

Deborah Cao, 2007, 《动物非物：动物法在西方》 *Animals are not Things: Animal Law in the West, with Preface by Peter Singer*, Beijing, Law Press.

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Chapter 1

Introduction

Are Animals Closer to Humans or Things?

In March 2007, a news story was broadcast around the world. In a case at the Mödling district court, near Vienna, Austria, a judge is to rule whether a 26 years old chimpanzee, named Hiasl, deserves a legal guardian. One of the issues before the court is: Does Hiasl as a chimpanzee have certain rights, specifically, the right to have a guardian?

The story of Hiasl is like this. Hiasl was one year old in 1982 when a poacher shot his mother and sold him to an animal trader. He was taken from his home in the Sierra Leone jungle in West Africa and shipped to Austria for a vivisection laboratory near Vienna with other chimpanzees. By 1982, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) forbade the import of wild caught chimpanzees, so Hiasl and seven other chimpanzees were seized by customs officers and handed over to an animal sanctuary. The vivisection laboratory paid a fine but four years later, successfully sued the sanctuary to get Hiasl back for research. Two hundred or so animal rights activists managed to prevent the laboratory's action, and Hiasl has remained safely at the sanctuary ever since.

In early 2007, the sanctuary where Hiasl lives went bankrupt and was to be closed down. In order to ensure that Hiasl would not be sold to a zoo, an Austrian businessman donated €5000 to Hiasl and another person on the proviso that they agree on how the money should be spent. As a result, Hiasl needs a legal guardian to manage the money as otherwise the money would go to the sanctuary receiver.

Now, the court is being asked to rule whether Hiasl is not just an endangered ape, but a person entitled by law to a legal guardian just like a child. A British woman, Paula Stibbe, is reported to be the potential guardian. It is also reported that Austria's best-known primatologist agreed to write an expert report supporting the demand for Hiasl's legal guardianship. Similarly, the world most famous primate campaigner, Jane Goodall, and renowned expert on wild chimpanzees and professor of evolutionary anthropology at University College London, Professor Volker Sommer, were said to have provided expert opinions for the case. Professor Sommer was reported to have dictated a statement by phone directly from the African jungle. In his view, chimpanzees are not just one of the genus Homo; they should be considered as being of the same species as humans. Two law professors at Vienna University also argued that a chimpanzee

could be considered a legal person before the law and, if not, would at least deserve a legal guardian to safeguard his interests.

In an unprecedented move, an application was made to the Mödling district court for appointing a legal guardian. On the 20 February, 2007, the judge, Barbara Bartl called the first hearing. She adjourned the proceedings until documents to prove Hiasl's identity could be obtained. In any event, if Hiasl is to be granted human or human like legal status, there could be some far-reaching legal implications for primate species.

This test case is legally interesting and unprecedented, not just in Austria but around the world.¹ Another interesting thing in my personal observation of the news is a comment made by the newsreader when it was broadcast on TV. I saw this news story on BBC TV. Immediately after the footage of the story, the BBC newsreader made a casual remark that this is 'one of those ridiculous stories'. Most likely he was just making a casual off-hand comment, and I am sure he was not be alone thinking that way. We can well imagine that a Chinese newsreader might have similarly said after the news story: *tianxia zhi da wu qi bu you* (literally, the world is big and many strange things happen). In fact, a Chinese newspaper did report the case under the heading 'A Ridiculous Case of Whether an Ape has Human Rights,' describing the case as 'strange'.² But is this legal case really that ridiculous and why is it considered strange?

We may recall that around 2004, an animal welfare bill was drafted in Beijing to protect animals and animal welfare. The proposal was to improve the welfare of animals requiring all animals to be treated in a humane manner and farm animals to be slaughtered with minimum pain. The Beijing government initially published the draft on its website to gauge public opinion, but quickly withdrew it a week later. The major reason for rejecting it was that it was thought to be impractical and premature in a developing nation like China, too far ahead of the time. One may ask: Why is it considered premature and ahead of its time in China while such laws are commonplace in many parts of the world, not only in many European countries but also in some Asian countries?

We may find a similarity between the above two stories in that the subject matter concerns animals, that is, nonhuman animals, and it shares the same underlying assumption, conception and attitude of humans for thousands of years: fundamentally, nonhuman animals and humans are perceived to be different, and they should thus be treated differently, in particularly in law. But exactly how different are human and nonhuman animals?

To begin with, humans are animals, but in traditional taxonomy, humans are classified as Hominids in the animal kingdom under the categories of mammals and primates. Orangutans, gorillas and chimpanzees are classified as Pongids under the categories of mammals and primates. However, modern genetic science tells us that human genes are more than 98 percent identical to those of

¹ See Chapter 5 Brazil's chimpanzee Suica case. In this regard, New Zealand's Animal Welfare Act prohibits experiments on great apes including gorilla, chimpanzee, bonobo and orangutan granting them some basic rights. In the past year or so, the Spanish Parliament has been considering a non-binding resolution directing the Spanish government to protect great apes.

² The Chinese newspaper quoted here is *Chongqing Youth Daily*, reporting on April 2, 2007, see <http://news.sohu.com/20070402/n249124250.shtml>

chimpanzees and around 97 percent the same as those of orangutans.³ It has been proposed that, given the genetic similarities, in scientific classification, we should change the primate order and that humans and chimpanzees should be grouped in the same genus, *Homo*, as we have seen advanced in the Hiasl case. According to researchers at the Wayne State University in the USA, this is because it has been shown with non-coding DNA sequences that chimpanzees are closest in kinship to humans than to other animals,⁴ but the traditional classification is that chimpanzees and humans are different and belong to different branches of the biological family tree. However, new genetic analyses show that humans and chimpanzees are 99.5 percent identical in functionally important DNA. It has been argued that this provides further evidence for revisions in our genus classification. It has been proposed by Dr Morris Goodman of the Wayne State University that the traditional anthropological view with its anthropocentric bias emphasizes how very different humans are from all other forms of life. This traditional view, according to Dr Goodman, favors a wide taxonomic separation of humans from the living apes, placing humans and apes in different families.⁵ In Dr Goodman's opinion, the view from molecular genetics studies emphasizes how much humans hold in common with other forms of life, especially with chimpanzees.⁶ The molecular evidence from primates shows that humans, chimpanzees and gorillas are the sole living members of a close knit genealogical group and that within this group, chimpanzees and humans are most closely related with more than 98.3 percent identity in typical nuclear noncoding DNA sequences and more than 99.5 percent identity in the active coding sequences of functional genes.⁷ The molecular genetic view, says Dr Goodman, free of anthropocentric bias, places all the living apes (gibbons, orangutans, gorillas and chimpanzees) with humans in the same family.⁸ Thus, it is proposed that all living apes should occupy the family Hominidae, and that both humans and chimpanzees should occupy the genus *Homo*.⁹ We may want to remind ourselves that more than a century ago, Charles Darwin, without the aid of genome mapping or DNA data, proposed then, to the shock of the scientific, religious and the rest of the world, that humans and the African apes are descended from a common ancestor (for discussion of Darwin, see Chapter 4).

However, it is more than just genetic or biological similarity. Chimpanzees do not just have a human-like appearance; they also share some

³ K.S. Pollard, S.R. Salama, B. King, A.D. Kern, T. Dreszer, et al. 2006, 'Forces Shaping the Fastest Evolving Regions in the Human Genome', *PLoS Genetics* 2(10):e168:1599-1611. See also Matt Ridley, 2003, *Nature via Nurture: Genes, Experience, and What Makes us Human*, London, Fourth Estate.

⁴ M. Goodman and A.S. Moffat (eds.), 2002, *Probing Human Origins*, Cambridge, American Academy of Arts & Sciences Press, 1-10.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ D.E. Wildman, M. Uddin, G. Liu, L.I. Grossman, and M. Goodman, 2003, 'Implications of Natural Selection in Shaping 99.4% Nonsynonymous DNA Identity Between Humans and Chimpanzees: Enlarging genus *Homo*', *Proceedings of the National Academy of Science, USA*, 100:7181-7188, available online at <http://www.pnas.org>. See also Sean Carroll, 2006, *The Making of the Fittest: DNA and the Ultimate Forensic Record of Evolution*, New York, W.W. Norton & Company.

⁹ Goodman, 2002, *Ibid.* See also <http://www.britannica.com/eb/article-9399873/Hominidae>.

human-like behaviours. They make and use tools and teach those skills to their offspring. They have complex social hierarchies and culture.¹⁰ Great apes can learn and use human language through signs or symbols although they lack the vocal anatomy to master speech. Great apes display love, fear, anxiety, jealousy, sorrow and trauma. Furthermore, some of the animals' behaviours are also very versatile and complex. For example, as described by Professor Donald Griffin of Harvard University, some African chimpanzees select suitable branches from which they break off twigs to produce a slender probe, which they carry to poke it into a termite nest to catch termites; apes have also learned to use artificial communication systems to ask for objects and activities they want and to answer simple questions about picture of familiar things; vervet monkeys employ different alarm calls to inform their companions about particular types of predators.¹¹ Such ingenuity is not limited to primates as Griffin points out.¹² Lionesses sometimes cooperate in surrounding prey or drive prey towards a companion waiting in a concealed position; captive beavers modify their customary patterns of lodge and dam building behaviour by piling material around a vertical pole at the top to reach food located there that they could not otherwise reach, and Australian bowerbirds construct and decorate bowers that help attract females for mating.¹³ Recently, scientists have also observed that elephants are able to recognize themselves in the mirror, indicating self-awareness as are great apes and dolphins.

In short, these are just a few examples of the strikingly versatile behaviours in some animals. Generally speaking, we have now moved past the eighteenth and nineteenth century outdated and unscientific thinking that animals are just machines that cannot think or feel. It has also been found that some behaviours or capacities that were thought to be exclusively and uniquely human turn out not to be human's sole domain, for instance, developing family ties, solving social problems, expressing emotions, starting wars, having sex for pleasure, using language, or thinking abstractly.¹⁴ Other examples include the following: many species of nonhuman animals develop long lasting kinship ties – orangutan mothers stay with their young for eight to ten years. They eventually part company, but they continue to maintain their relationships. Chimpanzees, baboons, wolves and elephants maintain extended family units built on complex individual relationships for long periods of time. Meerkats in the Kalahari desert are known to sacrifice their own safety by staying with sick or injured family members so that the fatally ill will not die alone.¹⁵ Furthermore, some animals, for instance, primates, possess problem-solving abilities. Even chickens are known to recognize large number of individuals in their social hierarchies and to

¹⁰ See Gretchen Vogel, 1999, 'Chimps in the Wild Show Stirrings of Culture', *Science*, 284:2070-2073; Gretchen Vogel, 2002, 'Can Chimps Ape Ancient Hominid Toolmakers?' *Science* 296:1380.

¹¹ Donald R. Griffin, 2001, *Animal Minds: Beyond Cognition to Consciousness*, Chicago, University of Chicago Press, p.2.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Lori Gruen, 2003, 'The Moral Status of Animals', *The Stanford Encyclopedia of Philosophy* (Fall 2003), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/fall2003/entries/moral-animal/>>.

¹⁵ *Ibid.*

manoeuvre within them. Animals that develop life-long bonds are known to suffer terribly from the death of their partners. Some are even said to die of sorrow.¹⁶ Coyotes, elephants and killer whales are also among the species for which profound effects of grief have been reported,¹⁷ and many dog owners can provide similar accounts. Additionally, recent studies in cognitive ethology, which is the comparative investigation of mental phenomena, including both conscious and unconscious mental states and the cognitive process behind the behaviours of animals, have suggested that some nonhumans engage in manipulative and deceptive activity, can construct cognitive maps for navigation, and some appear to understand symbolic representation and are able to use language.¹⁸ Now it is believed that innovation and deception are activities that may be evidence of thinking. Researchers found many years ago that baboons are capable of deceiving other baboons, giving false alarms to get what they want. Many animals also possess innovation and creativity. For instance, back in 1953, scientists observed that a Japanese macaque began to wash sweet potatoes in water, and this behaviour was copied by others and passed on to a new generation.

In this connection, an old argument often used to distinguish humans and animals and to deny animals any ethical or moral consideration was that animals cannot speak and do not have language, unable to articulate their thoughts and feelings. Now given new scientific studies, it is debatable whether humans are unique in having language. One of the genes related to language and speech disorder, known as FOXP2, was discovered on human chromosome 7 at Oxford in recent years, but this gene does not seem to be unique to humans.¹⁹ In 2002, the studies by the researchers at the Pääbo Laboratory of the Max Planck Institute for Evolutionary Anthropology in Leipzig, Germany, found that the human version of the FOXP2 gene plays a role in our ability to develop speech and language, evolved within the past 200,000 years - after the anatomically modern humans first appeared.²⁰ They compared the DNA sequence of the intact FOXP2 gene in humans and chimpanzees, and found that the human gene carried a unique sequence variation and FOXP2 could have been pivotal for the origin of human language.²¹ Because FOXP2 is a protein that regulates the activity of many other genes, the sequence changes of FOXP2 in the hominid lineage could, in the course of evolution, have triggered a chain of events.²² By comparing the protein coded by the human FOXP2 gene with the same protein in various great apes and mice, these researchers discovered that the amino-acid sequence that makes up the human variant differs from that of the chimpanzee in just two locations out of a

¹⁶ See Gruen, 2003.

¹⁷ Marc Bekoff (ed.), 1998, *Encyclopedia of Animal Rights and Animal Welfare*, Westport, Greenwood Press.

¹⁸ Gruen, 2003. See also Griffin, 2001.

¹⁹ See Ridley, 2003, pp.214-219.

²⁰ See also Michael Lemonick and Andrea Dorfman, 'What Makes Us Different?' *Time*, October 9, 2006, 39-45.

²¹ W. Enard, M. Przeworski, S.E. Fisher, C.S.L. Lai, V. Wiebe, T. Kitano, A.P. Monaco and S. Pääbo, 2002, 'Molecular Evolution of FOXP2 - A Gene Involved in Speech and Language', *Nature*, 418: 869-872. For this and other recent research papers from the Pääbo laboratory related to human and primate genetic studies, visit http://www.eva.mpg.de/genetics/files/public_paabo.html

²² *Ibid.*

total of 715, an extraordinarily small change that may explain the emergence of all aspects of human speech. Humans with a defective FOXP2 gene or mutations have trouble with articulating word and comprehension of language.²³

In the further development in this area, in 2004, scientists from the Max Planck Institute for Molecular Genetics in Berlin and from Duke University, USA discovered an almost identical version of FOXP2 in songbirds and show that the corresponding protein was expressed in brain regions in songbirds critical for song learning.²⁴ As FOXP2 is believed to play a central role in the development of speech, the neurobiologists speculated that FOXP2 could also play a key role for the ability of birds to learn song. Young birds of many species need to learn the sounds they communicate with in a manner akin to the way infants learn to speak, which is in contrast to mice and nonhuman primates who do not learn their vocalizations.²⁵ The research team at the Max Planck Institute for Molecular Genetics therefore asked whether the songbird FOXP2 carried sequence variations similar to those found in humans. They compared the expression of FOXP2 in a variety of bird brains, including song learners such as zebra finches, canaries, chickadees, sparrows, hummingbirds, parakeets, and non-learners, such as pigeons and chickens. They found that the FOXP2 brain expression pattern in these songbirds is striking, and the gene is expressed in these bird brains in a manner astonishingly similar to the distribution in mammalian brains including humans.²⁶

As we now also know, many nonhuman animals such as chimpanzees, gorillas, bonobos and parrots are able to learn and use human language. For instance, in 2007, it was reported that scientists believe that the day apes can have a conversation with humans is not far off. For more than three years, seven bonobos at the Great Ape Trust in the US have been taught to communicate with humans. They are taught to press 350 lexigram symbols that appear on a screen and each symbol represents thoughts or objects. As we know, most vertebrates communicate acoustically, but few, among them humans, dolphins and whales, bats, and three orders of birds, learn this trait.²⁷ Evidence so far seems to indicate that animals may not have grammar and syntax, but this may turn out not to be entirely true either.²⁸ Notwithstanding, many people now recognize that animals

²³ *Ibid.*

²⁴ S. Haesler, K. Wada, A. Nshdejan, E. Morrisey, E.K.T. Lints, E.D. Jarvis, and C. Scharff, 2004, 'FOXP2 Expression in Avian Vocal Learners and Non-Learners', *The Journal of Neuroscience*, March 31, 2004, 24(13): 3164-3175. The full text is available at <http://www.jneurosci.org/cgi/content/full/24/13/3164>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ For discussions of nonhuman animals and language, see Paola Cavalieri and Peter Singer (eds.), 1993, *The Great Ape Project: Equality beyond Humanity*, London, the Fourth Estate, in particular Roger S. Fouts and Deborah H. Fouts, 'Chimpanzees' Use of Sign Language', 28-41, and H. Lyn White Miles, 'Language and the Orangutan: The Old "Person" of the Forest', 42-57, and Francine Patterson and Wendy Gordon, 'The Case for the Personhood of Gorillas', 58-79, E. Kako, 1999, 'Elements of Syntax in the Systems of Three Language-trained Animals', *Animal Learning & Behavior*, 27:1-14; E.S. Savage-Rumbaugh and W.M. Fields, 2000, 'Linguistic, Cultural and Cognitive Capacities of Bonobos (*Pan paniscus*)', *Culture and Psychology*, 6:131-154; E.S. Savage-Rumbaugh, 1990, 'Language Acquisition in a Nonhuman Species: Implications for the Innateness Debate', *Developmental Psychobiology*, 23: 599-620; E.S. Savage-Rumbaugh, K.

may not have language as we humans define it, but animals do have communication systems, and they communicate with each other effectively. Many people who work closely with animals and pet owners can also testify that they can communicate with their animals. Obviously, these animals do not speak English, Chinese, or any other human language.

However, even if it is true that animals do not possess a human like language or do not have the same level of intelligence as humans (language and intelligence are defined in human terms by humans), even if this is the case, it still does not provide a logical justification or rationale that humans can treat animals whichever way they want, wilfully killing them, harming and slaughtering them with institutional sanction, cruelly subjecting them to pain, suffering and misery. Suppose some super intelligent extra-terrestrial beings are living somewhere in the universe and decide to come down to the earth, and suppose they are more intelligent than humans and have a different communication system, would it mean that they are perfectly entitled to slaughter us humans and condemn us to deaths and pains?!

A measure or criterion that can and has been used in philosophical and legal discussions and debates in the last few decades in the West is that if an animal is a sentient being, that is, a being that can experience pain and pleasure, then the animal deserves our moral and ethical consideration. There is no need to measure the level of intelligence or whether one animal is more articulate than the next. It is, after all, not a speech or intelligence contest. Analogously, as Wise points out, if fundamental rights for humans ‘turned on the ability to write prose like Shakespeare or poetry like Dante, to do science like Einstein or mathematics like Newton, to sculpt like Michelangelo or paint like Leonardo, to demonstrate the insight of Freud or the political skills of Lincoln, few humans would have them’.²⁹ Thus, a sentient life, whether it is human and nonhuman, by itself, is a good measure in our moral compass. The capacity to feel and suffer is one of the most common traits of human and nonhuman lives of many or most species, a universal common denominator of humans and many nonhumans, one major commonality or similarity often forgotten or ignored in our search for further understanding of life and its moral status on earth. As Wise says, that is why today many or most countries in the world have laws that ‘prohibit nonhuman animals from being tortured, tormented, abused, cruelly treated, overworked, starved, deprived of water and shelter, and having unnecessary pain inflicted upon them’, but there are no statutes prohibiting cruelty to robots or washing machines, and ‘for good reason as they are not conscious. They don’t suffer. They can’t feel pain. They can’t feel a thing.’³⁰

If we say animals, or at least some animals such as mammals or vertebrates, are sentient or conscious, but how do we know? This is important as animals deserve moral consideration if and only if they are sentient, especially possessing the capacity to feel pain. The issue of animal consciousness has been a

McDonald, R.A. Sevcik, W.D. Hopkins, W.D. and E. Rupert, 1986, ‘Spontaneous Symbol Acquisition and Communicative Use by Pygmy Chimpanzees (*Pan paniscus*)’, *Journal of Experimental Psychology*, 115:211-235.

²⁹ Steven M. Wise, 2000, *Rattling the Cage: Toward Legal Rights for Animals*, Cambridge, Mass., Perseus Books, p.179.

³⁰ Wise, 2000, p. 181.

topic of philosophical discussion for many hundreds of years (see Chapter 4). Originally, as Descartes and others believed, animals were mere automata, unable to feel pain or pleasure, no different from mechanical gadgets, but other thinkers thought otherwise, for instance, Kant who at least thought animals were conscious and could feel pain, and Bentham, among others (see Chapter 4).

In modern or more recent times, it is generally accepted that animals are sentient, that is, possessing the ability to have the raw experiences and feels such as seeing, hearing, feeling pains,³¹ and that animals are conscious, capable of having subjective or personal feelings and thoughts and can feel pain and pleasure. In particular, animals are said to possess the capacity to suffer, that is, experiencing adverse physiological and mental states such as pain, discomfort, fear, distress, frustration, boredom, torment or grief. There is increasing evidence to show that animals apart from humans have this ability. Still, there is the question of how we know that animals actually suffer, and how to assess the suffering of animals. These are very difficult questions even today because animals cannot talk to us and tell us how they feel. Thus, ascertaining that animals do suffer is generally based on observations of animal behaviour and clinical signs. Such signs can be observed and they are described as either nonparametric or parametric.³² Nonparametric signs are observable as being present or absent but are not measurable on a continuum in such aspects as body posture, eyes, ears, tail, and overall manner in which it relates to the environment.³³ These are expressive traits indicating how an animal feels, e.g., rough coat, runny eyes, diarrhoea, lameness, change in behaviour such as change from docility to aggression or from quiet to vocalizing on approach, may indicate the animals are suffering or under stress. This is also how most people observe in everyday life in their interaction with animals. Parametric signs are measurable on a continuum. Such clinical signs include body weight, body temperature, heart rate or rate of breathing.³⁴ When these parameters are established, one can estimate objectively how far an animal has deviated from normality and what an animal may be feeling, and this may enable us to assess the level of animal suffering. All these are closely related to animal welfare and animal welfare law. Cambridge University professor of animal welfare Donald M. Broom argues that animal welfare as a scientific concept can and should be assessed in a scientific and objective manner, measuring an animal's welfare state in a particular time under particular conditions (see Chapter 2).³⁵ Nowadays, scientists can and do measure the hormone output of animals to assess their welfare or suffering.³⁶ It has also

³¹ M.S. Dawkins, 2006, 'Through Animal Eyes: What Behaviour Tells Us,' *Applied Animal Behaviour Science*, 100: 4-10.

³² Bekoff, 1998, p.330.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Donald M. Broom, 1999, 'Animal Welfare: the Concept of the Issues', in Francine L. Dolins (ed.), *Attitudes to Animals: Views in Animal Welfare*, London, Cambridge University Press, 129-142; Donald M. Broom and K.G. Johnson, 1993, *Stress and Animals Welfare*, London, Chapman & Hall.

³⁶ See, for instance, M.S. Dawkins, A. Edmond, A. Lord, S. Solomon, and M. Bain, 2004, 'Time Course of Changes in Egg-Shell Quality, Faecal Corticosteroids and Behaviour as Welfare Measures in Laying Hens', *Animal Welfare*, 13:1-7. For discussion of studying animal behaviour to measure welfare, see also M.S. Dawkins, 2003, 'Behaviour as a Tool in the Assessment of

been suggested that we need to see animal sentience and animal welfare through animal eyes and hear their voices, that is, what animals want and prefer and how they see the world, not just what people think what animals want or how they feel.³⁷

Furthermore, common sense observations of animal behaviour may also be bolstered by scientific investigations of behaviour and neurology as well as considerations of evolutionary continuity between species.³⁸ For instance, the reactions of many animals, particularly mammals, to bodily events are easily and automatically recognized by most people as pain responses. High-pitched vocalizations, fear responses, nursing of injuries and avoidance are common mammalian behaviour.³⁹ Another scientific method of detecting suffering or consciousness is by measuring neurological responses. In this connection and paradoxically, a large amount of scientific research for the purpose of treatment of human pain and brain damage have been conducted on animals as all mammals are believed to share the same basic brain anatomy. Thus, we cannot on the one hand deny that animals are conscious, can feel pain and suffer while on the other hand, we use animals for such experiments on these very things in order to understand and treat humans. In short, in modern science, the combination of behavioural, physiological, biochemical, neurological and other studies provides strong evidence that animals, or at least some animals such as mammals and vertebrates are conscious and can experience pain and pleasure.

In terms of the more general animal consciousness, as Griffin points out, there are several types of scientific evidence that provide insights into what life is like for various animals.⁴⁰ He says that one category of evidence is the versatility with which many animals adjust their behaviour appropriately when confronted with novel challenges. According to Griffin, a second category is animals' communicative behaviour, and a third type is neuropsychological evidence. Griffin states that what little is known about the neural correlates of conscious thinking does not suggest that there is anything uniquely human about the basic neural structures and functions that give rise to human consciousness.⁴¹

In short, as Griffin suggests, conscious thinking may well be a core function of central nervous system for all animals, including human and nonhuman.⁴² This is not to say that animal consciousness is the same as humans. Most likely, the contents of the consciousness are different between humans and animals. Human consciousness is more likely to be much more complex and

Animal Welfare,' *Zoology*, 106 (4): 383-387; M.S. Dawkins, 2006, 'Through Animal Eyes: What Behaviour Tells Us,' *Applied Animal Behaviour Science*, 100: 4-10.

³⁷ M.S. Dawkins, 2006, 'Through Animal Eyes: What Behaviour Tells Us,' *Applied Animal Behaviour Science*, 100: 4-10.

³⁸ Colin Allen, 'Animal Consciousness', *The Stanford Encyclopedia of Philosophy* (Winter 2006), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/win2006/entries/consciousness-animal/>>.

³⁹ *Ibid.*

⁴⁰ Griffin, 2001, pp.12-13.

⁴¹ Griffin, 2001, p.13. For detailed discussion and examples of these categories, see Griffin, 2001. See also Wise 2000, pp.180-237, for his detailed discussions of seven areas of animal cognition in relation to chimpanzees and bonobos: capacity to feel pain, mental representation, self-conception, logical and mathematical abilities, tool use, the knowledge that minds exist, and nonsymbolic and symbolic communication including language.

⁴² Griffin, 2001, p.3.

versatile than animal thinking.⁴³ However, the issue for us here is not the degree or quality of thinking, but whether animals are conscious and can feel and suffer. As Griffin speculates, it is likely that an animal is not always conscious of everything it is doing, as humans are often unaware of many complex activities of our own bodies.⁴⁴ Consciousness may occur in some species and not at all in others, and even animals that are aware of events important in their lives may be incapable of understanding many other facts and relationships, yet the capability of conscious awareness under some conditions may well be so essential that it is the *sine qua non* of animal life, even for the smallest and simplest animals that have any central nervous system at all.⁴⁵

These are the basic background considerations against which this book is written. Animals feel and suffer as well as experience pleasure, animals everywhere, in African jungles, Chinese food markets, European research labs or American intensive farming factories. Such sufferings are the legitimate and moral concern of all human beings, irrespective of cultures, geographic locations or legal jurisdictions. Of course, different countries and cultures have their own traditions and ways of doing things, but it is not logical to think that animal welfare and animal law are the exclusive domain of concern for only certain countries or that somehow some countries or peoples are too backward or too ignorant to concern themselves with such moral issues. Such an attitude is illogical and irrational. It is an insult to the intelligence of the people in those countries.

Hence, this book aims at providing an introduction to the concept of animal law, animal welfare and animal rights, and the legislative and judicial practice of animal law in the West. We can see that animal welfare, animal law and animal rights are not ridiculous, far-fetched fantasies dreamed up by some idealists or radicals somewhere in the West. Nor is it making a fuss about nothing, or to use a Chinese expression *qiren you tian* (people from Qi worrying unnecessarily about the sky falling, or worry too much about nothing). We will see that the concept of animal law and rights was first proposed in the eighteenth and nineteenth centuries, and it has been practised in Western countries for the last century. We will see that it is not a matter of animal law being suitable only for Western cultures or developed countries. It is something that all civilized, enlightened and progressive nations and peoples should embrace, and it is a measure of the basic humanity in all of us humans. In today's globalized world, this is particularly important and relevant as we are interconnected in most or all spheres of human activities. Much can be learned from the Western, in particular, the European experience in animal law. At the same time, we also need to put this into perspective. In today's Western animal welfare law, especially the laws on farm animals in Europe and the lack thereof in the US, many laws and regulations have been enacted in the face of the reality of large scale industrialized intensive farming practices introduced in the West. After all, if chickens are allowed to run free on traditional farms, as chickens and other farmed animals used to be raised, free range, we would not need the legislation, stipulating the minimum space for those poor creatures in cramped cages! Such legislation unfortunately also helps

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

to institutionalize animal cruelty. The minimum spaces the law mandates obviously help to reduce the pains and sufferings to animals living in those conditions and help to improve their welfare. However, the intensive farming practice is cruel and inhuman to begin with. We need to legislate to ban such animal farming method, not just to lower the degree of its cruelty. To use an analogy, if we say that torture is cruel and inhuman, so we should legislate, not to completely abolish it, but to make torture slightly less cruel and inhuman. Therefore, the ban of intensive farming through legislation, not just making it less cruel is necessary if we talk about animals getting anything approaching justice. For instance, some European countries have banned the use of battery cages for chickens altogether, not just enriching the cages. Unfortunately, the inhuman and cruel practices of intensive farming are being introduced to developing and other countries in the name of modern advanced management practice for efficiency and cost-effectiveness. In this regard, countries like China need to consider both the positives and negatives when learning from the West and introducing Western practices, including animal law and animal farming practices.

In short, the book is a systematic examination of animal welfare law in the West in theory and practice as a general introduction to Chinese readers. The first part of the book focuses on the theoretical and historical aspects. It explores and surveys the historical background of animal welfare in the West, the conception of animals in philosophy and law and its evolution through the ages, including the early animal welfare conception and its legal development in the eighteenth and nineteenth centuries in England against the background of the increasing understanding of animals and biology and breakthroughs in modern natural science, followed by an examination of animal welfare and animal rights in modern and contemporary philosophical, ethical and legal debates. The second part of the book concentrates on animal welfare law in practice in Western countries and jurisdictions including the UK, Australia, the EU and the USA. A description of all the major relevant laws is presented in terms of anti-cruelty legislation and laws for the protection of other animals. In particular, the book discusses the case law from different jurisdictions.

Specifically, the arrangements of the book are as follows: Chapter Two provides a brief description of the key concepts including animal welfare, animal rights and animal law, animal ethics, and a general description of animal law courses and academic journals and leading animal charities in major Western countries. Chapter Three explores the historical background and evolution, including ancient Rome and Greece, the trials of animals in the Middle Ages in Europe and the earliest animal welfare lawmaking in the eighteenth and nineteenth century England. Chapter Four asks the question whether animals should have rights, exploring Western philosophical thoughts on animals including those of Bentham and Salt, and contemporary philosophers Peter Singer and Tom Regan. Chapter Five outlines the legal status of animals, presenting the classification of animals in law and their legal status as property/thing and the consequences of the property status of animals. It also ponders over the question whether animals could become legal persons, and presents the argument for animals as legal right holders by legal philosopher Joel Feinberg, and the contemporary animal legal scholars Gary Francione and Steven Wise and their arguments.

Deborah Cao, 2007, 《动物非物：动物法在西方》 *Animals are not Things: Animal Law in the West, with Preface by Peter Singer*, Beijing, Law Press.

In the second part of the book, Chapter Six discusses animal welfare law in practice in the West. It first identifies and discusses the two approaches to animal welfare law in the West: European and American. Then the chapter discusses England and its major animal legislation, the legal definitions of ‘unnecessary suffering’ and ‘cruelty’ as interpreted and applied by the court. The rest of the chapter is devoted to animal law in Australia and the case law from Israel, and lastly the McLibel case and its implications. Chapter Seven continues with animal welfare law in practice. After briefly describing the EU legal structure and legislative set-up, it outlines EU’s basic policy on animal welfare and the legal status of animals in EU law. It then specifically discusses and describes the major EU animal welfare laws, including the major EU directives and European conventions on animal welfare. Lastly, the chapter touches on the EU 2006-2011 animal welfare action plan. Chapter Eight turns to the animal law practice in the US. It first outlines the major federal laws, the background, content, enforcement, and major state anti-cruelty laws and their deficiencies. It next focuses on the case law – the legal definition of cruelty and the legal standing of animals to sue through various leading cases.

Last but not least, this book is about animal law, but animal law is never just a matter of the law. As Henry Salt said all those years ago in 1892, education must always remain the antecedent and indispensable condition of humanitarian progress and of the animal rights and animal law project.⁴⁶ It is society as a whole that needs ‘enlightenment and remonstrance’ for the recognition of animal rights,⁴⁷ in the West and elsewhere. China is no exception.

⁴⁶ Henry S. Salt, 1892/1980, *Animal's Rights : Considered in Relation to Social Progress*, Preface by Peter Singer, Clarks Summit, Pennsylvania, Society for Animal Rights, p.119.

⁴⁷ Salt, 1892/1980, p.120.