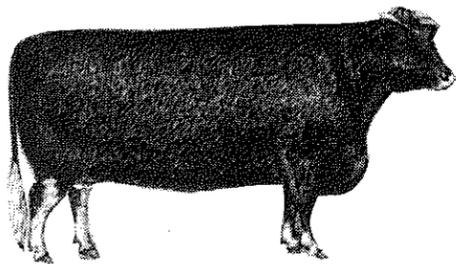
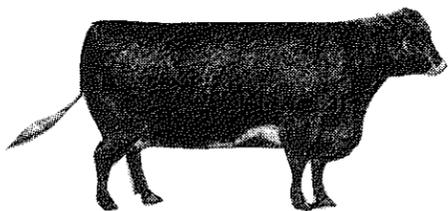
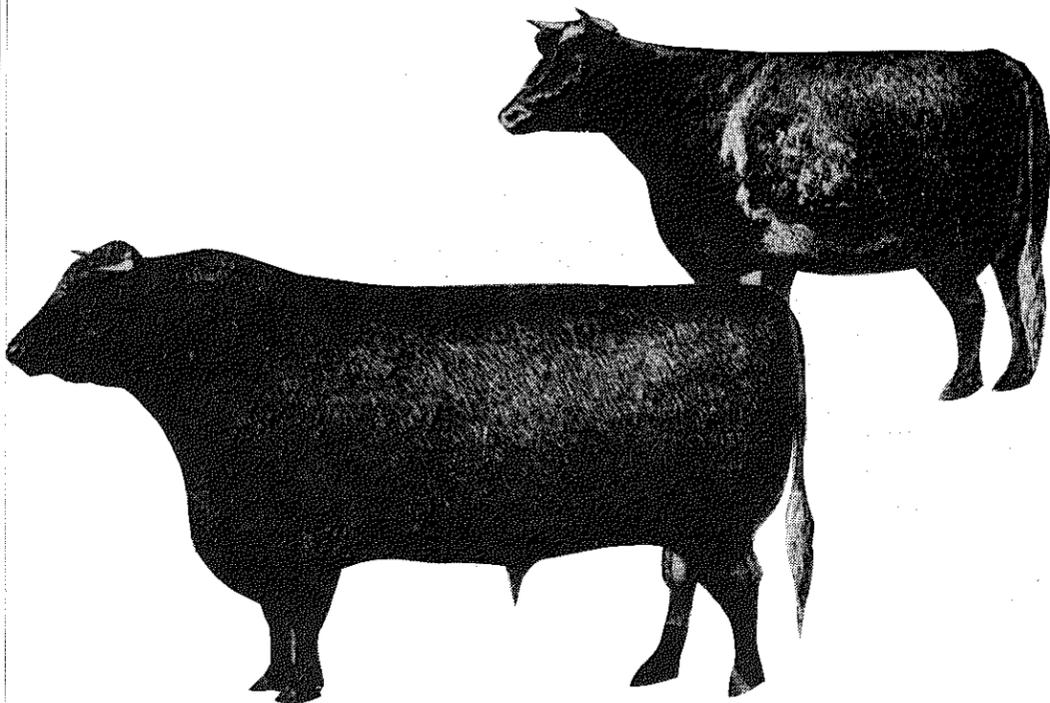


RIGHTNESS OR RIGHTS

John Livingston



The need for rights is uniquely human, arising out of unique human social relationships. Domesticated and captive non-human beings, as a part of the human organization of society, can be seen as qualifying for "prosthetic" rights on the same grounds as human members. Wild nature, on the other hand, seems not to require rights between co-existing participants, and certainly between species. The capacity for humankind to be able to "confer" rights upon the non-human world would require all existence to be moved under human control. The goals of many environmentalists thus have become paradoxical.

By and large, "environmentalists" are humanists, not biocentrists. Most current discussions of "environmental rights" centre on the interests of human beings against those of other human beings. Such discussions usually come down to questions of relative individual, group and public interest. While there may be sufficient philosophical, legal and other existing frameworks for their ultimate, if gradual, resolution, the political obstacles to implementation are formidable. In a lesser measure, valiant attempts to bestow legal rights on "the environment" continue, and valiant intellectual enterprises attempt to bring non-human beings under the umbrella of human ethical systems. Both efforts may prove to be misguided. The environmental problem is not a technical, legal or moral problem, but a metaphysical one.

I. THE NEED FOR RIGHTS

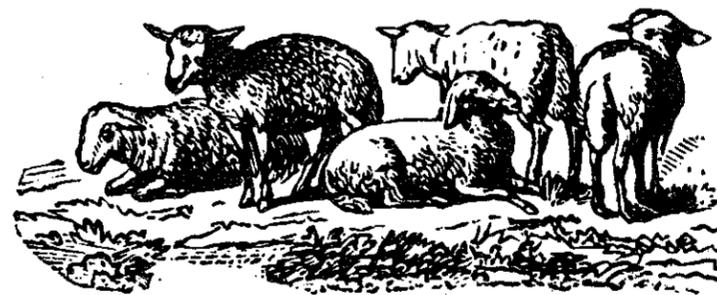
On the attempts to ascribe rights to the non-human, there is little, if any, theoretical, philosophical or legal basis for the arguments. Debates surrounding rights for the non-human customarily flounder on definitions such as, for example, of moral subjects and objects; such definitions are inescapably anthropomorphic and lose all meaning in the attempted translation to the biomorphic. The difficulty inherent in these discussions arises in great measure from the failure to acknowledge that concepts of rights

arise in human social environments which are built on dominance hierarchies or other forms of *power relationships*. That there were many and still are very few human societies (for example, hunter-gatherers) in which *competitive* power relationships do not appear to exist¹ indicates that the need for the concept of rights is neither universal nor absolute; power relationships appear to be peculiar to more "advanced" or "civilized" human organizations, especially those in which rank and achievement are symbolized by the accumulation of commodities, such as cattle, wives and other accoutrements.²

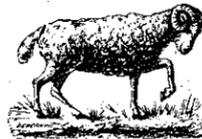
Human uniqueness among biological beings is frequently justified on the basis that people are the only moral species. This assertion may be disputed on a variety of grounds, most ultimately hanging on semantics. There is good reason to think, however, that the statement may well be accurate. I have recently argued³ that human moral and ethical systems, among other cultural techniques of social control, may be seen as surrogates for "natural" forms of behavior, which although they still exist in human biology, have been at least temporarily suppressed by the pathological structure of power and dominance on the basis of which most human societies are currently organized. As an institution, the arrangement is continuously reinforced by tradition and convention, that is, culture. Moral, ethical and legal systems may be seen as part of a "prosthesis,"* set in the place of abandoned biological ways of peaceful group co-existence.

II. RATIONALIZING THE NEED

So fundamental is the survival of the powerfully competitive believed to be, that modern biology was able to take what was essentially a sociological, economic and political principle, and to project it upon all of non-human nature.⁴ Charles Darwin did not invent the concept of a competitive struggle for existence, but he argued it with such elegance and persuasiveness that it entered the



mainstream of Western thought as "a blinding flash of the obvious."⁵ If we are able to see natural processes as competitive, goal-oriented and dominance-striving, it is seductively easy to see the human ethical prosthesis as an advance over brute systems of social organization. The non-scientific public is as yet largely unaware that concepts of dominance and competition in the non-human world are presently under serious challenge on grounds not merely hypothetical.⁶ Non-human societies and multispecies communities may be organized in ways that are closer to those of "primitive" human hunting-and-gathering societies than those of the prosthetic *sophisticated* civilization.



If people form the only moral society, it is for reasons dramatically different from those most usually purveyed in the humanistic cultural tradition. Non-human nature does not appear to require prosthetic means of social control, because it has not yet amputated mutual and peaceful co-existence from its behavioral repertoire. It is the wont of the humanistic observer to view the "struggle for existence" as *fundamentally natural*. On the same body of evidence (or lack of it) the biocentric observer may think it anomalous and pathological. Such are the ways of worldviews. Neither extreme interpretation is sustainable on Cartesian method, but since one view is the child of Cartesian metaphysics, and the other is not, the truth is summarily laid down. Many "philosophical naturalists," to use Darwin's terms, are persuaded that non-human nature, far from being competitively preoccupied with the achievement of future goals, gives the

consistent appearance of present complementary co-existence. If this is accurate, the assumption of a competitive goal-oriented struggle in non-human nature is not sustainable. Nor are dominance structures and relationships. Therefore it necessarily follows that in a state of nature, *rights* have no meaning.

There are, however, countless numbers of non-human beings who are not in a state of nature. There are many familiar situations in which the concept of rights could and should be applied to non-human existences. While these have been addressed by numerous authors on moral and ethical grounds, I will present a slightly different formula.

III. PROSTHETIC RIGHTS FOR SLAVES?

Animals (restricted here to mammals) are domesticated for four basic purposes: as pets, as servants, as sources of food and clothing and as human surrogates in experimental research. Some, such as the dog and horse, may be used for all four purposes, but most are used for three. Such sensate beings are bought and sold on the open market as commodities. The essence of domestication is tractability, docility and manageability. This is obtained through selective breeding, by systematic dismantling of the animal's social dependance on conspecifics,* while at the same time maintaining, encouraging and redirecting its innate need to participate in a group social arrangement. Group interdependence is replaced by

one-way dependence on the human proprietor. Unfortunately, it is necessary to point out the extraordinary lack of sensitivity to the psychological needs of the animal. Since it has been brought directly into the social unit, as a moral being, the proprietor would seem to have no alternative but to treat it as a functioning member of that social unit.⁷ Drawn, body and mind, into the human social organization, the animal becomes part of the power-based prosthetic dominance structure. Domestication has conferred upon it interests that deserve to be recognized in the interest of all members of the organization. On psychological and behavioral grounds alone, there is simply no civilized alternative to this view.

That the legislators, legal theorists and philosophers have tended not to address this argument, usually preferring to emphasize the obligation of moral animals which arises from control of second and third class beings, is less a matter of politics, the law and moral philosophy than of the cultural bias that towers over and dominates virtually all intellectual pursuit. It is a comment on moral beings themselves, and on the undeniable chauvinism that pervades our prosthetic cultural institutions.⁸ Failure to acknowledge this fundamental flaw in Western moral and ethical systems (that is, they are human-specific and species-chauvinistic) means that philosophy and law cannot influence human treatment of non-human domesticates. Clearly, much, if not all, of the unspeakable barbarism that prevails, for example, in factory farming and experimental research,

could be dealt with if we understood and accepted the significance of such beings as members of the human social order. Brutality and cruelty, both physical and psychological, could be treated as phenomena in their own right, without pedantic Cartesian recourse to definitions of "objects." Brutality and cruelty within the social order would be inherently wrong and thus punishable *and* preventable, regardless of the taxonomic or clinical classification and labelling of targets.



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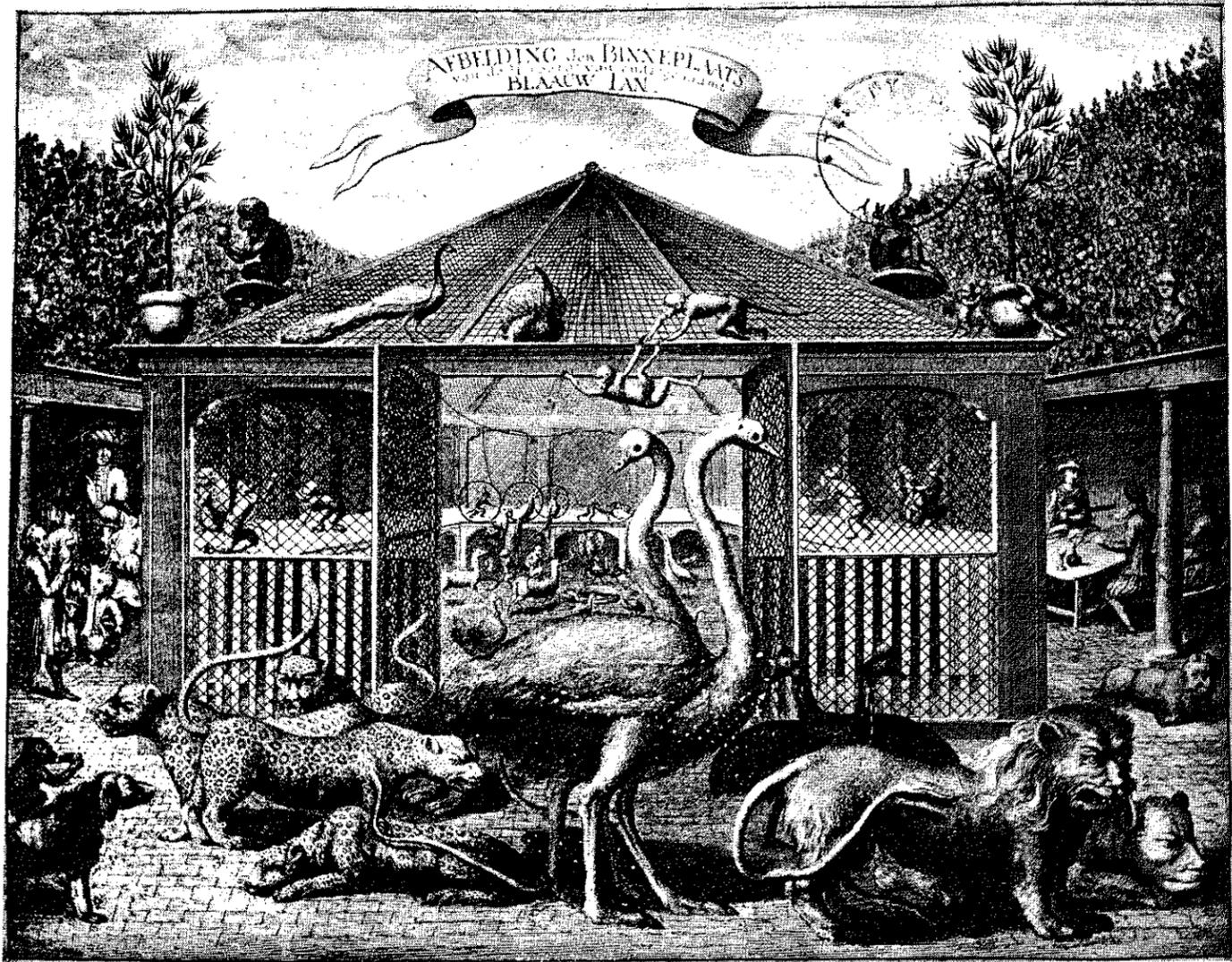
In addition, this argument can clearly be made on behalf of individual non-domesticated species, held captive and occasionally tamed, entirely within the human power structure, as are exotic pets, experimental surrogates and the inhabitants of zoos, circuses, menageries and so forth. In maintaining captive non-domesticates, there is *no* fostering of *social* dependence. Indeed, since the animal is not "socialized," its psychological suffering is probably much greater than that of the domesticate. The same conclusions on rights would apply: if the animal is contained in a power relationship -- foreign to its psychology -- it deserves to have rights. It seems reasonable to expect that how those rights would be exercised is a technical, not philosophic challenge.

The assumption legitimating our discretionary power transcends all moral philosophy, all law. It is a *given*. It is essential that it be understood that the human conquest of nature and the planet, accomplished through sheer power, is translated retroactively into the human *right* to dominate. No element of the environmental discussion is as crucial; all flows

from this radical source. I have suggested that the modern scientific view, projected upon nature, allows the inference of certain conclusions about the "survival of the fittest" and other post-Darwinian rationalizations. On such reasoning, people are the species who are the "fittest," having become dominant. Ergo, human dominance is right, proper and *natural*. Ironically, far from upsetting the human chauvinist appellation as he had originally feared, Darwin legitimated the rationale for future generations.

Darwin's preference for *progress*, as manifested in the emergence of new species, is of the greatest importance to Western thought: competition produces the best of everything. It is interesting that there are different views on progress as applied to domesticated animals. There are those who see domesticates as grotesque travesties of their wild antecedents.⁹ On the other hand, Darwin saw new breeds as improvements over "older and inferior kinds."¹⁰ Surely, however, the qualitative assessment of animal breeds and species cannot have logical relevance to their status as living sentient participants in human society.

It can be said that the recognition of rights in domesticated and captive animals would be an exercise in anthropomorphism. This would be entirely acceptable, indeed necessary, for these purposes, on the grounds that the physical and social environments in which they live out their lives are in fact human environments. The animals -- even the captives -- are expected to behave not in relation to other animals, as they would in nature, but *in relation to humans*.¹¹ Behavior in relation to others is the most fundamental means of identifying one's social "place." Their social place is in the human context, where prosthetic rights prevail.



IV. PROSTHETIC RIGHTS FOR THE FREE?

Domesticated and captive animals are one thing, but wild nature is another. There is at least one aspect of wild nature in which the concept of prosthetic rights might apply. This is "sport" hunting or recreational killing. Again, the human right of access for the most frivolous of purposes is taken to be a given thing. It might be expected that the law might eventually help to eradicate this practice if society were to understand that recreational killing and wounding is inappropriate behavior for moral animals.

This "sport" may be seen as a gratuitous intervention into nature by the human power apparatus. The target animal is drawn into the same relationship with the shooter as the lamb experiences with its slaughterer. The argument that the wild quarry is "free," is spurious; there is a relationship based on power. Killing -- or sparing -- is Caesar's ultimate exercise of power over a lesser being. Surely no being of whatever perceived rank has any obligation to enter, however briefly, into such a relationship. The moment the target is within shooting range, it should have the right to go its own way. The moral being squinting along the gun-barrel has a moral decision to make, and the ability to make it. As yet, because of the overwhelming species chauvinism of moral and legal authority, the shooter has no guidance.

Some advocates of "sport" killing defend it as a healthy competitive pursuit: man against beast, one-on-one. Since one participant is aware of the contest, such a justification need not be considered on either moral or logical grounds. Hunting takes the place of natural predation in the folkloric "balance of nature" because there are no natural predators left. And, of course, sport killing is cleaner, more efficient and more merciful than natural predation. What is steadfastly ignored is that predation naturally has little or no effect on prey populations. Rather, predator numbers fluctuate as the result of naturally changing numbers of their prey. The sporting community does not like natural ebbs and flows; it likes guaranteed "harvests." It is for this reason there is wildlife management, which so often involves predator control.

Barry Holstun Lopez argues that the natural act of predation includes a "conversation of death."¹² During this moment, a decision seems to be made as to whether the predator will or will not attack. It is as though the act of natural predation were mutually agreed upon. This cannot be said of sport killing, in spite of its often ritualized trappings. There is only one participant aware of the ritual; the conversation is one-sided. The phenomenon Lopez describes would appear to be some ancient interspecies pact, arrived at over thousands of years of joint evolution, not an arrangement of rights and obligations. The pact is clearly not a power relationship, and since predator and prey are of two unrelated species, neither the domesticator of the other, it is clearly not a social relationship. In this relationship, the concept of rights has no meaning.

Some observers would, however, be able to perceive *intra* species rights, or at least, *intragroup* rights, especially in those species that are highly social. It is tempting to see each individual member of a well-functioning group as not only having a social place in relation to others, but also as having a right to that place against all others. This is an unnecessary anthropomorphism, projected upon the social group. It occurs because we are taught to expect strife and competition as the norm, and would like to see this counterbalanced by the right of the individual to a place in the "pecking-order." But, if the concept of dominance competition is removed¹³ the necessity for a competitive place, and thus the necessity for the *right* to that place, is also removed. As non-human social behavior is beginning to be understood, every individual has a place by simple virtue of presence. This does not need to be seen as a *claim*.

There are, of course, exceptions; all is not unbroken tranquility. Everyone has seen occasional incidents of aggressiveness and fighting in non-human social groups. I would venture to say that all such exceptions are stress-induced, arising from difficulties involving food, population, illness, disturbance, habitat disruption, social disruption and a variety of other factors. They

very often manifest themselves as communication problems. Physical or psychological stress seems almost always to be at the root of aggressive-competitive behavior in social species. The only *normal* competitive activity is probably play.

V. THE ULTIMATE EXTENSION

 n the assumption that the existence of rights, whether inter- or intraspecies, cannot be satisfactory demonstrated in non-human nature, we are left with its palpable necessity in the human relationship with domesticated and captive animals, and with the targets of recreational killing. What must be done about those aspects of nature -- non-game species and wild nature -- which are of the most pressing concern to conservation, preservation and environmental groups?

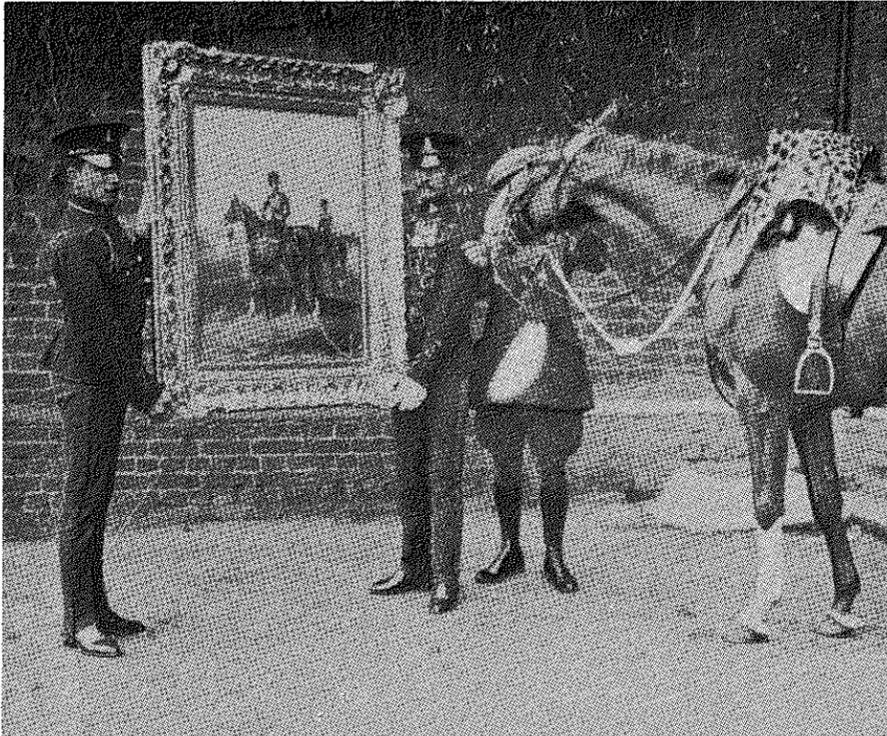
A starting point is the status of the national parks. As in so much of the reflection on environmental rights, there is a move into the neighbourhood of the *reductio*. Some of the smaller national parks of the world are little more than extended menageries. Most of the animals inhabiting them are not under our direct control as individuals, but they are certainly under our control as local populations of their species. Breeding stock is often introduced to improve the genetic "mix." Wildlife management in the national parks and game reserves is a growth industry. More and more, populations of large species, at least, are manipulated in the long-term interest not only of the biological community but also of the tourist trade and international balances of payments. Indeed, many of the ungulate species are under more intensive management in other areas, leading toward domestication, or are made available for shooting on game "ranches." All of these, even those moving freely within the fenced parks, are directly under our discretionary control. They have been subsumed into our organization. As members of the technostucture, or the managed community, they should have rights equivalent to those of any other members of the (prosthetic) community.



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"Hunting takes the place of natural predation in the folkloric 'balance of nature' because their are no predators left."

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The *reductio* is closer, camouflaged by questions of degree. What will be done about the really *large* national and wilderness parks, or wild places in general, not yet cordoned off? My argument would seem to require that such places are often the last refuge of endangered, threatened, rare or vulnerable species, on whose behalf constant vigilance is maintained. The occasional result is to bring captive specimens to world-class zoos for controlled breeding toward eventual restoration to the wild, or, salvation in captivity. Certainly, those individual captives have moved into the realm of human control, and thus, of rights. But has the species? Has its unique habitat also gained a status deserving of rights, when the animal is officially listed as endangered?

On this analysis, the ultimate question for the environmentalists et al. is whether *all* of non-human nature ought to move into the control of the human relationship. Presumably, the goal is to prevent such a relationship from developing. But if it is prevented, then the goal of environmental rights must be relinquished. Taken to its extreme, the result of the extension of rights would be to "humanize," or domesticate the entire planet. All life would be a human farm. All would have decent treatment. All would live happily ever after. It must be remembered, however, that the administrator of the extended enterprise would receive proportionately extended obligations and responsibilities. Is anyone willing to accept them?

If the domestication of the planet is thought desirable, the price of the total conquest would be to confer rights on all species conquered, usable against everyone. But past evidence of the human conquest of nature displays massive extinctions, widespread suffering and disfigurement. Accordingly, either total domestication could not take place because each new expansionist move would create a new array of rights to stall it, or rights would have to be subtracted for a majority and selectively retained for a few. That would not amount to moral or ethical behavior toward those under our total control as part of the planetary estate. The argument leads to chasms of absurdity.

As a "nature preservationist," I take no satisfaction from the apparent absurdity of environmental rights. The exercise does, however, have residual merit, if only for having shown that environmental despoilation, degradation and the barbarous interspecies behavior of humankind may have no remedies within the Western cultural tradition. These problems cannot be resolved by the familiar disciplinary tools. Tortured logic and absurd conclusions are inevitable so long as we persist in huddling within conventional legal and moral ground rules. The need is not to invest endless time, energy and creativity in futile attempts to rationalize rights for non-humans within the existing belief structure, but rather to systematically address, with every intellectual tool at our disposal, the pathological species-chauvinist belief structure itself. The humanist tradition dictates that people have absolute rights against all things non-human, and that the human interest is the court of the last resort.

Some philosophers and legal scholars have already recognized the merits and demands of this challenge. Those who have accepted the challenge have found disciplinary precedent scarce. This is understandable. The present relationships with other species, so far as rights and obligations are concerned, are logical outcomes of a unidimensional and egocentric vision of the world. To extend concepts of rights into nature -- Caesar's ultimate exercise of power -- would be to export and legitimate a pathological obsession with hierarchical relationships. As such, the choice is clear: either we must acknowledge the intrinsic "rightness" of non-human existences and sensibilities and express that acknowledgement in *human* behavior, backed by law, or, complete the "humanization" of the planet by making all living things unwitting participants in a prosthetic moral hierarchy.

Notes

¹ Fromm analyzed thirty "primitive" cultures, and identified a syndrome in which competitiveness was linked with individualism, private property, dominance hierarchy, and tension in those societies which were strongly aggressive. In others, including those of the Pueblo and the Eskimo, which Fromm terms "life-affirmative societies," he found "little envy, covetousness, greed and exploitativeness...little competition and individualism and a great deal of cooperation...trust, and confidence, not only in others but particularly in nature." See Fromm, *The Anatomy of Human Destructiveness* (1973) at 168.

² *Id.* at 169.

³ Livingston, "Ethics as Prosthetics," in Hanson and Dugaid, eds., *Proceedings of 1983 Environmental Ethics Research Workshop* (as yet unpublished, 1984). In this paper, the prosthesis is explicated in the context of the self domestication of technological mankind.

⁴ Worster, *Nature's Economy: The Roots of Ecology* (1977).

⁵ This is attributed to Thomas Henry Huxley, when first examining Darwin's thesis. He is also said to have exclaimed, "How stupid of me not to have thought of that!" *Id.* at 182.

⁶ Harvey and Silvertown, *Can Theoretical Ecology Keep A Competitive Edge?* (1983), 99 *New Scientists* 760 at 760-63.

⁷ I would emphasize that this argument does not need to address such speciesist caveats as relative levels of sentience, self-awareness, intelligence and reason, significance in the divine eye, and of human beings as unique "ends-in-themselves" as contrasted with mere animal means. The specious claims (none sustainable on scientific grounds) have been disposed of. See Singer, "Animals and the Value of Life," in Regan, ed., *Matters of Life and Death* (1980) at 218 and *Animal Liberation* (1975). See also Rollin, *Animal Rights and Human Morality* (1981).

My reason for taking a different approach is my (admittedly lay) perception of the self-defeating nature of conventional philosophic and legal argument, mounted as it must be within the inherently chauvinistic framework of Western thought.

⁸ Routley and Routley, "Human Chauvinism and Environmental Ethics," in Mannison and Rotley, eds., *Environmental Philosophy* (1980) 96 on the chauvinism of our ethical systems. See also White, *The Historical Roots of Our Ecologic Crisis* (1968), 155 *Science* 1203. This early statement of the Judeo-Christian roots of the "environmental crisis" has become a classic.

⁹ Shepard, in *The Tender Carnivore and the Sacred Game* (1973) at 15, argues that domesticated animals are "well-padded drudges, insulated by blunted minds and coarsened bodies against the uniformity of the barnyard...coming to terms with the grey world of captivity by arriving at the lowest common denominator of survival." But, one might ask by what *right* did we accomplish this?

¹⁰ Darwin, *supra* note 12, at 111.

¹¹ Perhaps I may be forgiven for a personal note here. Many friends appear to be mildly amused by the fact that I talk to my family dogs a great deal. The practical fact is that this is the best way to "train" them -- for them to learn the social ways of the household. More important, however, the dogs are an integral part of the social organization of the household. The animals *belong*, not in the proprietary sense, but in the sense of a social imperative. When I am teased for behaving anthropomorphically, my rejoinder is that as a person that is the only way I *can* behave. Judging from their behavior, I have little doubt that the dogs "canimorphize" humans. Their behavior is that of human-socialized dogs. There is no other way to behave.

¹² Lopez, *Of Wolves and Men* (1978) at 62.

¹³ For works that also argue for the removal of the dominance-competition concept from our society, see Haraway, *Animal Sociology and a Natural Economy of the Body Politic*, *Signs*; 4 (1978); Brownlee, *Biological Complementariness* (1981); Livingston, *The Fallacy of Wildlife Conservation* (1981); Fedigan, *Primate Paradigms: Sex Roles and Social Bonds* (1982). There are also many other recent speculations, some as yet unpublished.

* surgery: the fitting of artificial parts to the body (eds.).

* members of the same species (eds.).

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