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Animal Rights and Rhetorical *Topoi*

Tero Kivinen*

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1 Introduction

In this paper, I'll argue that, among other things, animal rights can be understood as a kind of rhetoric that seeks to persuade people into improving the societal status of animals. In section 2, I briefly describe how the concept of animal rights ought to be understood for the purposes of my argument. In section 3, I outline what rhetoric means and how exactly audiences are persuaded by using its toolkit. I then examine the way animal rights discourse functions in rhetorical terms before moving on to certain problems associated with the logical type of argumentation generally used in animal rights advocacy. In section 4, I classify the rhetoric of animal rights further as political oratory. Having briefly discussed the so-called 'topics' or *topoi* of rhetorical theory, I sketch three lines of argument that might better suit the future-oriented nature of animal rights discourse. Finally, in section 5, I present some concluding remarks about rhetorical theory's potential for improving the effectiveness of the animal rights movement.

2 Animal Rights

Let me begin by defining what I mean by animal rights. 'From its outset,' writes Joyce Tischler, 'the animal law movement has struggled with the distinction between *rights'*, on the one hand, 'and *welfare'*, on the other, 'and the resulting choice of which concept to spend one's time promoting.'[1] Many now believe the distinction to be a bit outdated. Indeed, these positions are hardly extremes in that animals simply couldn't have it any worse than animal welfare (or better than animal rights, for that matter). Nor does it seem true that intermediate or otherwise mixed positions simply couldn't exist[2]. Be that as it may, the dichotomy does provide a good starting point for making sense of normative claims made on behalf of animals and thus arguably still remains, at least in some ways, 'at the center of modern animal advocacy'[3].

2.1 Animal Welfare

To outline first the contrasting position ever so briefly, the animal welfare view holds that it's permissible for humans to use animals for a variety of purposes as

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1 Joyce Tischler, 'A Brief History of Animal Law, Part II (1985 – 2011)' (2012) 5 Stanford Journal of Animal Law and Policy 27, 48 (emphasis added). See also 52; Joyce Tischler, 'The History of Animal Law, Part I (1972 – 1987)' (2008) 1 Stanford Journal of Animal Law and Policy 1, 26, 28.

2 For a so-called 'intrinsic value' position, see Elisa Aaltola and Birgitta Wahlberg, 'Nonhuman Animals: Legal Status and Moral Considerability' (2015) 38(4) Retfærd 83. For so-called 'new welfarism', see eg Gary L Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press 1996).

3 Gary L Francione and Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (Columbia University Press 2010) xii.

long as they're spared 'unnecessary' suffering and treated 'humanely' (whatever that means)[4]. Put differently, '[a]nimal welfare proponents believe that humans can interact with animals in entertainment, industry, sport and recreation, … but that the interaction should include provisions for the proper care and management for all animals involved.'[5] Animal welfare, then, is not so much about *whether* we use animals as it is about *how* we use them.

The above descriptions do provide some insight as to what animal welfare is about in rather general terms, but they don't go particularly far in terms of explaining *why* the position looks the way it does. *Why* is it alright to use animals instrumentally provided certain safeguards are in place? As far as I can see, at least two explanations have been offered in literature thus far. The first one explains the inner workings of animal welfare theory in terms of moral philosophy. The other one explains it from a more economic point of view.

Starting with the moral explanation, Robert Garner argues that '[t]he idea of animal welfare recognizes the moral standing of animals but it does not, of course, postulate moral equality. Rather, its central feature is an insistence that humans are morally superior to animals. Animals matter, but not as much as humans.'[6] Garner commends Robert Nozick for providing 'a concise but admirably effective definition of animal welfare when he writes that it constitutes "utilitarianism for animals, Kantianism for people."'[7] For Nozick, that phrase represented the idea that whereas the happiness of all living beings—animals included—was something to be maximized in society, humans enjoy certain immunities against the sheer utilitarianism of this business of happiness-maximization in that they 'may not be used or sacrificed for the benefit of others'[8]. Humans, in other words, enjoy certain kinds of base protections that trump appeals to the greater good. Animals, on the other hand, 'may be used or sacrificed for the benefit of other people or animals *only if* those benefits are greater than the loss inflicted'[9]. Put differently, the fate of animals is to be judged according to utilitarian considerations and such considerations alone.

Most contemporary legal regulation involving animals arguably conforms to the language of animal welfare. The moral explanation outlined above essentially suggests that we can satisfactorily explain the practical outcome of such regulation in terms of moral philosophy; utilitarianism, to be precise. Whatever the law happens to say in the abstract or prohibit or permit in practice may thus be assumed to result in an optimal distribution of pains and pleasures, or satisfied and frustrated interests, depending a bit on what school of utilitarianism one subscribes to. The weakness of this explanation, of course, is that much is indeed left to be assumed. Given the sheer amount of individuals (both humans and animals) involved, it's extremely unlikely one could ever be

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4 See ibid ix.

5 Animal Welfare Council, 'Welfare vs. Rights' <https://www.animalwelfarecouncil.org/?page_id=16> accessed 30 September 2020.

6 Robert Garner, 'Animal Welfare: A Political Defense' (2006) 1 Journal of Animal Law and Ethics 161, 163.

7 ibid.

8 Robert Nozick, *Anarchy, State, and Utopia* (Blackwell 1999) 39.

9 ibid.

able to accurately account for everyone's—and I do mean *everyone's*—pains, pleasures, or other relevant interests[10]. And so we assume, since that's the best we can do, that the law both reflects and enforces utilitarian philosophy when it comes to the treatment of animals.

On the other hand, we could also explain animal welfare in more, shall I say, economic terms. Gary Francione, for one, has argued that certain key terms of animal welfare theory, such as 'unnecessary' suffering and 'humane' treatment, are to be 'interpreted in light of the legal status of animals as property, the importance of property in our culture, and'—and this is probably the most pertinent point—'the general tendency of legal doctrine to protect and to maximize the value of property.'[11] According to this view, animal welfare is essentially about wealth maximization, and the law consequently proscribes 'only those uses of animals that are not "efficient" or that decrease overall social wealth.'[12] In other words, animal welfare legislation (allegedly, at any rate) reflects an ideology according to which society ought not intervene in the way property owners make use of their property unless said use is clearly wasteful.[13]

The aforementioned points of view are not intended as an exhaustive list of reasons for the animal welfare position. Both the law as it is and the law as it perhaps ought to be may surely be explained and justified in numerous ways. The moral explanation is grounded in conceptions of right versus wrong, good versus bad, with animal welfare regulation, whether *lata* or *ferenda*, falling on the morally acceptable side of the boundary. The economic explanation, in turn, separates the efficient from the inefficient with similar results. I'll have more to say about pursuing the same goal using different lines of argument later in section 4. For now, and as distasteful as the proverb might sound, it's good to remember there's always more than just one way to skin a cat.

2.2 Animal Rights

Against the animal welfare position, its moral explanation in particular, the animal rights view appears as a polar opposite of sorts. At stake is no longer *how* we use animals but the fact that we use them in the first place. And if animal welfare, according to Garner at least, meant 'utilitarianism for animals, Kantianism for people', it could well be argued that animal rights means Kantianism for both.

Tom Regan, whose theory I take to be the most well known and exemplary one in the offering, once argued that all those who satisfy what he calls the 'subject-of-a-life criterion'—those who, among other things, 'have beliefs and desires', 'perception, memory, and a sense of the future, including their own future', 'an emotional life together with feelings of pleasure and pain' and 'an individual welfare in the sense that their experiental life fares well or ill for them, logically independently of their utility for others and logically independently of

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[10] See Tom Regan, *The Case for Animal Rights* (University of California Press 1983) 221–22.

[11] Gary L Francione, *Animals, Property, and the Law* (Temple University Press 2007) 4–5.

[12] ibid 5.

[13] See Darian M Ibrahim, 'The Anticruelty Statute: A Study in Animal Welfare' (2006) 1 Journal of Animal Law and Ethics 175, 187, see also 182–83.

their being the object of anyone else's interests'[14]—are valuable in and of themselves and are to be treated 'in ways that respect their inherent value'[15]. Regan's view is reminiscent of Kant, who believed that 'the human being, and in general every rational being, exists as an end in itself', that is, 'something that may not be used merely as means'[16]. Their main difference? Kant saw animals as falling short of the requirement of rationality, from which it followed that humans had indirect duties at best with regard to them[17]. Conversely, for Regan, at least all 'mentally normal mammals of a year or more' make the cut[18]. So, to summarize, the animal rights position holds that at least some animals are valuable in a way that they may not be used as mere means or resources for the satisfaction of other people's interests.

Yet just like animal welfare theory could be explained in terms of moral philosophy and more economic considerations (and there may well be other explanations to be discovered still), so, too, can the concept of animal rights be understood in at least two different meanings. The first one, already outlined in the preceding paragraph, turns on what animals are owed as a matter of morality or justice. Understood in this way, animal rights is essentially about applying moral theory to the particular case of animals. What moral theory, you ask? The kind that says animals have inherent value and are to be treated in ways that recognize and respect that value.

Should we adopt this view, and many do, we'd be right to deny the label 'animal rights' from anything falling short of the aforementioned criteria. Most if not all contemporary legislation, for example, would not meet the requirements since the implication of such regulation seems to be that *our* needs, *our* interests come first. As such, the conclusion would be that there's either very little animal rights legislation in the world today or perhaps none at all.

On the other hand, it's possible to understand animal rights in a more, shall we say, *legal* meaning. Visa Kurki, for instance, has convincingly argued that animals already hold legal rights, at least according to the so-called interest theory of rights[19]. This kind of an understanding of rights turns more on proper classification of protections as well as consistency in the way we use certain terms and concepts. What counts as a 'right' for humans should count as a right for animals, too. From this perspective, and in stark contrast to the other view entertained earlier, it would appear animals already enjoy plenty of rights under

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14 Regan (n 10) 243.

15 ibid 248 (emphasis omitted), see also 249, 264–65.

16 Immanuel Kant, *Groundwork for the Metaphysics of Morals* (Allen W Wood ed and tr, Yale University Press 2002) 45–46 (emphasis omitted), see also 47.

17 See Immanuel Kant, *Lectures on Anthropology* (Allen W Wood and Robert B Louden eds, Robert R Clewis and others trs, Cambridge University Press 2012) 17, 348. See also Immanuel Kant, *Anthropology from a Pragmatic Point of View* (Robert B Louden ed and tr, Cambridge University Press 2006) 15.

18 Regan (n 10) 78.

19 See Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019) 61, 65–66, 71, 201. See also Visa AJ Kurki, 'Why Things Can Hold Rights: Reconceptualizing the Legal Person' in Visa AJ Kurki and Tomasz Pietrzykowski (eds), *Legal Personhood: Animals, Artificial Intelligence and the Unborn* (Springer 2017) 71, 80–81.

extant law. Of course, their rights are often much more modest than the ones we humans have.[20]

Just to make clear, from here on when I speak of animal rights in this paper, I'll speak of animal rights understood according to the former of the two meanings described above. I'll thus attach the label to any and all normative statements, whether already legally binding or not, that imply in one way or another that animals are valuable in and of themselves and must not be treated in ways that imply that they aren't.

3 The *Logos* of Animal Rights

Bearing in mind what I just said about animal rights, the concept could probably be approached from an almost endless range of different perspectives, and I've no doubt most such perspectives would have something quite interesting to say about them. The vantage point from which I'll be looking at animal rights in this paper, however, won't be legal theory, moral philosophy, political theory, or any of the usual suspects. I'll be looking at them through the lens of *rhetoric*.

3.1 Rhetoric

Much like the phrase 'animal rights', the word 'rhetoric' could be given a number of definitions none of which could necessarily claim to reach all the way into the very essence of the thing. In fact, it often appears that, as Richard Whately once wrote, people 'seem not so much to have disagreed in their conceptions of the nature of the same thing, as to have had different things in view while they employed the same term.'[21] It shouldn't come as a huge surprise, then, that the concept of rhetoric has been subject to many an understanding and definition over the past couple of millennia.

For starters, we could consider rhetoric an art or a skill, something to be used in a practical setting for the purpose of convincing an audience to think or act (or *not* to think or act) in some specific way. Indeed, '[r]hetoric', writes Sam Leith, 'is, as simply defined as possible, the art of persuasion: the attempt by one human being to influence another in words. It is no more complicated than that.'[22] Though he subsequently entertains other meanings as well, he's quick to remind the reader that this practically-oriented definition of the art should be considered the primary one[23]. Leith is in pretty good company in this regard, for something along these lines was also the first meaning of the art established by Plato's character Socrates in the dialogue *Gorgias*:

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[20] See Visa Kurki, 'Eläinten oikeudet ja oikeussubjektius' in Mai Kivelä, Veikka Lahtinen and Laura Uotila (eds), *Uusi eläinlaki* (Into 2017) 144–45.

[21] Richard Whately, *Elements of Rhetoric* (Southern Methodist Publishing House 1861) 15.

[22] Sam Leith, *Words Like Loaded Pistols: Rhetoric from Aristotle to Obama* (Basic Books 2012) 1.

[23] ibid 2.

> Socrates: *Now* I think you've come closest to making clear what craft you take oratory to be, Gorgias. If I follow you at all, you're saying that oratory is a producer of persuasion. Its whole business comes to that, and that's the long and short of it. Or can you mention anything else oratory can do besides instilling persuasion in the souls of an audience?
>
> Gorgias: None at all, Socrates. I think you're defining it quite adequately. That is indeed the long and short of it.[24]

But of course, there are other meanings as well. On the other hand, it's possible to conceive of rhetoric as a 'science', if you will, a 'faculty of observing in any given case the available means of persuasion.'[25] So rather than themselves use whatever tools the art provides in an attempt to persuade, a practitioner of rhetoric may also use the art more as a theoretical framework for making sense of and evaluating instances of rhetoric as used by others. (Which, I might add, is more or less the way rhetorical theory is being used in this paper.)

Finally, and I'll be brief here, it must be admitted that the word 'rhetoric' has historically carried and continues to carry with it some rather unsavory connotations in the sense that people often not only use it to signify 'flowery, ornamental speech laden with metaphors and other figures of speech', but something far more sinister: 'empty, bombastic language that has no substance', 'spin', even 'deception of the kind we associate with the selling of used cars.'[26] So '[w]hen a politician calls for "action, not rhetoric,"' write Jim Kuypers and Andrew King, 'the meaning seems clear; rhetoric denotes hollow words and flashy language. It also connotes associations with deceit and tricks that mask truth and forthrightness.'[27]

Whereas there certainly exist plenty of completely legitimate (not to mention morally impeccable) ways of making use of rhetoric in everyday life, the charge of flattery remains a staple criticism levelled against the art. This, then, is yet another meaning that has traditionally been associated with rhetoric. (Or perhaps this third meaning is more an offshoot of the first meaning described above than an independent one; all rhetoric_3 is rhetoric_1, but not all rhetoric_1 is rhetoric_3.)

In light of the aforementioned definitions (or rather descriptions?) of rhetoric, I'd be willing to argue that animal rights can be meaningfully understood as a kind of rhetoric, primarily in the first meaning of the word discussed above. That is, animal rights discourse, to quote Leith out of context, represents an 'attempt by one human being to influence another in words', only this time it's actually quite a large collective of people trying to influence another, even larger collective of people. I'll have more to say about what *kind* of rhetoric animal rights discourse is in the next section. For now, I'll satisfy myself with the view

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[24] Plato, 'Gorgias' in Plato, *Complete Works* (John M Cooper and DS Hutchinson eds, Donald J Zeyl tr, Hackett Publishing Company 1997) 452d–453a. Later in the dialogue, Socrates famously advances another, far less flattering account of what the art of persuasion is all about.

[25] Aristotle, *Rhetoric* (W Rhys Roberts tr, Dover Publications 2004) 1355b.

[26] Sonja K Foss, *Rhetorical Criticism: Exploration and Practice* (5th edn, Waveland Press 2018) 3.

[27] Jim A Kuypers and Andrew King, 'What is Rhetoric?' in Jim A Kuypers (ed), *Rhetorical Criticism: Perspectives in Action* (Lexington Books 2009) 1.

that animal rights discourse is about persuading an audience to first *think* about animals in a very specific way—that they have inherent value and, consequently, rights—, then *act* on that belief.

3.2 Pisteis

So, if rhetoric is indeed the art or producer of persuasion, then how exactly is persuasion produced? What are the specific techniques of rhetoric that end up 'instilling persuasion in the souls of an audience'?

Rhetorical theory has traditionally called such means of persuasion or proofs *pisteis* (singular *pistis*), and they come in two varieties: technical (*pisteis entechnoi*) and non-technical (*pisteis atechnoi*). 'Of the modes of persuasion', writes Aristotle, 'some belong strictly to the art of rhetoric and some do not. By the latter'—the *pisteis atechnoi* or non-technical proofs—'I mean such things as are not supplied by the speaker but are there at the outset—witnesses, evidence given under torture, written contracts, and so on. By the former'—the *pisteis entechnoi* or technical proofs—'I mean such as we can ourselves construct by means of the principles of rhetoric. The one kind has merely to be used, the other has to be invented.'[28]

Non-technical proofs, in other words, do not 'come about through [the orator's] agency'[29]—they're already there, waiting on the shelf, as it were, the implication being that they essentially speak for themselves. Moreover, it may well be that their use is limited to the kind of judicial oratory that occurs in courtrooms[30]. 'The technical *pisteis*, on the other hand,' writes David Mirhady, 'had to be composed completely by the orator.'[31] These are the kind of proofs that rhetoric is truly the art of, and what rhetoric itself is consequently really about.

The *pisteis entechnoi* are further divided into three kinds often referred to as *ethos*, *pathos* and *logos*. 'Persuasion', writes Aristotle, 'is achieved by the speaker's personal character when the speech is so spoken as to make us think him credible. We believe good men more fully and more readily than others'.[32] This is *ethos*, also known as the ethical appeal, that is, an appeal to the speaker's character. 'Secondly,' he says, 'persuasion may come through the hearers, when the speech stirs their emotions', for '[o]ur judgements when we are pleased and friendly are not the same as when we are pained and hostile.'[33] This is *pathos*, the appeal to the audience's emotions. 'Thirdly,' and perhaps most importantly given our present purposes, 'persuasion is effected through the speech itself when we have proved a truth or an apparent truth by means of the persuasive

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[28] Aristotle (n 25) 1355b.

[29] David Mirhady, 'Non-Technical *Pisteis* in Aristotle and Anaximenes' (1991) 112(1) The American Journal of Philology 5, 6.

[30] ibid. The concept of judicial (as well as other forms of) oratory will be discussed in section 4.

[31] ibid.

[32] Aristotle (n 25) 1356a.

[33] ibid.

arguments suitable to the case in question.'[34] This is *logos*, the appeal to the audience's reason. 'Logos, ethos, and pathos', as summarized by Jay Heinrichs, 'appeal to the brain, gut, and heart of your audience. While our brain tries to sort the facts, our gut tells us whether we can trust the other person, and our heart makes us want to do something about it. They form the essence of effective persuasion.'[35]

As far as I can see, animal rights discourse employs the third and final proof most of all. The animal rights advocate tries to persuade an audience primarily by appealing to their reason through logical arguments, not so much by emphasizing elements of their own character or by toying with their audience's emotions. This should come as no surprise given the position's roots in moral philosophy. Regan's argument, for one, is *logos* through and through, and though him being an academic philosopher probably gives his words some added weight, and though the argument itself may find emotional resonance in at least some readers, it is reason, first and foremost, that forms the foundation of his case for animal rights[36].

Though *logos* often translates to the logical appeal[37] and is generally about logic in every way imaginable, rhetoric doesn't contain its own theory of logical argument. Rather, the art is parasitic on other fields of knowledge where rules concerning valid and sound arguments have been developed more fully[38]. And though the centerpiece of rhetorical *logos* is what Aristotle calls the *enthymeme*—'a sort of syllogism'[39], often (but not necessarily) in truncated form[40]—, at the end of the day, it's propositional logic and syllogisms what *logos* is ultimately all about.

The syllogism, write Robert and Susan Cockcroft, 'first used by Aristotle and meaning "a putting together of two propositions", denotes the deliberate, rule-based and formalised employment of a deductive mode of argument.'[41] The classical, categorical syllogism—which, as far as rhetoric goes, is the only syllogism the orator ought to worry about—is about linking together propositions about relationships that hold between different categories as a way of establishing new, previously unknown connections between said categories. The standard form contains three propositions mentioning a total of three so-

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[34] ibid.

[35] Jay Heinrichs, *Thank You for Arguing: What Cicero, Shakespeare and the Simpsons Can Teach Us About the Art of Persuasion* (Penguin Books 2017) 40.

[36] See Tom Regan, *The Case for Animal Rights* (University of California Press 2004) xliii.

[37] See eg Edward PJ Corbett and Robert J Connors, *Classical Rhetoric for the Modern Student* (Oxford University Press 1999).

[38] Aristotle himself considered rhetoric a 'counterpart of Dialectic'. Aristotle (n 25) 1353b.

[39] ibid 1355a.

[40] See Christof Rapp, 'Aristotle's Rhetoric', *The Stanford Encyclopedia of Philosophy* (Spring edn, 2010) <https://plato.stanford.edu/archives/spr2010/entries/aristotle-rhetoric/> accessed 30 September 2020.

[41] Robert Cockcroft and Susan Cockcroft, *Persuading People: An Introduction to Rhetoric* (2nd edn, Palgrave Macmillan 2005) 122.

called terms with each proposition containing two such terms—no more, no less[42]. Like:

All B are C.
All A are B.
∴ All A are C.

Or, using more down-to-earth terms:

All men are mortal.
Socrates is a man.
∴ Socrates is mortal.

3.3 The Logos *of Animal Rights*

But what would an argument for animal rights look like in similar form? The way I see it, animal rights discourse has always been about justifying the desired conclusion—rights for animals—not by reference to what would be appropriate or expedient for us human beings, but rather by reference to the animals themselves. More specifically, the justification for animal rights tends to turn on what kind of capabilities animals possess. We saw something like this already above with Regan, who required individuals to be what he termed 'subjects-of-a-life' in order to have inherent value. In syllogistic form, the chain of thought would look something like this:

All subjects-of-a-life have inherent value.
Animals[43] are subjects-of-a-life.
∴ Animals have inherent value.

However, Regan's subject-of-a-life criterion, as we saw, is a rather complicated one. Far more commonly the bar is set at mere *sentience*, typically (though not exclusively) defined as 'the capacity to suffer and/or experience enjoyment'[44]. Francione, for instance, has explicitly argued against the use of more demanding criteria, concluding that

> Whether nonhumans have minds that are similar or identical to ours may be interesting from a scientific perspective, but it is wholly irrelevant from a moral

[42] See Terence Parsons, 'The Traditional Square of Opposition', *The Stanford Encyclopedia of Philosophy* (Summer edn, 2017) <https://plato.stanford.edu/archives/sum2017/entries/square/> accessed 30 September 2020.

[43] Bear in mind Regan's qualifications concerning the term—see n 18.

[44] Peter Singer, *Animal Liberation* (Avon Books 1975) 9.

> perspective. If we take nonhuman interests seriously, we have no choice but to acknowledge that *only sentience is relevant*.[45]

In a similar vein, Jeremy Bentham once famously wrote that 'the question is not, Can they *reason?* nor, Can they *talk?* but, Can they *suffer?*'[46] Likewise, fellow utilitarian Peter Singer considered 'the limit of sentience … the only defensible boundary of concern for the interests of others.'[47] So, going by the seemingly more popular criterion of sentience, the argument for animal rights would take the following form:

All sentient beings have rights.
Animals are sentient beings.
∴ Animals have rights.

The style of argument outlined above seems intuitively appealing, and many—perhaps most—animal rights advocates still use it today. There's but one problem with the argument: it doesn't persuade. Well, it does persuade with regard to *some* animals, but not nearly as many as one would want to.

Note that this is not a matter of *validity*. In that regard, the argument fares quite well. If—*if*—both premises actually hold water—sentient beings really do have rights, and animals really are sentient beings—, then arriving at the designated conclusion is not a matter of personal opinion but of logical necessity. The problem is not that the argument would be invalid. The problem is that it is *unsound*.

On the one hand, some rather optimistic claims have been expressed in both literature and legislation concerning the distribution and prevalence of sentience in the animal kingdom. An oft-cited example would be article 13 of the Treaty on the Functioning of the European Union, which provides that

> In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, *since animals are sentient beings*, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.[48]

Likewise, biologist Marc Bekoff has argued in favor of a Universal Declaration on Animal Sentience. 'We surely are not exceptional or alone in the arena of sentience', he writes, and continues:

> There are sound biological reasons for recognizing animals as sentient beings. We need to abandon the anthropocentric view that only big-brained animals such as

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45 Gary L Francione, 'Taking Sentience Seriously' (2006) 1 Journal of Animal Law and Ethics 1, 17 (emphasis added).

46 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1907) 311.

47 Singer (n 44) 8–9.

48 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326 (emphasis added).

> ourselves, nonhuman great apes, elephants, and cetaceans (dolphins and whales) have sufficient mental capacities for complex forms of sentience and consciousness.[49]

However, while (or perhaps *since*) we may never be able to conclusively prove the sentience of each and every animal species, some advocates have resorted to the so-called precautionary principle in an attempt to reverse the burden of proof. The Finnish Animal Rights Law Society, for instance, is a group of lawyers who have drafted and proposed an amendment to the Finnish Constitution which, if enacted, would enshrine animal rights at the highest level of the Finnish legal system. Pursuant to section 1 of their proposal, '[s]entient animals are invidivuals [sic] whose fundamental rights and welfare requirements must be fully respected by humans. All animals shall be presumed to be sentient unless otherwise can be determined.'[50] The latter sentence invokes the precautionary principle in all but name. An express mention of the principle can be found in the more detailed rationale attached to the section:

> Animal research has demonstrated that sentience is widespread among various animal species. However, given the current state of research, it is impossible to make a precise distinction between sentient and insentient species. There is some uncertainty especially in assessing the sentience of invertebrate species. The delimitation of sentient and insentient species is constantly changing and thus, when determining individual sentience in practice, the precautionary principle has to be applied for the benefit of the animal. According to the precautionary principle, all animals are considered to be sentient unless there is evidence to the contrary. Due to the scientific uncertainty, the provision assumes the sentience of animals. Thus, lack of scientific certainty cannot be used as an excuse for neglecting animal rights provided by law.[51]

On the other hand, and as suggested above, there is some uncertainty as to whether all animals are sentient after all. Whether fish, for example, can experience pain was questioned as recently as 2016. 'What then do noxious stimuli feel like to a fish?' asks Brian Key. 'The evidence best supports the idea that they don't feel like anything to a fish.'[52] And whereas the 2012 Cambridge Declaration on Consciousness concluded that nonhuman animals, too, possess the kind of equipment required for generating consciousness, the taxa mentioned expressly—mammals, birds, octopuses—were all relatively uncontroversial if not well-established cases[53].

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[49] Marc Bekoff, 'A Universal Declaration on Animal Sentience: No Pretending' (*Psychology Today*, 20 June 2013) <https://www.psychologytoday.com/intl/blog/animal-emotions/201306/universal-declaration-animal-sentience-no-pretending> accessed 30 September 2020.

[50] 'Proposal: Fundamental Rights for Animals' (*Eläinten vuoro*) <https://www.elaintenvuoro.fi/english/> accessed 30 September 2020.

[51] ibid.

[52] Brian Key, 'Why fish do not feel pain' (2016) 3(1) Animal Sentience 1, 17.

[53] 'The Cambridge Declaration on Consciousness' (7 July 2012) <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf> accessed 30 September 2020.

In somewhat similar fashion, when the Scientific Panel on Animal Health and Welfare of the European Food Safety Authority was asked to 'consider the scientific evidence for the sentience and capacity of all invertebrate species used for experimental purposes and of fetal and embryonic forms to "experience pain, suffering, distress or lasting harm"'[54], the results were mixed. In its opinion, the panel established three categories in which studied taxa would then be placed depending on the quality of evidence of their sentience. For animals classified in Category 1, '[t]he scientific evidence clearly indicates that those groups of animals are able to experience pain and distress, or the evidence, either directly or by analogy with animals in the same taxonomic group(s), are able to experience pain and distress.' In category 2, the case was the opposite: such animals were clearly *not* able to experience such negative sensations. Finally, Category 3 was to include such taxa where there was some evidence, but not enough to place them in either aforementioned category.[55]

Some taxa were subsequently recommended for protection while others weren't. Cyclostomes, all cephalopods, and all decapods were deemed to fall within Category 1 and thus deserve protection[56]. Tunicates, on the other hand, were placed in Category 3 and denied protection at present[57] whereas the panel was of the opinion that for land gastropods such as snails and slugs, '[t]he case for a substantial degree of awareness would appear to be weak.'[58] It followed that land gastropods were considered to belong in Category 2[59]. As far as insects are concerned, it is noteworthy that social insects such as ants and bees were filed in Category 3 since '[t]hey might be aware to some extent but we have little evidence of a pain system.'[60] All other insects were placed squarely in Category 2[61].

It would seem, then, that the jury is still out as to whether all members of the animal kingdom are sentient even if many of them certainly or at least most likely are. Yet even if such uncertainties could be decided in the animals' favor by application of the precautionary principle, supporters of the principle have themselves warned against practical issues should the principle be invoked too lightly. Jonathan Birch calls it an 'extreme proposal' to 'assume an animal is sentient unless there is conclusive evidence to the contrary' since such a position could be considered unscientific, perhaps even anti-scientific. '[T]he science of animal sentience', he writes, 'would become more or less irrelevant to the scope of animal protection law', for 'it is hard to see how research could "prove otherwise" in any interesting case.' For him, 'it seems reasonable that some

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54 'Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to "Aspects of the biology and welfare of animals used for experimental and other scientific purposes"' (2005) 3(12) EFSA Journal 1, 2.

55 ibid 20.

56 ibid 14–17.

57 ibid 14–15.

58 ibid 15.

59 ibid 16.

60 ibid.

61 ibid.

evidential bar for sentience should have to be cleared' and, consequently, '[t]here cannot be a default presumption of sentience in all cases.'[62]

Arthur Reber, on the other hand, underlines the relevance of 'pragmatic cost-benefit analyses' should 'all species come under the umbrella of the legislative reach of animal rights laws.' 'If there is no demonstrable threshold for invoking the [Animal Sentience Precautionary Principle]', he writes, 'then the determinations must be carried out using a different framework, one more focused on pragmatic and practical considerations.'[63] Put differently, it's difficult to protect *everything* with equal force, and such a problem would be further compounded by the inclusion of taxa that are potentially dangerous or otherwise harmful to humans, other animals, or the environment[64].

A related concern has to do with the distribution of sentience (or any other capability, for that matter) *within* taxa. The views expressed above, both those in favor of animal sentience and those against it, have examined the question at the level of species or some other, higher taxa. Yet it is also possible to adopt a more micro-level perspective and ask whether all members of a taxon must necessarily conform to the paradigm.

This is precisely what the so-called 'argument from marginal cases' seeks to do with respect to human beings. The argument reminds us that whatever criteria we set for moral considerability or perhaps even significance, there are some human individuals, those 'marginal cases', that don't make the cut. And since we choose not to enforce the criteria when it comes to our dealings with such people, consistency demands we grant the same privileges to at least some animals as well.[65]

In other words, and according to Oscar Horta, '[t]he argument points out that there are individuals of a certain species who do not satisfy some criteria that members of this species are commonly assumed to satisfy'—such as all humans at certain phases of their lives[66]. It should be noted that this is in perfect conformity with what evolutionary theory predicts. Evolution rules out the possibility of timeless, immutable 'essences' at the core of species identity, 'for seldom', writes David Hull, 'is a property of any taxonomic value distributed both universally and exclusively among the members of a taxon. The properties of which are used to define the names of taxa do not respect taxonomic boundaries.'[67] No wonder biologists cannot even agree on the definition of species.

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62 Jonathan Birch, 'Animal sentience and the precautionary principle' (2017) 16(1) Animal Sentience 1, 5.

63 Arthur S Reber, 'What if all animals are sentient?' (2017) 16(6) Animal Sentience 1, 2.

64 ibid 3.

65 See Daniel A Dombrowski, 'Is the Argument from Marginal Cases Obtuse?' (2006) 23(2) Journal of Applied Philosophy 223, 224.

66 Oscar Horta, 'The Scope of the Argument from Species Overlap' (2014) 31(2) Journal of Applied Philosophy 142, 148–49.

67 David L Hull, 'The Effect of Essentialism on Taxonomy—Two Thousand Years of Stasis (I)' (1965) 15(60) The British Journal for the Philosophy of Science 314, 322. See also Marc Ereshefsky, *The Poverty of the Linnaean Hierarchy: A Philosophical Study of Biological Taxonomy* (Cambridge University Press 2004) 98, 102.

The rhetorical case for animal rights, then, seems to be founded on shaky ground. At the end of the day, a logical argument will only be as compelling as its weakest link. The *logos* of animal rights, as described above, requires both premises to be true for the argument to succeed. The first, major premise (eg 'all sentient beings have rights') turns on values instead of empirically discoverable facts, and whether or not such a premise is accepted will depend largely on the convictions of the rhetor's audience.

Even assuming the acceptance of the major premise, it would appear that the second, minor premise will be true only with regard to some parts of the animal kingdom. Some species are sentient, some probably aren't. And even when it comes to the former kinds of species, it remains an open question whether all such individuals ultimately are.

4 Animal Rights and Rhetorical *Topoi*

Whereas most human uses of animals tend to target species that probably have rights according to the animal rights view, I don't see why one couldn't (and perhaps *shouldn't*, either) pursue the same end results using different kinds of tools. And so, I propose the effectiveness of animal rights discourse could be further improved by a richer understanding of what are called 'topics' in rhetorical theory. Such topics would not only strengthen the case for protecting sentient animals, they would also largely circumvent the kind of problems associated with coverage as described in the previous section. Before I discuss these so-called topics in greater detail, however, I must first say a couple of words about what different kinds of rhetoric there are.

4.1 Branches of Oratory

Another important grouping of threes in rhetorical theory has to do with how instances of rhetoric can be divided into different categories depending on the context in which they occur as well as their purpose. Thus, we recognize three distinct genres of oratory: political (also known as deliberative), forensic (also known as judicial), and ceremonial (also known as epideictic).

'Political speaking', writes Aristotle, 'urges us to either do or not to do something'. 'Forensic speaking either attacks or defends somebody', and '[t]he ceremonial oratory of display either praises or censures somebody.'[68] Beyond this, the three genres also operate in different time. Political rhetoric always targets the future—'it is about things to be done hereafter that [the political orator] advises, for or against.' Judicial oratory (that is, courtroom rhetoric) concerns things that have already happened, and ceremonial oratory refers to virtue and vice in the present.[69]

Let's imagine for a moment that you're a writer or a speaker who has been handed a subject to write or talk about, but have not yet decided what exactly to say about it. Ancient rhetors were kind enough to bequeath to us a list of so-

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[68] Aristotle (n 25) 1358b.

[69] ibid.

called 'topics', 'an ancient set of pedagogical resources designed to help speakers and writers invent arguments for public debate.'[70] *Topos* (plural *topoi*) in Greek and *locus* (plural *loci*) in Latin, a topic is quite literally a 'place' where standard arguments could be found for just about any subject imaginable[71]. 'Thus', write Cockcroft and Cockcroft, 'a persuader might glance through the *topoi* for possible arguments, just as someone might run through a mental checklist when preparing for some activity or event.'[72]

Topics are further divided into the common and the special. Much like the name suggests, the common topics could be employed in most if not all situations due to their general nature. For present purposes, however, we're interested in just the special topics. By now, the reason for bringing up the tripartite division into political, forensic, and ceremonial rhetoric will become plain. The special topics are so called because they are specific to each branch of oratory. According to Aristotle,

> Rhetoric has three distinct ends in view, one for each of its three kinds. The political orator aims at establishing the *expediency* or the *harmfulness* of a proposed course of action; if he urges its acceptance, he does so on the ground that it will do good; if he urges its rejection, he does so on the ground that it will do harm; and all other points, such as whether the proposal is just or unjust, honourable or dishonourable, he brings in as subsidiary and relative to this main consideration. Parties in a law-case aim at establishing the *justice* or *injustice* of some action, and they too bring in all other points as subsidiary and relative to this one. Those who praise or attack a man aim at proving him *worthy of honour* or *the reverse*, and they too treat all other considerations with reference to this one.[73]

4.2 The Advantageous

Earlier in this paper, I argued that animal rights discourse can be understood as a kind of rhetoric that seeks to persuade an audience. And of what? *To do or not to do something with regard to the future.* The rhetoric of animal rights, then, falls primarily within the branch of political or deliberative oratory, and it is according to such standards that it ought to be evaluated.

Against this backdrop, the *logos* of animal rights discussed in section 3 appears even more out of place. That *logos*, it will be recalled, was primarily[74] about what animals are owed as a matter of morality or justice. *Justice demands this, therefore we should do that*. But morality and justice are hardly leading topics for the future-oriented business of political rhetoric. Matters of justice, right, and wrong belong more properly to the judicial oratory of the past. None of this is to suggest one shouldn't be allowed to appeal to such considerations at

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[70] David Fleming, 'Becoming Rhetorical: An Education in the Topics' in Joseph Petraglia and Deepika Bahri (eds), *The Realms of Rhetoric: The Prospects for Rhetoric Education* (State University of New York Press 2003) 94.

[71] See Corbett and Connors (n 37) 19.

[72] Cockcroft and Cockcroft (n 41) 82.

[73] Aristotle (n 25) 1358b (emphasis added).

[74] For some examples of human-interest arguments being appealed to alongside morality, see section 5.

all, of course; it's merely to suggest such considerations ought to be secondary to the more primary argument from expedience.

Likewise, considerations of morality, values, virtue, and vice are the bread and butter of epideictic rhetoric. 'The rhetoric of the present', writes Heinrichs, 'handles praise and condemnation, separating the good from the bad, distinguishing groups from other groups and individuals from each other. … It celebrates heroes or condemns a common enemy. It gives people a sort of tribal identity.'[75] But as satisfying as it might be to separate the virtuous from the vicious, chances are both will simply dig deeper into their respective trenches. For meaningful change, something other than tribalism is required.

It is my argument that animal rights discourse should become more heavily invested in the special topic of the advantageous and explore the possibility of furthering the interests of animals by reference to the corresponding interests of human beings. Garner once remarked how, '[a]long with the deep ecology movement, animal rights is the only cause that seeks to advance the interests of non-human species, *even when* these interests are in conflict with the significant interests of humans.'[76] This may not necessarily have to be so. 'It is a truism', he wrote, 'that improvements in animal well being are more likely to come about when human and animal interests are not in conflict.'[77] 'Even more likely to succeed', he continued,

> are those reforms improving the well being of animals we can identify which are beneficial to humans as a by-product. For example, focusing on the health and environmental consequences of factory farming would seem to be an astute tactical ploy.[78]

At a glance, human and animal interests may overlap at least in the context of human health, the environment, and what I'll call human rights for the time being. I'll now briefly sketch how each of these lines of argument might look like.

4.2.1 Human Health

Firstly, issues having to do with human health provide several opportunities for improving the societal status of animals. For example, in 2015, the International Agency for Research on Cancer evaluated the carcinogenity of meat consumption and concluded that red meat is 'probably carcinogenic to humans … based on limited evidence that the consumption of red meat causes cancer in humans and strong mechanistic evidence supporting a carcinogenic effect.'[79] The finding concerned mostly colorectal cancer, but also pancreatic cancer and

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75 Heinrichs (n 35) 29.

76 Garner (n 6) 169.

77 ibid.

78 ibid 170.

79 International Agency for Research on Cancer, 'IARC Monographs evaluate consumption of red meat and processed meat' (26 October 2015) 1 <https://www.iarc.fr/wp-content/uploads/2018/07/pr240_E.pdf> accessed 30 September 2020.

prostate cancer[80]. Processed meat fared even worse and was deemed carcinogenic 'based on sufficient evidence' of causing colorectal cancer, the risk increasing by 18% for each 50 grams consumed a day[81]. Though the nutritional value of red meat was duly noted, the director of the Agency was quoted as stating that '[t]hese findings further support current public health recommendations to limit intake of meat'[82].

According to another study published in 2015, 'recent evidence from the epidemiologic literature suggests that the increasing consumption of red meat, especially in its processed forms, may have adverse health effects'.[83] Whereas complete abstinence from meat was again noted to carry with it certain risks, especially 'if no animal-based foods at all are consumed'[84], increased intake of red and processed meat over long periods of time was linked with far more serious conditions: a potential 'increase in the risk of mortality, cardiovascular disease, certain forms of cancer such as colon cancer and type 2 diabetes.'[85] The study recommended more restrictive recommendations for consumption of red meat and even more so when it came to processed meat, insinuating the latter might be best to be avoided altogether[86].

A further study published in 2016 similarly underlined the potential link between meat consumption and an increased risk of death and of developing chronic illnesses[87]. 'Overall,' the author wrote, 'it is plausible to conclude, taking into account the available scientific evidence, that high consumption of red meat, and especially processed meat, is associated with the increased risk of several major chronic diseases and preterm mortality.'[88] Of some interest is the fact that the study also mentioned expressly the environmental burden associated with the meat industry[89].

Last but certainly not least, it would seem almost irresponsible to write about how our treatment of animals may have adverse effects on our on health in 2020 and not mention the COVID-19 pandemic. By now, it seems probable that the virus causing the disease originated in bats[90]. Though certainly not part of the

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80 ibid.

81 ibid.

82 ibid.

83 Evelyne Battaglia Richi and others, 'Health Risks Associated with Meat Consumption: A Review of Epidemiological Studies' (2015) 85(1–2) International Journal for Vitamin and Nutrition Research 70.

84 ibid 76.

85 ibid.

86 ibid.

87 A Wolk, 'Potential health hazards of eating red meat' (2017) 281(2) Journal of Internal Medicine 106.

88 ibid 119.

89 ibid.

90 See eg Muhammad Adnan Shereen and others, 'COVID-19 infection: Origin, transmission, and characteristics of human coronaviruses' (2020) 24 Journal of Advanced Research 91, 92–93; Tao Zhang, Qunfu Wu and Zhigang Zhang, 'Probable Pangolin Origin of SARS-CoV-2 Associated with the COVID-19 Outbreak' (2020) 30(7) Current Biology 1346.

diet of your average westerner, many authors have leapt at the opportunity of being able to generalize the origin story of COVID-19 to apply to western intensive animal agriculture as well[91]. A bit of a stretch, perhaps, but a recent report does add some credence to the analogy. 'Diseases are emerging more frequently from animals', reads one of the report's key messages[92]. According to another key message, more than half of all human infections are estimated to have originated in animals whereas about three fourths of all new and emerging diseases 'jump' to humans from other animal species[93]. Ranking first among seven factors cited as 'most likely driving the emergence of zoonotic diseases'? '[I]ncreasing human demand for animal protein'.[94]

It should be noted that bats are mammals and therefore fall quite neatly within the scope of the classical moral argument for animal rights as described earlier in this paper. Still, the human health argument provides an additional, more anthropocentric reason for arriving at a somewhat similar conclusion. Besides, it's not as if the moral argument alone has managed to end most prominent forms of animal exploitation since being popularized almost 50 years ago. Beyond mammals and other easy cases, of course, the moral argument becomes relatively weaker while the human health argument becomes relatively stronger.

4.2.2 The Environment

Secondly, results roughly in line with the animal rights view could potentially be pursued on grounds of protecting the environment. The main culprit here, as with the human health approach, is the animal food industry. According to a 2014 study, the diet of a meat-eater is responsible for as much as 2.5 times the greenhouse gas emissions of that of a vegan[95]. Reductions in the consumption of meat were consequently deemed likely to reduce dietary greenhouse gas emissions as well[96], marking also 'a valuable contribution to climate change mitigation'[97]. The authors' conclusion was that dietary recommendations

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91 See eg Laura Spinney, 'It takes a whole world to create a new virus, not just China' (*The Guardian*, 25 March 2020) <https://www.theguardian.com/commentisfree/2020/mar/25/new-virus-china-covid-19-food-markets> accessed 30 September 2020; Sigal Samuel, 'The meat we eat is a pandemic risk, too' (*Vox*, 20 August 2020) <https://www.vox.com/future-perfect/2020/4/22/21228158/coronavirus-pandemic-risk-factory-farming-meat> accessed 30 September 2020.

92 United Nations Environment Programme and International Livestock Research Institute, 'Preventing the Next Pandemic: Zoonotic diseases and how to break the chain of transmission' (United Nations Environment Programme 2020) 7.

93 ibid.

94 ibid.

95 Peter Scarborough and others, 'Dietary greenhouse gas emissions of meat-eaters, fish-eaters, vegetarians and vegans in the UK' (2014) 125 Climatic Change 179, see also 186.

96 ibid 179.

97 ibid 188.

premised on health and sustainability must also 'incorporate the recommendation to lower the consumption of animal-based products.'[98]

Another study published in 2014 warned that by 2050, certain global dietary trends, 'if unchecked, would be a major contributor to an estimated 80 per cent increase in global agricultural greenhouse gas emissions from food production and to global land clearing.'[99] Reference was also made to many chronic illnesses discussed in the previous section. According to the authors, alternative diets, 'if widely adopted', could not only prevent such chronic diseases but also reduce emissions, land clearing, and extinction of species.[100] 'The implementation', the study concluded, 'of dietary solutions to the tightly linked diet-environment-health trilemma is a global challenge, and opportunity, of great environmental and public health importance.'[101]

Beyond greenhouse gas emissions, the livestock sector's impact on the quality of air, water and soil in general has also garnered some attention. 'Meat', said one paper published in 2015, 'is one of the food products with the greatest environmental impact due to the inefficiency of animals in converting feed to meat'[102], the associated sector being 'one of the leading polluters in the food industry.'[103] On a related note, the animal food industry has been accused of being just that—*inefficient*. Critics have called concentrated animal feeding operations 'factories in reverse', emphasizing the abysmal ratio at which animal feed is converted to the final product[104]. Perhaps it is even possible that economic efficiency could be considered an independent line of argument utilizing the special topic of the advantageous. The argument, in essence, would be that it is expedient to utilize finite resources in an economically efficient manner whereas it is harmful to do the opposite.

4.2.3 Human Rights

Thirdly, and finally, human and animal interests might also coincide in terms of human rights, or perhaps global justice might sometimes be a more suitable term. That is, whatever risks, costs and other adverse effects are associated with animal exploitation, such risks, costs and effects tend to be distributed among human populations in ways that might, at worst, arguably constitute human rights violations. Melanie Joy, for one, dedicated an entire chapter of her 2010 book to

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98 ibid.

99 David Tilman and Michael Clark, 'Global diets link environmental sustainability and human health' (2014) 515(7528) Nature 518, see 520.

100 ibid 518, see also 521.

101 ibid 521.

102 Ilija Djekic, 'Environmental Impact of Meat Industry – Current Status and Future Perspectives' (2015) 5 Procedia Food Science 61.

103 ibid 63.

104 See eg Compassion in World Farming, 'Food Waste & Factory Farming' (10 January 2013) <https://www.ciwf.org.uk/news/2013/01/food-waste-factory-farming> accessed 30 September 2020.

such 'collateral damage', stressing the interconnectedness of human and animal suffering:

> These other casualties of carnism are rarely the focus of attention when discussing meat production. They, too, are invisible victims—not because they are not seen, but because they are not recognized. They are the human animals. They are the factory workers, the residents who live near polluting [concentrated animal feeding operations], the meat consumers, the taxpayers. They are you and I. *We* are the collateral damage of carnism; we pay for it with our health, our environment, and our taxes…[105]

According to one report cited above, for example, 'The greatest burden of zoonotic disease is borne by poor people'[106], underlining the fact that such issues are not only matters of public health but also matters of equality—at the end of the day, 'it is the poorest and the most vulnerable', writes UN Environment Programme Executive Director Inger Andersen, 'who suffer the most'[107]. In this regard, it was interesting to note how the 2018 edition of the Animal Law Conference, organized jointly by Lewis & Clark Law School and the Animal Legal Defense Fund, and themed *Law and the Farmed Animal: Policy, Advocacy, and Culture*, included also one panel specializing in the human victims of intensive animal farming. Speaking under the heading of *Collateral Damage: Factory Farming Impacts Beyond the Animals*, the panelists discussed not only the environmental impact of CAFOs but also the harm they cause to farmworkers and nearby residents.[108]

Considerations of human rights, equality, and global justice, then, could provide one further avenue for pursuing similar conclusions as the animal rights view.

5 Concluding Remarks

This paper began by showing how the rhetoric of animal rights (as defined in section 2) operates on premises that risk significantly narrowing that rhetoric's range of application. The traditional and still popular way of justifying the desired conclusion by reference to animal sentience or some other capabilities deemed morally relevant probably has the effect of excluding most animals (that is, members of the kingdom Animalia) from that coveted category of rights-holders. Moreover, it's not altogether clear whether, according to the logic of the enterprise, possessing rights ought to be a binary affair at the taxa level. Recall

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[105] Melanie Joy, *Why We Love Dogs, Eat Pigs, and Wear Cows: An Introduction to Carnism* (Conari Press 2010) 73–74.

[106] United Nations Environment Programme and International Livestock Research Institute (n 92) 7.

[107] United Nations Environment Programme, 'Unite human, animal and environmental health to prevent the next pandemic – UN Report' (6 July 2020) <https://www.unenvironment.org/news-and-stories/press-release/unite-human-animal-and-environmental-health-prevent-next-pandemic-un> accessed 30 September 2020.

[108] The Animal Law Conference, 'Agenda' <https://www.animallawconference.org/2018-agenda/#tab-1-1-saturdayoctober132018> accessed 30 September 2020.

Hull from above: 'seldom is a property of any taxonomic value distributed both universally and exclusively among the members of a taxon. The properties of which are used to define the names of taxa do not respect taxonomic boundaries.'[109] For all we know, there are marginal animals just as there are marginal cases of humanity.

However, when it comes to the persuasiveness of the rhetoric of animal rights, it is striking how discourse focused on future choices should rely so heavily on arguments grounded in considerations of what is moral or just. In some ways, the inefficiency of this reliance on moral appeals speaks for itself. Soon enough, 50 years will have passed since the publication of Peter Singer's *Animal Liberation*, and 40 since the publication of Tom Regan's *The Case for Animal Rights*, yet most humans continue to lead unjust, immoral lives. Could it be that the moral argument just isn't enough on its own? Is something more required in addition to it—or perhaps in its stead?

As a remedy to this arguable lack of social impact, I proposed the special topic of the advantageous and sketched briefly three potential applications thereof: human health, the environment, and what for the most part I termed human rights. It is not my intention to claim that these lines of argument would themselves be somehow novel. Singer himself, for instance, may have given animal interests a place of pride in his argument, but even he was quick to appeal to world hunger as well as the fishing industry being 'one more form of redistribution from the poor to the rich' once the opportunity presented itself[110]. Likewise, in a 2010 article, Megan Senatori and Pamela Frasch argue that animal law attorneys should make more frequent use of human-interest arguments. 'Doing so', they write, 'does not undermine animal protection arguments, it enhances them, by recognizing that humans and animals often share interests that are more aligned than many people initially realize.'[111] If anything, I hope to have organized such lines of argument under a new framework, one that hasn't received as much attention in animal rights circles as it perhaps should've.

Nor am I claiming that appeals to more anthropocentric considerations would necessarily lead to a full realization of animal rights theory as envisioned by Regan, for example. Appeals to morality are likely to reach further and prohibit more than appeals to mere expediency. Maxim Fetissenko summarizes the dangers aptly:

> There is also some fear that human health and environmental arguments take away from the importance of the movement's core claim: animals are sentient beings and are not ours to use as we please, just as black people were not created to be used as slaves by white people and women were not created to serve men. And what if some new advance in medicine made it possible to reconcile consumption of animal products with good human health, or if scientists found a way to lessen the impact

[109] Hull (n 67) 322.

[110] See Singer (n 44) 169–73, 178.

[111] Megan A Senatori and Pamela D Frasch, 'The Future of Animal Law: Moving Beyond Preaching to the Choir' (2010) 60(2) Journal of Legal Education 209, 217.

> of animal farming on the environment? From this perspective, the moral argument is not only the strongest: It is the only one that animal rights advocates should use.[112]

An unfortunate, unintended consequence of 'animal rights without animal rights' might indeed be that improved, more efficient and convenient forms of mass-scale exploitation of animals would be allowed to continue in perpetuity. After all, if animals don't get the benefit of at least some watered-down version of Kantianism, there's nothing, in principle, that we couldn't do to them as long as the consequences play out favorably. It's entirely possible, of course, that more advantageous forms of animal exploitation would, for example, result in less animals being bred and killed for food, somewhat reminiscent of the second of the Three Rs. On the other hand, those selected for extermination would still lose everything. So much for respecting that inherent value.

'Animal rights without animal rights' might well turn out to be an impossibility, at least according to some understandings of what rights mean and entail. But that shouldn't necessarily mean that the idea of pursuing similar goals through different means ought to be jettisoned completely. 'Don't let the perfect be the enemy of the good', or so the saying goes. If anything, I hope to have shown that rhetorical theory in general and the topics in particular might have something of value to offer for animal rights advocates and be worthy of more serious, systematic inquiry than has been the case thus far. It is my belief that not only animals, but humans and the environment, too, might benefit from such efforts.

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[112] Maxim Fetissenko, 'Beyond Morality: Developing a New Rhetorical Strategy for the Animal Rights Movement' (31 March 2012) <https://fetissenko.com/research/beyond-morality/> accessed 30 September 2020.