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Article:

Beke, Roma (2024) To What Extent Should Non-Human Animals Have Legal Rights? York Law Review, 5.

https://doi.org/10.15124/yao-bq0q-9m47

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To What Extent Should Non-Human Animals Have Legal Rights?

Roma Beke

Abstract

Recent developments in animal welfare legislation in the UK have further advanced the protection of animal rights in domestic law, from the Animal Welfare (Sentience) Act 2022 to the more recent Pet Abduction Bill in January 2024, while international developments such as the 'rights of nature' doctrine have been used to ascribe legal status to non-living entities such as rivers. Both developments raise an interesting question about the advancement of non-human animals' legal status: to what extent should non-human animals have legal rights? This article explores several elements to determine the potential scope of such rights. First, it finds that the multitude of theories on the subject have prevented socio-legal theorists from reaching an agreement on how animals should be treated in society compared with humans. Second, it determines that prevailing socio-cultural preferences for certain non-human animals contradict scientific findings about sentience and make it difficult to create enforceable animal welfare law. Third, it suggests that the applicability of the rights of nature doctrine to non-human animal rights is limited because inanimate environments like rivers are not conscious, and therefore courts can interpret their purpose however they see fit. Finally, it concludes that the complexity of the issues means that the law should not establish which rights should be granted until the legal community can reach consensus on how animals might benefit from specific rights in a practical sense.

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1 Introduction

The UK has made significant strides in animal welfare legislation that further advances the protection of animals in domestic law. The Animal Welfare (Sentience) Act 2022, formally recognises animals as 'sentient beings'. The Pet Abduction Bill (January 2024) would make the theft of pet cats and dogs a criminal offence. The bill follows principles established in the Sentience Act, which acknowledges that animals can experience trauma and emotional harm from being taken from their owners. However, society's limited understanding of animal welfare leaves a plethora of unanswered questions about the implementation of non-human animal legal rights (animal rights) and the complex socio-legal issues it might bring. Moreover, domestic legislation combined with international legal developments in other countries, the recognition of the 'rights of nature', or the entitlement of the natural environment to 'legal personhood status' and legal rights, raise an interesting question: *To what extent should non-human animals have legal rights?*

This article explores the acceptability of granting animals legal rights, providing insights from both case law and academia. First, the article will analyse various justifications for animal rights from moral and ethical points of view. Second, it will debate whether all animals should be given the same rights. Third, it will explore whether the concept of the 'rights of nature' could support the recognition of animal legal rights. Finally, the article will examine the potential types of rights animals could have.

2 Moral and Ethical Theories

As a result of the wide range of theories in ethical discussions, animal rights advocates have found justifications for animal rights through several different approaches. For instance, proponents of the interest theory of rights argue that because 'animals have intentions and therefore interests, as opposed to non-sentient living beings, which only have needs',[1] animals deserve legal rights. The backbone of this theory is the 'particular-interest principle', which maintains that animals can only hold rights that would advance their interests.[2] According to

[1] Tom Sparks, Visa Kurki and Saskia Stucki, 'Editorial: Animal Rights: Interconnections with Human Rights and the Environment' (2020) 11 Journal of Human Rights and the Environment 149, 153.
[2] Ibid.

Mañalich, evidence demonstrating animals have intention and interests in need of protection suggests that animals should, at the very least, have the 'legal right to continued existence'—as demanded by 'quasi-personhood'—as well as any other rights depending on the species' unique interests and needs.[3]

In contrast, utilitarian perspectives assert that whether an animal has intentions or interests is irrelevant. However, proponents of the interest theory and utilitarians could come to the same conclusion regarding animal rights as a whole. For utilitarians, weighing up all suffering and happiness experienced by living beings, which helps determine how to produce the greatest good, should imply the inclusion of sentient, animals in that evaluation of interests.[4] Furthermore, prioritising human suffering over animal suffering constitutes 'speciesism'.[5] The best way to counteract this bias is to convey the same regard for animal legal rights and protections that humans are entitled to.

This perspective has increased in popularity among animal rights activists over the last few decades at the expense of rights theories. Utilitarians argue rights theories are unequipped to supply conclusive 'normative guidance'[6] on classifying the legal status of animals. Unlike animal rights advocates who demand the 'immediate abolition of animal exploitation', utilitarians believe that the best way to reduce animal suffering is through a 'realistic', measured approach.[7] Such an 'incremental' approach would involve small but consistent steps that support animal rights reforms in relevant issues, for instance incremental bans on animal experimentation.[8] Utilitarianism might then seem the most rational approach to resolving the issue of animals' legal rights.

However, the utilitarian belief in 'the greatest good for the greatest number' has been used to support statements that might be deemed unethical in the context of human rights and animal welfare. Singer asserted that 'under some circumstances, it would be permissible to use nonconsenting humans in experiments if the benefits for all affected outweighed the detriment

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[3] Ibid.
[4] Animal Ethics, 'Utilitarianism' (*Animal Ethics*, 2024) <https://www.animal-ethics.org/utilitarianism/> accessed 20 March 2024.
[5] Ibid.
[6] Gary L Francione, 'Animal Rights Theory and Utilitarianism: Relative Normative Guidance' (1997) 3 Animal 75, 76.
[7] Ibid.
[8] Ibid.

to the humans used in the experiment.'[9] Essentially, he argued that species differences alone cannot justify the differences in exploitation between humans and animals, just as differences in gender, religion or other protected characteristics cannot justify discriminatory treatment.[10]

Perhaps due to such controversies, other theories have continued to prevail. One such theory is inherent value theory which states that each individual possesses moral value that is distinguished from any type of intrinsic value.[11] Regan suggests that humans and animals are both 'subjects-of-a-life' that possess equal inherent value.[12] Because they are both 'subjects-of-a-life', the respect principle of the theory not only necessitates the 'attribution of equal value' but those of equal value should never be treated as a 'means to an end', no matter how beneficial the outcome might be.[13] Subsequently, any form of animal exploitation violates the respect principle by determining that any interest of an animal can be ignored as long as humanity's interests are prioritised.[14]

It is clear that creating consensus on a legal theory to ascertain the legal rights of animals is difficult when utilitarian advocates and inherent rights theory proponents are inherently opposed. It is especially challenging when established ideas of ethics, such as Kant's foundation of human rights, is predicated on beliefs that refuse to acknowledge any responsibility for animals.[15] Kant's categorical imperative holds 'rational self-conscious human beings should always be treated as ends in themselves and never as mere means', and all other living things can be used and exploited as tools for humanity's interests.[16] Moreover, not all animal rights advocates desire the introduction of non-human animals' legal rights for the sake of animal welfare. Virtue animal ethics is more concerned with the effects of humans' participation in animal exploitation and abuse on the development of humanity's moral character than on animals' safety.[17]

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[9] Ibid 78.
[10] Ibid.
[11] Ibid 81.
[12] Ibid.
[13] Ibid 82.
[14] Ibid.
[15] Charles Magles, 'Animals: Moral Rights and Legal Rights' (1985) 1 Between the Species 10.
[16] Ibid.
[17] Animal Ethics, 'Virtue Ethics and Care Ethics' (*Animal Ethics*, 2014) <www.animal-ethics.org/?s=Virtue+Ethics+and+Care+Ethics> accessed 20 March 2024.

3 Non-Human Animals: Not a Monolith

Discussions which consider the possibility of granting animals legal rights, commonly centre on domesticated animals such as cats and dogs, If passed, the Pet Abduction Bill would only make the theft of cats and dogs a new criminal offence in England and Northern Ireland.[18] Prioritising certain animals over others in a legal context raises the question: how can we determine which animals are capable of holding legal rights and therefore deserve to have their rights guaranteed?

3.1 Animal Welfare Act 2006 and Animal Welfare (Sentience) Act 2022

One authoritative source which has determined which animals should be 'protected' is the Animal Welfare Act 2006.[19] Section one, clarifies that an 'animal' refers to a vertebrate, although section four establishes that if an appropriate national authority extends the definition to an invertebrate, the animal must be 'capable of experiencing pain or suffering'.[20]

Having the capacity to experience pain or suffering—a crucial characteristic to be labelled a 'sentient being'—is paramount in considering which non-human animals deserve legal rights. Research into the 'science of feeling' pushed the UK Government to '[announce] in November 2021 that animal welfare protections were to be extended to cephalopod molluscs and decapod crustaceans—including octopuses, lobsters and crabs—[in the Animal Welfare (Sentience) Act].'[21, 22] On one hand, it is encouraging that the government amended the Act to include protections for these invertebrate animals after scientists provided supporting evidence for their sentience. On the other hand, it is discouraging that the animals most often considered for legal

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[18] British Broadcasting Corporation, 'Cat and Dog Theft Set to be Made Criminal Offence' (*BBC*, 19 January 2024) <https://www.bbc.co.uk/news/uk-politics-68021178> accessed 20 March 2024.
[19] Animal Welfare Act 2006.
[20] Animal Welfare Act 2006 s 1.
[21] Animal Welfare (Sentience) Act 2022.
[22] Jonathan Birch, 'The Science of Feeling: Why Octopuses, Lobsters and Crabs Require Animal Welfare Protection' (*LSE*, 18 January 2022) <https://www.lse.ac.uk/research/research-for-the-world/politics/the-science-of-feeling-why-octopuses-lobsters-and-crabs-require-legislative-protection#:~:text=Drawing%20on%20over%20300%20existing,scope%20of%20animal%20welfare%20law> accessed 20 March 2024.

protections and rights are those we find ‘cute’ or have empathy for, such as dogs and cats.[23] Octopi, who are so intelligent they have shown the ability to solve mazes in experiments,[24] are frequently ignored because humans have difficulty relating to them. As Birch declares, ‘there is a danger’ in thinking that such animals do not feel.[25]

Animals that we deem ‘cute’ as a result of sociocultural prejudices are often the ones who are afforded protections, despite sentience being an objective characteristic.[26] For instance, the Pet Abduction Bill would only make the theft of pet cats or dogs a criminal offence, even though people keep a variety of animals as pets. Cultural attitudes in the West regarding dogs and cats have led to these animals receiving a higher social status compared to other sentient animals. It is critical to recognise their supposed ‘cuteness’ makes it easier to empathise with such animals, providing humans with an emotional stake to fight for their protection and welfare. Animals not deemed ‘cute,’ such as decapod crustaceans[27] have only been more readily recognised as sentient following scientific research. Possessing characteristics which make it challenging to have empathy for their welfare means that their legal protections ‘range from strong (Norway and New Zealand), through circumstantial (Australia and Italy) to non-existent (in many other countries)’.[28] Lobsters and dogs both share pain, but only one of those animals is afforded certain protections due to their cultural significance as ‘man’s best friend’.

In order for the law on animal rights to be more unified, it must apply to all sentient animals, and be continually updated to keep up with the latest scientific findings’.[29] Changing the law to incorporate these elements would demand that legislation is only based on science and not on cultural attitudes. Such change would be difficult to implement in the current political structure.

4 The Rights of Nature

[23] Ibid.
[24] Lisa Hendry, ‘Octopuses Keep Surprising Us—Here Are Eight Examples How’ (*NHM*, 2024) <https://www.nhm.ac.uk/discover/octopuses-keep-surprising-us-here-are-eight-examples-how.html> accessed 20 March 2024.
[25] Birch (n 22).
[26] Sarah Wolfensohn, ‘Too Cute to Kill? The Need for Objective Measurements of Quality of Life’ (2020) 10 Animals 1, 4.
[27] Anthony Rowe, ‘Should Scientific Research Involving Decapod Crustaceans Require Ethical Review?’ (2018) 31 Journal of Agricultural and Environmental Ethics 625.
[28] Ibid.
[29] Ibid 5.

According to the global network Global Alliance for The Rights of Nature, the rights of nature is the:

> '*Recognition that our ecosystems ... have rights ... to exist, persist, maintain, and regenerate its vital cycles ... [and] rather than treating nature as property under the law ... we the people have the legal authority and responsibility to enforce these rights on behalf of ecosystems*.' [30]

The aim of the doctrine is to ensure that the natural environment is protected to the strongest levels possible to not infringe upon an ecosystem's inherent rights.[31] Proponents assert that protecting these rights are in humanity's best interests due to their compatibility with the 'right to a clean and healthy environment' as recognise by the United Nations General Assembly.[32] Furthermore, several indigenous cultures believe that the rights of nature doctrine is consistent with traditions emphasising balance with nature.[33] Recently, more courts have been willing to recognise the legal rights of local ecosystems.[34] In 2017, New Zealand became the first country in the world to '[grant] the status of a legal person' to a river through the Te Awa Tupua Act, which provided the 'Whanganui river [with] the "rights, powers, duties, and liabilities of a legal person"' and assigned 'two guardians responsible for maintaining the river's "health and well-being"'.[35]

Following the recognition of the Whanganui River's legal rights, as well as those of other rivers across the world,[36] scholars considered whether the core tenets of the right of nature doctrine can be applied recognising animals' rights.[37] Some scholars argue that recognising animals' rights can be justified more easily than establishing the rights of rivers or trees because animals

[30] Global Alliance for The Rights of Nature, 'What are the Rights of Nature?' (*GARN*, 2024) <https://www.garn.org/rights-of-nature/> accessed 20 March 2024.
[31] Tiffany Challe, 'The Rights of Nature—Can an Ecosystem Bear Legal Rights?' (*Columbia Climate School*, 22 April 2021) <https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits//> accessed 20 March 2024.
[32] Human Rights Council, *Resolution 48 The Human Right to a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/48/L.23/Rev.1 (5 October 2021).
[33] Global Alliance (n 30).
[34] Matthias Kramm, 'When a River Becomes a Person, Journal of Human Development and Capabilities' (2020) 21 Journal of Human Development and Capabilities 307.
[35] Ibid.
[36] Palash Srivastav, 'Legal Personality of Ganga and Ecocentrism: A Critical Review' (2019) 4 Cambridge Law Review 151.
[37] Kristen Stilt, 'Rights of Nature, Rights of Animals' (2021), 134 Harvard Law Review 281.

are 'conscious and self-conscious living beings who act intentionally, with agency, and communicate intelligently and deliberately', and therefore are capable of holding personhood status.[38]

However, currently accepted definitions of legal personhood do not refer to any requirements for consciousness, intention, or communication. Rather, it solely 'involves either the holding of rights and bearing of duties or the "legal capacity" to hold rights and bear duties.'[39] Therefore, the inherent concept of legal personhood and the rights of nature doctrine should, in theory, already provide a grounding framework for animals to hold legal rights. If the rights of nature doctrine established that nature holds legal rights, then animals should already hold the right to have claims made on their behalf using the rights of nature doctrine.[40]

Despite this presumption, there have been several challenges providing remedies for animals involved in legal disputes that are not observed in disputes involving inanimate parts of nature.[41] A possible reason for the difference in these challenges may lie within the complexity of varying species in the natural world. Various parts of an environment have unique relationships with humans, which may be considered in such judgments. It is useful to ascertain how case law has treated the recognition of inanimate natural elements such as rivers to establish if there is a possibility for application to animals.

4.1 *The Atrato River* Case

The Atrato River case, or judgment (T-622/16), was decided in Columbia's Constitutional Court in 2016. The case was prompted by representatives of local indigenous communities living near the river basin, who were concerned about illegal mining operations polluting the river with toxic chemical substances such as mercury and cyanide.[42] These toxic chemicals

[38] Kramm (n 34) 311.
[39] Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford Academic 2019), 1, 4.
[40] Stilt (n 37) 279.
[41] Ibid 283.
[42] Constitutional Court of Colombia (2016) *The Atrato River* Decision (T-622/16) s 2.4.

posed a significant health risk to the indigenous communities, who depended on the river for drinking water, farming, fishing, and other daily activities.[43] Moreover, it was found that since the illegal mining operations, incidences of illness had increased among the populations.[44] Following these considerations, the Sixth Review Chamber laid out several execution orders with the intention of 'guaranteeing the fundamental rights of the ethnic communities of the Atrato River Basin'.[45] Among these orders was the government's recognition of 'the Atrato River, its basin, and tributaries … as an entity subject to rights of protection, conservation, maintenance, and restoration by the State and ethnic communities.'[46]

Rather than focus solely on how the river's rights were being violated by environmental degradation, the indigenous communities argued that the consequences of the mining on the river basin's biodiversity had resulted in an infringement of their groups' socio-cultural, territorial, cultural, economic, and political rights,[47] thus highlighting the impacts on human rights as opposed to protecting the rights of nature as a necessity in and of itself, for the river's sake. Furthermore, the understanding that biodiversity is essential for the 'next generations' propelled the court to establish that the state must 'adopt comprehensive public policies on conservation, preservation, and compensation.'[48]

These factors suggest a limit to the applicability of the rights of nature doctrine to the possible rights of animals for one major reason; because inanimate parts of the environment are not conscious beings, rights of nature judgments can interpret their purpose however courts see fit. For example, 'the purpose of a river … is to serve humans, through access to water, transportation, and the animals who live in them'.[49] In contrast, animal welfare experts may not deem an animal's purpose to be the fulfilment of humanity's interests, especially if the intrinsic value of an animal is considered.[50] Perhaps, the only purpose of animal species is to survive, as evolution has intended. Accordingly, it is difficult to assert that the 'rights of nature' can be extended to support the recognition of animal legal rights because animals have unique needs and challenges that rivers do not face. There is no possibility for rivers to be exploited

[43] Ibid.
[44] Ibid.
[45] Ibid s 10.1.
[46] Ibid s 10.2(1).
[47] Ibid s 9.17.
[48] Ibid s 5.58.
[49] Stilt (n 37) 284.
[50] Lawrence Odey Ojong, 'Singer's Notion of Speciesism: A Case for Animal Rights in Ejagham Culture' (2019) 2 IJEPEM 116, 118.

in zoos or laboratories,[51] or to be malnourished or killed, and thus the laws determining the rights of these groups must be different. Rather than rely on the 'rights of nature' doctrine as the singular justification for providing animals with legal rights, it would be better to explore other explanations, whether through science or moral theories, to further investigate this issue.

5 What kind of Rights do Animals Deserve?

Such potential rights depend on the needs and complexity of the species in question.

One proposition from Motoarcă, is that animals should be granted the political 'right to vote'.[52] Motoarcă's proposition would work similarly to the guardianship system set-up. Whanganui River case animals would be provided with representatives from a 'politically neutral committee consisting of scientific experts' to enforce animal rights and serve the interests of the animal(s) they represent on their behalf.[53] This right is founded on the 'all affected interests' principle, which asserts that all beings impacted by a government's policies should have a say in those policies.[54]

Although this idea may be justified by democratic principles, the study which proposed this right mentioned several controversial ideas. It compared the current lack of animal voting rights to the time when 'women and slaves'[55] did not have voting rights, and also argued that just as children and persons with disabilities[56] have access to legal representation, animals deserve the same rights. Such comparisons to vulnerable populations are demeaning to those groups. However, the fact that governments and rights of nature advocates have been willing to appoint legal representation for environmental features suggests that voting rights for animals could become viable legislation, assuming there is significant support as well as further legal development to determine the parameters of those rights.

[51] Stilt (n 37) 284.
[52] Ioan-Radu Motoarcă, 'Animal Voting Rights' (2024) 84 Analysis 56.
[53] Ibid.
[54] Ibid 58.
[55] Ibid 59.
[56] Ibid 56.

Another discussion surrounding animal rights was posed by the US case *Naruto v Slater*.[57] Representatives of a monkey brought copyright infringement claims to a wildlife photographer who alleged ownership and copyright of images taken of the monkey. The court concluded that the monkey could not 'sue corporations, and companies for damages and injunctive relief arising from claims of copyright infringement' because the 'monkey—and all animals, since they are not human—lack statutory standing under the Copyright Act'.[58] Essentially, any 'work' produced by an animal is not a property of which they can own a copyright, nor can they sue for damages.[59] The case raised several questions as to the recognition of legal rights. For example, what authority should determine if an animal has the right to sue when a dispute arises? Also, how 'would a court know whether it was properly understanding the concerns raised by the animal?'[60] The numerous unanswered questions about the real-life implementation of animal legal rights demonstrate that these issues are far more complex than society's existing understanding of animal welfare.

6 Conclusion

It is clear there is significant potential for the further development of animal rights law beyond current legislation. As scientific advancement reveals more about the sentience of vertebrates and certain invertebrate animals and shows that animals have needs that must be protected, it appears that proposals such as the guardianship representative system proposed in rights of nature cases and by legal theorists could provide innovative solutions to the issue of animals not having their interests adequately safeguarded by the law. Nevertheless, there remains a plethora of unanswered questions surrounding the implementation of animal rights, which highlights that such issues are much more intricate than current sociocultural attitudes and legislation can resolve. This suggests that while animals do deserve some extent of legal rights, the law should not establish which rights should be granted (the right to vote, the right to sue for damages, etc) until there is consensus from the legal community on what the benefits of those rights would be for the animals, as well as the implications on amending the law.

[57] *Naruto v Slater*, 916 F.3d 1148 (9th Cir. 2018).
[58] Ibid [4].
[59] Ibid.
[60] Ibid.