

ANIMAL RIGHTS AND THE RIGHTS OF NATURE

A Brief Overview

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ANIMAL RIGHTS

The traditional *welfare* approach is to ascribe ‘freedoms’ for animals rather than rights. The oft-cited five freedoms are: Freedom from Hunger and Thirst; Freedom from Discomfort; Freedom from Pain, Injury or Disease; Freedom to Express Normal Behaviour; Freedom from Fear and Distress.¹

A more radical movement began in the late 1970s, starting with Peter Singer’s seminal book, *Animal Liberation*.² *Singer’s Utilitarianism* suggests that animals have the right³ to equal consideration in utilitarian balancing, rather than absolute rights.⁴ Equal consideration would render much animal exploitation indefensible.

Regan proposes that all *Subjects-of-a-Life* have absolute rights.⁵ As a subject-of-a-life cares about its life and has perception, desire, memory, and some sense of the future, its life has inherent value, which is equal among all beings. This is arguably the preeminent theory of animal rights today.

Francione’s Abolitionism extends Regan’s absolutist approach and argues that animals need only one right: the right not to be treated as property or as things.⁶ Francione envisages a practical legal approach to achieving abolition through legal reforms that seek prohibition, as opposed to regulation, of particular forms of animal exploitation.⁷

RIGHTS OF NATURE

Earth Jurisprudence suggests that the core failure of modern human governance systems is that they regulate human behaviour based on the fallacy that we are separate from nature and can operate outside the boundaries imposed by natural system.

The theory has been influenced heavily by *Stone*,⁸ who advocated that trees could have standing in court, *Berry*, who identified the defective nature of our relationship with

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the rest of the Earth Community,⁹ and *Cullinan*, whose seminal book *Wild Law* drew many threads together to propose a new paradigm for human regulatory systems.

Earth Jurisprudence discerns the fundamental laws of nature (the *Great Jurisprudence*) and sets our laws within this context. The Great Jurisprudence is the nature of the world, the “fundamental laws and principles of the universe”.¹⁰ I.e. the Earth itself provides us with a universal framework and ecological limits within which to bound human laws.

In terms of rights, Earth Jurisprudence recognises the right of each earth subject (humans, non-human animals, plants...) to fulfil its ecological role in the earth system.

The *Declaration on the Rights of Mother Earth (2008)* identifies the rights of nature as including, *inter alia*: the right to life and to exist; the right to be respected; the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions; and the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being.

RIGHTS OF ANIMALS IN EARTH JURISPRUDENCE

Animals are not accorded specific rights in Earth Jurisprudence, rather, all natural subjects hold the same basic rights. In *Wild Law*, Cullinan does not explore how the rights of animals would be balanced with those of humans in any detail, instead planting the seeds of an idea and leaving much to be discussed and developed.

Cullinan does suggest that animals do not have absolute rights as in Regan’s theory. In Earth Jurisprudence, the legitimacy of killing an animal depends on the circumstances, and Earth Jurisprudence itself varies based on the ecological characteristics of the locality, local customs, and the relationship of the person killing the animal with nature. Cullinan contrasts an indigenous hunter killing a zebra for food in accordance with traditional rituals and customs, with a hunter that is out to make some extra cash. Of course, there will be many difficult cases between these two extremes.

An animal’s role in the Earth system is the starting point for determining its rights, but simply identifying the role of an animal in the ecosystem does not in itself provide any detail on how human actions should be limited in relation to that animal: i.e. “zebrakind as a concept in isolation is not that helpful in determining the rights and wrongs of actions directed at zebras”.¹¹

The position of animals under Earth Jurisprudence would involve, as in Singer’s utilitarianism, a balancing or weighing of an animal’s rights with the rights of other members of

the Earth Community with which the animals interact, including humans. Thus the 'right to be' proposed by Earth Jurisprudence is not the same as the absolute right to life.

WILD ANIMALS AND DOMESTICATED ANIMALS

The application of Nature Rights to domesticated presents difficulties because their domesticated nature means that it is difficult to determine a function beyond providing for humans, and they would serve no function if transferred to their original habitats. Arguably the role of a subject in the Earth system should be discerned from the Great Jurisprudence, rather than from the roles that humans have imposed through modern agricultural systems. Therefore, although humans have changed domesticated animals in such a way as to prevent them from existing in the wild, their rights should be derived from their role in a state of nature.

Hamblin elaborates on the way that Earth Jurisprudence could apply to animal farming industries, using egg production as a case study.¹² She argues that an Earth Jurisprudence approach to animal industries would reframe regulation so that the core concern, rather than increasing human profit, would be improving humans' relationships with other members of the Earth Community. Specifically, this would require smaller operations, improved welfare standards, a strong focus on whole of system environmental impacts and better consumer education.

However, Hamblin does not address the argument that Earth Jurisprudence would require us to regulate agriculture according to the ecological characteristics of the local ecosystem, such that abolition of animal agriculture may be required in some situations.

COMMON THREADS

CRITIQUE OF PROPERTY

Animal Rights and Earth Jurisprudence both critique property as the vehicle for exploitation. In *Wild Law*, Cullinan states that the "dominant cultures understand land as property. Land in the eyes of the law is therefore a thing, an object that may be bought and sold";¹³ likewise Francione argues that the property status of animals is the major facilitator of continued animal exploitation.

REFRAMING RIGHTS

Both theories suggest that the main solution to the imbalances in the current law is to reframe our conception of rights. Rights are easily expanded and integrated into our current legal systems. In particular, history has shown that extensions of rights can bring about significant legal

change: the abolition of slavery, for example, was a legal as well as cultural process.

THE CHALLENGES FOR RECOGNITION

Both Animal Rights and Earth Jurisprudence agree that reframing or expanding rights will be a lengthy uphill battle for legitimacy and recognition. Just as Francione notes that social changes must come first and drive legal change, Cullinan notes that our societies and legal systems were traditionally framed to promote human interests only. Efforts to have animal rights recognised in US courts have largely failed, not because "the American judiciary is particularly insensitive to animals [but because] recognizing that animals should be treated the same way as humans goes against the grain of the whole legal system".¹⁴

Wise quotes Stone, who writes that proposals to extend rights are "bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of 'us' – those who are holding rights at the time".¹⁵ The common ground here is illustrated by the fact that an Animal Rights scholar is citing an Earth Jurisprudence scholar in order to highlight the difficulties in having extensions to rights recognised.

POINTS OF DIFFERENCE

BASIS UPON WHICH RIGHTS ARE REFRAMED

Earth Jurisprudence requires a massive shift in the way we view rights. Rather than increasing the rights of animals, or including animals in our sphere of moral consideration, the rights of humans and nonhuman animals alike are drastically reframed under an Earth Jurisprudence approach. Whereas animal rights asserts that there are objective moral rights that are owed to all living creatures, Earth Jurisprudence asserts that all components of the Earth system, in contributing to the health of the whole, are deserving of the right to perform their natural functions.

SCOPE OF PROTECTION FOR ANIMALS

Animal Rights would protect all animals, domestic or wild, whereas Earth Jurisprudence, makes some distinction between these two categories. In addition, the absolute nature of the rights accorded to animals in the abolitionist approach means that protection is complete and impassable, whereas an Earth Jurisprudence approach to rights offers far more protection than the present welfare paradigm, but does not guarantee the life and liberty of animals.

DOMESTIC AND WILD ANIMALS

A final important difference between Earth Jurisprudence and Animal Rights, is their differing treatments of wild and domesticated animals. While the former suggests that some utilisation of domestic animals is acceptable, Francione states, “if we took animals seriously in a moral sense, we would stop bringing domesticated animals into existence for our purposes, and not formalize that exploitation by seeking to regulate it” and that “the only conflicts that would [then] remain would involve humans and animals living in the wild”.¹⁶

MAY THE TWAIN MEET?

Environmentalists and theories of environmentalism have not generally embraced the individualistic and absolute nature of Animal Rights, and the two movements have often been at odds. Animal Rights and Earth Jurisprudence appear to continue this division and to be irreconcilable. However, a high level of reconciliation is both achievable and desirable, aiming for a ‘pragmatic holism’ that recognises the greater moral worth of animals by ascribing absolute rights and the intrinsic value of other natural subjects by ascribing them the non-absolute natural rights required by Earth Jurisprudence.

A ROCKY RELATIONSHIP

Regan states that theories like Earth Jurisprudence and Animal Rights are “like oil and water: they don’t mix”,¹⁷ while Sagoff states: “Environmentalists cannot be animal liberationists. Animal liberationists cannot be environmentalists”.¹⁸ The difficult relationship between the two was perhaps most notoriously described by **Callicott**,¹⁹ who “appeared to delight in driving a very deep wedge between environmentalism and animal rights”²⁰ which has remained in place ever since.

This absolutist conception of rights means that Animal Rights cannot cover all the natural subjects which Earth Jurisprudence considers worthy of moral consideration. Furthermore, Animal Rights would assign no more value to the individual members of an endangered species critical to an ecosystem than to those of a common or domesticated species, and would give the same absolute rights to invasive species which may be an ecological burden. Due to this focus on the individual, Animal Rights theory offers no realistic plan for managing the environment, and could potentially hinder efforts to improve environmental protection. Likewise, Regan criticises the environmental holism on which Earth Jurisprudence is based for its protection of ecosystems at the expense of individual animals.

RECONCILING ANIMAL RIGHTS AND EARTH JURISPRUDENCE

There are considerable similarities between the two theories; seeing them as completely exclusive is unwarranted and unnecessarily divisive. Reconciliation is desirable because Animal Rights and Earth Jurisprudence can complement each other and be mutually beneficial.

Animal Rights and Earth Jurisprudence are capable of being reconciled to some extent because:

1. they both focus on practical action, i.e. expanding rights;
2. they already have a specific and well-defined ‘common enemy’ in Western conceptions of property;
3. an advancement of either theory will also be an advancement of the other in that expansion of rights for either animals or earth subjects will improve the rights of the other, or make it easier to expand right further;
4. novel mechanisms have been proposed that are consistent, at least to some extent, with both theories, e.g. the notion of animal property rights²¹; and
5. a certain level of pragmatism in the application of the approaches can go a long way toward reconciliation.

PRAGMATIC HOLISM

Warren was the first academic to propose a reconciliatory response to the assertion that Animal Rights and Earth Rights are mutually exclusive, insisting that they are in fact complementary.²² Warren’s approach is a pluralistic one, agreeing that animals and nature have rights, but arguing that they have different rights to humans: animal rights and human rights are grounded in differing psychological capacities, while earth rights are based on the value of nature, both as a resource and intrinsically.²³

This pragmatism will not necessarily be acceptable to proponents of Animal Rights because it explicitly relegates the rights of animals to beneath those of humans. In addition, Warren’s pluralism may inevitably lead to conflict as “ethical eclecticism leads, it would seem inevitably, to moral incommensurability in hard cases”.²⁴

Callicott proposes a different form of pragmatism which is based on a more objective moral foundation. Callicott essentially makes the argument, reminiscent of those of

Earth Jurisprudence, that humans have always ‘used’ animals, and it is merely our modern, industrialised relationships with animals that cause our revulsion at the breaching of Animal Rights. He thus argues that a return to a relationship with animals whereby we consider them a part of the ‘inner circle’ of our mixed communities would suffice to reduce both their suffering and our repulsion. He maintains however that wild animals should be free from interference.

This attempt to find an objective moral basis for rights, as opposed to the pluralism of Warren, is well-intentioned, but may again be opposed by Animal Rights theorists because it suggests that human exploitation of animals is in some way natural and that some animals' rights will always be subsidiary.

Ultimately Animal Rights, by insisting upon absolute and individual rights, cannot be completely reconciled with the more broadly-focussed nature of Earth Jurisprudence, though an emphasis on common ground and a pragmatic holism approach can go some way toward reconciliation and advancement of these two nascent ideas.

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