

RIGHTS FOR ANIMALS— THE PAST TEN YEARS

The Humane Society of the United States has long been in the forefront of advocating the recognition of rights of and for animals. At its national membership conference held in San Francisco in 1980, the membership of The HSUS formally resolved to "pursue on all fronts...the clear articulation and establishment of the rights of all animals...within the full range of American life and culture."

In the past ten years, the term "animal rights" has been overused, and, in the process, the concept has become muddled. "Animal rights" is used as a general rallying cry for all manner of animal advocates. In the hands of the media, it is often applied indiscriminately

obligations to animals. When we speak of "being kind to animals," we are really talking about states of mind or motivations that are gratifying to human beings. What the animal-rights approach does is to shift our focus away from human-oriented motivations and gratifications toward the intrinsic worth and needs of animals and, moreover, leads us to reconsider and grapple with the moral and philosophical justifications for the whole range of uses and exploitations of animals to which human beings are accustomed.

Thinking about animal rights is also important because it emphasizes, and indeed springs from, a realization, heightened by the environmental movement, that all life exists in an essential unity and interdependence. This realization at once qualifies any strict hierarchical distinctions between one species and



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to any action or organization seeking to protect or enhance the status of animals. Unfortunately, the term has also become closely identified with those who see the need to resort to violence and illegal means to further their cause. Overuse and careless use has led not only to confusion and imprecision but also to a loss of perspective as to how much work lies ahead before animals acquire rights in a practical and legal sense.

ANIMAL RIGHTS: IN PHILOSOPHY

When we say that animals have rights, we mean that, as a philosophical principle, animals should be included within the same system of moral protections that govern our behavior toward each other. Animals, as living, sentient beings, have intrinsic worth irrespective of their usefulness to human beings and have essential physical and behavioral requirements that, if denied, can lead to privation, stress, and suffering.

Such essential requirements include adequate nutrition, an environment suited to their natural and essential behaviors, and the need not to be subjected to unnecessary physical pain or psychological torment.

In the philosophical sense, the rights of animals are derived not from legal statutes but from the same principles of justice and fairness that are the foundation of human rights.

The concepts behind animal rights are important because they help us focus on the intrinsic needs and worth of animals. This approach is different from loving animals, being kind to them, or speaking merely in terms of human

systems, the age-old ethic of compassion toward and protection of animals, which is the foundation of the humane movement, is also the fundamental wellspring of ideas about animal rights.

It is undeniable, however, that within the animal-protection movement now for over ten years, the ideas behind animal rights have served to partially redefine and partially affirm the ethical dimensions of animal protection and

another and compels caution in our civilization's habits of thoughtless consumption of land, natural resources, and animal life.

Nonetheless, because animals do not have equal power or capabilities with human beings, and never will have, and because any rights animals have in philosophy, or will have in law, will be conferred by human beings and spring from human value

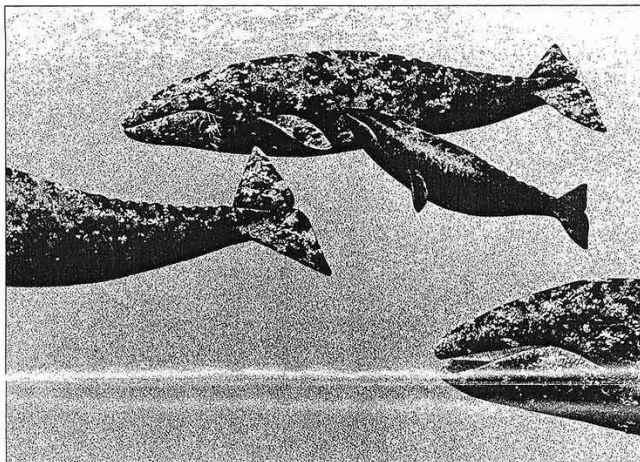
and statutory frameworks are simply not in place. Domesticated animals, for example, are classified in law as tangible personal property, like furniture or cars. They are provided protections by the law against grosser abuses at the hands of those who "own" or have power over them. But they are viewed as having no inherent capacity to invoke the protection of the state, and their entire legal status is underpinned by constitutional doctrines that deny them recognition as "persons."

Access to the courts is such a powerful right and would pose so revolutionary a threat to the established order that it will probably be among the last of animal rights to be recognized, requiring statutory, even constitutional, changes.

However, access to the courts by animals, through their advocates and representatives, could be improved through an evolutionary expansion of the standing doctrines of *ius tertii*, or the right of third parties to sue on behalf of those who cannot but who have legally cognizable interests to protect, a doctrine illustrated now by parents suing on behalf of minor children and by legal guardians representing comatose or otherwise incompetent persons. Criminal prosecutions brought by the state must be supplemented, or supplanted, by actions brought by private citizens or organizations to obtain court injunctions against exploiters of animals. (North Carolina already allows such civil-injunction suits.) Such measures would partially fulfill the critical goal of getting litigation into a format where someone with ready access to the judicial system is representing the animal and its interests and *only* the animal and its interests.

In criminal cases brought under the anticruelty laws, animals must be treated more as the beneficiaries of enforcement actions and not merely as evidence of human guilt or innocence. Accordingly, the goal of anticruelty enforcement must be redirected toward proceedings that decide what disposition of the case is in the best interest of the animals

involved, whether or not convictable behavior has been committed by human beings. Custody proceedings must be decoupled from criminal proceedings. Again, a ready-made model can be found in child-custody proceedings, which parallel but are independent of criminal proceedings against parents for child abuse, and in which the court decides, based on the best interests of the child or children involved, whether the child should stay with the parents or be removed to better surroundings. Independent custody proceedings for domesticated animals would entail a recognition by the law that the public has a special interest in the pro-

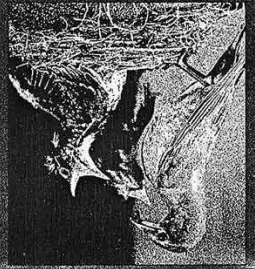
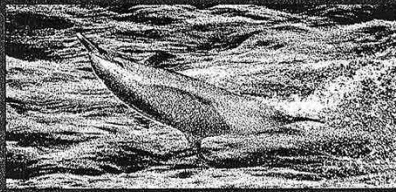


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have served as a catalyst in shaping and reshaping the approaches, policies, and goals of many organizations, including The HSUS.

ANIMAL RIGHTS: THE LEGAL CONCEPT

As a practical legal concept, a "right" is the inherent capacity to invoke the assistance of the state (through the courts, for example) in controlling the behavior of others in order to enhance or protect one's interests. Viewed in this light, "animal rights" is not useful as a legal tool at present because the constitutional



tection of animals that overrides any private property interest, just as all minor children are ultimately wards of the state at law.

A PARADIGM FOR ANIMAL RIGHTS

There is another sense of "rights" that is at once legalistic and of practical use: rights can be viewed as interests that are perceived as being worthy of being balanced against competing interests to see which is of overriding value. The injection of a balancing test into every debate wherever animals' interests are



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at stake holds the potential for the development of a whole host of rights for animals. In many cases the animals' interests are clearly weightier but need to be asserted as independent, cognizable interests. For example, rabbits are used to test the eye-irritancy of new cosmetics. Yet our interest in new eyeliners and facial creams is frivolous compared to the suffering test rabbits endure. Therefore the animals' interest not to be subjected to unnecessary pain should outweigh the human interest in self-adornment. Similar is the case of the person who wants to take a monkey from the wild to keep caged as a pet. The human interest in keeping an exotic pet is trivial compared to the animal's interest in being able to maintain its natural behavior in its natural habitat. Similarly, in some states, dogs that are caught chasing livestock are seized and put to death as a matter of course by animal wardens, while a more correct weighing of the dog's interest in life would urge a different, nonfatal solution to the problem of protecting livestock.

In other situations, the balancing of interests presents closer cases: whether animals should be used as food, for example. But it is the concept of an interest that is worthy of being

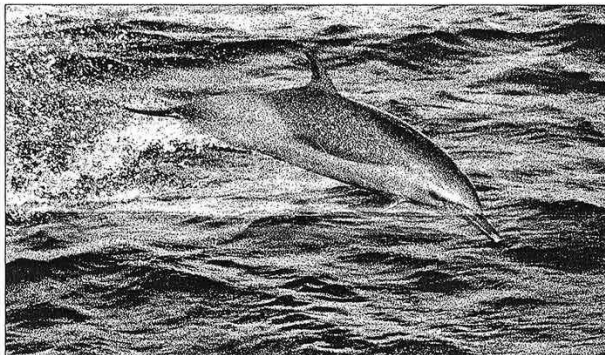
weighed, or rather that is perceived as being worthy, that generates the germ of a right, and therein lies the avenue toward a broad realization of animal rights.

Moreover, the concept of a right as a balanceable interest is one that respects reasonable and necessary human interests. Even within the context of human rights, no right is absolute, and every human right, no matter how fundamental, is liable to be outweighed by a stronger interest. Free exercise of religion, guaranteed by the First Amendment, is commonly outweighed by other interests, including the need to protect animals from cult sacrifices and the state's need to ensure the education of children and to enforce a variety of laws that may conflict with religious practices. One person's freedom of speech must be balanced against the right to have another person's good reputation preserved.

There are no absolutes in human rights, and there can be no absolutes in animal rights. But the new balancing of competing animal and human interests, which the past ten years of public debate and agitation has promoted, provides the machinery for progress toward recognition of the rights of animals.

Therefore, in all available forums, animal advocates must continually assert the notion that animals' fundamental interests deserve to be weighed against competing human interests before use or exploitation of animals is permitted or continued.

Recognition of legal rights will follow.

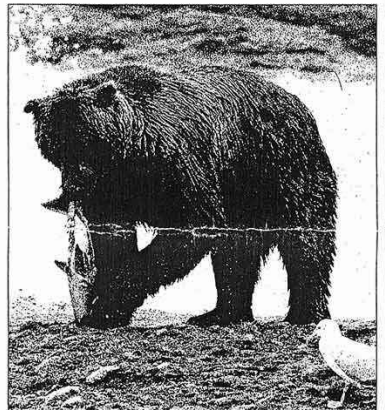


NATIONAL MARINE FISHERIES SERVICE

HELP US HELP THE ANIMALS

Animals cannot help themselves—they must depend on people who care to fight for them. The Humane Society of the United States represents more than one million people who care. The HSUS fights for animals through educational, legislative, investigative, and legal means.

Millions of dogs and cats are suffering as



LEONARD RUE ENTERPRISES

homeless, unwanted strays. Farm animals are being subjected to cruel intensive farming methods. In research laboratories, animals are used and abused in painful experiments that are, too often, badly planned and pointless. Dozens of wild animals are on the brink of extinction in America because of habitat destruction, hunting, trapping, pollution, and other intrusions of man.

The HSUS is committed to the goal of ending animal suffering. It has more programs than any other animal-protection organization, working to protect pets and domestic animals as well as wildlife.

The HSUS is a nonprofit organization supported solely by the contributions of individuals

like you. Money donated is put into action on the front line right away. The animals need us now.

Join The Humane Society of the United States today! Membership is \$10 a year. All contributions are tax-deductible. Send a self-addressed, stamped envelope and ask for our list of information

publications on this and other animal-protection problems.

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West Virginia residents may obtain a summary of The HSUS's registration and financial documents from the Secretary of State, State Capitol, Charleston, WV 25305. Registration does not imply endorsement.

