

## LINKING CULTURAL AND LEGAL TRANSITIONS

### Panelists:

Taimie Bryant, Una Chaudhuri, and Dale Jamieson\*

### Moderators:

Laura Ireland Moore and David J. Wolfson†

*In this discussion, panelists explore the many viewpoints society holds with respect to nonhuman animals. The discussion broadly covers ethics and what constitutes ethical behavior in this regard. The question dealt with is, largely, what is the appropriate ethical model to use when arguing that animals deserve better treatment and expanded rights? Unlike parallel movements for human civil rights or women's equality, the animal rights movement has much greater hurdles to overcome when it comes to arguing that animals deserve equal treatment under the law. In an attempt to address this question, the dialogue touches upon many areas of human thought. The panelists take on diverse fields such as philosophy, science, anthropology, environmentalism, and feminism and use them to understand the past and present state of animal law. The analytical tools of these several disciplines are also applied to animal law in an attempt to develop a better model for the future.*

**Sandeep Kandhari:** I would like to welcome David Wolfson and Laura Ireland Moore, who will moderate the first panel, entitled "Linking Cultural and Legal Transitions." This interdisciplinary panel will explore the dialogue between popular cultural views of animals and legal changes.

Laura Ireland Moore is the founder and Executive Director of the National Center for Animal Law at Lewis & Clark Law School in Port-

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\* © Taimie Bryant 2006. Taimie Bryant is currently a Professor at the University of California at Los Angeles (UCLA) School of Law. She holds a Ph.D. in anthropology from UCLA and a J.D. from Harvard Law School.

© Una Chaudhuri 2006. Una Chaudhuri is a Professor of English and Drama at New York University (NYU). She earned her Ph. D. in English and Comparative Literature from Columbia in 1982.

© Dale Jamieson 2006. Dale Jamieson is a Professor of Environmental Studies and Philosophy and an affiliated Professor of Law at NYU. He earned his Ph.D from the University of North Carolina at Chapel Hill in 1976.

† © Laura Ireland Moore 2006. Laura Ireland Moore is the Founder and Executive Director of the National Center for Animal Law. She earned her J.D. from Lewis & Clark Law School in 2001.

© David J. Wolfson 2006. David J. Wolfson is an Adjunct Professor of Law at NYU and a partner in the Global Corporate Group at Milbank, Tweed, Hadley & McCloy LLP. He earned his J.D. from Columbia University School of Law in 1993.

land, Oregon.<sup>1</sup> The Center is dedicated to providing training, resources and support for animal law students, including curriculum development, conferences and competitions, career advice, and scholarships.<sup>2</sup> Laura is also an advisor to the *Animal Law Review* and teaches Lewis & Clark's Animal Law Clinic.<sup>3</sup>

David Wolfson is a partner in the Global Corporate Department at Milbank, Tweed, Hadley & McCloy LLP.<sup>4</sup> He has represented a number of animal protection groups, including the Humane Society of the United States (HSUS), Farm Sanctuary, and the Animal Legal Defense Fund (ALDF).<sup>5</sup> He has also written extensively on animal protection law.<sup>6</sup> His most recent article was coauthored with Mariann Sullivan and is entitled *Foxes in the Hen House: Animals, Agribusiness and the Law: A Modern American Fable* published in *Animal Rights: Current Debates and New Directions*.<sup>7</sup> He currently is an adjunct professor, teaching animal law at New York University (NYU) School of Law,<sup>8</sup> and has previously taught animal law at Harvard Law School, Yale Law School, Cardozo Law School, and Columbia Law School.

**Wolfson:** Thank you. I am delighted to be at NYU today. I am particularly excited to be discussing the issues that we are going to discuss in the next hour and a half with the people we have on the panel. We have a truly great group here. I am going to briefly introduce the panelists and then describe what we are going to be talking about. Then we are just going to start it up. There will be a period for questions at the end of the panel. Hopefully, we will have about ten or fifteen minutes. At that time, if you have a question, you can just walk up to the microphone. I encourage you to please ask a question as opposed to giving us a statement.

To start off, over here in the middle, we have Taimie Bryant. Taimie holds a Ph.D. in anthropology from the University of California

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<sup>1</sup> Natl. Ctr. Animal L., *About the National Center for Animal Law*, <http://law.lclark.edu/org/ncal/staffadvisors.html> (accessed Nov. 16, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Milbank, Tweed, Hadley & McCloy LLP, *Attorneys: David J. Wolfson*, [http://www.milbank.com/en/Attorneys/v-z/Wolfson\\_David.htm](http://www.milbank.com/en/Attorneys/v-z/Wolfson_David.htm) (accessed Nov. 16, 2006).

<sup>5</sup> Voiceless: The Fund for Animals, *September 2005: David J. Wolfson*, [http://law.voiceless.org.au/law\\_talk/september\\_2005\\_david\\_j\\_wolfson.html](http://law.voiceless.org.au/law_talk/september_2005_david_j_wolfson.html) (accessed Nov. 16, 2006).

<sup>6</sup> David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production* (Farm Sanctuary, Inc. 1999); David J. Wolfson, *McLibel*, 5 *Animal L.* 21 (1999); David J. Wolfson, *Steven M. Wise: Rattling the Cage—Toward Legal Rights for Animals*, 6 *Animal L.* 259 (2000); David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, in *Animal Rights: Current Debates and New Directions* 205 (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford U. Press 2004).

<sup>7</sup> Wolfson & Sullivan, *supra* n. 6, at 205.

<sup>8</sup> Voiceless: The Fund for Animals, *supra* n. 5, at ¶ 3; N.Y.U. Sch. L., *Faculty: Adjunct Faculty*, <http://its.law.nyu.edu/faculty/profiles/index.cfm?fuseaction=listings.adjunct;select W> (accessed Nov. 16, 2006).

at Los Angeles (UCLA) and a J.D. from Harvard Law School.<sup>9</sup> She is a professor at UCLA School of Law, where she teaches an introductory course on animal law and an additional course about animal shelters and the animals passing through them.<sup>10</sup> Her work is funded by Bob Barker's generous endowment for the purpose of teaching and research into animal rights law.<sup>11</sup> Dr. Bryant has been active in legislation such as the California Shelter Reform Legislation of 1998 and the West Hollywood ban on the declawing of cats.<sup>12</sup> Her work integrates social science and law. Her article, *Trauma, Law and Advocacy for Animals*, examines the interplay between society's denial of institutionalized violence against animals, legal activism, and public activism.<sup>13</sup> Two other forthcoming publications are *Similarity or Difference as a Basis for Justice: Must Animals Be Like Humans to Be Legally Protected from Humans?* and *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*.<sup>14</sup> Both draw on social justice activism in the areas of disability rights and radical feminism to inform animal law theory and strategies.

To my immediate right, we have Professor Una Chaudhuri, a professor of English and Drama at NYU who is currently working on a project that explores the relationship between performance and the new field known as "Critical Animal Studies."<sup>15</sup> She has published several papers on what she calls "zooësis," defined as the way cultures use the figure of the animal to make meaning.<sup>16</sup> She is guest editing a special issue of *TDR: The Journal of Performance Studies*, on animal-

<sup>9</sup> UCLA L., *Taimie L. Bryant: Biography*, <http://www.law.ucla.edu/home/index.asp?page=439> (accessed Nov. 16, 2006).

<sup>10</sup> UCLA L., *Taimie L. Bryant, Courses*, <http://www.law.ucla.edu/home/index.asp?page=441> (accessed Nov. 16, 2006).

<sup>11</sup> *Id.*

<sup>12</sup> Cal. Sen. 1785, 1997–1998 Reg. Sess. (Aug 28, 1998); see Taimie Bryant, *The Uncertain Present State of the Hayden Shelter Reform Legislation of 1998*, [http://www.maddiesfund.org/news/news\\_pdfs/hayden\\_update.pdf](http://www.maddiesfund.org/news/news_pdfs/hayden_update.pdf) (accessed Nov. 16, 2006) (providing a detailed explanation of the history of the bill, and how it operates within CA law); John M. Broder, *In West Hollywood, a Cat's Right to Scratch May Become a Matter of Law*, N.Y. Times A12 (Jan. 25, 2003).

<sup>13</sup> Taimie L. Bryant, *Trauma, Law and Advocacy for Animals*, 1 J. Animal L. & Ethics 63 (2006).

<sup>14</sup> Taimie L. Bryant, *Similarity or Difference as a Basis for Justice: Must Animals be Like Humans to be Legally Protected from Humans?* 70 L. & Contemp. Probs. \_\_\_ (forthcoming 2006) (draft available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=796205](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=796205)); Taimie L. Bryant, *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*, U. Chi Legal Forum \_\_\_ (forthcoming 2006) (draft available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=902041](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=902041)).

<sup>15</sup> N.Y.U. Arts & Sci. Faculty, Una Chaudhuri, <http://as.nyu.edu/object/UnaChaudhuri.html> (accessed Nov. 16, 2006); see also Richard Pierce, *Chaudhuri Honored by Humane Society for Innovative Research in Animal Studies*, 2:2 NYU Today (Spring 2006) (available at <http://www.nyu.edu/nyutoday/archives/19/11R/Stories/Chaudhuri.html>) (explaining that "Critical Animal Studies" examines the cultural meaning of human animal practices).

<sup>16</sup> Una Chaudhuri, *Animalizing Performance, Becoming-Theatre: Inside Zooësis with The Animal Project at NYU*, 16:1 Theatre Topics 1–17 (Mar. 2006).

ity and performance.<sup>17</sup> A course she designed and teaches, entitled “Topics in Performance Study: Animal Rites,” won the Animal & Society’s Course Award from HSUS.<sup>18</sup>

Then at the end, on the right, we have Professor Dale Jamieson, who is a professor of environmental studies and philosophy at NYU and an affiliated professor of law.<sup>19</sup> This semester, he is teaching a seminar at the NYU Law School, entitled “Environmental Values, Policy, and the Law.”<sup>20</sup> He has written extensively on both animal and environmental issues.<sup>21</sup> His most recent book, *Morality’s Progress: Essays on Humans, Other Animals, and the Rest of Nature*, explores cultural transformations as they relate to human relationships with animals and the environment.<sup>22</sup>

You can see we have an absolutely terrific panel. The goal of the panel, as was stated before, is to address the constant interchange between the legal and popular view of animals. Specifically, I think we would like to talk a little bit about how humans and animals actually interact, the problems that seem to exist between our cultural view of animals, our actual treatment of animals, and the way that the law relates to animals. To the extent that we determine there are problems, we will try and work out a way of maybe moving the peanut forward a little bit, making the situation better.

My goal, and Laura [Ireland Moore]’s goal, will be to facilitate a dialogue between the panelists. It is our hope that we will have a general free-flowing conversation here, and we will all just get to watch.

To begin this morning, I wanted to throw a general question to the panel. Anyone is free to take the first response. One of the most common ways we have begun to look at animal-human interaction is due to the work of Professor Gary Francione. He coined the phrase “moral schizophrenia,” which has become widely adopted in the animal protection community.<sup>23</sup> The phrase means that the way we interact with companion animals and the animals that we use in our society seems somewhat schizophrenic from an ethical basis. That is, we seem to believe in treating animals appropriately. We seem to treat some of them extremely appropriately, in fact, maybe a little too well sometimes. At the same time, we seem to be quite capable of distancing ourselves from the egregious treatment of animals that would, one would think, contradict our basic premise that animals should be treated ethically.

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<sup>17</sup> MIT Press Js., 51:1 TDR T193 (forthcoming Spring 2007).

<sup>18</sup> Ctr. Respect Life & Env., *Programs: 2006 Animals & Society Course Awards*, [http://www.crle.org/prog\\_course\\_awards.asp](http://www.crle.org/prog_course_awards.asp); scroll to Congratulations to the Award Recipients for 2005 (accessed Nov. 16, 2006).

<sup>19</sup> N.Y.U. Sch. L., *Faculty: Dale Jamieson*, <http://its.law.nyu.edu/faculty/profiles/index.cfm?fuseaction=cv.main&personID=25471> (accessed Nov. 16, 2006).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Dale Jamieson, *Morality’s Progress: Essays on Humans, Other Animals, and the Rest of Nature* (Oxford U. Press 2002).

<sup>23</sup> Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* 1–30 (Temple U. Press 2000).

The first question I want to ask the panel is, do we agree that this is a starting point for the conversation, that there is in fact a great deal of inconsistency with the way society treats and views animals? If so, what are some of the reasons we might think this is the case?

**Chaudhuri:** I think this is actually an excellent place to begin the conversation. Delci [Winders] formulated a set of simply beautiful questions for us. The first one pointed out this inconsistency between the fact that people spend billions of dollars on pets—on the pet industry—and yet most people are unaware of or unconcerned about the violence committed against animals raised for food.<sup>24</sup> It seems to me that these two facts are intimately related. They are two sides of the same coin. My point of departure for my work has been in recognizing that the way humans treat animals, and our relationship to animals, is kind of the great open secret of our society and culture. Anthropologists have this theory about how cultures are often organized around certain things that you know *not* to know.<sup>25</sup> It is about *not* knowing, in a special sense. In other words, you are aware of something, but you do not acknowledge that you are aware of it. It is a kind of willed ignorance. A good analogy for this is the way children deal with the fact that their parents have sex. They kind of know it, but then, they also do not know it. That structure of the open secret, and living and organizing your existence around it, is absolutely key to the way we relate to animals today.

To me, the good news is that society is becoming very aware of this open secret and its mechanisms. It is becoming harder for us to keep the secret in its place, hidden away. There is an increasing awareness of this inconsistency, and more and more need to attend to it. Our discomfort is producing activities, discourses, and artifacts in the field in which I am interested, which is cultural and artistic production. We are becoming aware of a great deal of representation, in popular culture, painting, theater, performance, and high art, in which we are being asked to rethink our relationship to animals.

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<sup>24</sup> See Am. Pet Prods. Mfrs. Assn., Inc., *Industry Statistics & Trends: Pet Ownership*, [http://www.appma.org/press\\_industrytrends.asp](http://www.appma.org/press_industrytrends.asp), scroll to Spending (accessed Oct. 23, 2006) (indicating anticipated U.S. pet industry expenditures of \$38.4 billion in 2006 and actual expenditures of \$36.3 billion in 2005).

<sup>25</sup> See generally Daniel Katz & Floyd Allport, *Student Attitudes: A Report of the Syracuse University Research Study* (Craftsman Press 1931) (coining the phrase “pluralistic ignorance” and exploring how culture at times encourages self-deception); James A. Kitts, *Egocentric Bias or Information Management? Selective Disclosure and the Social Roots of Norm Misperception*, 66:3 *Social Psychology Quarterly*, 222-237 (Sept. 2003) (arguing that people conceal their “counternormative” behavior which then causes overestimation of support for existing social norms); see generally Francisco Gil-White, *How Conformism Creates Ethnicity Creates Conformism (and Why This Matters to Lots of Things)*, 88 *Monist* 189-237 (2005) (“exploring the connection between conformism as an adaptive psychological strategy, and the phenomenon of ethnicity”); see generally Thomas Kuhn, *The Structure of Scientific Revolutions* (U. Chi. Press 1996) (developing a theory of science that includes the idea that science as an institution often denies the truth of new studies that conflict with what has been the consensus in order to preserve the status quo and avoid having to adjust other contingent theories).

**Bryant:** Continuing on in the order of our seating arrangements, I, too, think that this is a good point of entry to talk about society's myths. By myth, I mean a discourse that is used to define us, but a discourse that actually distorts reality for many of us. If we think about other social justice movements, I think this has been a phenomenon elsewhere as well, like the melting pot myth that hindered civil rights development. Certainly, the United States was not a melting pot for those people who saw a great deal of distinction in their treatment. The idea that society cares about animals is truly a myth in light of the uses that we make of animals and the disregard in which we hold them.

However, I would like to speak briefly about a different myth: the myth of valuing nonviolence. This is my first opportunity to work through some of these ideas. I think that humans pride themselves on valuing nonviolence as a means of living with one another and solving problems. But in fact, there is a tremendous amount of violence that operates in our society. The consequences of a myth of nonviolence are: first, inappropriate trust; second, the traumatic silencing of those who speak a different truth, or a different aspect of truth; and third, the danger of oppositional categorization. I would like to speak a little bit about each one of those.

The first issue is that of inappropriate trust. This is the ready acceptance of claims that an individual—or an institution—would not engage in violence, either because they are not violent as a general matter, or because it would not suit their goals. A general statement of this came up when Justice Ginsberg spoke to the UCLA law faculty about her dismay during oral arguments in the *Hamdi v. Rumsfeld* case, which dealt with what the United States can do to people they detain and raised questions regarding the possibility of torture.<sup>26</sup> The response given by the Solicitor General of the United States, and I actually have the transcript here from that, was that:

It's also the judgment of those involved in this process [of detention] that the last thing you want to do is torture somebody or try to do something along those lines. . . . [I]f you did that, you might get information more quickly, but you would really wonder about the reliability of the information you were getting. So the judgment of people who do this as their responsibility is that the way you would get the best information from individuals is that you interrogate them; you try to develop a relationship of trust.<sup>27</sup>

The reason Justice Ginsberg said she was dismayed is that the very next day, pictures of Abu Ghraib hit the front pages of all the major newspapers.<sup>28</sup> As a result of this timing, part of the reality of the experience of those people being held by the United States was not

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<sup>26</sup> See generally 542 U.S. 507 (2004).

<sup>27</sup> Oral Argument at 50, *Hamdi*, 542 U.S. 507 (copy on file with *Animal L.*).

<sup>28</sup> *Id.* at 27.

represented in the discussion of justice during the *Hamdi* oral arguments.

For me, it resonated with the statements of many factory farmers who claim that they would not engage in violent and torturous acts against the animals they hold, because they are not that kind of people. Also, they say it would not meet their needs to engage in that kind of conduct, because the meat might be tough or unmarketable, and consumers might not purchase their food. In fact, as with the situation of violent conduct in the one context, Abu Ghraib, the public was totally dependent on pictures being made available for a different version of reality to somehow make its way into the discourse. The same thing is true in the context of factory farmed animals, where it is very difficult to get pictures of what is going on, because those animals are held on private property, and access is controlled. It is difficult when those people who would ask for our trust, or who are operating on our trust, also hold the keys to the visions of a different way of understanding reality.

My second point, traumatic silencing, goes to some of the writing I have done that deals with new theories in sociology and psychology. Psychiatric research shows that when a person speaks to a reality that is not given credence in their society, it actually leads to a type of trauma first documented among war veterans.<sup>29</sup> This was secondarily documented by research psychiatrist, Judith Herman, at Harvard, when talking about rape victims who would give a picture of violence that was cast back at them as if the violence was somehow brought on by the victim herself, rather than receiving a statement about the extent to which women are vulnerable to rape.<sup>30</sup> In the war veteran context, the issue is the extent to which people serving for the United States military are subjected to violence that can leave traces on their soul.<sup>31</sup> The disbelief of those people listening is a hurdle to get past. Attempting to get past it results in raising the volume of our voices. “No, I really mean it’s true! No, it’s really happening! No, I’m not really at fault here!” The result is the discrediting of our message, because we do not modulate our voices correctly. That lack of modulation is really born of the other side in the discourse, denying the reality that is presented.

The third issue is what I call “oppositional categorization.” In preparation for this event, I was reading Joyce Tischler’s 1977 article talking about animal attorneys as advocates in the movement.<sup>32</sup> At

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<sup>29</sup> Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* 67–68 (Basic Bks. 1992).

<sup>30</sup> *Id.*

<sup>31</sup> See Betsy Streisand, *Stress by Any Other Name (Post-Traumatic Stress Disorder among Soldiers)*, 141:13 U.S. News & World Rep. 56 (Oct. 9, 2006) (noting that every major war in the past hundred years has led to stress disorders among returning soldiers).

<sup>32</sup> Joyce Tischler, *Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats*, 14 San Diego L. Rev. 484 (1977).

that point in time, Joyce was writing about how we were characterized as sort of silly.<sup>33</sup> We romanticized animals. We were quite idealistic about animals. We anthropomorphized animals excessively. Now we are seen as terrorists.<sup>34</sup> When I was talking to Joyce before this session, she said, "This isn't a good change." We could readily agree about that. Because violence is not something that runs through society, according to our mythic system, it becomes an oppositional category by which those people who can most readily be identified as violent get cast as bad and violent, speaking in a language that is not acceptable in a society that does not operate with violence as an underpinning. The oppositional category is dependent on a sense that the other side of this discourse is nonviolent.

I think some of this cultural barrier and the schizophrenia about which we are talking is related to a number of different myths that reject some aspects of reality that would, in fact, be helpful in advancing the cause of animal advocacy.

**Jamieson:** There is so much interesting material already on the table that I hesitate to put more on the table, both because we do not need more and because what I have to say may be less interesting. But let me plunge on.

If philosophy begins in wonder, then moral philosophy begins in moral schizophrenia. So the first observation I would make about this question is that it seems to me that schizophrenia runs through our everyday conception of morality and is not just confined to animals. Taimie [Bryant] pointed out, I think very well, the schizophrenia that runs through our views about violence. It often comes up at a very early age when children learn that there is a commandment against killing and find it very difficult to theorize and understand what the exceptions to killing are supposed to be. At a more sophisticated level, common sense morality tells us that it is wrong to kill people, but that we are not blameworthy for letting people die, even when, through very simple actions on our part, we could save a great many lives. In common sense morality, there is a deep distinction between acting and omitting, between the kinds of responsibility we have for positive acts and negative allowings.

We could talk just about our common sense moral framework in that way, and point out a lot of areas where there are asymmetries that, from a certain perspective, can be seen as schizophrenic. This tendency also runs much more deeply. For example, we tend to have

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<sup>33</sup> *Id.* at 498-99.

<sup>34</sup> Animal Enterprise Terrorism Act, Pub. L. No. 109-374, 120 Stat. 2652 (2006) (amending previous version, 18 U.S.C. § 43 (2002)); see Peter Nicholas, *State Tracked Protesters in Name of Security*, L.A. Times A1 (July 1, 2006) (discussing a program whereby different activist groups, including historically nonviolent animal rights groups, were tracked and even spied on by the State of California); see generally *Terrorists or Freedom Fighters? Reflections on the Liberation of Animals* (Steven Best & Anthony J. Nocella II eds., Lantern Bks. 2004) (examining the philosophical and cultural meanings of the word "terrorism" within the context of animal liberation tactics).



schizophrenia about reason and emotion. As we know, some of the people who speak most loudly in defense of reason often speak very shrilly and emotionally.

When it comes to the distinction between humans and animals, this is very deeply ingrained in our identity. What exactly is our relationship to our animal nature? Certain people have argued very persuasively that this anxiety about the relationship between humanity and animality is actually one of the most animating questions in classical Greek philosophy, although much of that debate tends to be submerged in the history of philosophy.<sup>35</sup> We see this distinction in the medieval period through a picture of people as, on the one hand, dancing with the angels, and on the other hand, crawling around in the mud with the animals. What exactly are we? Of what does our identity really consist? Of course, although we are living more than a century after Darwin, in some ways the challenge is even more intense. There is a remarkable schizophrenia on the part of many people in our society about how to have the deliverances and advantages of contemporary biological research, while at the same time not accepting fundamental parts of the Darwinian worldview that states that we are in fact animals, not distinct from other animals in substance or kind.<sup>36</sup> Therefore, there does not seem to be anything in the nature of things that provides the kind of moral distinctiveness that we have all too often assumed is given.

This schizophrenia also runs through other areas of life. I have often wondered what it is like to be, for example, a fourteen or fifteen year old boy who, in the course of a single hour, may go from viewing images of women on MTV, for example, that are considered to be perfectly acceptable, perfectly normal ways of relating to women, and within an hour wind up in a class where women's history month is being discussed and women are being portrayed and represented in a radically different light.

Although it runs very deep in our moral outlooks, moral schizophrenia is perhaps especially intense when it comes to sites of moral transformation. I think this is the case with respect to animals.

If our moral schizophrenia with respect to animals seems particularly striking, it is because we are living in a time in which our moral relationships with animals are being radically transformed, although it may be difficult to see that on a day-to-day basis.

**Wolfson:** Please feel free to respond to each other if you want.

**Ireland Moore:** I just wanted to ask you to go on a little bit. Is there a way we can make the schizophrenia productive?

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<sup>35</sup> See e.g. Richard Sorabji, *Animal Minds and Human Morals: The Origins of the Western Debate*, 156–57 (Cornell U. Press 1993) (discussing Greek philosophers' various bases for justice for animals and the relation of this justice to human justice).

<sup>36</sup> See James Rachels, *Created from Animals: The Moral Implications of Darwinism* 129 (Oxford U. Press 1990) (arguing that humans frequently tend to anthropomorphize nature and see animals as similar to humans).

**Jamieson:** I think that is a nice question because it feeds into some things that Taimie [Bryant] has thought about in interesting ways. Certainly, much of how our moral thinking and the law change and progress is based on exhibiting inconsistencies and framing what hitherto had been viewed not simply as constituting differences, but as constituting indefensible inconsistencies. A lot of the philosophical argument about the moral status of animals progressed by pointing out analogies and similarities between humans and other animals. For example, the argument that if it is *prima facie* wrong to cause humans to suffer, then it is inconsistent to suppose that it is not *prima facie* wrong to cause nonhumans to suffer.<sup>37</sup> After all, if there is something wrong with suffering, it does not matter what sort of animals are suffering.

Similarly, for reasons that I think are quite obvious to this audience, arguments in litigation are often made on grounds of consistency. The appeal to precedent is meant to show that the particular principle extends to new cases. It involves an inconsistency not to see that extension. That line of argument has been critiqued by a number of people including, I think, Taimie [Bryant], so this might be a good invitation for Taimie to say something about this.

**Bryant:** Feminism, not the animal issue, actually brought me into what I call the similarity argument: the justice argument that like entities should be treated alike. The idea that if women are like men, they should be given access to workplace opportunities like men was kind of a misstep in some ways, because women did get access to the workplace on the basis of that etiology, the similarity argument.<sup>38</sup> But when they gained access, it turned out they were not like men. They got pregnant. That created inconveniences for employers that flew in the face of everyone involved. “Wait a minute. We used similarity arguments to support our access, but once we got entrance, we wanted to be treated as different.” In subsequent iterations of the dialogue about women’s workplace opportunities, women/feminists had to change the concept of justice so that it was not based on women being like men, but on employers having to justify exclusion. The use of a different justice paradigm and a shifting of presumptions meant that if employers wanted to exclude, they must bear the burden of explaining this exclusion.

In the animal context, we have done the same thing. I have surveyed the literature of many different civil rights and social justice movements’ approaches, and they all seem to start with this inherent similarity argument and what is now labeled the formal equality ap-

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<sup>37</sup> See Internet Ency. Phil., *Animals and Ethics* 2(a)–(b), <http://www.iep.utm.edu/a/anim-eth.htm> (accessed Nov. 16, 2006) (discussing “Why Animals Have Direct Moral Status” and “Why Animals Are Not Equal to Human Beings”).

<sup>38</sup> See *Nev. Dept. Human Resources v. Hibbs*, 538 U.S. 721, 738 (2003) (discussing the Family Medical Leave Act of 1993 and stating that a statute simply mandating equality would provide for no family leave at all).

proach.<sup>39</sup> If you are like the rights holder, you should get the same treatment. In our case, the approach has been to argue that if animals are like humans, then they should be protected from harms to which we would not subject a human.<sup>40</sup> Now it cannot just be any characteristic; it has to be something that defines humans. I actually find it really interesting that by contrasting animals, we figure out what we are like. One of those characteristics has been cognition: do they think like us? Another has been some combination of cognition and pain and suffering, those kinds of things.<sup>41</sup> Finally, there is the flat-out Bentham approach, based on the capacity to suffer.<sup>42</sup>

I would argue that focusing on animals' capacity to suffer as the basis for a similarity argument is wrongheaded. It is true that it gets away from the hierarchy that is created by cognition. You cannot sweep in as many animals with a cognition argument as you can with a suffering argument. But a suffering similarity argument is really seriously flawed in some ways.

First, you define the animals by reference to a quality that is actually despised by many people. The fact that I suffer really bugs me, because it means that I cannot do something. When I am suffering from a migraine or from anxiety about something, I cannot participate as well. It seems like a weakness. In fact, psychological research after World War II about people who had survived the holocaust—concentration camp and death camp situations—suggested that, in fact, there was a lot of disdain for suffering and a desire to say that an individual who suffered was weak to begin with.<sup>43</sup> There is a lot of literature that suggests it is dangerous to define an individual by reference to suffering when we think of suffering as a pitiable and undesirable quality.<sup>44</sup>

Interestingly, if you choose cognition, you are choosing something that we actually do value about ourselves. I think it also belittles animals with respect to all the wonderful and affirmative qualities they have. If you take cognition, for example, it is interesting to me, this "man is the measure" deal. If animals are like humans, then they get entrance to rights. You know, they have to think like we do. Well, what

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<sup>39</sup> See generally Louis M. Seidman, *Constitutional Law: Equal Protection of the Laws*, 201-07 (Found. Press 2002) (discussing formal equality in gender law).

<sup>40</sup> See generally Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Bks. 2000) (examining how the rights of animals to bodily integrity and bodily liberty relate to a similarity with human rights derived from autonomy).

<sup>41</sup> See generally *Mental Health and Well-Being in Animals* (Franklin McMillar ed., Blackwell Publ. 2004) (compiling recent research in the fields of cognition, emotions, suffering, and mental states in animals).

<sup>42</sup> See generally Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford U. Press 1789) (discussing theories of law and rights based on the capacity to suffer and feel pleasure).

<sup>43</sup> See generally U.S. Holocaust Meml. Museum, *Bibliographies: Psychological Trauma and the Holocaust*, <http://www.ushmm.org/research/library/bibliography/index.php?content=Psychological> (accessed Nov. 16, 2006) (compiling scholarly research on the psychological effects of the Holocaust on Holocaust survivors).

<sup>44</sup> *Id.*

do humans think like? Tom Regan said that human cognition is distinctly different from that of animals, because humans anticipate the future and, therefore, their lives have somewhat more value in some settings.<sup>45</sup> There is a lot of literature that suggests humans would be better off if we were to think like animals, live in the present moment, not live so far in anticipation of the future.<sup>46</sup> So if we live in the moment, we have access to a state of grace. If we live like humans, we have access to rights. Rights, grace.

It is hard to say that man should be the measure of all goodness if all we can produce is a cognitive pattern that gives us access to rights. The capacity to suffer distinguishes rights, but nevertheless defines them by reference to that capacity, rather than by capacities humans do not have, like breathing without assistance under water or flying in the air without assistance. In that sense, it limits. It also stimulates research on animals, to find out if they suffer like humans.<sup>47</sup>

You will notice that since we have started defining animals as like humans by reference to suffering, the impetus and the incentive exists to define animal suffering as different from that of human suffering. A tremendous amount of research now shows that, while fish do appear to feel pain, they process pain differently.<sup>48</sup> Research also shows other kinds of animals engaging in aversion to negative stimuli are not really experiencing pain.<sup>49</sup> When we rely on the capacity to suffer, we are actually ratcheting up the incentives associated with experimenting on animals with respect to their capacity to suffer.

As I have just alluded to, I do not think it works. Humans have defined themselves as nonanimals. Whenever we come close to that boundary line and show humans that animals are like them, humans get redefined as not being like animals. It is this slippage backwards that makes the similarity argument flawed. I actually do not spend most of my time dealing with the similarity argument, because I am not interested in talking about animals. I am really interested in talking about abusers of animals. I want to know how it is they justify what they do. That is why the work I did on the declaw ban, for example, gave me a way of changing the presumption.<sup>50</sup>

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<sup>45</sup> Tom Regan, *Defending Animal Rights*, 1-27 (U. Ill. Press 2001).

<sup>46</sup> See generally His Holiness the Dalai Lama & Howard C. Cutler, M.D., *The Art of Happiness: A Handbook for Living* (Riverhead Bks. 1998).

<sup>47</sup> See generally *Laboratory Animals: The International Journal of Animal Science and Welfare* (C. Dunn et al. eds., RSM Press 2006) (compiling scholarly articles on research related to animal pain).

<sup>48</sup> VA Braithwaite, *Fish Pain Perception* 5, <http://www.aquanet.ca/English/research/fish/vb.pdf> (accessed Nov. 16, 2006).

<sup>49</sup> See U. Newcastle: Animal Care & Ethics Comm., *Perception and Measurement of Pain* 1-2, <http://www.newcastle.edu.au/research/animal/revision/ACEC16.pdf> (Sept. 1993) (discussing species-specific differences in the perception and measurement of pain).

<sup>50</sup> See The Paw Project, *Acknowledgements*, <http://www.pawproject.com/html/acknow.asp> (accessed Nov. 16, 2006) (listing advocates for The Paw Project, the group that initiated the West Hollywood Declaw Ban).

One of the highlights of Joyce [Tischler]'s presentation earlier was that it takes a village. It takes a team of people to be able to do this. Vicki Steiner, who is here today, was one of a team of people working with me on the declaw ban.<sup>51</sup> The declaw ban says that if you want to cut off the toes of a cat, you have to justify it on the basis of medical benefits to the animal.<sup>52</sup> Instead of the presumption being that the owner can ask the vet to cut off the toes of her cats, and instead of arguing, "Oh, you shouldn't cut off the toes of a cat, because the cat will suffer," I would ask, "Why do you want to cut off the toes of a cat? What do you hope to accomplish?" and, "That's not a very good reason, is it? To save your furniture?" Or something like that.

My anchor point is not similarity between animals and humans. My anchor point is forcing the justification on the other side. That is something the formal equality theorists are beginning to work on in other areas. I do not have a full solution to it, but I know I would much prefer to talk about the other side of the moral schizophrenia than specifically the animal side.

**Chaudhuri:** With regard to analogy, though, it is tempting and can be persuasive to put forward an animal rights agenda that is analogous to earlier movements and progressive politics, like the fight for civil rights, the fight against racism, or the fight against sexism. Obviously, that has been the strategy of organizations like People for the Ethical Treatment of Animals (PETA).<sup>53</sup>

**Bryant:** I think that is definitely true. The similarity argument has salience in popular culture, but it loses ground in a legal context. In this context, people who have entitlements to use animals can bring to bear in the courtroom scientific evidence that animals actually are different from humans, and argue that, therefore, the entitlements should remain where they are. As a popular culture phenomenon though, I think the similarity argument gets you to some places.

**Chaudhuri:** Yes. Also, beyond popular culture, as a kind of ideology or place for thinking through the ideology of animal rights, the analogy method is interesting, because it brings people to a place where they encounter a very important difference between humans and animals: the fact that, unlike all those other groups represented by progressive politics, animals cannot represent themselves.<sup>54</sup> Ani-

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<sup>51</sup> *Id.*

<sup>52</sup> Paul Koretz, Press Release, *Koretz Bill Banning the Declawing of Cats Goes to Schwarzenegger* ¶ 4 (Aug. 24, 2004) (available at [http://democrats.assembly.ca.gov/members/a42/press\\_pdf/press\\_069.pdf](http://democrats.assembly.ca.gov/members/a42/press_pdf/press_069.pdf)).

<sup>53</sup> PETA, *About PETA: General FAQs*, <http://www.peta.org/about/faq.asp>, scroll to "It's fine for you to believe in animal rights, but why do you try to tell other people what to do?" (accessed Nov. 16, 2006) (In reference to freedom of thought versus freedom of action: "You may believe that animals should be killed, that black people should be enslaved, or that women should be beaten, but you don't always have the right to put your beliefs into practice.").

<sup>54</sup> See generally Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333 (2000) (discussing the statutory granting of standing to persons to represent animals in legal matters).

mals cannot speak, so humans working on behalf of animals always have that issue to deal with. In terms of representation, that becomes a very challenging kind of issue. Since they cannot speak for themselves, who has the right to speak for them? What are the appropriate terms for that speech on their behalf and for their representation in art, media, and culture?

The question is: how do we get to credible, persuasive, respectful, inspiring modes of introducing humans to animals and their issues? One text that has been incredibly influential in this field of animal studies is J.M. Coetzee's book, *Lives of the Animals*.<sup>55</sup> That book does a wonderful job of marking a trajectory for many people, nonspecialists, who want to think about animals. The book is divided into two chapters. The first chapter is called *The Philosophers and the Animals*, and the second chapter is called, *The Poets and the Animals*.<sup>56</sup>

The trajectory is from one discipline to another, from one kind of intellectual practice to an imaginative practice, from reason to imagination. However, in the second chapter, the author talks about how poetry can help in this understanding and about this enlightening, clarifying encounter with animals: an encounter that might change the way we deal with animals and challenge this moral schizophrenia with which we live. She goes not just from philosophy to poetry, not just from reason to imagination, but also from one kind of poetry to another.<sup>57</sup> When I say she, I mean Elizabeth Costello, who is the fictional speaker of this text—she talks about two poems.<sup>58</sup> She starts out with Rilke's poem, *The Panther*, one of the most famous animal poems, in which Rilke describes a panther in a cage at the zoo.<sup>59</sup> She contrasts that with Ted Hughes' poem on the jaguar, his *Second Glance at a Jaguar*.<sup>60</sup>

Costello talks about the difference between looking at animals, primarily submitting them to the regimes of visibility—trying to deal with them as images, as something that we must try to understand through how they look to us<sup>61</sup>—and moving from that to a vision or a proposal for encountering animals in some more embodied way.<sup>62</sup> She feels that the Ted Hughes poem begins to take us into a relationship that is more complicated, deeper, more three-dimensional, more interesting, and more embodied than simply looking at animals.<sup>63</sup>

<sup>55</sup> J.M. Coetzee et al., *The Lives of Animals* 15, 47 (Amy Gutmann ed., Princeton U. Press 1999).

<sup>56</sup> *Id.* at 15–73.

<sup>57</sup> *Id.* at 50–73.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*; Rainer Maria Rilke, *The Panther*, in *The Best of Rilke* 69 (Walter Arndt trans., U. Press New England 1989).

<sup>60</sup> Coetzee, *supra* n. 55, at 50–73; Ted Hughes, *Second Glance at a Jaguar*, in *Collected Poems* 151 (Paul Keegan ed., Farrar, Straus & Giroux 2003).

<sup>61</sup> Coetzee, *supra* n. 55, at 50–73.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

The path Costello outlines for us involves thinking about animals, then looking at animals, and then really opening ourselves up to different ways of being with animals. This includes identifying cultural practices that might allow us to use and explore the above concepts as a way to get out of this bind, this sense that we already know everything there is to know about animals.

**Jamieson:** To see someone as an abuser is already to see the thing abused as having moral status. If we did not see cats as having moral status, we would see the question of declawing a cat to be like the question of how to shape one's fingernails or what colors to paint them, or something of that sort. I actually see a lot of what Taimie [Bryant] is talking about, not as representing an alternative to the kinds of arguments that have been given, but as actual evidence of how far we have progressed in terms of validating the moral status of animals.

We have to remember that before the publication of [Peter] Singer's *Animal Liberation*, to a very great extent, animals were simply seen as really automata.<sup>64</sup> How one related to animals was a question of taste or etiquette, not really a moral question. I see a lot of the similarity arguments as directed towards getting animals into the moral game, so to speak, so that other kinds of considerations can then come into play. This is not so different from what we saw in the civil rights movement. For example, Sidney Poitier in *Guess Who's Coming to Dinner* was, in a sense, a condition for later interest in black power, nationalism, respect, and so on and so forth.<sup>65</sup>

I see a dynamic between two things that I think are very deep in our nature. One is a moral imperative to respect difference; the other is an ineluctable tendency to model other beings on ourselves as a way of making them intelligible. If you think about our attitudes towards nature in general, I think this comes out as very clear.

When the Puritans landed in North America, the term "wilderness," which they applied to the New England landscape, was seen as an altogether negative term.<sup>66</sup> To say that what they had encountered was a wilderness meant that it was terrible, a wastage, without value, scary, awful, a place inhabited by devils.<sup>67</sup> People only later began to talk in the language of respect for wilderness and nature, noting the importance of preserving wilderness once it had already been seen as in some way being tamed.<sup>68</sup> The sixteenth and seventeenth century language of wilderness epitomizes this idea of wilderness as bad, negative, inhuman, and ferocious.<sup>69</sup> The idea of the sublime came into play in the eighteenth and nineteenth centuries. The wildness and other-

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<sup>64</sup> Peter Singer, *Animal Liberation* (N.Y. Rev. Bks. 1975).

<sup>65</sup> *Guess Who's Coming to Dinner* (Columbia Pictures 1967) (motion picture).

<sup>66</sup> Dale Jamieson, *Morality's Progress* 265 (Oxford U. Press 2002).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

ness of nature then became something to value and respect,<sup>70</sup> in part because it was now largely assimilated to the human world.

The same thing plays out with human attitudes towards animals. This is often seen in the case of endangered species issues. People are very much concerned with, say, protecting mountain lions and bringing them back to California.<sup>71</sup> We have to respect them and their wildness, but once they become a serious threat, for example, when a mountain lion takes a jogger, then immediately people revert to the radically devalued other.<sup>72</sup>

I see a kind of constant dynamic, not just in society's relationships with animals, but also in our relationships with other people, as involving an oscillation between modeling animals and other people on ourselves and respecting their differences. I do not see a time or even a possibility in which one way of viewing those unlike ourselves can somehow be subordinated to the other.

**Bryant:** I would agree wholeheartedly with the last point, that there is an oscillation and that there is a process. Where I would disagree is on just about everything else. My belief is that the similarity argument has been exploited to the exclusion of a difference or a diversity argument. Part of my work is trying to create the oscillation that you are talking about, which is to explore other avenues that cause us to let go of the similarity argument long enough to focus on something else.

With respect to the first argument, the declaw ban is indicative of the point that the similarity argument has actually gained somewhere. What actually worked in that setting was the violence of the procedure itself. It was not so much a respect for cats kind of thing, as much as it was the fact that veterinarians got on board explaining that, by declawing, you are cutting off a digit.<sup>73</sup> You are affecting a cat's gait, and a justification needs to be made for that.<sup>74</sup> We did have to get to a point where the similarity argument got us into a discourse, but once we were in that discourse, we did not have to stay entrenched in it. That was a real plus.

In the writing and the research I have done, I really cannot answer the question yet as to whether the formal equality/similarity argument approach was a necessary precursor to the oscillation you are talking about, or whether it was simply an adoption of a standard of justice—that like entities be treated alike—that lacked imagination or serendipity. It is interesting to me that now formal equality theorists

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<sup>70</sup> *Id.*

<sup>71</sup> Sierra Club, *California Mountain Lion Page*, <http://california.sierraclub.org/mountain-lion/> (accessed Nov. 16, 2006).

<sup>72</sup> *Id.*

<sup>73</sup> Paw Project, *FAQs on Declawing and Feline Scratching Behavior*, <http://www.pawproject.com/html/faqs.asp>; *select* What Is Declawing? (accessed Nov. 16, 2006).

<sup>74</sup> Christianne Schelling, *Veterinarians Who Don't Declaw*, <http://www.declaw.com> (accessed Nov. 16, 2006).



are asking that question in other social justice movements.<sup>75</sup> They are asking, “Why did we do that? We did that, and then at some point, we had to stop doing that.”<sup>76</sup> And, “Is there a way we could have not taken step one, only to stop doing step one and go on to step two?” What I take from Dale [Jamieson]’s comments is they actually present a strong belief that we really did need to engage in step one, and that it is a necessary precursor to step two. I think history may well bear that out, in which case my argument would be, “Alright then, let us move on.”

My critique of the similarity argument has actually been attacked from another direction as well: if you do not define which animals should receive protection, then you will not engage in a necessary line drawing exercise that keeps bacteria on one side and sentient beings that we should care about on the other side. That is where I dip a lot into Chris Stone’s idea, which is basically about how we have to get away from the line drawing exercise, because we all need bacteria; animals need them; the environment needs them.<sup>77</sup> If we have a line that puts some animals on the side of protection but cuts off those aspects of their habitat and the food chain on the other side, we have protected on one hand what we cannot sustain with the other. That is why the similarity argument increasingly, in step fashion, brings animals into a protected fold, but does not enable us to bleed over into environmental protection in such a way that we preserve the fundamental basics those animals need to survive.

I see a lot of inherent difficulty with letting go of the similarity argument. First, it might be necessary. Second, it may make people feel uncomfortable about being able to wash their hands and prompt thoughts such as, “Am I a bad person? I wash my hands and kill bacteria.” I would say that if you wash your hands to excess, use hand cleaners that disproportionately kill off more than you need to, and that kind of thing, you are probably not as good as you would be if you just washed in proportion. I do feel a very strong pressure that we should be examining the extent to which our own conduct unself-consciously makes things worse in a general way. My point of entry is animals, and I do care about animals, but I do not think we have done a whole lot to protect them if we start drawing lines and bringing them in one by one. We might be able to accomplish some things, but since I am in

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<sup>75</sup> See generally Robin West, *Re-imagining Justice: Progressive Interpretations of Formal Equality, Rights, and the Rule of Law* (Aldershot, Hants, England 2003) (offering new ways of understanding equality in the law by focusing on the idea of cooperative community life and presenting an idea of equality that recognizes shared humanity).

<sup>76</sup> See generally Jamieson, *supra* n. 22.

<sup>77</sup> See generally Christopher D. Stone, *Should Trees Have Standing? and Other Essays on Law, Morals and the Environment, Preface to the 1988 Edition*, v-xii (Tioga Publishing Company 1988) (stating that tying standing to human concerns has the potential to keep pressing issues of environmental concern out of courts for lack of standing, since there are many things that—though important from an overall ecological perspective—are only tenuously tied to legally identifiable human interests).

the luxurious position of being an academic who is able to think about things in a more theoretical context and bring to bear theorists in other areas, I take advantage of that by imagining the world as if we did not need to engage in that line drawing exercise.

**Jamieson:** I would just like to add one thing about similarity considerations and then say something uncharacteristically practical. We philosophers are concerned with the real world, not like law professors.

First of all, this whole language of similarity and formal equality tends to obscure the contribution that thinking about animals has actually made to other subjects. For example, take the question of cognition. There tends to be an unspoken assumption that it is simply a matter of, in some way, assimilating nonhuman animals to some paradigm of human cognition. In fact, the whole explosion of work in cognitive ethology, beginning in the 1970s, has actually led—and will lead even more profoundly in the future, because we are really seeing the early stages of it now—to seriously rethinking how we view cognition generally.<sup>78</sup> Before the rise of cognitive ethology, people simply assumed that cognition and language went together.<sup>79</sup> Nonlinguistic cognition tended to be invisible as a problem, but once you begin to view animals as cognitive creatures, arguably by some kind of similarity extension, then it presents the question, “What is the best theory of cognition that is actually going to account for this incredibly diverse set of phenomena that we find in nature?” Often, similarities have this tendency to be provocative for the subject that is initially being extended.

Now, the uncharacteristically practical point: one of my concerns, and this goes back to a comment that I made earlier, is how something that is viewed initially as just a matter of taste or etiquette later comes to be viewed as a question of abuse. Most of what we do to animals that I find morally appalling is not what most people would consider to be a matter of abuse, but simply a matter of what is institutionalized normal behavior. I am talking about what goes on in factory farms, for example, in laboratories, and so on and so forth. Just to give you an anecdote, when I was a small child, I lived for a while in Iowa in a neighborhood where all the other kids’ dads either worked for John Deere or they worked in what were called the “packing houses.” There was always a bad vibe about these guys who went off and slaughtered animals all day long. However, the possibility that some might be weakhearted about it was considered a character defect, because everyone knew that there was nothing wrong with slaughtering animals;

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<sup>78</sup> See generally Eileen Crist et al., *The Cognitive Animal: Empirical and Theoretical Perspectives on Animal Cognition* (Marc Bekoff, Colin Allen & Gordon M. Burghardt eds., MIT Press 2002) (describing some of the studies carried out in the five years preceding the essay that demonstrate categorization abilities in certain species of animals, which greatly enhance our understanding of cognition in animals).

<sup>79</sup> Irene M. Pepperberg, *Lessons from Cognitive Ethology: Animal Models for Ethological Computing 2*, <http://www.lucs.lu.se/epigenetic-robotics/Papers/Pepperberg.pdf> (Oct. 10, 2006).

it was just what needed to be done. It was not a question of liking to do it or abusing animals or doing anything of that sort. It was simply a job.

If we are going to really make huge changes from where we are now, our goal should not be eliminating abuse, but rather taking things that are now seen as perfectly natural, normal, acceptable, and objective, and transforming those things so that they are actually seen as a kind of abuse, or at least seen as something that is morally objectionable.

**Bryant:** I just want to turn the tables on you. The fact that, as you put it, these people who worked in the packing houses had to override a queasy feeling actually means the starting point was that people would think of what was going on in the packing houses as not quite right and as abusive. It is the same sort of thing you said to me, that to get the declaw situation changed, there had to be an underlying sense of abuse. My sense is that people do not think of these issues in terms of whether they are defined as abuse. First of all, I do not think a lot of people actually know what is going on in packing houses, so it is sort of an open question as to whether they think it was abuse. I think a certain number of people, even if they did see it, would say, "Ew, well, it is just necessary." That definition of necessity really speaks more to who we are in a general sense as opposed to in a more limited sense, but I do not want to forestall the consideration of other issues.

**Wolfson:** Laura [Ireland Moore] and I have calculated that if we ask one question, we have sixty minutes of answers. So what we have decided to do is ask all of the other questions now! What I would actually like to do is try and ask two or three questions and then open these questions up to the panelists.

First, I would like to go back to the Coetzee book, *The Lives of Animals*, which I really do recommend that people read.<sup>80</sup> It is a wonderful book. A couple of things come out of the book. One is that it is obvious that the size of the issue is just ridiculously large. When we deal with the farmed animal issue, we are dealing with ten billion animals (excluding fish) in the United States alone.<sup>81</sup> We are not just trying to sort out a problem. We are trying to actually flip society's attitude completely on its head, probably transforming society in a way that is hard to envision. You can make the parallels to slavery and other issues, and it is an incredibly significant change that we are trying to reach. One thing with which I struggle, and with which the author struggles in the book, is how much of a role reason can play in something like this. One thing that is so distressing to people in the animal protection movement is the initial belief that perhaps if we articulate our concerns, then everyone will agree with us. Then when we

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<sup>80</sup> Coetzee, *supra* n. 55.

<sup>81</sup> HSUS, *An HSUS Report: The Welfare of Animals in the Meat, Egg, and Dairy Industry*, [http://www.hsus.org/farm/resources/research/welfare/welfare\\_overview.html](http://www.hsus.org/farm/resources/research/welfare/welfare_overview.html) (Feb. 27, 2006).

find that is not the case, we feel like, “Well, we must not have articulated them well enough.” What actually happens, and what Coetzee expresses particularly well, is that truly good people can disagree with us over this stuff.<sup>82</sup>

It is not that everyone who does things that we disagree with is a terrible person. In fact, many of the people who disagree with us are very kind, good people, but people seem to rely on some type of instinctual excuse for the way that we treat animals. In the legal field, this has been somewhat frustrating. For example, Judge Posner has written about how he understands what animal advocates are saying, but it does not feel right.<sup>83</sup> It is very important to trust one’s feelings, he says, and, therefore, society will not do what animal advocates want. That is a strange argument in most contexts, but it seems to be one that a lot of people agree with in the animal context. That is, people just think there is a difference between us and other animals and so this is the way it should be, and this difference justifies our current treatment of animals.

How do we truly begin to move to common ground and cause change in our society? How do we have a conversation where we can change the way that things work on a rational basis? Clearly there is no other way of doing it, but the rational basis does not seem to work that well. Although arguably, as noted by Vice Dean Gillette, the movement we have made in the last twenty-five years has been profound. So maybe this approach has actually worked better than we thought.

**Chaudhuri:** I do not think I would agree that this is the only way to go. I think the whole point of Coetzee’s book and Elizabeth Costello’s argument is that reason can only be one of the avenues in dealing with this project.<sup>84</sup> All these others have to be engaged as well—emotion, imagination, empathy, and the complicated nature of this issue enjoin an experimental attitude upon all of us who are involved, and a kind of openness to all kinds of discourses and all kinds of representational forms.

I also think one issue that is very important to look at is the way in which institutions of cultural animal practices register these changing attitudes or anxieties. One of the places where culture stages its relationship to animals most centrally is the zoo. The home and companion animal is another one, but the zoo is a big one. It would be really interesting to try to chart ways in which this oscillation between inclusion and exclusion practices or thinking about animals is altering the structure of that institution and the way in which it stages animals, and the way in which it presents them. Again, this is an area in

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<sup>82</sup> See generally Coetzee, *supra* n. 55 (exploring the history of thought regarding the treatment of animals and current strains of thought on the issue).

<sup>83</sup> Slate Mag., *Dialogues: E-mail Debates of Newsworthy Topics: Animal Rights*, <http://www.slate.com/id/110101/entry/110188/> (accessed Nov. 11, 2006) (e-mail from Richard A. Posner to Peter Singer, written June 13, 2001).

<sup>84</sup> Coetzee, *supra* n. 55.

which artistic and cultural practice can sort of jump start or push change by innovative and inventive interventions.

I am thinking of a performance project that was done recently in England.<sup>85</sup> It was called Human Zoo<sup>86</sup> and presented by the people who run the London Zoo.<sup>87</sup> They invited ordinary citizens to participate in this. I believe a number of people—maybe thirty—agreed to do it.<sup>88</sup> It involved living in the zoo for four days in a human enclosure.<sup>89</sup> A project like that raises so many fascinating questions, not only about the display of animals, but also about the parallel between human behavior and what animals we go to see in the zoo can do. I am just wondering what you David [Wolfson] or Dale [Jamieson] would think about projects and interventions like that into this complicated area?

**Jamieson:** Well, I like it very much. As you know, I have written a fair amount about zoos. I actually think zoos really are a particularly interesting and productive site for this kind of thinking. But going back to David [Wolfson]'s point, I think it is hugely important that, in the broadest sense, we have won the arguments. More than anything, this is why we are all here and why this conference was introduced by the dean of a law school. It would be unthinkable otherwise. The transformation of what animal rights meant before these arguments were on the table and what it means now is almost unfathomable.

Of course, arguments are always to be given, and this work always goes on, thankfully, or else philosophers would be out of jobs, but the question now is really one of moral salience. Having won the arguments, how do you move someone like Posner to say not just "I see your argument," but "now, why should I think this issue rises in the moral thermometer such that I should devote energy to it and act, and that this should trump other concerns?"

I just want to make two points, not having any of God's own answers to these questions. For one thing, this is very similar to where we are in the environmental movement. We live in a country in which ninety percent of the people on surveys say they are environmentalists, yet they vote for environmentally abusive candidates and tend not to punish them for their environmentally abusive behavior.<sup>90</sup> Why? It

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<sup>85</sup> London Zoo, *Human Zoo*, <http://www.zsl.org/london-zoo/whats-on/the-human-zoo,94,EV.html> (accessed Nov. 11, 2006).

<sup>86</sup> *Id.*

<sup>87</sup> London Zoo, *Human Zoo – How Was It for You?* <http://www.zsl.org/london-zoo/news/human-zoo-how-was-it-for-you,185,NS.html> (Aug. 30, 2005).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Nicholas Inst., Duke U., *Environmental Survey Results: Why Pro-Environmental Views Don't Always Translate Into Votes*, <http://www.nicholas.duke.edu/dukenvironment/f05/f-survey.html> (accessed Nov. 11, 2006) (indicating that while about eighty percent of Americans support pro-environmental policies, most are unlikely to cast votes based on those convictions); David DeFusco, *Yale Poll Reveals Overwhelming Public Desire for New Energy Policy Direction*, [http://www.eurekalert.org/pub\\_releases/2005-06/you-ypr060905.php](http://www.eurekalert.org/pub_releases/2005-06/you-ypr060905.php) (June 9, 2005) (indicating that ninety-three percent of Americans favor stricter government mileage standards, ninety percent say solar energy is a

is a moral salience question. The environment is an issue. It matters to people. They are on one side rather than another side, but it does not matter as much to them as a whole host of other issues that trump it. The first thing to see is that animal rights concerns are not alone. This is a very familiar kind of political issue or situation.

One way of trying to move past that, which has been incredibly powerful both in the environmental and animal rights movements, is very simple in a way. It has to do with transparency; with making what is hidden visible. In the environmental movement, perhaps the single most powerful law that was ever passed was the one that mandated the toxic release inventory; where people could actually go to a website and see what corporations were dumping in their census tract.<sup>91</sup> This provides an incredible tool for people to mobilize around. For those of us who have taught animal courses, the issue of how much to show students about what is done to animals, as opposed to how much to talk about it, is always profoundly important.

For what it is worth, my current way of handling this is to say to students, "We are now at the point in class when I could show you some of the things that we are talking about. Now, I recognize that if I show you this, many of you will be quite repulsed, quite upset, and quite resentful that I've inflicted this on you. Some of you will respond very, very strongly to this material, but if I don't show you, you will not fully be grasping the sorts of things that we're talking about." What should I do? In other words, I think the transparency issue is hugely important, and we have to directly acknowledge the fact that it sets in motion forces that are very difficult to understand and control.

**Chaudhuri:** I agree. This was an issue I faced in my class, as well, about whether to actually screen a film like *Peaceable Kingdom*, which David [Wolfson] screened in his course. I chose not to, partly because the purpose of my class was to introduce students to this whole range of issues, and many of these students had never thought about any of this before.<sup>92</sup> I do think that there is a kind of psychic numbing around this question. A polarization exists where people think of animal activists as these crazy terrorists and do not want to get too close to it. My solution to this issue of transparency, of looking for ways to help people face the realities of our animal culture, is

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good idea, eighty-seven percent support expanded wind farms, and eighty-six percent want the government to expand renewable energy research funding); Nat. Resources Def. Council, *The Bush Record*, <http://www.nrdc.org/bushrecord/2001.asp>; *select* 2001, 2002, 2003, or 2004 (accessed Nov. 16, 2006) (providing a timeline of actions by President George W. Bush's administration that can be described as environmentally abusive); CNN, *America Votes 2004: Election Results*, <http://www.cnn.com/ELECTION/2004/pages/results/president/> (accessed Nov. 16, 2006) (indicating that fifty-one percent of American voters cast their votes for President George W. Bush, despite his administration's environmental policies).

<sup>91</sup> Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-50 (2000); see U.S. Env'tl. Protec. Agency, *Toxic Release Inventory Program*, <http://www.epa.gov/tri> (accessed Nov. 11, 2006) (website mentioned by Dale Jamieson).

<sup>92</sup> *Peaceable Kingdom* (Tribe of Heart 2004) (documentary).

through analysis or discussion of the work of artists who are doing exactly that.

Often, these artists are very controversial and provocative. I am thinking of people like Damien Hirst, from England, or John Isaacs.<sup>93</sup> Damien Hirst is the one who slices carcasses in half and then displays them in formaldehyde.<sup>94</sup> He has an installation piece called *A Thousand Years*, which has a rotting cow's head and flies that breed from the maggots in the corpse.<sup>95</sup> It is a kind of perpetual artwork, in that these flies breed out of maggots and go and feed on this rotting cow's head, and then are electrocuted in an insectecutor that is also part of the installation. It is a horrific work, but its intention is to get people to think about our lack of awareness or lack of facing of the realities of our relationship with animals. To use works like that has worked well for me and my students, because it creates the kind of experimental space which is needed in order to process the variety of emotions and the very different cultural sites from which people approach this subject. Depending on where you come from, what your religious background is, you can have very powerful and different feelings about this.

To create a space where there can be a genuine, expansive, and extensive dialogue about our culture's relationship to animals must be done in some ways obliquely, through analysis and exposure to works that ask questions about this, rather than just imposing the facts. It is good when people feel able to face the facts on their own and then want to go out and share those facts with others, but very often you risk just completely ending the conversation and turning the group off.

One recent piece of animal artwork that has gotten a lot of attention is Edward Albee's play, *The Goat*. It was on Broadway and won a Tony, was nominated for a Pulitzer, and so on.<sup>96</sup> This is a play which tries to get us to look at our relationship with and attitude towards animals by dealing, quite literally, with bestiality. It was amazing to be sitting in a Broadway theater and hearing the repeated discussion and jokes about goat fucking, which is what they kept calling it over and over again. But it is also about trying to put the goat back in scapegoat, trying to get us to recognize the extent to which our culture is based on repeated animal death.

What was fascinating was the resistance people had to reading this as a play about animals. Much of the criticism wound up saying that the goat was just a stand-in for tragedy, or the bestiality was a stand-in for homosexuality, which in fact did not make sense, because

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<sup>93</sup> See Other Criteria, <https://www.othercriteria.com/index2.php>; select Damien Hirst; select Prints (accessed Nov. 16, 2006) (providing examples of Damien Hirst's artwork).

<sup>94</sup> See Carrie O'Grady, *Damien Hirst (Winner 1995)*, Guardian Unlimited (Nov. 1, 2003) (available at <http://arts.guardian.co.uk/turnerpeoplespoll/story/0,,1073355,00.html>) (discussing pieces of Damien Hirst's artwork).

<sup>95</sup> *Id.*

<sup>96</sup> Sartre.org, *The Goat, or Who is Sylvia?: About the Play*, <http://www.sartre.org/Theatorwhoissylvia.htm> (accessed Nov. 16, 2006).

there was an unproblematically gay character in the play.<sup>97</sup> There was no real need for a metaphorical mechanism for discussing homosexuality; it was being discussed openly. I think the mass cultural tendency is that, whenever serious issues about our relationship with animals are brought up, there is an effort to displace that onto other cultural topics, to turn it into a metaphor, to trope it. What I have noticed with contemporary artists is that they are working very hard to re-literalize the animal, to sort of put the goat back in scapegoat and get us to face this. It is also a project of performance and kind of embodied imagination.

**Jamieson:** In one of my animal classes, I would always show the film *Babe*, and then ask students to write about what it was about.<sup>98</sup> I remember the first time I taught that, I was amazed, because most of the papers said it was about how you could overcome obstacles and succeed no matter who you are. Somehow, they missed the point.

**Bryant:** I am optimistic, because I have seen other social justice movements move forward, and I have seen enough evidence of forward progression in this one. I guess I am old enough also to have experienced some of that movement forward as a general matter of our society, so I am generally hopeful. The basis for my hope relates to the discussion that just occurred about the issue of transparency. The hope that with transparency comes transformation and accountability. The transparency that Dale [Jamieson] first mentioned was transparency about what is going on literally. The toxic release information directs the transparency inquiry at those who are using animals and would be able to come up with their own justifications, having to present the evidence with which their justifications can be refuted.

The poignant question involved in all of that is a kind of Catherine MacKinnon feminism question: "What if you show them what is going on, and they do not care?"<sup>99</sup> The discussion that followed about different artistic representations and manifestations of our beliefs is a way of testing the waters on that claim. People are shown different manifestations of the idea that it is okay to use animals or treat them as property, and they are converting that idea to another purpose or another use. As I was listening to that exchange, I was thinking that it certainly is not a one step process with transparency, transformation of beliefs, and then accountability that falls back on those who have been forced to finally give the evidence that others might use in different ways.

My own sense of this concept is that, even though there is a recapturing or a co-opting of those forms that could be used to advance sensitivity towards animals, nevertheless, that is where it lies. I do not

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<sup>97</sup> Barbara Lee Horn, *Edward Albee: A Research and Production Sourcebook* 205-07 (Praeger Publishers 2003).

<sup>98</sup> *Babe* (Universal Studios 1995) (motion picture).

<sup>99</sup> Catherine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 1-2 (Harvard U. Press 1987).



really think of it so much as lying in my animal law classroom. It is not so much a question of whether I would expose that particular self-selected audience to these concepts; rather, I think of it as the kind of issue that Una [Chaudhuri] and Dale [Jamieson] were just talking about with respect to the broader society.

**Chaudhuri:** I am very optimistic. This field that I have recently discovered within academia—the field of animal studies, which draws from anthropology, cultural studies, art history, literature, history, and philosophy—just the emergence of this field is extremely hopeful. For one thing, it disrupts the previous academic or intellectual organization about animals; which was really the realm of scientists, and then in culture it was something to do with children. Those were the ways in which animals were culturally processed. This new field makes it very clear that we have to approach our understanding of this relationship from all the disciplinary perspectives, and from many interdisciplinary perspectives as well. Next weekend, there is going to be a conference at the University of Texas at Austin called *Animal Humanities*.<sup>100</sup> It is one of dozens of conferences and art exhibitions, installations that have happened in the last five or six years, which really index a burgeoning cultural interest in this issue and a recognition of how complicated, culturally contingent, and specific it is. As a result, we now require some very sophisticated, nuanced, methodological tools to get at this issue in its broad cultural manifestations.

**Wolfson:** Dale [Jamieson] is clearly not optimistic.

**Jamieson:** I am trying to look optimistic so I do not have to say anything. No, what is there to say? I am optimistic. Anyone who has been through this for the last thirty years or so can see how the world is now, compared to what it was. In fact, if I look around at the world generally, one of the few areas about which I feel optimistic is the change in our consciousness about animals. I am much more pessimistic about many other issues that have been around for centuries. For example, I once thought a lot of human rights issues such as concern about torture were pretty much settled. I am kind of shocked to discover that they are not.

**Wolfson:** Just a few final thoughts. I definitely sympathize with Taimie [Bryant]'s comment about Catharine MacKinnon, the fear that we always spend so much time saying, "But if people know what is happening, surely then they will change." There is this terrifying fear that maybe they will not. I will say that I think the most effective tool I have ever used in the classroom is showing films. Over and above anything I say to students or have them read, showing films has made more of a difference than anything else.

The final issue is that sort of cultural disconnect with the movie *Babe* that Dale [Jamieson] was talking about. I remember watching

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<sup>100</sup> U. Tex. Austin, *Animal Humanities: A Symposium*, [http://www.utexas.edu/cola/depts/english/content/conferences/ahs\\_prog.pdf](http://www.utexas.edu/cola/depts/english/content/conferences/ahs_prog.pdf) (accessed Nov. 16, 2006).

*Planet of the Apes*; I loved that movie.<sup>101</sup> Charlton Heston, the whole thing. I loved it. I actually thought, “This is really clever. I mean, there is this film about how they are abusing and experimenting on animals, and the reason is because they are not intelligent and they cannot speak. And then they put the humans in the place of the animals and the animals in the place of the humans. Surely this is saying something. It is saying something about many things, but it is saying something about how we treat animals, right?” But in every study that I have seen discussing the *Planet of the Apes* when it came out, the film was lauded for the way it had shown a new light on the issue of human slavery. That was the real value of the film, what it showed humans about treating other humans that way. No one else seemed to quite get what I thought was the most obvious thing: humans being treated like chimps, by chimps.

I want to thank the panel very much. At this point, we have an opportunity for questions. If anyone would like to ask a question, please feel free to just step up to the microphone right in the middle and line up, then go ahead and ask the question.

**Question:** First off, when I was in law school, our Student Animal Legal Defense Fund had a screening of *Planet of the Apes*. We were all on board with you, David [Wolfson]. Second, I am very interested in what Professor Bryant was saying. It seems to me that simply turning the tables on animal exploiters is not enough, because to ask them the question, “Why are you declawing the cat? Justify your declawing of the cat,” you still need to be able to refute their justifications. It is not as though they will simply melt away in defeat at the posing of the question. They will say, “well, I want to protect my furniture,” or whatever the reason is. Animal advocates need to be able to formulate a response that is based on something, whether it is similarity or something else. In terms of the similarity argument, the one piece I think was left out is that it is not just similarity; it is similarity in relevant ways. For example, in the workplace, as an employment lawyer, I have not seen the shifting of presumption that you mentioned, that employers have to justify exclusions. But the issue is not that women are similar to men in every way. The issue is that women are similar to men in the skills that are relevant in the workplace. I think that is the same argument that has been applied to animals.

So my question to you is, what framework are you proposing instead of the argument of similarity? Once you pose the question to animal exploiters and they give you their reasons, what is your premise for responding to them?

**Bryant:** I would like to first respond to a couple of other things in your statement. It is a matter of the feminist discourse on employment relationships that the Pregnancy Discrimination Act was based on a similarity argument, such that if employers had a disability policy in place for the temporary disability of male employees, then they had to

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<sup>101</sup> *Planet of the Apes* (Twentieth Century-Fox Film Corp. 1968) (motion picture).

offer a similar situation for pregnant employees.<sup>102</sup> You are quite right; that did not change the discourse. Where you have an opening in the discourse for employment law for women is the Family and Medical Leave Act.<sup>103</sup> It is used by a range of employees for the purpose of taking time off temporarily when they cannot work and fulfill their obligations as defined by the employer.<sup>104</sup> A shift occurs in that moment, such that it is no longer possible for employers to be competitive by excluding women. Now an employer is competitive, if at all, by envisioning a workplace in which all employees will be taking limited periods of time off. What does a competitive organizational structure look like when you have that expectation of employees?

As a result of the Family and Medical Leave Act, employers were no longer able to define what a good employee was in quite the same way that they could before. There are all kinds of flaws with this Act, and you are quite right that, as a lawyer practicing in the field, you may not see many positive signs of it, but the discourse is present. I use that as an introduction in order to get to your second comment about how the similarity argument always reasserts itself when we deal with a situation such as the declaw ban, where somebody says, "because I want to." We have a choice in the discourse at that moment. One choice we can make is to say "Well, the animal will suffer, and it's really pitiable." A lot of that discourse goes on, but we do not need to limit ourselves to that discourse. We can also stay with the subject a little bit longer in terms of the justification.

I suggest that instead of caving and saying, "Well, but they're pitiable creatures," we stay on people a little bit longer and say, "What do you mean, you just want to?" and, "Is it really a good idea to have cats in an environment where your furniture is more protected?" The implication is that, if a person is more protective of her furniture than her cats, the furniture must be more valuable. I suggest we stay in the discourse a little bit longer, and approach living in the world with an unapologetic attitude for our views. I suggest living in the world with an "as if" approach. This approach is evidenced in things like the Endangered Species Act (ESA).<sup>105</sup> An animal does not have to look like a human being, think like a human being, walk like a human being, or be known by a human being to be protected under the ESA.<sup>106</sup> It provides broad-based species wide protection without the similarity argument.<sup>107</sup> Unfortunately, it is shallow protection and does not address some things. Dale [Jamieson] was quite right when he said that humans can still abuse an endangered chimpanzee through any number of entertainment or research venues.

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<sup>102</sup> Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (2000).

<sup>103</sup> Family and Medical Leave Act, 29 U.S.C. § 2601 (2000).

<sup>104</sup> *Id.* at §§ (a)(4), (b)(2).

<sup>105</sup> The Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. (2000).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

Another example is artificial wildlife corridors. Humans should live in the world as if it is valuable for animals to cross the road. We should create wildlife corridors that will allow mice and other animals we care about to pass. We should look for advocacy projects that—number one—create these things. These projects are in those shallow places in the river.<sup>108</sup> They create opportunities for an “as if” position that does not depend on a similarity argument. When we are forced into a similarity argument, we decline to accept that burden and continue to make arguments that cause the justification to be placed on someone else. Am I saying that it is an all-or-nothing similarity or abuser perspective? No. I am talking about presumption shifts that go back and forth and staying our course, being anchored by certain ideas.

**Question:** My name is Ken Shapiro. I am with the Animals & Society Institute. I am still hung up on the similarities and differences issue, so I am going to ask about that again. Maybe Dale [Jamieson] can respond. My question is: do you see any hope in the thinking of people, continental thinkers like Levinas, whose ethic is based on differentness or otherness?<sup>109</sup> Such that you and I, Dale [Jamieson], are different from each other, and because I do not really know you, it is the basis of your otherness that puts an obligation on me to treat you well and good? I feel that humans are really hung up on the similarity/difference issue and will be for some time. If you recall Singer’s dilemma—this was in the context of the antivivisection research issue, which is what launched a contemporary animal rights movement—Singer said that the degree to which animals are similar to humans is the degree to which we need to treat them well.<sup>110</sup> And the degree to which animals are different from humans is the degree to which we cannot learn from studying them, from doing animal research.<sup>111</sup> What did the animal researchers say in reply? “The degree to which they are similar—and we think there are some similarities—is the degree to which we have to study them, and the degree to which they are different is what allows us to study them, because there is no ethic for us.”<sup>112</sup> So they both had this terrible moral schizophrenia swinging in

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<sup>108</sup> This is a reference to an analogy made by David Favre in a recent law review article. David S. Favre, *Judicial Recognition of the Interests of Animals - A New Tort*, 2005 Mich. St. L. Rev. 333, 337. Joyce Tischler discusses this analogy in her introduction of the symposium. Joyce Tischler, Symposium, *Confronting Barriers to the Court Room for Animal Advocates* 8 (N.Y.C., N.Y., Apr. 14, 2006) (copy of transcript on file with *Animal L.*). In his article, Favre describes a hypothetical river that separates human and nonhuman animals, creating a barrier between those with rights and those without. Favre, *supra* n. 108, at 337. When attempting to bridge this gap, animal advocates should look to the areas in which the river is narrower and shallower. *Id.*

<sup>109</sup> Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Alphonso Lingus trans., New Editor’s ed., Duquesne U. Press 1969).

<sup>110</sup> Singer, *supra* n. 64, at 6, 9, 19–20.

<sup>111</sup> *Id.* at 15–16, 88–92.

<sup>112</sup> *Id.* at 88.

opposite directions. But that is just a comment. My question is, is there any hope through a Levinas reading of morality?

**Jamieson:** There is an old joke that loquaciousness would be an occupational hazard to professors if it were not their occupation. I will try to be brief, but this is obviously a very large question. The first thing to say about similarities and differences is that arguments always have contexts. I am very uncomfortable talking about these arguments as if they take place in some logical space. The fact of the matter is that I think those similarity arguments have gained incredible traction and force. Even in the United States, it requires more justification to do fewer things to animals now than it did before those arguments were being given.<sup>113</sup>

If you look at the continental context, in fact, restrictions are much greater. You are absolutely right that very interesting things are happening generally in continental and French philosophy, and in particular about animals. Most of you probably know that the kinds of arguments we are discussing really come from an Anglo-American philosophical, legal, cultural perspective.<sup>114</sup> But in only the last five or six years, there has been this whole independent body of philosophical work: a lot of it from Levinas, a lot of it from the last works of Jacques Derrida.<sup>115</sup> A great deal of interest exists among French philosophers in concerns about the moral status of animals.<sup>116</sup> The arguments being given are actually from a very different perspective than the kinds of arguments that have grown up in our philosophical tradition. I consider that to be enormously promising, in part because of my view about the importance of contextualizing arguments. I tend to see philosophical arguments as being quite culturally specific.

**Chaudhuri:** There have been quite a few articles about Levinas in terms of animal studies.<sup>117</sup> Peter Steeves has written one, in which he talks about the fact that when Levinas was in the concentration camp, there was a dog there whom he and his fellow prisoners adopted.<sup>118</sup> They named the dog Bobby, and Levinas says that Bobby

<sup>113</sup> *Id.* at 245–48.

<sup>114</sup> *Id.* at 240–43.

<sup>115</sup> Peter Atterton, *Face-to-Face with the Other Animal?* in *Levinas and Buber: Dialogue and Difference* 262–81 (Peter Atterton, Matthew Calarco & Maurice Friedman eds., Duquesne U. Press 2004); Jacques Derrida, *L'animal que donc je suis* (Galilée 2006).

<sup>116</sup> Atterton, *supra* n. 115; Derrida, *supra* n. 115; Florence Burgat, *Animal, mon prochain* (Odile Jacob 1997); Paul Kurtz, *Can the Sciences Help Us to Make Wise Ethical Judgments?*, 28.5 *Skeptical Inquirer* 18 (Sept. 2004) (available at <http://www.csicop.org/si/2004-09/scientific-ethics.html>).

<sup>117</sup> Silvia Benso, *Heidegger et la question anthropologique*, 67:2 *Theological Stud.* 466 (June 1, 2006); Christian Diehm, *Facing Nature: Levinas beyond the Human*, 44:1 *Phil. Today* 51 (June 30, 2000); Miriam Bankovsky, *Derrida Brings Levinas to Kant: The Welcome, Ethics, and Cosmopolitical Law*, 49:2 *Phil. Today* 156 (July 1, 2005).

<sup>118</sup> H. Peter Steeves, *Lost Dog, or, Levinas Faces the Animal*, in *Figuring Animals: Essays on Animal Images in Art, Literature, Philosophy, and Popular Culture* 21, 21–34 (Mary Sanders Pollock & Catherine Rainwater eds., Palgrave Macmillan 2005).

was “[t]he last Kantian in Nazi Germany,” because he was the only one who recognized them as human beings.<sup>119</sup> However, in the development of that argument, Levinas reaches the conclusion that Bobby does not have a face in the ethical sense.<sup>120</sup> It is only a human, in Levinas’ mind, who has a face.<sup>121</sup> That is one of the things Derrida takes on in the article to which Dale [Jamieson] just alluded.<sup>122</sup> Derrida’s article starts with himself. There is a scene in which Derrida faces an animal, a very specific animal—his cat—and tries to think about the ethics of that situation, whether the cat is not just looking at him, but really seeing him.<sup>123</sup>

**Question:** Increased trade with countries that give little or no consideration to animal rights issues increases the opacity of the supply chain, which encourages the willful ignorance of our abuse of animals. So we are effectively exporting animal abuse. Can you touch on how we can export more humane cultural and legal principles in the context of animal rights across different cultures and across different legal systems?

**Bryant:** What a hugely difficult question for you to leave us with. You are in danger of leaving us with a cloud of pessimism, because the import of your statement is that no matter what we accomplish in this country, if we engage in free trade access from other countries, those products will be less expensive, and the abuse inherent in making animal based products less expensive will be simply entering our country through this other route. I think that is the global question that animal activism faces. We can be very optimistic about perhaps our own little settings and our own little municipalities that enact declaw bans, but in a way, it is embroidering while the house is burning, because in the same sense as global warming, these are global issues, given the global nature of trade.

Having said that, I have to say, unfortunately, I do not have a formula for addressing it. Activists have tried to address this by putting their attention on world trade organizations and trying to get the means of production listed as an acceptable reason for excluding a product, where those means of production involve cultural values such as cruelty to animals, cruelty to workers, and harm to the environment.<sup>124</sup> I am told there is relatively little inroad at this point. But as

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<sup>119</sup> *Id.* at 22.

<sup>120</sup> *Id.* at 24.

<sup>121</sup> *Id.*

<sup>122</sup> Jacques Derrida, *The Animal That Therefore I Am (More to Follow)* 28:2 *Critical Inquiry* 369, 369–418 (David Wills trans., U. Chi. Press Winter 2002) (available at <http://www.jstor.org/cgi-bin/jstor/printpage/00931896/ap040110/04a00030/0.pdf?backcontext=page&dowhat=Acrobat&config=jstor&userID=95afcc2b@clark.edu/01cce4405a00501b2ae68&0.pdf>). This article is a translation from *L’animal que donc je suis*, referenced earlier by panelist Dale Jamieson. Derrida, *supra* n. 115.

<sup>123</sup> *Id.* at 372–82.

<sup>124</sup> See Global Trade Watch, “WTO - Shrink or Sink!” *The Turnaround Agenda International Civil Society Sign-On Letter*, [http://www.citizen.org/trade/wto/shrink\\_sink/articles.cfm?ID=1569](http://www.citizen.org/trade/wto/shrink_sink/articles.cfm?ID=1569) (accessed Nov. 16, 2006) (The website provides a petition signed

our attitudes change about bringing products in that affect other human rights and environmental issues, it is possible that the door will be opened generally for us to exclude on the basis of these other issues. Hand in hand with that goes an obligation to make it possible for other places to survive without the abuse of animals as part of the picture.

I would state, finally, that what we can do on an individual level about that is to question the extent to which our materialism drives the products coming into this country. Being members of an incredibly—according to many different scales—materialistic, stuff oriented society, we North Americans actually are the biggest consumers of a lot of these products.<sup>125</sup> That needs to be part of the picture that we bring to people when we are talking about cruelty to animals.

**Jamieson:** If I could, I would like to end with a statement of prejudice, which is a response, but not an answer to your question. I think we Americans, following the British, have an excessive interest in the virtue of others and too little interest in our own virtue. I think if we really do want to make the world better in these respects, the most effective thing we can do is to make ourselves better.

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by hundreds of concerned organizations from across the globe. Among other things, it demands that the WTO not constrain rules based on social welfare and animal safety.).

<sup>125</sup> World Resources Inst., *Earth Trends: Environmental Information*, [http://earthtrends.wri.org/searchable\\_db/results.php?years=2002-2002&variable\\_ID=192&theme=8&cID=190,2,3,4,5,6,7,9,10,11,12,13,14,15,16,17,18,19,20,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,59,60,61,62,63,64,65,66,67,68,70,72,73,74,75,76,77,78,79,80,81,83,84,85,86,87,89,90,91,92,93,94,95,96,98,99,100,101,102,103,104,105,106,107,108,109,111,112,113,114,115,116,117,119,120,121,122,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,139,140,141,142,143,144,145,146,147,149,150,151,152,153,154,156,157,158,159,160,161,162,165,166,167,168,169,170,172,173,174,175,177,178,179,180,182,183,184,186,187,188,189,191,192,193,194,195,198,199,202,203,204,205,207,208,215,219,220,229&ccID=0](http://earthtrends.wri.org/searchable_db/results.php?years=2002-2002&variable_ID=192&theme=8&cID=190,2,3,4,5,6,7,9,10,11,12,13,14,15,16,17,18,19,20,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,59,60,61,62,63,64,65,66,67,68,70,72,73,74,75,76,77,78,79,80,81,83,84,85,86,87,89,90,91,92,93,94,95,96,98,99,100,101,102,103,104,105,106,107,108,109,111,112,113,114,115,116,117,119,120,121,122,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,139,140,141,142,143,144,145,146,147,149,150,151,152,153,154,156,157,158,159,160,161,162,165,166,167,168,169,170,172,173,174,175,177,178,179,180,182,183,184,186,187,188,189,191,192,193,194,195,198,199,202,203,204,205,207,208,215,219,220,229&ccID=0) (accessed Nov. 11, 2006).

