

THE CONCEPT OF HUMAN DIGNITY AND ITS APPLICABILITY TO NON-HUMAN ANIMALS

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Abstracts:

This paper seeks to examine both historical and prevalent notions surrounding the nebulous term, 'dignity', and establish that the understanding of this quality as something only humans possess and are entitled to is problematic. Given the recent advancements in scientific inquiry into various fields – from genetics to neurosciences – the very definitions which have hitherto delineated aspects that make certain animals 'human' have begun to blur, leaving behind the moral quandary surrounding the way we view and treat other, nonhuman animals. Once the present paper ascertains that nonhuman animals are indeed entitled to a certain level of dignity, it delves into questions surrounding the key precepts of dignity, to see how far these may be applied to nonhuman animals.

Keywords: *Animal, Rights, Environmental, Dignity, Human society, Environment*

The concept of human dignity, seemingly based on the very essence of humanity, has been widely embraced in international law. Still, the very meaning of the term remains shrouded in mystery, devoid of objective consensus and dependent upon cultural opinions. The etymological roots of dignity can be traced back to the German term 'würde', which means both 'worth' and 'to become',¹ and the Latin term 'dignitas', which could mean 'dignity' but also various other things such as 'grace', 'decorum' and 'position'.² These meanings give little indication of what dignity might mean, which is consistent with its varying lexical meanings today – including self-respect, gravitas, honourable position, or just simply worthiness.³ Going by lexical definitions alone, it is impossible

to say exactly what dignity means as a term. Throughout early Western tradition, the term was used only to signify hierarchy in society, and not as inherent worth demanding respect or recognition.⁴ Even today, while most societies do have their own conceptions of human dignity, they are often unidentifiable and certainly not based on ideas of inalienability or social equality.⁵

It is then no surprise that the question of including animals within the ambit of 'dignity' is strongly divisive. Despite the leaps made in the scientific understanding of animals and humans, the law confusedly lags behind.⁶ This paper will critically evaluate the meaning of dignity, and analyse the reasonability of arguments seeking to accord it exclusively to humans. It

¹ 'Würde' (Oxford Dictionaries) <<http://www.oxforddictionaries.com/translate/german-english/wurde>> accessed 01 April 2014.

² 'Dignitas' (Latin Dictionary) <<http://www.latin-dictionary.org/dignitas>> accessed 01 April 2015.

³ 'Dignity' (OED) <<http://www.oxforddictionaries.com/definition/english/dignit-y>> accessed 01 April 2015.

⁴ Jack Donnelly, 'Normative Versus Taxonomic Humanity: Varieties of Human Dignity in the Western Tradition' (2015) 14 *Journal of Human Rights* 1.

⁵ Rhoda Howard, 'Dignity, Community, and Human Rights' in Abdullahi An-Na'im (ed), *Human Rights in Cross-cultural Perspective* (University of Pennsylvania Press, 1991) 81.

⁶ Andrew McLaughlin, *Regarding Nature: Industrialism and Deep Ecology* (SUNY Press 1993) 148.



will then attempt to assess the extent to which the universal principles of dignity may be applied to nonhuman animals.

1. DIGNITY AS A HUMAN QUALITY

Religion

Most religions consider all humans to be sacred. The Quran has accorded dignity to 'all sons of man'.⁷ Christianity proclaims that man is made in the image of God and consequently bestowed with a dignity that places him above all other animals of the world.⁸ Despite its acceptance of Darwin's theory of evolution, the Catholic church maintains that the true source of human dignity, the soul, was created by God, hinting at an ontological leap made sometime during evolution itself.⁹ Other Eastern religions, such as Hinduism and Buddhism, accord dignity to all beings as they all work to maintain the cosmological balance, all though humans are accorded greater dignity than others, poised as they are to achieve spiritual liberation.¹⁰ Because these religions have accorded a modicum of dignity to animals, viewing them as friends and family from past lives,¹¹ they also stipulate better treatment of these animals, going as far as forbidding the slaughter of cows.¹² Ultimately, using religious philosophy that has little grounding in science as the basis for granting or denying dignity to any species can be a dangerous proposition, especially

⁷ Jerome J Shestack, 'The Philosophic Foundations of Human Rights' (1998) 20 Human Rights Quarterly 201.

⁸ *ibid.*

⁹ 'Truth Cannot Contradict Truth: Address of Pope John Paul II to the Pontifical Academy of Sciences' (*New Advent*, October 22, 1996)

<http://www.newadvent.org/library/docs_jp02tc.htm>
accessed 03 April 2015.

¹⁰ Dipti Patel, 'The Religious Foundation of Human Rights: A Perspective from the Judeo-Christian Tradition and Hinduism' (*Human Rights Law Centre*)
<<https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2005/religiousfoundationshumanrights.pdf>>
accessed 04 April 2015.

¹¹ Neil Dalal and Chloë Taylor, *Asian Perspectives on Animal Ethics: Rethinking the Nonhuman* (Routledge 2014) 155.

¹² Marvin Harris, 'The Cultural Ecology of India's Sacred Cow' (1966) 7 *Current Anthropology* 51.

considering the fact that these religions themselves do not hold a unanimous stance on the meaning and vessels of dignity.

Human Nature

Cicero, one of the earliest writers on the subject of dignity, tautologically defined the *dignitas* of human beings as a virtuous quality which made human beings worthy of being respected.¹³ Dignity was, to him, both a person's intrinsic worth and external decorum. It could be achieved only once humans learned to cleave themselves from the sensual pleasures of the world, which he deemed animalistic. Cicero's definition of dignity would clearly exclude animals (as they remain irreverently animalistic), but it also specifically excludes most of humankind itself, and he himself considered some men as men in words alone and not actions, and deemed them unworthy of possessing dignity.¹⁴ His conception of dignity, therefore, would not satisfy the requirement of universality, and becomes irrelevant to postmodern discussions of human and animal rights.

Human Rational Capacity

Rather than basing dignity on metaphysical aspects such as man's nature, Kant, whose theory exemplified the age of enlightenment, declared that humans possessed dignity because they had reason and autonomy. It was this capacity for moral choice that meant that they must be the end and never the means.¹⁵ More recently, autonomy was used as a cornerstone of dignity by the prominent bioethicist Browns word, who based it on the respect for the ability of humans to override their natural inclination of survival and end their

¹³ Scott C Shershow, *Deconstructing Dignity: A Critique of the Right-to-Die Debate* (University of Chicago Press 2014) 53-63.

¹⁴ *ibid.*

¹⁵ Mette Lebeck, 'What is Human Dignity?' (*Maynooth University*)
<http://eprints.maynoothuniversity.ie/392/1/Human_Dignity.pdf> accessed 05 April 2015.



lives.¹⁶ Ash rightly criticised this particular line of thought by bringing up evidences of animals harming and even killing themselves when they undergo trauma inflicted upon them by humans.¹⁷

An even greater reason exists to refute the use of human autonomy as the basis of dignity, however. Recent neurological experiments are beginning to destroy notions of free will and autonomy, by proving that choices emanate from the unconscious, not the conscious, sections of humans' brains, affecting both the action to be performed¹⁸ and the time of its performance.¹⁹ Taking this a step further, electromagnetic theories of free will declare that consciousness is nothing but the firing of neurons in particular regions of the brain.²⁰ While these studies have been heavily contested, they have nonetheless added some fresh perspective – namely, that human decisions could be the result of evolutionary responses to environmental stimuli, a concept that is not dissimilar to animals' decisions with regard to their own environment. And if exceptions have already been made for children and the mentally disabled despite their lack of complex thought processes and moral culpability, ought the same not be done for other sentient beings?

The idea, that human intelligence is somehow in an entirely separate category, has also suffered from recent scientific knowledge of animal intelligence – with scientists supplying proof of various

nonhuman animals not just committing facts to memory to utilise in future planning, but displaying proficiency in basic arithmetic, crafting tools out of their environment, and even reflecting upon their knowledge to come up with unique solutions to problems.²¹ The human mind may be intelligent and capable of rational thought, but it is not the only mind capable of both. It is merely the most complex of all species, but that fact in itself does not sever the evolutionary connection between human and nonhuman animals.

Human Emotions

Having failed to establish that dignity is a solely human quality in light of scientific proof of the similarities between the natures and rational capacities of human and nonhuman animals, and in the absence of any actual proof of an ontological leap that resulted in the implanting of a soul (and with it, dignity) in humans by a divine entity, those adamant on denying the dignity of animals are resting their case on the entirety of a human being's complex intelligence and emotions, arguing that the sum is greater than the parts.

Fukuyama, a proponent of this line of thinking, defines human consciousness as the 'full gamut of human emotions' and called it at least as important as human reason and moral choice. He feels it is this gamut of human emotions that engenders every human need, desire, goal, purpose, fear, aversion, and the like, and consequently it is the source of 'all human values'.²²

While this is an admirable attempt to work towards a non-speciesist definition of dignity, it remains insufficient, if only because of the fact that he did not offer up any explanation as to why a line ought to be drawn in the sand, separating animal

¹⁶ Roger Brownsword, 'Bioethics Today, Bioethics Tomorrow: Stem Cell Research and the "Dignitarian Alliance"' (2003) 17 Notre Dame Journal of Legal Ethics and Public Policy 15, 21.

¹⁷ Kyle Ash, 'International Animal Rights: Speciesism and Exclusionary Human Dignity' (2005) *Animal Law Review* 195, 210.

¹⁸ Chun S Soon and others, 'Unconscious Determinants of Free Decisions in the Human Brain' (2008) *Nature Neuroscience* 543.

¹⁹ Benjamin Libet, 'Do We Have Free Will?' (1999) 6 *Journal of Consciousness Studies* 47.

²⁰ David Talbot, 'Searching for the Free Will Neuron' (*Technology Review*, 17 June 2014) <<http://www.technologyreview.com/featuredstory/528136/searching-for-the-free-will-neuron/>> accessed 07 April 2015.

²¹ Thomas R Zentall, 'Animals Represent the Past and the Future' (2013) 11 *Evolutionary Psychology* 573.

²² Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (Farrar, Straus and Giroux 2002) 169.



emotions from human ones. Emotions do not fall exclusively in the human domain. Experiments on animals have proven that they feel pain and pleasure,²³ sexual desire,²⁴ jealousy,²⁵ and even empathy.²⁶ It is not unreasonable to then expect that animals be accorded dignity as well, even if they cannot experience emotions the way humans do. If Fukuyama's assertion is indeed that someone who cannot experience every human emotion is unworthy of being accorded dignity, then this might also strip the dignity of people with mental abnormalities that affect their ability to feel emotions, in the case of psychopaths, or recognise them, as in the case of autistic people,²⁷ as both situations could leave the humans in question unable to possess 'all human values'.

Human Genetics

A purely scientific objection to according dignity to animals is genetic. It finds expression in Article 1 of the Universal Declaration on the Human Genome and Human Rights, 1997, which states that '[t]he human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity...' The genetic ground is arguably the most speciesist, and for good reason. While it might be possible to one day understand everything about the nature and minds of animals so that their differences from humans dwindle even further, and while it might even be possible to find extant species that have human-like intelligence and

emotions, it would certainly never be possible to find a nonhuman animal that shares a human's exact genetic makeup.

Certain species do come close, however. The biologist and geneticist, Walter Bodmer, considered the genetic sequences of chimpanzees and human beings to be 99 per cent similar.²⁸ He believed this dissimilarity of 1 per cent was enough to create a complex notion of a human being that was separate from all other creatures in his identity, autonomy and responsibility. However, close scrutiny of the genetic sequences of males and females reveals that they differ by as much as 2 per cent, which is greater than the gap between those of humans and chimpanzees. Indeed, Willard has said that 'there is not one human genome, but two: male and female,'²⁹ which itself runs contrary to the wording of Article 1 of the Universal Declaration above. Males and females are not the only members amongst human animals who display this genetic difference. Humans that suffer from Down's Syndrome, the disorder that leads them to have an extra chromosome 21 instead of the usual pair, could differ by 1 to 1.5 per cent from other humans.³⁰ While recent studies are now stating that the difference between humans and chimpanzees are far greater, up to 5 per cent in fact,³¹ consensus is far from achieved, leaving enough scope to question, once again, the arbitrariness in making exceptions for some beings and not for others.

The very term 'family' in the Declaration requires some careful

²³ Marian Stamp Dawkins, 'Animal Minds and Animal Emotions' (2000) *American Zoology* 883.

²⁴ Joseph H Manson, Susan Perry and Amy R Parish, 'Nonconceptive Sexual Behavior in Bonobos and Capuchins' (1997) 18 *International Journal of Primatology* 767.

²⁵ CR Harris and C Prouvost, 'Jealousy in Dogs' (2014) *PLoS ONE* 9(7)
<<http://journals.plos.org/plosone/article?id=101371/journal.pone.0094597#abstract0>> accessed 08 April 2015.

²⁶ Jennifer Viegas, 'Dogs Sense When Humans Are in Distress' (*ABC Science* 2012)
<<http://www.abc.net.au/science/articles/2012/09/03/3581696.htm>> accessed 08 April 2014.

²⁷ Molly Losh and Lisa Capps, 'Understanding of Emotional Experience in Autism: Insights From the Personal Accounts of High-Functioning Children With Autism', (2006) 42 *Developmental Psychology* 809.

²⁸ Walter Bodmer, 'Foreword' in Charles Pasternak (ed), *What Makes Us Human?* (OneWorld Publications 2007) ix.

²⁹ Robert Lee Hotz, 'Galaxy Of Genetic Differences Between Men & Women: Latest Research Into X Chromosome Brings Startling Discoveries' (*The Scotsman - UK* 2015)
<<http://www.rense.com/general63/galaxyofgeneticdifferences.htm>> accessed 09 April 2015.

³⁰ Based on the estimates of the genes that chromosome 21 contains in proportion to the total genes in the human body, in 'Chromosome 21' (*Genetics Home Reference* 2013)
<<http://ghr.nlm.nih.gov/chromosome/21>> accessed 09 April 2015.

³¹ RJ Britten, 'Divergence between Samples of Chimpanzee and Human DNA Sequences is 5% Counting Indels' (2002) 99 *Proceedings National Academy Science* 13633.



reconsideration, bearing in mind that the Linnaean classification of living organisms now features many extant species of great apes alongside humans in the family-level classification, *Hominidae*.³² These apes also have the distinction of being descended from the same ancestors as we, making Richard Dawkins absolutely right in stating that, but for ‘the accidental extinction of the intermediates’ that link us genetically to other great apes, the very concept of humanity would have to be deliberated upon in courts that would have the burdensome task of pronouncing judgment over whether intermediates could pass for human or not.³³ Dawkins likened this situation to apartheid, and while the analogy might appear harsh, the element of arbitrariness, in including certain animals within the definition of the human family and excluding others, cannot be denied.

The speciesist argument of human genes establishing their superiority is wrong on another ground as well. The exact extent to which genes can determine the personality and traits of any human is unclear and provokes fiery debate. The scientific consensus lies in acknowledging that it is not just the genes of human beings that determine their natures and personalities, but also these genes’ interaction with the environment.³⁴ The concepts of both ‘nature’ and ‘nurture’ play important roles, and it would be unwise to reduce all of humanity to either one aspect and use that as a ground to discriminate against nonhuman animals.

2. DIGNITY OF ANIMALS DISTINCT FROM HUMAN DIGNITY

It is evident that there is no logical ground for denying animals the dignity that they deserve, other than the archaic notions of human uniqueness that people obstinately cling to. Philip Allott was right in declaring the reality of the human world to be a ‘species-specific reality made by human beings for human beings’, an *istopia* where the objective truth is merely what human beings, after coming up with the answers in their minds, say it is.³⁵ This is evident in the reasoning of the famous Swiss Expert Report,³⁶ which talks about a ‘minimal conception’ of human dignity, arguing that humans have a self-awareness to them that spawns self-respect and the capacity for feeling humiliation.

The concept of self-awareness is, itself, very highly debated. David De Grazia has argued that there are, in fact, many different types and levels of self-awareness – a *personal self-awareness*, which stops the animal from eating itself and informs it of the body’s movement and position, a *social self-awareness*, which allows the animal to know its place in the hierarchy of its pack and informs its interactions with other animals, and an *introspective self-awareness*, which informs the animal of its feelings, wants and desires. Different animals may hold different types of self-awareness. Certain animals are complex enough to hold memories of their pasts and be able to anticipate their immediate futures, since both skills are imperative for survival in a variable environment.³⁷ Furthermore, if self-awareness is considered synonymous with self-

³² ‘Hominidae’ (*Encyclopaedia Britannica* 2014)

<<http://www.britannica.com/EBchecked/topic/270333/Hominidae>> accessed 16 February 2015.

³³ Richard Dawkins, ‘Foreword’ in Justine Burley (ed), *The Genetic Revolution and Human Rights* (Oxford Amnesty Lectures 1998).

³⁴ Robin Headlam Wells and John Joe McFadden (eds), *Human Nature: Fact and Fiction: Literature, Science and Human Nature* (Continuum 2006) 15-17; Fukuyama (n 22) 131-37.

³⁵ Philip Allott, *The Health of Nations: Society and Law beyond the State* (Cambridge University Press 2002) 3-5.

³⁶ Philipp Balzer, Klaus Peter Rippe and Peter Schaber, ‘Two Concepts of Dignity for Human and Non-human Organisms in the Context of Genetic Engineering’ (2000) 13 (1-2) *Journal of Agricultural and Environmental Ethics* 7.

³⁷ David DeGrazia, ‘Self-awareness in Animals’ in Robert W Lurz (ed), *The Philosophy of Animal Minds* (Cambridge University Press 2009) 201-217.



recognition, then many species of nonhuman animals have passed the popular mirror test that is used to gauge self-recognition,³⁸ and at least with the great apes, the data produced by multiple tests remains consistent.³⁹ In fact, research has proven that children up to the age of six years can remain stumped by the mirror test and be unable to recognise themselves.⁴⁰ If this is the case, then self-awareness can hardly be used as a valid excuse for viewing dignity as an exclusively human attribute.

Acknowledging that studies have proven the existence of self-awareness in animals, the Swiss Expert Report reasoned that this quality in itself was not important; rather, the nonhuman animal must also possess 'some conception of how it should live',⁴¹ thereby invalidating the dignity of those humans who were unable to have this conception. It added, however, that humiliation could be both felt by the victim and perceived by outsiders, and that society as a whole would ascribe an inherent human dignity to even those members who were not capable of feeling degraded. This ascription would arise out of 'social-psychological considerations', because other humans felt "some special connection to young children and the mentally challenged".⁴² This complicates things somewhat for people who domesticate animals and feel an affinity to them, and rests on its own assertion of a myth that can be perpetuated by nothing other than social conditioning. The Supreme Court of Israel did, in fact, put an end to a television show that featured human battles with alligators to entertain viewers. The Court, comparing animals with children, called them innocent, weak and unable to

defend themselves from human brutality. It called upon humans to protect animals and refrain from treating them cruelly or humiliating them.⁴³ The Court also said that it did not know if the alligator could feel humiliation, but the people could certainly feel that they were humiliating these alligators, and for this reason, their treatment was inhuman.

In light of this, it would perhaps be better, as Dunja Jaber suggests,⁴⁴ to conceptualise dignity as the inherent worth of all living organisms, and to differentiate the level of moral obligation to protect this dignity on the basis of *species-specific capabilities* (which for humans would include the ability to feel humiliation).⁴⁵ This concept would be in keeping with the doctrine of *intrinsic value* of all living beings. If this is done, dignity will easily apply to nonhuman animals, but in not quite the same way as it does to humans. The extent to which it can be applied to an animal would depend on not just the species-specific capabilities of the animal, but also the very conception of dignity in international law.

3. THE POTENTIAL EXTENSION OF DIGNITY TO ANIMALS

Dignity in Law

The term dignity has been used in international law rather intuitively, its meaning implicit and not explicit.⁴⁶ Human rights instruments attempt to define neither dignity nor its relationship with human rights.⁴⁷ This raises the question of whether

³⁸ Monique V De Veer and Ruud Van Den Bos, 'A Critical Review of Methodology and Interpretation of Mirror Self-Recognition Research in Nonhuman Primates' (1999) 58 *Animal Behaviour* 459.

³⁹ Gordon G Gallup Jr, 'Self-Recognition in Primates' (1997) *American Psychologist* 329.

⁴⁰ Tanya Lynn Broesch, 'Cultural Variations in Children's Mirror Self-Recognition' (2011) 42 *Journal of Cross-Cultural Psychology* 1018.

⁴¹ Philipp Balzer, Klaus Peter Rippe and peter Schaber (n 36) 14-15.

⁴² *ibid* 13-14.

⁴³ A Reis Monteiro, *Ethics of Human Rights* (Springer Science and Business Media 2014) 247.

⁴⁴ Dunja Jaber, 'Human Dignity and the Dignity of Creatures' (2000) 13 (1-2) *Journal of Agricultural and Environmental Ethics* 29, 30.

⁴⁵ *ibid* 39.

⁴⁶ Oscar Schachter, 'Human Dignity as a Normative Concept', (1983) 77 *American Society of International Law* 848, 849.

⁴⁷ Louis Henkin, 'Human Dignity and Constitutional Rights' in Michael J Meyer and William A Parent (eds), *The Constitution of Rights: Human Dignity and American Values* (Cornell University Press) 211.



dignity is a separate human right, a catalogue of human rights,⁴⁸ or the very philosophical basis of all human rights.⁴⁹

Defining dignity may well be a futile task, as it is one concept but has many conceptions and many roles to play in international law. In fact, as Andorno has stated,⁵⁰ its primary meaning may merely be intrinsic value, but it has 'multiple functions, which operate at different levels'. McCrudden suggests that while scholars could continually debate the philosophical meaning of dignity, judges have, for the most part, overlooked philosophy and settled upon a case-by-case approach to determine if dignity has been violated. They come to different conclusions by emphasising different interpretations of dignity.⁵¹ In such circumstances, dignity might easily be extended to animals by favouring those interpretations that grant them dignity.

Universal Tenets of Dignity that May Apply to Animals

Christopher McCrudden has proposed a 'minimum core' of dignity by way of universal consensus, and lists its three components – firstly, every human being has an intrinsic worth; secondly, this intrinsic worth must be recognised and respected, necessitating an alteration in treatment that is inconsistent with respect for this intrinsic worth; and finally, the State exists for the sake of the individual human being and not vice versa.⁵² Thus, when applied to animals, the minimum core would simply say that they have an intrinsic worth, which must be recognised by everyone, and which must be respected and protected by the State.

A more detailed attempt to strip the concept of dignity of culture-specific context and distil it to a globally acceptable notion is made by Andrew Clapham, whose four postulates of dignity are further elaborated upon by McCrudden.⁵³ They are the prohibition of inhuman, degrading or humiliating treatment of a person by another; the autonomy accorded to individuals to freely pursue their choices and attain self-fulfilment; the protection of group identity and culture; and the creation of conditions so that individuals can meet their essential needs. Each of these has some bearing upon the way animal dignity can be perceived.

Freedom from torture and degrading or inhuman treatment is one of the most basic and inviolable human rights, considered non-derogatory even in times of emergency.⁵⁴ Its applicability to animals would go a long way in assuring their dignity and welfare. Demonstrating this approach, the Indian Supreme Court recently upheld a Governmental ban on the practice of *jalikattu* – a tradition where bulls were starved, beaten and forced to participate in races – saying that all living creatures possess an inherent dignity and an accompanying right to live peacefully, which encompasses their protection from physical abuse of various kinds. The Court has also stated that while it is common practice to distinguish human life from mere animal existence, that practice stems from an anthropocentric bias and disregards the intrinsic value of nonhuman animals.⁵⁵

Animals form a big part of human life at different levels – acting as pets and companions, beasts of burden, sources of entertainment, providers of food, and involuntary subjects of scientific experiments and genetic meddling. There is an urgent need to revolutionise the processes dealing with animals in order to minimise their pain

⁴⁸ Oscar Schachter (n 46) 853.

⁴⁹ Joel Feinberg, 'The Nature and Value of Rights' (1970) *Journal of Value Inquiry* 243, 252.

⁵⁰ Roberto Andorno, 'Human Dignity and Human Rights as a Common Ground for a Global Bioethics' (2009) 34 *Journal of Medicine and Philosophy* 223.

⁵¹ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 *European Journal of International Law* 655.

⁵² *ibid* 679.

⁵³ *ibid* 686.

⁵⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4.

⁵⁵ *Animal Welfare Board of India v A Nagaraja and Others*, Civil Appeal No 5387 of 2014, Decided on 07 May 2014.



and suffering. Temple Grandin has conducted excellent research in the field of domesticated animals' welfare, and her extensive proposals of reform include effective solutions to make living conditions for these animals more humane, training staff to sensitively handle animals, and ending practices that cause unnecessary physical harm and death. The goal is to minimise not just the physical suffering of animals, but also any mental distress.⁵⁶

This also in with Clapham's fourth postulate of dignity, namely, the creation of conditions so that *animals can meet their basic needs*. Most animals have a basic litany of goals in life – to be adequately fed, to be of robust health, and to be able to reproduce. Animals in captivity are often stripped of these basic rights, forced to live in cramped conditions that cause an abundance of health problems, and often malnourished.⁵⁷ In order to preserve these animals' dignity, their environment must allow them at least a modicum of movement and their diet should be sufficient to keep them healthy.

The second and third meanings of dignity as defined by Clapham do not have as clear an application to animals as the ones already mentioned, but scientific progress in understanding nonhuman animals could help expand the area in the future. While studies have proven the *existence of culture* in animals,⁵⁸ there has been no evidence so far linking its presence or absence to the intrinsic worth of the animals.

The *dignity in animals' autonomy*, on the other hand, could exist, albeit in a crude fashion. It can be simply understood as their freedom to live their lives and perform their species-specific functions, while

keeping human intervention in their daily affairs minimal. Since animals have, so far, not been found to have very complex thought processes, it would not make sense to accord them the rights that are given to humans capable of complex thought processes – such as the right to vote. Indeed, even children, who possess similarly low cognitive abilities, do not have such rights.

Oscar Schachter has, in his own conception of dignity, made mostly the same points as Clapham above. However, he added *another element to human dignity – responsibility*, which can mean both respect for a person's autonomy as well as consequences for his autonomous actions.⁵⁹ Humans' dignity may well stem from their responsibility, but this does not apply to the mentally disabled and children, whom the law absolves of responsibility in most criminal and civil situations. It would therefore not be a far stretch to extend the same exception to animals as well.

Dignity and Nonhuman Animals' Right to Life

Perhaps the most widely debated aspect of animal dignity would be its potential effect on animals' right to life. Ruth Cigman, in an attempt to assess the morality of animal slaughter, has proposed that human suffering and animal suffering are unequal, and that death is a misfortune for humans alone.⁶⁰ She claims that while animals feel pain and therefore must be protected from cruelty, they do not feel their life as strongly as humans do. They do not hold any fear of death or illness and consequently, their painless killing would not be immoral. Kyle Ash, however, dismisses her view as being steeped in metaphysical privilege and lacking any objective criteria for conferring such a legal right to humans alone.⁶¹

⁵⁶ Temple Grandin, 'Animal Welfare and Society Concerns Finding the Missing Link' (2014) 98 Meat Science 461.

⁵⁷ *ibid.*

⁵⁸ Michael Balter, 'Strongest Evidence of Animal Culture Seen in Monkeys and Whales' (*Science* AAS 2013) <<http://news.sciencemag.org/brain-behavior/2013/04/strongest-evidence-animal-culture-seen-monkeys-and-whales>> accessed 10 April 2015.

⁵⁹ Oscar Schachter (n 46) 851.

⁶⁰ Ruth Cigman, 'Death, Misfortune and Species Inequality' (1981) 10 Philosophy and Public Affairs 47.

⁶¹ Kyle Ash (n 17) 210-11.



It could be argued that the animal kingdom is structured in a way that the predators hunting the prey forms a part of nature's cycle. If the animals' dignity is maintained throughout their existence and their death is painless, then the taking away of their life need not be considered immoral, so long as the animal was not killed to serve no purpose. This does not relate to species that are on the brink of extinction, as certain legal measures will certainly have to be implemented for their protection, but that would not in itself grant them an inherent right to life.

It can also be argued that nonhuman primates, who are much closer to humans than other animals in the Linnaean classification system, can be accorded a right to life. The beauty of the dynamic nature of law is that this has already been done in Argentina, where a Court of Appeals ordered the release of an orang-utan languishing in a zoo with the writ of *Habeas Corpus*.⁶² A similar case has been heard in the New York Supreme Court, where the fate of two chimpanzees used for research by the Stonybrook university was decided with the filing of a *Habeas Corpus* writ. While the judge ultimately ruled that she was bound by an earlier precedent denying a nonhuman primate personhood, she urged an appeal on the matter to a higher court, saying that public policy and principle play a greater role in determining 'personhood' than mere biology. She also ordered the release of the two chimpanzees and clarified that humans could bring cases on behalf of nonhuman animals without showing any proof of personal injury.⁶³ While the case achieved a modest amount of success, the ultimate question of the chimps' personhood, to be

determined in a future appeal, will either establish the Argentinean court's ruling as a lone exception, or mark it as the beginning of a new era in animal rights.

4. CONCLUSION

Science has not yet managed to answer all the questions surrounding human and nonhuman existence, but its advances so far have helped bring the two closer than philosophers and legal scholars could have ever imagined, in terms of genetic makeup, intelligence and emotions. The concept of dignity, however, has been unable to evolve in keeping with our new understanding of life. The idea that humanity alone possesses dignity is an entirely theoretical concept, paralleling other theoretical notions that have enjoyed widespread popularity in the past – such as those alleging the inferiority of women and 'savages'. Much like those previously popular notions, it also rests on a fundamentalist idea rather than any actual scientific grounding, leaving plenty of scope for detractors of animal dignity to produce new grounds to preserve the *status quo*. But every reason supplied for this speciecism fails either because it is purely metaphysical, like religion's reliance on an ontological leap, or because of its inability to find any one trait or ability that is exclusive to humans. Exceptions are inadvertently created for children, the mentally disabled, sufferers of genetic abnormality, and yet these exceptions are not extended to nonhuman animals.

But when dignity is condensed to its most basic, universally accepted core, it becomes as crucial to the existence of animals as it does for those of humans. It is notable that some legal systems are already beginning to recognise animal dignity, in so far as it relates to minimising their suffering and ensuring that they are not ill-treated for amusement. This has generated hope that, once humans are able to cast off the shackles of their anthropocentric view of rights, dignity and life, they will finally be able to

⁶² 'Argentine Appeals Court Rules Orangutan Has Right to Habeas Corpus' (*Non Human Rights Project* 2014) <<http://www.nonhumanrightsproject.org/2014/12/22/argentine-appeals-court-rules-orangutan-has-right-to-habeas-corpus/>> accessed 26 April 2015.

⁶³ Steven M Wise, 'That's One Small Step for a Judge, One Giant Leap for the Nonhuman Rights Project' (*Non Human Rights Project* 2015) <<http://www.nonhumanrightsproject.org/2015/08/04/thats-one-small-step-for-a-judge-one-giant-leap-for-the-nonhuman-rights-project/>> accessed 04 October 2015.



recognise and respect the dignity of nonhuman animals.

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