⁵⁴ If we furthermore consider the probable consequences of the realisation of animal rights⁵⁵ coupled with the high value that society places on data stemming from research that is done under 'controlled conditions', it is clear why mere observations of animals in their natural surroundings will not suffice as satisfactory proof of similarity.⁵⁶ Captivity and exploitive research are inescapable ramifications of the similarity argument.

Past use of animals in scientific research paints a gruesome picture of mice being irradiated to cause lung cancer, rabbits being injected in their knee joints to induce chronic inflammation and electric shocks being administered to the tooth pulp of dogs, to name but a few examples.⁵⁷ Experiments conducted to determine animals' ability to feel pain have not been any less invasive and what is of even more concern, is that the findings of these experiments have not provided conclusive insight into the cognitive processing of pain by animals.⁵⁸ There is still room for debate and more painful research.

But even if there was a humane way to determine animals' capacity to feel pain, we need to bear in mind that they cannot meaningfully consent to being participants in these experiments aimed at advancing 'an idea of "chimpanzee-ness" or "goldfishness" or "animalness"'.⁵⁹ Whilst the motives behind these

⁵²Garvin 'Constitutional limits on the regulation of laboratory animal research' (1988) 98 *Yale LJ* 369 at 371.

⁵³This case led to the first raid of a research laboratory in the USA on 1981-09-11, with police confiscating 16 Macaques monkeys and one Rhesus monkey. Dr Edward Taub was charged with 17 counts of animal cruelty and found guilty on six counts on 1981-11-23. The convictions were later reversed. See Pacheco 'The Silver Spring monkeys' in Singer (ed) *In defence of animals* (1985) 135-147.

⁵⁴Bryant (n 6) 214.

⁵⁵This would ultimately require that we abjure the use of all animal products and lead a vegan lifestyle.

⁵⁶Bryant (n 6) 220.

⁵⁷See Ryder 'Speciesism in the laboratory' in Singer (n 53) 81-82.

⁵⁸Bryant (n 6) 213 - 214.

⁵⁹*Id* 221.

experiments might be noble, this approach ultimately preserves a view of animals as objects and consequently perpetuates the very mentality it seeks to rupture.

5 Conclusion

Whilst Douzinas describes rights as ‘one of the noblest liberal institutions’ he also regards their triumph as the ideology of postmodernity to be something of a paradox, reminding us that ‘our era has witnessed more violations of their principles than any of the previous and less “enlightened” epochs’.⁶⁰ For Douzinas, this paradox is the result of a historical and theoretical gap, one that he addresses and fills almost entirely in his body of work.⁶¹ I had neither the capacity nor the intention to tackle such a mammoth task in this article. My goal, rather, was to specifically focus on the similarity characteristic of the current concept of animal rights which I believe renders it theoretically and philosophically inconsistent with the ideal of animal liberation.

To this end I started off by examining the make-up of rights and its expansive potential that paves the way for animals to be the bearers of rights. I also highlighted the challenge that this poses to proponents of the movement in the formulation of an inclusive theory of rights. In the second part of this article I examined the human/animal interaction from the perspective of an ethical relation and illustrated what recognition of – and respect for – the otherness of the Other demands. I argued that the same-as approach denies the otherness of the Other and amounts to a reduction of the (irreducible) animal Other to a symmetrical reflection of the self which, as Levinas reminds us, is evidence of a fundamental ethical failure.⁶²

The similarity argument also facilitates the formation of hierarchies according to the degree to which animals possess arbitrarily identified human characteristics. As illustrated by the degree to which animal rights are currently recognised, the nature of this approach allows for it to be as easily employed for the discountenance of some animals as for the protection of others. Finally I highlighted the practical limitations and ideological inconsistencies of the same-as approach and illustrated why this course is incongruent with the ultimate goal of animal liberation.

In conclusion I would like to emphasise that I share the view that animals will, despite the problematic aspects of the current conception, undoubtedly be better off with rights than without them.⁶³ The road of rights will indeed take us ‘somewhere’, and that place will be better than the one animals find themselves in

⁶⁰Douzinas (n 7) 446.

⁶¹See *inter alia* Douzinas ‘The end of human rights’ (2000) and Douzinas ‘Human rights and empire: The political philosophy of cosmopolitanism’ (2007).

⁶²See Levinas (n 23).

⁶³MacKinnon (n 28) 271.

now. But just as the present concept of rights has not, to date, been able to significantly change the social status of women and adequately address the emanating oppression, I do not believe that the current approach to the idea of animal rights allows for the realisation of the ultimate goal of the animal liberation movement. As long as our anthropocentric outlook persists and we employ humanness as the exclusive reference point from which to establish similarity and an ensuing right to rights, animals will without fail be subjugated; just as blacks will always, despite being rights bearers, be othered when whiteness is the norm, women when maleness is the measure and homosexuals within a heteronormative configuration.