

What is an animal: Learning from the past - looking to the future

Werzamsky-Orland, Yotam

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Werzamsky-Orland, Y. (2019). What is an animal: Learning from the past - looking to the future. *Society Register*, 3(3), 19-37. <https://doi.org/10.14746/sr.2019.3.3.02>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-NC Lizenz (Namensnennung-Nicht-kommerziell) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier: <https://creativecommons.org/licenses/by-nc/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-NC Licence (Attribution-NonCommercial). For more information see: <https://creativecommons.org/licenses/by-nc/4.0>

WHAT IS AN ANIMAL: LEARNING FROM THE PAST – LOOKING TO THE FUTURE

YOTAM WERZANSKY-ORLAND¹

¹ Holon Institute of Technology (HIT), 52 Golomb Street, POB 305, Holon 5810201, Israel. ORCID: 0000-0001-7178-9772, E-mail: yotam.w@gmail.com

ABSTRACT: Can western human society apply its definition of the term “animal” on itself? Is it possible that a “person” is not only human? In this article, I explore and analyze various and interdisciplinary doctrines and approaches towards nonhuman animals in order to question the current status-quo regarding nonhuman animals.

Throughout history, as Man developed self-awareness and the ability to empathize with others, hunters were associated with wolves and began to domesticate them and other animals. With the introduction of different religions and beliefs into human society, Man was given the lead in the food chain, and the status of the nonhuman animals became objectified and subject of the property of human animals. Common modern taxonomy identified and described approximately 1.9 million different species. Some estimate the total number of species on earth in 8.7 million. The Human is just one of 5,416 other species in the Mammal class and shares a place of honour among hundreds of other Primates and Great Apes.

It appears to be commonly and scientifically accepted that humans are animals. Humans, as other nonhuman animals, all meet the definitions of the term. However, it seems that there is a wide gap between the human-generated definitions (HGDs) and the human social practice that created a distinct line between humans and “animals”. This alienation is best illustrated by the commonly mistaken equivalence between the terms “human” and “person”, as at least some nonhuman animals answer to many other HGDs. In this article I try to show that a rational and logical interpretation of these definitions’ nonhuman animals (at least some), should be regarded as persons and to suggest an approach to implement in the future.

KEYWORDS: human-animal studies, sociology, anthrozoology, animal rights, speciesism, attitudes toward animals

INTRODUCTION

Animals have been an inseparable part of human societies for millennia. From the early times when hunters-gatherers began to communicate with wild wolves and domesticated them to some extent, through the use of animals as assistants for hunting other animals (Harari 2011), the use of their skin and fur for clothing and their flesh for food. Although biologically similar to many other species, few would disagree with the claim that humankind has conquered Earth and is its undisputed ruler. However, is this undisputed fact enough in order for an immoral approach towards other species?

Humans communicate mainly through language. Put, language is a system comprised of words that have meaning. This meaning enables different individuals in a particular society to communicate and exchange ideas. Thus, the distinguished readers of this paper are able to understand the messages conveyed in it. However, these words and terms are Human Generated Definitions (Hereinafter: "HGDs"). Terms like "animal", "person" and "rights" are HGDs which meanings and interpretations are being cast by humans, although they affect other animals.

Human societies have created various institutions, such as legal systems and laws in order to function and operate in a more transparent and more secure manner. Whenever there was a dispute regarding the interpretation of a given HGD, such institutions of a particular society gave their opinion and ruling, thus clearing the dispute and setting the meaning of said HGD. That is also the case of the status of animals in human society.

This status has changed throughout history and differed in various human societies and went from mere "property" to "personality" and recently there are voices which call to debate it again in order consider the status of animals and their rights in a human-centred society. Some courts around the globe already acknowledged that although legally animals are considered property in most western countries, socially (specifically in the cases of companion animals and sometimes primates) they are considered by human individuals as persons and sometimes even family members and as a specific legal system exists to serve society, it has to reflect the changing ethics and values of said society and adapt to them.

In this article, I will try to suggest a different and novel moral interpretation and practice towards animals, based upon the constant change in the status of animals in a human-centred society, while drawing ideas and principles from various and interdisciplinary doctrines and integrate them.

WHAT IS AN ANIMAL?

In his 1735 book *Systema Naturae*, the "animal kingdom" (Animalia), Carl Linnaeus (1707-1778) firstly introduced what we refer today as common and modern taxonomy. Today modern taxonomy identified and described approximately 1.9 million different species (Mora et al. 2011). Some estimate the total number of species on earth in 8.7 million, including unidentified ones (Sweetlove 2011).

A species is the lowest category of the animal kingdom. For example, the Human is just one of 5,416 other species in the Mammal class (Wilson & Reeder 2005). The

Human shares a place of honour among 190-448 other Primates and seven other Great Apes (Mora et al. 2011).

The primary definition of the word “animal” in the Oxford dictionary is extensive. It states that an animal is a “living organism that feeds on organic matter, typically having specialized sense organs and nervous system and able to respond rapidly to stimuli”. However, some of the secondary definitions expressly define an animal as “opposed to a human being” and “A person without human attributes or civilizing influences, especially someone who is very cruel, violent, or repulsive”. The dissonance between these two possible interpretations is apparent, and so, very interesting (Hurn 2012). The fact that human cultures and societies address unwanted human behaviour as “animalistic” only intensifies the self-alienation of the human from the animal realm, for no objective, logical or scientific reason.

This approach is anthropocentric in its core. It basically claims (even if not always states that bluntly), that humans are the only ones to have moral standing and that nature as a whole (including nonhuman animals but excluding humans) is viewed solely by its value to humans. Even the frequent claim that humans should “save the planet” and advocates for the preservation of natural resources and wildlife are anthropocentric in their essence as usually they are being advocated as a reason to enhance and better the human life quality (Barry and Frankland 2002).

It appears to be shared (and of course scientifically) accepted that humans are animals. Humans, as other nonhuman animals, all meet the definitions of the term. However, it seems that there is a wide gap between the aforementioned definitions and the human social practice that created a distinct line between humans and “animals”. It is said that human race’s anthropocentric philosophies and beliefs and its almost “martial” approach towards nature, only to “show off” its power and superiority over other species and natural resources have led to this sharp and often bloody distinction (Pocar 1992).

Man, he has always sought after the differences between himself and the natural world that surrounds him, mainly between himself and other animals (Douglas 1975; Horigan 1988). Archaeological findings show that only about 40,000 years ago, Man developed self-awareness and the ability to empathize with others, and from then on man’s attitude toward the animal was empathetic and not indifferent. Over the years, hunters were associated with wolves and began to domesticate them and other animals. With the introduction of different religions and beliefs into human society, Man was given the lead in the food chain, and the status of the nonhuman animal became objectified and subject of the property of human animals (Serpell 2007).

In the first chapter of the book of Genesis in the bible (the Old Testament), the sacred book of the most ancient monotheistic religion, Judaism, God has said “Let us make man in our image, after our likeness. Furthermore, let them have dominion over the fish of the sea and over the birds of the heavens and over the livestock and over all the earth and over every creeping thing that creeps on the earth”.

In these words, God grants Man a divine seal of approval that not only that Man is distinct from any other species but is also superior to them and should control them and dominate over them.

Armed with this divine superiority, further perceptions and philosophies have evolved and guided more human societies to distinguish themselves from the animal kingdom and nonhuman animals. As will be elaborated later in this research, some of these perceptions claimed that while Man has a “soul” nonhuman animals do not. This is an anthropocentric perception that places man at the centre of the world and sanctifies him and so natural, and animals should be controlled by him (Caplin 1990).

It is imperative to understand or at least assume that in ancient times when cultures were mostly religious, these so-called divine axioms were their moral and social guidelines (Blackburn 2001).

This primal order to the first Men and has been adopted for generations thereafter, and in my opinion, has “laundered” and bleached Humankind’s distinctive, abusive and degrading approach towards and in relation to nonhuman animals.

It is somewhat amusing that Humankind has alienated itself from nonhuman animals ever since self-consciousness, philosophy and religion entered its social life, while “In recognizing our humanity there is an implicit, if largely unrecognized, admission of our animality” (Bennison 2011).

Such alienation is best illustrated by the standard mistaken equivalence between the terms “human” and “person”. As will be broadly discussed in this research, these terms are not synonymous, to say the least (Cohen 2017).

All of these terms are anthropocentric in their core. Humans have defined them, cast content into them and interpret them in their research. Just as an “aperitif” I would bluntly claim that the question of personhood is a cross-species one. A human animal can be regarded as a “person” as much as a non-human animal can. It all depends on the various criteria according to which we define this term.

Wynn R. Schwartz (1950) tried to define the term in a descriptive psychology approach and divided it to eight sub-categories from “non-persons” to “super persons”. I believe that the most relevant for this research is the “potential person” one (Schwartz 1982). Schwartz claims that a potential person is a “behaviorally complicated organism capable of socially exchanging varied and complex communications” and that if there is evidence that a particular individual acted with deliberation or used a form of language, it should suffice to suspect that that individual is a person, “regardless of his embodiment” (Schwartz 1982).

A different approach was taken by Mary Anne Warren (1946-2010) defining the cognitive criteria of personhood (Warren 1973).

Warren suggested (regarding the legal status of abortion), that in order for a thing to be considered a person, it should have five characteristics: consciousness (including the capacity to feel pain), reasoning, independent deliberated activity, communication capabilities and self-awareness¹.

¹ It is essential to note that Warren’s criteria of personhood in regards to abortion have been intelligently criticized by those who hold different views, mostly by fellow academic Robert F. Card, who bluntly accused Warren in promoting and moralizing infanticide. As the debate on the issue of abortion and the relation of the definition of personhood is a bloody battlefield between conservatives and liberals, religious and secular beliefs, some scholars rely on Warren’s criteria of personhood solely to present

It is common knowledge today that nonhuman animals are “capable of intelligence and planning, capable of emotion and responsiveness, capable of awareness of another animal’s feelings, capable of recognizing one another and members of other species as individuals, capable of joy, humor, and delight” (Nussbaum 2001)².

Beyond the fact that the definition of the term “animal” is an HGD, human society is divided into many different cultures and societies in which the practical interpretation of this term (if any) is different. As a derivative result, the human attitude and sentiments towards nonhuman animals differ from one human society or culture to another and varies through time and place (Ingold 2016).

There are various factors that affect humans’ perspectives towards other animals, such as cultural, utilitarian, ecological and others (Ingold 2016). In most western countries, the attitude towards nonhuman animals and the interpretation of their behaviour are dichotomous to humans’ whereas eastern and other societies’ view and attitude towards nonhuman animals are inherently different. Whereas in Tel Aviv, Israel for example, many consider cats and dogs as companions and even family members, in various and vast areas of Asia cats and dogs, are being bred and sold as food for humans (BBC 2017). On the other hand, if we compare the same societies and jurisdictions, in Tel Aviv, cattle is being served as food whereas in India, cattle (and other animals) is not only considered sacred by the Hindu religion, but have been recently declared and recognized by the secular Supreme court as “wards” of all humans in a way that forces them to act as their guardians and to take all necessary steps to prevent any harm to cattle (Robinson & Cush 1997; Uttarakhand High Court 4.7.2018).

It is imperative to discuss these approaches and take them into consideration when trying to draw conclusions about the human attitude toward nonhuman animals, although this research was written from a Western point of view.

THE HISTORY OF HUMAN-NONHUMAN SOCIAL RELATIONS AND STATUS

The status of nonhuman animals has changed and varied throughout history. There were times where nonhuman animals had equal right to standing in human legal and social instances. In some cases, an attorney was appointed to the animal, in order to give the best defence, it could get.

With time, as Man developed different schools of thought and philosophies, non-human animals have been degraded to the level of mere property for the functional use of humans. Through the nineteenth century, new perspectives evolved and gave the proprietary animals some rights, mainly the right not to suffer. In order to offer some conclusions regarding the research question, it is imperative to understand how

the possibility of using them to question non-human animals’ eligibility to human society’s rights, and in this paper, so will I.

² I believe many would agree that a human fetus in its mother’s womb for less than 90 days answers less cognitive criteria such as consciousness and self-awareness than a 4-year-old ape, yet western societies have legislated laws that prevent the abortion of 90 days and older fetuses on the grounds that the fetus is at this stage already a “person” with “rights”.

human society regarded nonhuman animals in the past, what rights were allocated to them and upon what criteria.

Although it might indeed sound like a fairy tale to the modern human ear, it appears that centuries ago nonhuman animals received equal treatment and attitude to humans by human society, at least regarding the society's norms, laws and regulations.

This research will explore some cases in which nonhuman animals were involved and analyze society's attitude to them, in order to better understand the development of the social status of nonhuman animals in human society.

ANIMALS IN ANCIENT GREECE

In the past, back in the times of ancient Greece, it was customary to prosecute non-human animals that committed a criminal offence. In fact, humans at the time considered animals as equal to them regarding civil and criminal obligations (and in some cases also as having equal rights, as will be elaborated later) and a mental capacity and intention to commit a crime³.

There are also references and sources that show that animals were tried before a court for such crimes, usually being sent to their death for killing people, even in biblical times (Finkelstein 1981). Interestingly and surprisingly, even in the 19th century in Western Europe, animals were still tried before a court, and sentenced to death and various other punishments, as will be elaborated later on.

In ancient Athens, not far from the famous Acropolis structure, there was another structure called the "Prytaneion" or "Prytaneum" (Jones 1956). This structure was a social, political and cultural centre where ceremonies and various events were held.

Among the other institutions that occupied the Prytaneion was a special court to discuss and hear only three types of cases: A. Cases in which the identity of a murderer is unknown or cannot be identified, B. Cases in which an object caused the death of a person and C. Cases in which a non-human animal killed a human person (Finkelstein 1981).

Little is known of the proceedings regarding non-human animals that were tried in the Prytaneion court instance; however, it is well known that the procedure in this instance was like any other judicial instance, and there was no substantive difference between them.

By way of example of the Prytaneion decisions, I chose to bring forward a case in which a child was killed by a javelin thrown by an athlete during his regular training at the stadium.

The Prytaneion court that dealt with the case and was supposed to decide who (or what) was responsible for the death of the child dealt not only with the possible guilt of the child and the athlete but also with the possible guilt of the javelin itself. In this case, the Prytaneion did not deal with an animal that caused the death of the child, but this example can testify and explain the ability that society attributed to objects and

³ It may be assumed that the concepts at the time were not „criminal intention” and „criminal responsibility”, instead that society at that time considered animals as personalities who could decide and intent to commit crimes and thus break the law.

animals and their responsibility and culpability for such acts (Jones 1956).

It should be noted that where the Prytaneion court found the defendant (an object or an animal) guilty, it issued an order instructing it to be exiled outside the city borders: “[I]f an inanimate object falling on someone hits him and kills him, a trial is held for it in [the Prytaneion], and it is cast beyond the frontier” (Macdowell 1965)⁴.

Human society’s approach to animals as entities with equal legal status continued to exist in later centuries. Evidence of this exists from the ninth to the nineteenth centuries and crosses borders and nationalities. Most of these examples came from Western Europe and took place between 824 and 1906 (Evans 1906).

IDENTITY OF CONDITIONS OF DETENTION, IMPRISONMENT AND PUNISHMENT OF HUMAN AND NON-HUMAN ANIMALS

When an animal was accused of committing a crime, or at least was suspected of committing it, it received the same treatment as a human person suspected of committing the same crime (Orbison 1985). This reinforces the assumption that nonhuman animals were a legal personality for all intents and purposes and not necessarily a scapegoat or a black sheep (literally).

Animals suspected of committing a crime (usually the murder of a human) were arrested by the authorities and placed in detention cells along with human detainees (Evans 1906). As I shall elaborate below, even after the beginning of their trial, animals received the same treatment as humans and were even granted, pardons and conditional release, which also attests to equality under the law.

Assuming that the animal was found guilty at the end of the process, it was generally sentenced to death and executed in the same ways that people were executed. On the day of the execution, the animals were sometimes placed on a torture apparatus that stretches the victim, in order to extract confessions before they die. On the way to the place of execution, the animal was dragged along the streets of the city, as befits a dangerous criminal, so that the public could see the law done and for criminals like him to see and be seen. The execution was usually carried out by hanging, but there are findings showing that animals were also burned at stake or buried alive.

1457, SAVIGNY, FRANCE – SOW CHARGED WITH MURDER

At the beginning of 1457, a sow was accused of murdering a boy. The sow was sentenced to death by hanging on a tree. The indictment also included the sow’s six piglets as accomplices to the crime and therefore demanded their execution. The reason for this demand was that the puppies were all stained with the child’s blood, and therefore presumably took part in the crime. In this case, the court held that because of the lack of substantive evidence linking the piglets to the crime, the piglets should be released and returned to their owners, under the obligation of the owners to return the piglets to continue the trial, where a direct connection between the puppies and the crime

⁴ This is a passage from the arguments of Demosthenes, the renowned jurist and author of Athens’ speeches, who lived between 384 and 322 BCE (Berman 2000).

will be found. The ruling of this court can be seen as a release on bail for house arrest, a right given to humans on trials: “In lack of any positive proof that they assisted in mangling the deceased, they were restored to their owner, on condition that he should give bail for their appearance, should further evidence be forth-coming to prove their complicity in their mother’s crime” (Berman 2000).

1522, AUTUN, FRANCE – RATS CHARGED WITH CAUSING DAMAGE

In 1522 in the Autun region of France, many farmers discovered that their crops were being destroyed. The crop, the only source of livelihood of the farmers, was eaten by rats. As a result, the farmers filed a complaint with the ecclesiastical court in their district, demanding that they investigate the events and find a suitable solution. The court was required to investigate the “crime” and issued an indictment for the rats. The court gave the order to a court officer who arrived at the rat’s whereabouts (where the crime was committed) and read out the summons so that the rats could hear it and respond to it. Strange as this would sound, the court-appointed a young lawyer named Bartolomé Chassenée to the rats to represent them in the proceedings (Hyde 1916).

Not surprisingly, the rats did not respond to the summons and did not appear on the day of the court hearing. Chassenée claimed that the order had not been duly delivered to his clients and argued that this was an issue that was relevant to the entire rat population, and not necessarily to the specific rat community that allegedly consumed the crop. Thus, Chassenée argued, that all rats must be aware of the trial and the essence of the act. At his request, the judges issued a new summons. When the rats did not appear in court again, Chassenée hastened to argue that since the entire rat population was scattered all over France, they needed more time to get to the hearing. After he was given another extension and his clients were still not in sight, Chassenée added that his clients were eager to appear in court and go to a fair trial, but the roads lurk with life-threatening dangers like wild dogs and street cats, and therefore, despite their strong desire to appear and win the trial, they cannot be expected to risk their lives.

1750, VANVER, FRANCE – A FEMALE DONKEY RAPE

In 1750, in Vanver, France, a peasant was convicted of having sex with a female donkey he owned. In those days, the law stated that the punishment for all parties committing the offense of bestiality, human and nonhuman, was a death sentence. However, in the case in question, the donkey was acquitted because she was a victim of the acts the peasant and did not voluntarily participate in the sexual act. The defense in this case claimed not only that the crime was committed without her consent, but also brought character witnesses, neighbors of the of the peasant who committed the crime, who claimed to have known the donkey for many years, because the donkey’s behaviour was always exemplary inside and outside her home and never caused problems to any of them: “They were willing to bear witness that she is in word and deed and in all her habits of life a most honest creature” (Berman 2000: 148). What can be deduced

from this case is that not only did society grant legal status to an animal in court and appointed a lawyer for its defense, but the animal's defence claims were based on its character and its pleasant and comfortable attitude toward the people surrounding it; claims that are being used to describe human characteristics.

2018, UTTARAKHAND, INDIA – COURT DECLARES ANIMALS HAVE SAME RIGHTS AS HUMANS

Just like by a customized order, after my first meetings with my supervising professor and right before submitting the research proposal, on the Uttarakhand high court in India gave a groundbreaking ruling in the state of Uttarakhand in India (Daily Telegraph 5.7.2018).

The case revolved around claims raised by a local citizen named Narayan Dutt Bhatt against the Indian government. Bhatt claimed that horses are being used for commercial transportation into India pulling overloaded carts while causing cruelty to the horses. Bhatt sought directions to the government to restrict the movement of horse carts and to provide vaccination and medical checkup of the horses for suspected infections before entering into the Indian territory.

In its judgment, the court held that “The entire animal kingdom, including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals” (Uttarakhand High Court 4.7.2018).

We have seen up to this point, at least partially, that nonhuman animals have been practically a part of human society. We have observed various examples which cross time and place of nonhuman animals that have been granted (legally and/or socially) individual rights that were equal to humans.

SOCIOLOGICAL AND PHILOSOPHICAL APPROACHES TO NON-HUMAN ANIMAL RIGHTS

It is essential to understand how history, philosophy and sociology intersect and reflect on how humans see nonhuman animals and what kind of relationship humans have with them. Should nonhuman animals be regarded as wards whereas humans are guardians? Should they be considered property with some rights or maybe full citizens? All these are not fairytales in the minds of “tree-huggers”, but rather learned and well-reasoned proposals of many sociologists and philosophers.

Also, in discussing the status of animals and their rights, various philosophical points of view must be taken into consideration. One must distinguish between two fundamentally different terms that tend to be confused: animal rights and animal welfare.

The perception that animals have rights relies on the claims according to which animals are entitled to certain rights and that these rights should be allocated to them by society and supported by the law. This approach rejects the proprietary approach to

animals which see animals as tools or mere property in the hands of their owners and claims that animal rights should be allocated on a moral basis. The concept of animal welfare, however, does not address their rights, taking account of the fact that animals can suffer and that humans can be cruel to animals, and this should be prevented, but this does not stem from a moral obligation toward animals.

In my opinion, animal welfare stems at least in some sense, from the recognition of the animal's fundamental right not to suffer. However, not all the philosophers discussing the matter see it this way.

The fundamental change in the perception of animals as having a social and legal status began with the Age of Enlightenment in the seventeenth century. René Descartes (1596-1650), who is considered the father of modern philosophy, saw animals as no more than tools given to man by God to help him in his work and to satisfy his needs.

Descartes assumed that animals are devoid of consciousness, feeling, and emotions, and therefore cannot suffer, feel pain or sorrow. Descartes, therefore, maintains that animals are merely biological machines designed to function for man. For him, only entities with consciousness, reason, or language deserve moral and other rights. Therefore, man owes no moral obligations to animals, just like he owes no moral rights to machines (Voelpel 2010).

Descartes' conception of man as the centre of the world and emphasizes the use of the animal as a human tool and claims that an animal that cries is nothing more than a creaking machine that needs good lubrication: "In his books, he [Descartes] describes the nerves as tubes, which, thanks to the pressure of a gas, inflate and transfer their contents to the muscles. When one muscle empties and the other swells, from the gas that is transferred from the nerves, the swollen muscle becomes shorter and stretches the organ... Descartes described the main activity of the body of all animals... as explained by fairly simple mechanical operations, a kind of living machine" (Scharfstein 1978).

Some disagreed with Descartes' notion that animals were soulless machines that could not suffer, but still held that despite their ability to suffer, the man owed no moral obligations to animals. The German philosopher Immanuel Kant (1724-1804) recognized the ability of animals to suffer but denied a moral commitment to them because he assumed, they were irrational and had no self-awareness. In Kant's view, animals are nothing but tools in man's hands that exist solely for his own use and have no value in themselves.

Kant's justification for protecting animal life stems from this perception that an animal is a tool for human use. In Kant's opinion, a person will not harm an animal because the animal probably belongs to another person, and harming the animal is doing injustice to another: "[H]e who is cruel to animals becomes hard also in his dealings with men" (Kant 1963: 240).

Although humans believe that they should prefer themselves to animals in a conflict of interest, most of them unequivocally accept the assumption that since animals are capable of suffering, they have a direct moral obligation not to cause them unnecessary suffering.

This behaviour of humans has been called the “Humane Treatment” principle. The origin of this principle lies in the theory of lawyer and philosopher Jeremy Bentham (1748-1832).

Bentham believed that although humans and animals are different, they share at least one common trait, the ability to suffer. This ability to suffer is the only criterion that needs to be examined where the question arises, whether it is proper to give legal protection and owe moral obligations towards nonhuman animals. Other criteria such as consciousness, feelings or language are irrelevant to this question. In Bentham’s view, animals have been lowered to the level of inanimate objects, since humans have chosen to ignore the apparent interest of animals not to suffer: “A full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. However, suppose the case were otherwise, what would it avail? The question is not Can they reason? Nor can they talk? But can they suffer?” (Bentham 2005).

Isidore Marie Auguste François Xavier Comte (1798-1857) was a French writer and philosopher who called for a new social doctrine based on the sciences. Comte regarded sociology, as a new field of science and an important one, preceding anthropology. He believed that sociology, as a study of human behaviour should include and intersect with all other sciences (Comte 1877).

Comte claims that the law of intellectual development is a universal law and that all fields of human knowledge goes through three theoretical evolutionary stages (known as the three-step law): “the theological or fictitious; the metaphysical or abstract; and the scientific or positive” (Comte 1877). According to Comte, these stages are intertwined with the same stages in the development of human society.

Comte was a significant influence on Karl Marx (1818-1883), whose writings are considered to be one of the cornerstones of sociological analysis. At the time of his writing, when the power of capitalism and its ability to generate wealth began to dominate, Marx tried to examine how the system worked, what way is the capitalistic society headed and in what ways the system is different from previous ones (Fasensfest 2007).

Marx developed his critical theory of society, being influenced by the scientific sociology of Comte and based on social and political theories and the political economy. Marx paved the way for a more critical study of society, one that not only analyzes the present according to the past but instead tries to forecast the future or try to influence it by analyzing both past and present. A critical theory is a theory that tries to “liberate human beings from the circumstances that enslave them” (Horkheimer 1982). One could easily interpret this aim for liberation is that critical sociology promotes and encourages a more active and initiative sociology research.

Whereas mainstream sociology takes society as given, tries to filter and categorize society’s relationships and activities and tries to understand and express society’s progress without setting a specific ideal or goal, critical sociology observes society in a dual-lens. The social relationships in a particular present society are the product of that society’s past but also the root of its future and only through academic research and comprehension of how society came to be, it will be possible to promote a change

in the future (Fasenfest 2007).

It is common knowledge that animals are taking part in human society in many ways for millennia. They accompany us as pets; they work with us on the fields, they fight with our armies, they save us from fires and avalanches, we use them for transportation and heavy duties, we use their faeces to grow plants, we eat them and experiment medications on them in laboratories.

Although this cross-species interaction has been gone for many years, the study of human-animal relations is entirely new, being developed in the midst of the twentieth century.

Having a sociological perspective when studying human-animal relations and their social implications is of utmost importance: “human interaction with nonhuman animals is a central feature of contemporary social life” (Sanders 2007).

In 1947, Max Weber (1864-1920) introduced a new perspective on nonhuman animals’ status in human society. He claimed that because many animals can understand and relate and respond to human communication and as they can feel hate, love, fear and they express conscious thought based on experience, it is possible to have a sociology of humans and animals (Weber 1947).

In 1975, Peter Singer published his groundbreaking book *Animal Liberation*. In this book, Singer claims that when members of a particular species treat with prejudice or biased attitude in favour of their own and against those another species, it is considered “speciesism”, a term he coined. Singer’s book has led to tremendous change in animals and served as an ideological basis for the establishment of many animal movements around the world.

Singer pointed the abnormality of protesting against individual acts like experimenting on lab animals or bullfighting on the one hand while continuing eating meat and eggs from mistreated animals on the other hand. He argued that such opposite and contradictory actions are just like “denouncing apartheid in South Africa while asking your neighbours not to sell their houses to blacks” (Singer 2009). According to Singer these are considered acts of speciesism. Singer does not accept that morality is relative or subjective and suggests that rational ethics with universal characteristics is possible by giving equal importance to the interests of nonhuman animals as well as to human interests (Singer 1999).

Singer’s speciesism could easily be regarded as a response to humanist perceptions, claiming basically that humanism is actually speciesism and therefore humanity is in some way “racist” towards those who are not of the human species.

Some sociologists have raised the notion that indeed animals are an inseparable part of human society, and in that regard, sociology should address animals and their relationship with humans in their research (Irvine 2008).

In the past three decades, the animal rights movement has flourished throughout the world. Human consciousness has evolved and accepted specific perspectives and thoughts that were merely fringe concepts earlier. Animal welfare legislation became more frequent on both sides of the Atlantic Ocean, in the Americas, in Europe and also in certain areas of the Middle East and Asia (Donaldson and Kymlicka 2011). However, these trends had little effect if any, on the everyday life of most animals worldwide.

Ever since the 1980's human population has tripled and expanded its control over animals and their habitats (land, air and water) and killed approximately 60 billion animals per year by doing so (Donaldson and Kymlicka 2011).

In their book *Zoopolis*, Donaldson and Kymlicka differentiate between three moral structures: the welfarist, the ecological and the basic rights approaches.

In short, the welfarist approach assumes that the welfare of animals should be considered and protected, as long as it does not contradict with any human interest. This is still an anthropocentric approach that places human interests above any interest of other animals. The main problem with this approach, according to Donaldson and Kymlicka, is that there is no distinct, precise and broadly accepted line under which no animal exploitation is allowed and above which such exploitation is forbidden. This lack of clarity leads to the cruel exploitation of animals for mere human interests such as fashion and cosmetics.

The ecological approach assumes that humans should not interfere with ecosystems in which animals reside, rather than the welfare of individual animals or species. This approach promotes the holistic state of ecosystems and their importance to the world. Still, where a destructive intervention is allegedly needed in order to support or protect a specific ecosystem, this approach favours the intervention over the lives of animals in that ecosystem (such as hunting for purposes of dilution and regulation of animal populations).

Therefore, a third approach is suggested according to which “the only truly effective protection against animal exploitation requires shifting from welfarism and ecological holism to a moral framework that acknowledges animals as the bearers of certain inviolable rights”. According to this approach, all animals, whether human or nonhuman, are born with the right not to be subject to medical experimentation, to live freely, not to be tortured, harmed or separated from their families.

One of the more thought-provoking approaches is Kymlicka's and Donaldson's novel concept of “animal citizenship”, which is a possible outcome of the fundamental rights approach (Kymlicka and Donaldson 2011).

In a recently recorded interview, Kymlicka explained the concept and explored what led to it. As humans brought animals to their homes throughout history, thus turning them to domesticated animals, it is evident to Kymlicka that humans took animals into their society: “That is what domestication means. We have taken them out of the wild, bred them to be dependent on us and incorporated them into our society” (Kymlicka 2014).

Kymlicka suggests that recognizing animals as members of a shared society with humans is a matter of justice and therefore tries to apply for the citizenship socio-legal status upon them. Such status will allow nonhuman animals to enjoy different fundamental rights as public health insurance, disability pension and be subject to the same labour rights as the humans they work with.

Animals also share our homes with us, and many of us consider them family members. In the United States of America alone, more than 70% of the households have dogs, cats and even birds and about half of these households consider their companion animals as family members (AVMA 2007 in: Irvine 2008). In Europe, at least 49%

of the households have one dog or one cat (FEDIAF 2018).

On the other hand, most of us wear their skin and consume their flesh. The inherent ambivalence toward animals is a sign of strong social forces that prevent people in modern society from sensing its problematic nature (Arluke & Sanders 1996).

As stated above, societies have established the court system in order to interpret their laws and regulations in order to better conduct the daily life of said societies and to live according to some certainty. People who have companion animals have a strong bond with them, almost a parental relation to them one might say. Children are attached to their companion animals, treat them and play with them as if they were young family members, almost like siblings.

It is therefore essential to address how various courts addressed the question of animals as family members of humans and try to understand if this “feeling” that many people in human societies have towards their companion animals are reflected and solidified in practical law.

In 1981 in the state of Texas, the court of appeals dealt with the status of the Arrington family’s companion dog when the Arringtons decided to divorce. The husband appealed the decision not to appoint him as guardian of the dog. The court acknowledged the couple’s love to the dog and its particular characteristics but ruled nevertheless that its legal status is proprietary and therefore the relationship of guardian and ward is not suitable to it. However, the court agreed that Mr. Arrington should be permitted to visit the dog, and elaborated on the importance of love:

Mr Arrington agreed to Mrs. Arrington’s custody of the dog if he could have reasonable visitation. He does not complain of lack of visitation; only that he was not appointed managing conservator. We... hope that both Arringtons will continue to enjoy the companionship of Bonnie Lou for years to come within the guidelines set by the trial court. We are sure there is enough love in that little canine heart to ‘go around’. Love is not a commodity that can be bought and sold or decreed. It should be shared and not argued about (Arrington v. Arrington 1981).

In 1994, also in Texas, another vital precedent was made. The case was an appeal on a ruling that was given by a lower court, according to which the appellant, Mr Bueckner, who shot to death both dogs of appellees, Mr Hamel and Ms Collins, had to pay them damages. In its decision, the court gave a groundbreaking ruling stating unequivocally that society’s recognition that animals are sentient and emotive beings, capable of providing companionship to the they live with should be reflected by the law and that accordingly “courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the only family members they have” (Bueckner v. Hamel 1994).

In 2004 in Israel, a Family Court discussed for the first time of the state’s history an interesting case dealing with human-animal relations in general and specifically with the status of an animal as a family member. The relationship between a couple who raised together “blind cat and wombless dog” (sic) ran aground, and the woman left the house and took the cat with her. About two years later, the man filed an action for joint custody of the animals, and “an equal division of the animals time between the

plaintiff and the defendant”. Both parties detailed in their arguments the warm and loving relationship between them and the animals and the constant care they gave the animals. The Plaintiff described the nursing actions he performed for the cat when she was collected from the street in its infancy and the Defendant detailed the severe medical problems the dog suffered from, requiring complicated and costly medical treatment, which was entirely funded by her.

In light of all this, the judge stated that “it seems that the couple treated the animals as their minor children, and in my understanding, they would have continued to treat them as such as long as they continued to live together under one roof”.

The judge similarly addressed the animals as if they were the couple’s children and based his judgment on the principle of the “the best interest of the child”, *mutatis mutandis* with the interests of the animals. The approach that guided the judge was that the best interests of animals and what was right for them and not what was suitable for the parties themselves should be taken into consideration. Therefore, the judge held that A. The connection between the defendant and the animals is a profound emotional bond; B. The animals find it difficult to separate from the defendant and in a renewed encounter with her their mutual joy is evident; C. The relationship between the blind cat and the dog is warm, and they play together; D. The relationship between the dog and the defendant is at a higher level of closeness than between the dog and the plaintiff – and thus the cat must not be separated from the dog and both animals should not be separated from the Defendant. The judge also ruled that the Plaintiff’s insistence on taking the dog came out of a desire to maintain some connection with the Defendant and not out of a genuine desire to see the dog. Therefore, in order to preserve the best interest of the animals, the judge did not allow visual encounters between the plaintiff and the animals.

It seems that throughout time and place, humankind in a cross-cultural perspective has observed and placed other animals on an axis that moves between two opposing poles: on the one side “personality” and on the other side “property”. On the one hand, many consider and treat some animals as companions and family members for all intents and purposes while on the other hand, they accept a different treatment (such as selling, eating and experimenting on) to animals which do not live with them as companions. As discussed earlier, these (and others) are HGDs, and as such they cannot be criticized or interpreted by any other animals, even though they affect them and may change their life and well-being from one end to end.

FINAL THOUGHTS

Under this assumption (not to say a fact) and under the assumption that it is highly unlikely that Man will easily relinquish his supremacy in controlling the earth and its ecosystem, a new or different approach might be offered.

The very definition of what is an animal (or its de-facto anthropocentric interpretation) subjectifies the nonhuman animal. The fact that modern human societies chose to differentiate humans from other animals albeit HGDs, leads to the conclusion that in order to actually prevent animal exploitation, mistreatment and suffering or at

least decrease its level, a certain society must use its political, legislative and judicial systems and powers to clearly define the wanted borders and relations between humans and animals. Should more modern human societies take into consideration the fact that other ones have already adapted novel standards in relation to animals, the status of animals will gradually move from an object to a subject and from mere property to personality.

Maybe the process of acknowledging animal rights should be gradual: at first, animals that humans accept as pets and companions and primates, based on the relations of humans with companion animals and on the genetic and other resemblances of the primates to humans, and only later to other animals upon previous gathered information.

Should we want to challenge the current status of human-animal relations in a social perspective, we should not completely rule out the possibility that animals should be recognized as part of human society, at least not theoretically at this stage.

Critical sociology is not necessarily a product of recent decades. If I could say so myself with regards to human-animal relations in a sociological perspective, traces of it could be found in the writings of Kinji Imanishi (1902-1992), a Japanese ecologist, anthropologist and primatologist.

Imanishi wrote two books in the midst of the second world war and introduced in them a unique and different approach to sociology in general and to the sociology of human-animal relations specifically.

In his 1941 book *Seibutsu no Sekai (The World of Living Things)* Imanishi offered a society that is not necessarily based on group formations but instead according to the relevant surroundings and ecosystem on which diverse organisms share their lives. This “life-field” is a habitat for several and diverse individual life forms that are interconnected and interdependent to some extent (Sugawara 2018). Therefore, Imanishi divided the living world into three layers: the Individual, the Specia and the Holospecia. The specia, which means a “species society”, is the primary term Imanishi focuses on and according to him it is not just a concept but rather an actual reality. Every species has its own society built on similar individuals. Hence, there are many different specia which together form the holospecia, holistic perception of interspecies coexistence (Matsuzawa and McGrew 2008).

It is important to note that the specia is not a biological term. A “species society” is not identical to a “biological species”. It is a sociological term which means a system that is consisted of all its member individuals, no matter how to spread they are in a certain territory: “Every living thing is considered to be a subjective autonomous entity that acts on and interacts with other living things and its environment. These living things form a species society, which in turn, in a similar manner, acts on and interacts with other species societies to form the whole living world” (Imanishi 2002 [1941]).

I believe that such a holistic perception of life on earth, when applied sociologically, could promote this much needed change.

FUNDING: This research received no external funding.

CONFLICT OF INTEREST: The author declares no conflict of interest.

ACKNOWLEDGEMENTS: I would like to express my deep gratitude to Professor Hanna Mamzer, my research supervisor, for her patient guidance, useful critiques and enthusiastic encouragement.

REFERENCES

- (PIL) No. 43 of 2014. Narayan Dutt Bhatt vs Union of India And Others (4.7.2018). Retrieved September 18, 2018 (<http://files.harmonywithnatureun.org/uploads/upload706.pdf>).
- American Veterinary Medical Association (AVMA). 2007. *Market research statistics - U.S. Pet Ownership*. Retrieved September 18, 2018 (<https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership-2007.aspx>).
- Arluke, Arnold and Clinton R. Sanders. 1996. *Regarding animals*. Philadelphia: Temple University Press.
- Arrington v. Arrington. 1981. 613 S.W.2d 565 (Tex.Civ.App.1981).
- Barry, John and E. Gene Frankland, eds. 2002. *International Encyclopedia of Environmental Politics*. London and New York: Routledge.
- BBC. 2017. *The Countries Where People Still Eat Cats and Dogs for Dinner* (12.4.2017).
- Bennison, Rod. 2011. "An Inclusive Re-Engagement with our Nonhuman Animal Kin: Considering Human Interrelationships with Nonhuman Animals." *Animals* 1(1): 40-55. doi: [10.3390/ani1010040](https://doi.org/10.3390/ani1010040).
- Bentham, Jeremy. 2005. *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation*. Oxford: Oxford University Press.
- Berman, Paul. S. 2000. "An Observation and A Strange But True 'Tale': What Might The Historical Trials Of Animals Tell Us About The Transformative Potential Of Law In American Culture?" *Hastings L. J.* 52: 123-178.
- Blackburn, Simon. 2001. *Ethics: A Very Short Introduction*. Oxford: Oxford University Press.
- Bueckner V. Hamel. 1994. 886 S.W. 2d 368, 378 (Tex.App.1994)
- Caplin, Arthur. L. 1990. *Ethics of Animals in Our Lives*. St. Paul: Minnesota Extension Service of the University of Minnesota.
- Carnegie Council for Ethics in International Affairs. 2014. *A Conversation with Will Kymlicka on the Challenges of Multiculturalism*. Retrieved August 25, 2018 (<https://www.carnegiecouncil.org/studio/multimedia/20141029-a-conversation-with-will-kymlicka-on-the-challenges-of-multiculturalism>).
- Cohen, Glenn., *Are There Non-Human Persons? Are There Non-Person Humans?* 2017. Retrieved June 24, 2019 (<http://www.tedxcambridge.com/talk/non-human-persons-non-person-humans>).
- Comte, August. 1877. *System of Positive Polity*. Vol. IV. Translated by Congreve, Richard. London: Longmans, Green and Co.
- Donaldson, Sue and Will Kymlicka. 2011. *Zoopolis: A Political Theory of Animal Rights*. Oxford: Oxford University Press.

- Douglas, Mary. 1975. *Implicit Meanings: Essays in Anthropology*. London: Routledge & Paul.
- Evans, Edward P. 1987. *The Criminal Prosecution and Capital Punishment of Animals: The Lost History of Europe's Animal Trials*. London: Faber and Faber.
- European Petfood Industry Federation (FEDIAF). *European Facts & Figures*. 2018. Retrieved July 16, 2019 (<http://www.fediaf.org/who-we-are/european-statistics.html>).
- Fasensfest, David. 2007. "Critical sociology." Pp. 17-24 in *21st Century Sociology: A Reference Handbook. Specialty and Interdisciplinary Studies*, vol. 1, edited by C. D. Bryant and D. L. Peck. Thousand Oaks: Sage Publications.
- Finkelstein, Jacob J. 1981. "The Ox That Gored." *Transactions of the American Philosophical Society* 71(2): 1-89.
- Harari, Yuval N. 2011. *Sapiens: A Brief History of Humankind*. London: Vintage Books.
- Horigan, Stephen. 1988. *Nature and Culture in Western Discourses*. London: Routledge.
- Horkheimer, Max. 1990. *Critical Theory: Selected Essays*. New York: Seabury Press.
- Hurn, Samantha. 2012. *Humans and Other Animals: Cross-Cultural Perspectives on Human-Animal Interactions*. London: Pluto Press.
- Hyde, Walter W. 1916. "The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times." *University of Pennsylvania Law Review* 64(7): 696-730.
- Imanishi, Kinji. 2002. *A Japanese View of Nature: The World of Living Things*. Translated by Asquith, Pamela J., Kawakatsu, Heita, Yagi Shusuke and Hiroyuki Takasaki. London: Routledge.
- Ingold, Tim., ed. 2016. *What is An Animal?* London: Routledge.
- Irvine, Leslie. 2008. "Animals and Sociology." *Sociology Compass* 2(6): 1954-1971.
- Jones, John W. 1956. "The Law And Legal Theory Of The Greeks." *The American Historical Review* 63(2): 378-379.
- Kant, Immanuel. 1963. *Lectures on Ethics*, Harper & Row.
- Macdowell, Douglas M. 1965. *Athenian Homicide Law in The Age of The Orators*. Manchester: Manchester University Press.
- Matsuzawa, Tetsuro and McGrew, William C. 2008. "Kinji Imanishi and 60 years of Japanese primatology." *Current Biology* 18(14): R587-R591.
- Mora, Camilo, Derek P. Tittensor, Sina Adl, Alastair G. B. Simpson, and Boris Worm. 2011. "How Many Species Are There on Earth and in the Ocean?" *PLoS Biology* 9(8). Retrieved 17 August 2019 (<https://journals.plos.org/plosbiology/article?id=10.1371/journal.pbio.1001127>).
- Nussbaum, Martha C. 2001. "Animal Rights: The need for a theoretical basis." *Harvard Law Review* 114(5): 1506-1549.
- Pocar, Valerio. 1992. "Animal Rights: A Socio-legal Perspective." *Journal of Law and Society* 19(2): 214-230.
- Robinson, Catherine and Cush, Denise. 1997. "The Sacred Cow: Hinduism and ecology." *Journal of Beliefs & Values* 18(1): 25-37.
- Robinson, Olivia F., Thomas D. Fergus, and William M. Gordon. 1985. *An Introduction to European Legal History*. Abingdon: Professional Books.

- Sanders, Clinton R. 2007. "The Sociology of Nonhuman Animals and Society." Pp. 405-426 in *21st Century Sociology: A Reference Handbook. Specialty and Interdisciplinary Studies*. vol. 2, edited by C. D. Bryant and D. L. Peck Dennis. Thousand Oaks: Sage Publications.
- Saptarshi, Ray. 2018. "Animals accorded same rights as humans in Indian state." *Daily Telegraph*. Retrieved 6 May, 2019 (<https://www.telegraph.co.uk/news/2018/07/05/animals-accorded-rights-humans-indian-national-park>).
- Scharfstein, Ben-Ami. 1978. *History of Philosophy from the Renaissance to Kant*. Israel: Ministry of Defense Press.
- Schwartz, Wynn R. 1982. "The Problem of Other Possible Persons: Dolphins, Primates and Aliens." *Advances in Descriptive Psychology* 2: 31-55.
- Serpell, James A. 2007. "Lambs of God: A Short History of Western Attitudes and Beliefs Regarding Animals." Pp. 15-32 in *Human Beings and other Animals in Historical Perspective*, edited by Arbel, Benjamin, Terkel, Joseph and Menache, Sophia. Jerusalem: Carmel.
- Singer, Peter. 2009. *Animal Liberation*. New York: Harper Collins.
- Singer, Peter. 1999. *Practical Ethics*. Cambridge: Cambridge University Press.
- Sugawara, Kazuyoshi. 2018. "The Situationality of Animal Borders: From Phenomenology to Natural History of Evolution." Pp. 29-50 in *The Situationality of Human-Animal Relations: Perspectives from Anthropology and Philosophy*, edited by T. Breyer and T. Widlok. New York: Columbia University Press.
- Sweetlove, Lee. 2011. "Number of species on Earth tagged at 8.7 million." *Nature*. Retrieved 16 February, 2019 (<https://www.nature.com/news/2011/110823/full/news.2011.498.html>).
- Voelpel, John. 2010. "Descartes' Bête Machine, the Leibnizian Correction and Religious Influence." *Graduate Theses and Dissertations*. University of South Florida. Retrieved 3 March, 2019 (<http://scholarcommons.usf.edu/etd/3527>).
- Warren, Marry A. 1973. "On the Moral and Legal Status of Abortion." *The Monist* 57(1): 43-61.
- Weber, Max. 1947. *The Theory of Social and Economic Organization*. NY: Free Press.
- Wilson, Don E. and Reeder, DeeAnn M., ed. 2005. *Mammal Species of the World. A Taxonomic and Geographic Reference*, 3rd ed. Baltimore, MD: Johns Hopkins University Press.

BIOGRAPHICAL NOTE

Yotam Werzansky-Orland is an adjunct professor at Bar Ilan University Faculty of Social Sciences, the College of Management Academic Studies School of Design and Innovation and Holon Institute of Technology (HIT) Faculty of Instructional Technologies (all in Israel), where he teaches Innovation, Entrepreneurship and Intellectual Property (IP) Strategic Management courses.

OPEN ACCESS: This article is distributed under the terms of the Creative Commons Attribution Non-commercial License (CC BY-NC 4.0) which permits any non-commercial use, and reproduction in any medium, provided the original author(s) and source are credited.

