ARTICLE READER 2: ANIMAL RIGHTS

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A Modest Proposal for Advancing Animal Rights

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I. INTRODUCTION

Animal rights activists are often called nut jobs, wackos, and extremists--and that is by our friends and family members. Too often our cause is splintered by polarizing views. Instead of focusing on the positions that divide us, we must pursue matters on which we agree. Few would object to the fact that animals feel pain. It may not be to the same extent as we do, but they feel it. As each new year dawns, the promise of the next year suggests the time may have come to recognize that sentience and finally abolish the continued legal classification of animals as property. The law must change to recognize that companion animals and other animals are sentient creatures deserving of greater protection.

In any discussion concerning animal rights, the question often arises as to the need to distinguish companion animals, like dogs and cats, from other animals. Clearly, it is an easier argument to limit animal rights to our companion animals who occupy our homes and are near and dear to us. However, such a distinction is too great a strain on science and compassion for us to promote without exploring the issue a bit deeper. Although it would be easy to give into the distinction between companion animals and other animals, to do so ignores the fact that noncompanion animals, like chimpanzees, have a genetic make-up very similar to ours. (1) They also have the capacity to experience great pain. (2) So to suggest that Rover or Kitty have rights and value beyond property, but a chimp does not, leads to an absurd conclusion: chimps can be seen as mere objects.

Chimps can experience a broad array of emotions like joy, grief, and sadness. (3) They are extremely intelligent and often serve as helpers to the disabled. (4) Their genetic make-up is nearly identical to ours. (5) So why should this living, breathing, and thinking being--sometimes thinking even more than we do according to Japanese researchers (6)--be relegated to the equivalent of the chair we sit on? Cruelty and humane treatment of animals aside, tort law, contract law, wills and trusts law, and family law all deal with issues regarding companion animals (with the exception of actions for damages to livestock where the law actually grants more protection to the animals so long as it is part of one's livelihood). (7)

While some environmental and constitutional laws (such as the Endangered Species Act (8) and the Marine Mammal Protection Act) (9) do address the rights of noncompanion animals, the continued property classification of animals affects--and hurts-companion animals more than it does our nondomesticated friends. Therefore, while some animal welfare groups have done a good job raising the awareness of the plight of the giant panda and the previously endangered bald eagle, the greatest strides yet to be made involve companion animals and their often horrid treatment in our United States.

There are three issues in animal law of which there should be little debate: (1) banning animal fighting as a spectator sport by increasing the penalties for those that attend; (2) providing for bequests for the care of our pets after our death; and (3) prohibiting the hunting of domesticated animals on private game preserves or over the Internet.

II. ANIMAL FIGHTING AS A SPECTATOR SPORT

Michael Vick was indicted on some of the most egregious, wanton acts of inhumanity toward animals ever reported. (10) The evidence and his resulting plea left most with little doubt about the horrific nature of their offenses. All of us condemn issues that shock us, but actions must follow our words. More often those opposed to animal cruelty and who are in support of animal rights need to speak with a unified voice to reform this country's unacceptable treatment of animals.

Dog fighting is illegal in every state in the United States and a felony in forty-eight of them. (11) Nevertheless, some people continue to engage in this cruel and reprehensible practice for gambling and depraved amusement. Very few cases are prosecuted. Vick's sentence sends a strong message to those that run the event, but the spectators and gamblers are also to blame. Eliminate the demand and you would likely eliminate the contest. Many states, like our own, need to strengthen the laws and penalties for being a spectator at dog fighting or other animal fighting contests. (12)

III. IT SHOULD BE A DOG'S LIFE

Leona Helmsley bequeathed twelve million dollars to her dog, Trouble. (13) Some newspapers cavalierly offered commentary suggesting the family should kill the dog. Laws need to be changed so it becomes far easier and more commonplace to provide for our companion animals.

Courts had historically struggled in upholding provisions in wills or trusts that provide for pets and have routinely invalidated bequests to companion animals. (14) Currently, thirty-six state legislatures and the District of Columbia have enacted laws that enable individuals to provide valid companion animal trusts, (15) and the Uniform Trust Code provides for pet trusts as well.

(16) Massachusetts and Vermont are the lone New England states that still do not recognize animals as beneficiaries under a will or trust. (17) More reform is necessary.

The classification of animals as property is generally a limiting or negative aspect, yet there are occasions when directions in a will regarding animals are found to be repugnant to public policy, and the courts will grant the animals more than just "personal property" status. In In re Estate of Howard H. Brand, the testator directed that his horses and mules be destroyed upon his death. (18) The court rejected that directive and noted that "the unique type of 'property' involved merits special attention. 'Property' in domestic pets is of a highly qualified nature, possession of which may be subject to limitation and control." (19) A Pennsylvania court also denied a testator's wishes to have her two Irish setters destroyed humanely as being against public policy in Capers Estate. (20) Had the courts considered these animals as mere goods, they would not have ignored the testators' wishes to dispose of their property as they desired.

It is time for all states to reject the classification of companion animals as property and to adopt statutory protections for their care by provisions in wills and trusts.

IV. SHOOTING FISH IN A BARREL--FOR REAL

What can one say about a man who is willing to pay thousands of dollars to shoot a buck for its huge antlers when that animal is raised in a pen and fed by hand like a domesticated pet with no basic instinct to avoid people? What if that hand-fed animal is hunted on enclosed private game preserves or, still worse, over the Internet? Who is that person sitting in his home or cubicle who, with a click of the computer mouse, can coldly kill an animal confined in a pen on a hunting preserve in some backwater state that allows such barbaric practices to exist? At a minimum, shouldn't such technological advances be banned?

Even most hunters and hunting organizations agree that these practices are unfair, deplorable, indefensible, and unconscionable. When the National Rifle Association and the Humane Society of the United States agree on banning "pay-per-view slaughter," then the remedy should be clear to any thinking person. (21) Even those with blood on their "index finger" know that shooting captive animals is no more a sport than if one chooses to hunt the family dog or cat in his suburban backyard.

Animal rights activists must acknowledge the desire for some of us to eat meat or clothe ourselves with animal skins, but that is not the purpose of these activities. There are ways to ensure that hunting is conducted as reasonably as possible in order to ensure the animal population thrives or, at the minimum, does not suffer.

There are approximately 7,800 deer and elk breeders in the United States competing to breed the largest rack of antlers possible. (22) Many of these animals are shot and killed by the wealthy on private hunting preserves enclosed by high fences. Some animals are drugged, staked, or simply docile, which makes it easy for hunt organizers, who guarantee a kill. A farm-raised, human-fed deer or elk is not a wild animal.

The State of Texas alone generates more than one billion dollars annually on hunting ranches, and business is booming. (23) It is encouraging news that a few states have outlawed deer/elk farming, and bills banning Internet hunting have been passed or

introduced in thirty-three states. (24) Federal legislation has also been introduced to oppose this practice. (25) These practices should be banned everywhere.

V. ANIMAL WELFARE PROTOCOL

In 1957, the European Economic Community signed the Treaty of Rome. (26) Absent from this treaty were any provisions on animal welfare or animal cruelty. (27) Accordingly, a revision followed forty years later, entitled the Treaty of Amsterdam, which included a provision for animal welfare protocol. (28) By design, its provisions on animal welfare are quite simple, unobjectionable, and moderate. The implementation of its provisions is left to each member. (29) The treaty simply recognizes that animals are sentient creatures capable of feeling and experiencing pain, and requires its members to pay full attention to the welfare requirements of animals. (30)

As a result of the treaty and the work of animal rights activists, European laws now ban veal crates, regulate the treatment of egglaying hens and calves, and limit other inhumane actions toward animals. (31) Israel has voted to end force-feeding animals and birds, fully recognizing that the creation of foie gras is a barbaric and inhumane practice. (32)

Unlike our enlightened European neighbors, the United States has yet to take a serious step in support of animal rights. The United States even permits animal sacrifice. In Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, the court struck down city ordinances that prohibited the practice of animal sacrifice by the Santeria religion on First Amendment grounds. (33) Even though the Santeria rituals included killing chickens, pigeons, doves, ducks, ducks, goats, sheep, and turtles by cutting their carotid arteries, the Court ruled that the ordinances, which specifically prohibited "ritual sacrifices of animals," directly targeted the Santeria practices, thus interfering with the exercise of religion, of which it deemed there were fifty thousand practitioners in South Florida at the time. (34)

VI. CONCLUSION

It is time to push forward in the United States with some reasonable, moderate, and timely suggestions for reform. It is beyond the pale that animals have some level of feelings. They run to us after our long day of work, befriend us at our low points, and often are content just to be with us while asking nothing more than basic care in return. They do not drive drunk, beat their partners, or even "max" out their credit cards spending lavishly at the mall. Most important, they yelp or cry when they feel pain so we know they can suffer. When our state or federal government makes laws that affect animals, should it not take into account that sentience? This basic requirement would end many present outdated practices and start us down the road toward meeting our enlightened European counterparts.

Consider providing more than your voice to the cause of animal rights. Please join the Animal Rights Cooperative at www.animalrightscoop.com. This organization is committed to a simple basic tenet--the humane treatment of animals. The "organization and its members are committed to working individually in personal ways and collectively through cooperative efforts to.... [plush for passage of a declaration on animal welfare by the United Nations." (35) Patterned after the European Union's Amsterdam Protocol, this declaration simply says that "all animals are sentient creatures meaning that they are living

and living things have feelings and in particular feel pain." (36)

Help us start work cooperatively to meet our shared goals and objectives. It is a modest step in a modest beginning in reforming our treatment of animals in the United States. The bible teaches us that "[m]an's fate is like that of the animals; the same fate awaits them both: As one dies, so dies the other. All have the same breath; man has no advantage over the animal." (37)

It is rare to have an opportunity to change your fate.

ACADEMIC JOURNAL ARTICLE *Women and Language*

Animal Equality: Language and Liberation

By Gunn, Elizabeth M.

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Animal Equality: Language and Liberation

Gunn, Elizabeth M., Women and Language

Animal Equality: Language and Liberation, by Joan Dunayer. Derwood, MD: Ryce Publishing, May 2001.

The idea of affording nonhuman animals equality with human animals can no longer be characterized as a fringe issue, at least in the United States. Groups such as PETA captured the public's attention with dramatic exhibitions and demonstrations years ago. But the recent proliferation of Op-eds and TV/radio talk shows on animal rights, nature documentaries, alternative health therapies for animals, and pet day care centers, spas, therapists and fashion shows suggests an accelerating interest in redefining our responsibilities toward both free-living nonhumans and nonhuman companions. (1)

Thus, Joan Dunayer, a writer specializing in animal rights issues, has produced a timely, provocative, indeed over-the-top, book on how language perpetuates inequalities between human and non-human animals. (2) Sure to provoke personal response and lively classroom discussions, Dunayer's arguments are supported by both ad hoc examples and references to selected popular and scholarly literature. Her extensive Notes, Selected Bibliography (organized by topics), Thesaurus, Style Guidelines, and Index provide considerable resources for the reader who might wish either to critique the book's thesis or to accept the book's

challenge. Yet Dunayer intends to persuade rather than offer balanced analysis.

To illustrate the "no holds barred" nature of the book, I offer Dunayer's voice (p. 1):

> We lie--to ourselves and to each other, about our species and about others. Deceptive language perpetuates speciesism, the failure to accord nonhuman animals equal consideration and respect. Like sexism or racism, speciesism is a form of self-aggrandizing prejudice. Bigotry requires self-deception. Speciesism can't survive without lies. Standard English usage supplies these lies in abundance. Linguistically the lies take many forms, from euphemism to false definition. We lie with our word choices. We lie with our syntax. We even lie with our punctuation.

Dunmayer's passion for her cause (3) risks leaving the reader uneasy or even defensive rather than persuaded. Yet her particular focus on language, using the lessons and strategies available from feminist, race and critical legal theories, makes this book interesting and distinctive from other recent books on animal rights. (4)

In her Thesaurus, Dunmayer provides "terms to avoid" and "alternatives." For example, she recommends that we avoid bestial by substituting rape, cross-species rape, or human rape of a nonhuman; that we substitute cattle abuser or cow abuser for cowboy; that we order cow flesh at a restaurant rather than steak, beef or hamburger, or that we substitute friendship or love for bond to describe the relationship between two nonhuman or human and nonhuman beings. In her Style Guidelines, she recommends avoiding "syntax that equates nonhuman beings with inanimate things (e.g., The tornado destroyed a barn and ten cows)" (p. 180). She also recommends word ordering that frequently places nonhumans before humans, e.g., "(... the cat Jessie and human companion Steve)" (p. 179). Is this kind of language ridiculous? Does the attempt to link oppressive, deceitful language to speciesism in the same ways that scholars and activists have linked such language to gender and race discrimination trivialize efforts to overcome prejudice? Or will Dunmayer's language become conventional in the near future, signaling a new understanding of the rights and responsibilities of human animals and nonhuman animals?

If we could understand that phrase, "rights and responsibilities of human animals and nonhuman animals," how would that understanding be translated into action? Since Dunmayer intends this book to be distinctive for its focus on language and persuasion, it is ironic that she does an inadequate job of presenting and analyzing the interesting history and debates on animal equality in law and moral philosophy. As Dunmayer asserts, language matters, and thus words like equality, rights, and responsibilities, are deeply complex, fraught with moral, legal, and social assumptions and implications. For example, note the way in which reports of mistreatment of human animals in research experiments (5) now appear alongside similar articles about mistreatment of nonhuman animals both in research experiments and in slaughterhouses operated by the cow-, pig-, or bird-industries and the fish enslavement industry. (6) Are there common lessons that can be learned from these events? Contrary to

Dunmayer's assertion, non-human animals do have legal rights in the form of "protection from harm" as do human animals, though of course the difference in degree of protection and capacity for enforcement is quite large. (7) Given the uneasy standing of "rights" as a way to ensure equality in feminist and critical legal theory, in particular, would giving "rights" to nonhuman animals by making them legal "persons" as Dunmayer proposes make sense? What would it mean to have a social contract with non-human animals?

Dunmayar presents her proposed language for describing our human and nonhuman animal relationships and activities as the truth, in contrast to our lies. Since the capacity for self-deception in human animals is evenly distributed, each reader will have to decide whether s/he is willing to adopt this language before having considered in an analytical and thoughtful manner the scientific, moral, social and legal evidence and implications of affording complete equality among all human and nonhuman animals.

Notes

(1) I am trying to adopt Dunmayer's suggested terminology throughout this review. If you are already responding to the unfamiliar, even awkward, language in this first paragraph, you are beginning to see how Dunmayer intends to change usage of Standard English language for animals and related economic and scientific activities.

(2) Dunmayer reserves the word animal for sentient beings, distinguishing sentient beings further as those with nervous systems. See James Rachels, Created from Animals: The Moral Implications of Darwinism (Oxford, Oxford University Press, 1990), for another discussion of the confusion language can perpetuate.

(3) The author reveals her credentials in the front matter. She is a "reformed" vivisectionist, having previously worked in an experimental psychology lab with rats; she also has a MA in English Literature and Education and is a vegan. She tell us that her spouse, a veterinarian, has not eaten meat since he was 13 years old and, while a student at the University of Pennsylvania, he participated in a lawsuit to have the right not to perform unnecessary surgery on animals (this could be read as admiration rather than an effort to gain reflected authority from having a politically correct spouse or maybe both).

ACADEMIC JOURNAL ARTICLE *Journal of Case Studies*

ASPCA: An Animal's Best Friend?

By Thomas, Joe

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ASPCA: An Animal's Best Friend?

Thomas, Joe, Journal of Case Studies

Ed Stevenson was watching television one night with his grandmother when an advertisement for the American Society for the Prevention of Cruelty to Animals (ASPCA) appeared. It showed several dogs and cats that, according to the ad, had been neglected or abused. Ed's grandmother commented that she was considering leaving a significant portion of her estate to the ASPCA as her children, "really did not need the money." She went on to comment, however, that she knew some charities did not really do what they claimed to do and misused their funds. She asked Ed, a college student, to look into the ASPCA and their activities to see if they were truly reputable and deserved her financial contribution. Did the organization seem well managed? Was it using most of its money to help animals? Were the actions really helping the animals? Was the organization doing anything a reasonable person would consider unethical?

About the ASPCA

Ed began his research of the organization by visiting the ASPCA's website. The website contained much historical information. For example, the ASPCA was founded in 1866 by a special act of the New York State legislature and became the first humane organization in the Western Hemisphere. Its founder, Henry Bergh, started the organization with the mission statement, "To provide effective means for the prevention of cruelty to animals throughout the United States" (About the ASPCA, 2013).

This mission statement had been expanded to the current ASPCA Mission Statement

Founded in 1866, the American Society for the Prevention of Cruelty to Animals (ASPCA) was the first humane organization established in the Americas, and today has more than one million supporters throughout North America. The ASPCA's mission

is to provide effective means for the prevention of cruelty to animals throughout the United States. The ASPCA provides local and national leadership in animal-assisted therapy, animal behavior, animal poison control, anti-cruelty, humane education, legislative services, and shelter outreach. The New York City headquarters houses a full-service, accredited animal hospital, adoption center, and mobile clinic outreach program. The Humane Law Enforcement department enforces New York's animal cruelty laws (Charity Navigator, 2013).

Bergh modeled his association after England's Royal Society for the Prevention of Cruelty to Animals, which had been founded 26 years earlier. After receiving his charter from the New York state legislature and pushing for the passing of the "anti-cruelty law," Bergh and his staff of three began their mission fighting for the rights of animals. They spent their days inspecting slaughterhouses, staking out dog fighting pits or inspecting liveries for signs of horse abuse. When he wasn't on the lookout for offenses against animals, Bergh spent time speaking to school children and adult societies about the importance of ending animal abuses. These activities earned Bergh the nickname "The Great Meddler" (About the ASPCA, 2013).

The ASPCA accomplished many things in its early years. In 1867, the ASPCA operated the first injured horse ambulance. In 1875, the ASPCA created the first sling for horse rescue. In addition, the organization helped to create fresh drinking water carts for the use of pulled-cart horses (also frequented by local dogs, cats and even humans!). Bergh and his team even intervened on the behalf of pigeons, finding humane alternatives to live pigeons during shooting events.

By Bergh's death in 1888, the ASPCA had grown in both size and importance. Buffalo, Boston and San Francisco had enacted their own Humane Society groups and 37 of the 38 states had passed anti-cruelty laws. However, the work of the ASPCA did not stop with Bergh's death. In 1894, the Society was placed over the New York City animal control department whose operations had become increasingly corrupt. Prior to ASPCA control, the publicly employed dogcatchers were paid per dog instead of per hour and were often accused of stealing properly confined pets to increase pay. As many as 300 dogs were rounded up per day and drowned in the city's East River. The ASPCA's newly founded shelter was funded by the licensure fees it had established to protect working animals. The organization also set up a shelter and attempted to adopt out the collected stray animals. Any animals unclaimed were euthanized in a more humane manner than had previously been used. The ASPCA operated these animal shelters in New York until 1995 (About the ASPCA, 2013).

Nationally, the ASPCA supported many causes over its history. These causes include the establishment of a veterinary hospital for domestic pets in 1912, and a training program for dogs and owners to help make better pets and pet owners. The ASPCA also helped ensure pets wore proper licenses for identification. More recently, the ASPCA supported efforts to have animals micro-chipped for identification purposes and to aid in their relocation to rightful owners. The ASPCA also participated in the continued effort to spay and neuter pets to control populations and keep numbers of stray animals who may need to be put down as low as possible (History, 2013).

Ed found the group was currently headquartered in New York City where Matthew Bershadker was the President and CEO and Tim F. Wray was currently the Board Chair (ASPCA, 2013). The ASPCA claimed to be the first humane organization to be given legal authority to investigate and actually make arrests for crimes committed against animals. The society currently provided local and national leadership in three main areas: "Caring for pet parents and pets, providing positive outcomes for at-

risk animals and serving victims of animal cruelty" (ASPCA Programs and Services, 2013). This was accomplished through the establishment of local community outreach programs and animal health services, running a 24-hour, 365 day per year animal poison control hotline, and funding grants for local animal organizations (ASPCA Programs and Services, 2013).

Membership

The ASPCA claimed more than 2 million members to help with the protection of animals (ASPCA Get Involved, 2013). The members paid no monthly or annual dues but were encouraged to become involved locally to prevent animal cruelty. Members were also encouraged to make a one-time donation or become an ASPCA Guardian by setting up a recurring monthly donation to the organization (ASPCA Membership, 2013).

The Annual Report also showed a number of ways members could become active in ASPCA. Members were encouraged to become an ASPCA Ambassador and organize a variety of fund raising activities. It was suggested members create a tribute page on the ASPCA where guests could make donations to ASPCA in lieu of giving a gift at a wedding, graduation, etc.

Another option was to become members of Team ASPCA. This was a national endurance and fundraising program dedicated to helping animal lovers walk, run or cycle with the goal of helping the ASPCA provide life-saving programs and services to animals nationwide. Team members participated in marathons, half-marathons, and other endurance events across the country to raise funds, and awareness of ASPCA (ASPCA Get Involved, 2013).

Revenues and Income

As shown in Table 1, the ASPCA had total revenues for fiscal year ending December 2012 of $163,615,458 up from a 2011 total of $148,247,629. Of this revenue, nearly 85% or $138 million came from contributions and grants to the organization. Fundraising accounted for approximately $471,000 of the revenues. Government grants accounted for another $24,300. The majority of revenue came from undisclosed contributions, gifts, and grants. Non-cash contributions totaled almost $2 million (Form 990, 2013).

ASPCA's non-donated revenue came largely from profits generated by their clinical ventures including the Animal Poison Control Call Center, which charged a fee of $65 per consultation for non-members and $60 per consultation for members, the Bergh Animal Hospital, the Mobile Veterinary Clinic, Adoption Centers and The Glendale Veterinary Clinic. Combined, these activities generated revenues of $14,332,923, approximately 10% of total annual revenue.

The Bergh Animal Hospital, located in New York City's Upper East Side, contained a 24-hour animal Intensive Care Unit and provided many other advanced services. It was staffed by three full time internists, a full-time surgeon, 12 generalists as well as many part-time specialists. The hospital also employed licensed veterinary technicians that were able to provide 24-hour care. In 2012, the animal hospital handled 5,326 emergencies, an increase of 8% from 2011 (Annual Report, 2012). The animal hospital contributed $5,062,711 to total revenue (Form 990, 2013).

The Mobile Veterinary Clinics included six vehicles that offered affordable spay and neuter surgery. The mobile clinics operated within New York City and provided services to all of New York's five boroughs (Annual Report, 2012). The Mobile Veterinary Clinics contributed $644,889 to total program service revenue in 2012 (Form 990, 2013).

In 2012, the ASPCA's adoption centers found homes for 3,476 cats and dogs. The adoption centers also took in 1,483 animals from other shelters that were at risk of being euthanized (Annual Report, 2012). The adoption centers contributed $482,867 to total program service revenue (Form 990, 2013).

The Glendale Veterinary Clinic offered basic veterinary services for animals. These services included annual checkups, preventative medicine, dental services, dermatology and cancer care. The Glendale Veterinary Clinic contributed $170,798 to the total program service revenue (Form 990, 2013).

Expenditures

Additionally, the ASPCA's Form 990, Table 1, listed expenses of $168,616,519 for Fiscal Year Ending December 2012. This represented a $5 million decrease in operating assets from 2011.

The ASPCA engaged in a variety of activities aimed at improving the welfare of animals. The organization was involved in a number of legislative activities as well as funding grants to animal related organizations.

Legislative initiatives were at both the federal and state levels. A sample of federal initiatives include

* National Defense Authorization Act--authorized the adoption and lifelong veterinarian care for retired military dogs.

* Helped get the Animal Fighting Spectator Act in the Senate

* Led an effort to ban spending tax dollars on horse slaughterhouse inspections.

* Organized "Paws for Celebration!" informing legislators and their staff about the work of shelters and rescues.

* Organized supporters to submit comments to the U.S. Department of Agriculture (USDA) in support of regulations of dog breeders selling puppies to the public sight unseen, including over the Internet.

* Worked with USDA requiring mandatory minimum penalties at horse shows for violations of the anti-soring provisions of the federal Horse Protection Act" (Annual Report, 2013, p. 17).

In 2010, the ASPCA launched a new ASPCA Field Investigations and Response (FIR) Team. This organization was a group of responders that participated in 27 separate raids and rescues, as well as more than 120 investigations. The FIR Team focused on remote locations that had trouble absorbing the volume of animals made homeless by disaster. The ASPCA also created a

Shelter Response Partner program in 2010, which connected shelters and rescue groups across the country that were willing to take in animals from these areas (BBB.org, 2012).

However, not all of the ASPCA interventions were successful. Some even made Ed question the integrity of the organization. For example, in July 2000, the ASPCA took Feld Entertainment, owner of Ringling Bros. Circus, to court alleging mistreatment of elephants. In 2009, after years of litigation, the case was dismissed after finding the key witness in the case was accepting money from the ASPCA. It was discovered that approximately $190,000 was paid to the witness over the course of the case. After the case was dismissed, Feld Entertainment sued the ASPCA for "violations of the RICO (Racketeer Influenced and Corrupt Organizations Act) statute and Virginia Conspiracy Act, malicious prosecution, and abuse of process" (ASPCA Pays, 2012). A settlement was reached on December 28th 2012 that required the ASPCA to pay Feld Entertainment $9.3 million in damages.

Efforts at the state level, "led to the passage of 35 new laws to protect animals and helped defeat 12 bills that would have rolled back protection for animals" (Annual Report, p. 17) This legislation included efforts to control puppy mills (Ohio), use of dogs for hunting purposes (California), prohibited tail-docking of cattle (Massachusetts), sale of animals at roadside stands and parking lots (Louisiana), and led the effort to ban horse slaughter and the transport of horses for slaughter (New Jersey) (Annual Report, p. 17).

Communities could also apply through their major animal sheltering agencies to become ASPCA partner communities. Launched in 2007, there were now 11 ASPCA Partner Communities located in Austin, TX, Buncombe County, NC, Charleston County, SC, Cleveland, OH, Miami-Dade County, FL, Oklahoma City, OK, Sacramento, CA, Shelby County, AL, Spokane, WA, Tallahassee, FL and Tampa, FL. These partners worked with ASPCA's experts to meet certain requirements to remain partners. In exchange the partners received financial and physical support from the ASPCA in the form of direct grants, strategic planning assistance, training and capacity-building (ASPCA Partnership, Annual Report 2012).

The ASPCA awarded 1,665 grants totaling more than $17 million to organizations in all 50 states. Grants supported animal shelters, rescue groups, humane law enforcement agencies, sanctuaries, and in-clinic and mobile spay/neuter providers. The median grant was $5,000 (Annual Report, 2012, p. 18). A few of the grants included funds to

* Enable humane organizations to better respond to cruelty incidents and train law enforcement officials to help identify and prosecute cruelty cases.

* Enable sanctuaries and other equine welfare groups to care for and retrain retired race horses.

* Grow the capacity of farm-animal welfare organizations, including rescuing and rehabilitating farm animals who were the victims of cruelty and advancing humane-farming research.

* Boost relocation efforts by helping move animals from high supply/low demand to areas of higher demand for adoptions.

* Respond to natural disasters and emergencies like Hurricane Sandy and areas of the country suffering from drought conditions and food shortages.

There had been controversy about the use of some funds. Between 2008 and 2012, Edwin Sayres, former ASPCA President and CEO, helped secure hundreds of thousands of dollars from the ASPCA's grant program for Nyclass. Nyclass was an organization opposing the use of horse drawn carriages. Controversy surrounded the attempts by Nyclass to eliminate the tradition of horse drawn carriages in New York. Many people questioned whether or not using horses for pulling carriages was actually animal cruelty. The fact that Mr. Sayres was drawing funds from the ASPCA to support such a controversial organization upset many people within the organization, especially since he was co-President of Nyclass ("Controversial Anti NY Carriage, 2012).

The Form 990 only showed $1.8 million for fundraising fees. However, there was another $23 million spent on advertising and promotion, including the television advertisement asking viewers to donate. Ed discovered there had been some controversy surrounding ASPCA's fundraising efforts. In 2011, a complaint was filed against the organization for deceptive fundraising practices. The claim was that since the ASPCA started aggressively advertising, it had hurt local humane societies. The complaint argued that some people donating to the ASPCA thought they were donating to their local humane organization. The complaint also argued the funds donated to the ASPCA were not being distributed fairly among the local organizations (Friesecke, 2012; Jones, 2011).

The "other expenses" category intrigued Ed. He was curious what went into that category. One of the larger expenditures was "fees for services" which included fees for legal service, lobbying, professional fund raising, etc. The category totaled nearly $14 million. He also found approximately $10 million was spent for information technology. Travel and conference expenses accounted for $5 million. Operating supplies were another $16 million. Veterinarian and medical services accounted for approximately $4.8 million.

Employment

ASPCA salaries and related expenses were another large expense, slightly over $60 million. The Form 990 indicated the ASPCA employed 811 individuals during 2012. There were also 751 volunteers working for the organization. The ASPCA listed 24 uncompensated members of the board for 2012.

The CEO until May 31, 2013 was paid a total of $560,368, down about $50,000 from 2011. The Chief Operating Officer had total compensation of $484,778. There were 17 other officers and key employees earning in excess of $200,000 each (Form 990, 2013). Further reading into the Form 990 revealed that compensation of officers, trustees, and other key employees totaled almost $4 million. Other salaries and wages accounted for $43 million. Benefits and pensions were another $9 million. Payroll taxes accounted for another $4 million.

Corporate Partnerships

ASPCA had worked with several large brand name sponsors in recent years for mutual benefit. The large brands brought large donations and exposure for the non-profit, while the ASPCA lent its goodwill and allowed the company to label itself as "animal friendly." Some more well-known current ASPCA Corporate Partners included Clorox and its Fresh Step cat litter brand, Freekibble.com a website that donated pet food to shelter animals and ASPCA's own Pet Health Insurance. Additionally, Lowes had partnered with the ASPCA to brand its collection of dog supplies. Carpenter Company used its partnership with the ASPCA to brand its Stainmaster line of carpet as compatible with pet ownership, even donating a percentage of each sale back to the ASPCA. Subaru was one of the newest and most high profile corporate partners. Subaru partnered with local ASPCA shelters to help adopt out rescue dogs. Subaru also offered Guardian and Founders Society members special discounts and sponsored the national endurance team to raise awareness of animal cruelty issues. In return, ASPCA listed the non-profit as a member of their end of year "Share the Love" Event. Subaru also donated several vehicles to both ASPCA's CSI Response Team and local Partner Communities (Corporate Partnerships, 2013).

Conclusion

After doing his preliminary research Ed did not know quite what to recommend. What was his assessment of ASPCA? Was it well-managed? Did it make good use of its resources? Was it doing what a reasonable person would expect from an organization supporting animal rights?

Joe Thomas, Middle Tennessee State University

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Equitable Self-Ownership for Animals

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ABSTRACT

This Article proposes a new use of existing property law concepts' to change the juristic personhood status of animals. Presently, animals are classified as personal property, which gives them no status or standing in the legal system for the protection or promotion of their interests. Professor Favre suggest that it is possible and appropriate to divide living property into its legal and equitable components, and then to transfer the equitable ,title of an animal from the legal title holder to the animal herself. This would create a new, limited form of. self-ownership in an animal, an equitably self-owned animal.

Such a new status would have two primary impacts. First, the animal would have access to the legal system, at least in what has historically been the realm of equity, for the protection and assertion of his or her interests. Secondly, the human holder of legal title will, like a traditional trustee, have obligations to the equitable owner of the animal, that is the animal himself. As the subject matter of this trust-like relationship would be a living being, not money or wealth, the legal owner would best be characterized as a guardian, rather than by the traditional category of trustee. The Article concludes with a short discussion of the use of anti-cruelty law and human guardianship concepts as providing a context for the further development of this new concept of equitable self-ownership.

INTRODUCTION

There is fair consensus among scholars that nonhuman animals within the control of humans are presently considered personal property, with title being held by humans or human substitutes such as corporations or state governments. Several authors have set out in some detail the facts relating to the present use of animals by humans.(1) In the arenas of moral philosophy and legal

jurisprudence, the status of animals has long been under discussion, with the result being a number of proposals supporting the proposition that animals are moral persons(2) and, as moral persons, are entitled to have legal rights.(3) However, the present legal paradigm, which has its roots in Greek philosophy, is inadequate for the recognition and protection of the interests of animals.(4) This Article does not seek to establish the necessity for change; rather, it assumes change is justified.(5)

In recent years, several authors have criticized the property status of animals and have sought a new, nonproperty status for animals in our legal system. Two authors in particular have argued for the extension of existing common law "rights" principles to nonhuman animals.(6) This Article proposes an intermediate ground between being only property and being freed of property status, where the interests of animals are recognized by the legal system but the framework of property law is still used for limited purposes.

As will be developed in this Article, it is possible to imagine and articulate a legal paradigm in which a nonhuman animal has equitable self-ownership and, thus, status within the legal system, while a human retains legal title to the animal in question. The analysis that supports this position will require a consideration of the root concepts of property law, as well as a few new concepts, including the idea that living entities inherently possess self-ownership. The legal history that allows the division of property into legal and equitable title will be examined and found to support the proposition that the equitable title of an animal can be separated from the legal title.(7) Then it will be shown that it is possible to change an animal's personhood status within the legal system by transferring the equitable title of an animal to the animal, creating for the animal a limited form of self-ownership.(8) Having envisioned a new legal status for animals, the Article will then briefly consider the legal relationship between the owner of legal title, the guardian of the animal, and the equitably self-owned animal.(9) In particular, the Article will examine some of the interests of animals that the legal system will need to acknowledge and take into account when making decisions affecting the well-being of the equitably self-owned animal.

I. UNDERSTANDING AND MODIFYING PRINCIPLES OF PROPERTY LAW

A. An Overview of Ownership

The concept of property is one of the fundamental organizing points for any legal system.(10) Anything of physical substance(11) is subject to its conceptual organization. The right to control, direct, or consume things--living or nonliving--is allocated or decided within our society under the legal concept of title to property.(12) The rules of each sovereign country control the property within its jurisdictional boundaries. The concepts discussed below arise out of our English common law roots and are shared by all common law countries. While much of this Article also applies to civil law system states, a separate analysis would have to be performed for the finer points of the civil law.(13)

Before proceeding to animal-specific issues, consideration must be given to the concept of title. To have title is to have a cluster of legally enforceable rights relative to a given object.(14) Concepts of title are entirely abstract and dependent upon the legal system in which the object is located. Legal rights, or the relationship between the title holder and the object, may well change as the object moves from one jurisdiction to another. For example, historically, in some states within the United States, humans were the property of other humans, and the slave laws of those states established the property rights of the owners.(15) If an

owner took a slave into another jurisdiction, then different laws would apply.(16) At one point, England adopted the proposition that any slave brought into its jurisdiction was freed immediately, thus entirely destroying the property interest of the slave owner.(17)

There are no characteristics within physical objects that demand a particular set of rules or definitions of the concept of title. However, because of the nature of human beings, rules of title are a prerequisite to order and efficiency within human society.(18) Humans seek to possess, use, and consume objects. The rules of title create a predictable matrix that sets out who may use which type of objects and what kinds of uses may be made of the object. Rules of property interrelate closely to help direct the economic structure of a country. As these rules are an ordering point for human society, they have a profound impact on how the members of that society view the world around them.

In the United States, the governments of the individual states control ownership under property law concepts.(19) As the concept of title predates the creation of our state governments, it is a common law topic.(20) As such, either the state courts or the state legislatures are fully empowered to deal with the issue of ownership of animals. At this level of government, there have long existed principles of the equitable ownership of property in the contexts both of trusts and the division of land title.(21)

One other preliminary point is that our common law system allows for a distinction between title and possession. As we will see, while human possession may be critical to create initial "title" in an animal, once title to an object is obtained, then possession by the title holder need not be retained in order to prove title. Title to your car or dog is not transferred when you let a friend borrow him or her for a week; instead, a bailment is created.(22)

It will be helpful to use the following examples to delve into the present state of property jurisprudence. Property law creates a relational overlay between objects in the physical world and the humans who own or possess them. We will begin by placing an identification tag on a number of physical objects within the physical boundaries of the United States. Consider a rock (of considerable age), a newborn squirrel, a newborn cat, and a newborn human. Each has its own identification tag: rock #R188A located on land in Redford, Washington; squirrel S-4444 born in the Yellowstone National Forest; cat #54376 (referred to as Zoe for easy reference), born of Starburst and Big Bo in the house of Ralph and Penny Willard (humans); and a female human, #256,332,881, known as Susan, born of Donald and Cindy Greenburg of Lansing, Michigan. Having properly identified these items, the legal concepts of property law can now be used to define the legal status of these four objects and a critical set of potential relationships between them.

B. Self-ownership

As property laws are a human construct and not an inherent characteristic of physical objects, there is always conceptual space for innovation. One of the premises for our new property paradigm is that living objects have "self-ownership." That is, unless a human has affirmatively asserted lawful dominion and control so as to obtain title to a living object, then a living entity will be considered to have self-ownership. As will be shown, this is but a modest recasting of existing concepts, but one with significant consequences.

Our existing legal system does not now assert ownership in all physical things. Meteorites in the sky have no human-designated title, and particular molecules of water and air in their natural state have no human title constraining and defining them.(23) Nor do newborn squirrels in the wilderness, or human babies in Lansing, Michigan, have human-based title claims against them. As will be seen, however, not all of these objects qualify for the concept of self-ownership, as the object in question must first be a "being."

In whichever category non-owned objects might be placed, our legal system does have a number of rules that allow humans to obtain ownership. Usually, as a prerequisite to title being acknowledged in a human, some assertion of possession and control over an object must be made by the person seeking title. This is logical, as the concept of title deals with the use and control of objects: until an object is within the possession and control of some human, the law will be without effect, and there will be no reason to assert title over an object.

As a wild animal, the squirrel of Yellowstone is not yet human-controlled; she retains self-direction, self-control and self-ownership.(24) It is a misperception of existing property law to say that title is in the state when wildlife exists in its natural environment.(25) If no human or human substitute has possession and control over a wild animal, there cannot be an assertion of title.(26) The courts have long made it clear that using the word "title" as it relates to wildlife and state ownership issues is not title in the property sense. Rather, the word is being used as a surrogate for a different concept. The assertion of the common law is not that the state has title to the wild squirrel, but that it has the right to decide the conditions under which humans can obtain title to the squirrel.(27) Under these rules, if Susan shows up in Yellowstone National Forest and traps or shoots the squirrel, then the property rules of the state of Utah will decide if she becomes the owner of the squirrel, if she obtains "title" to the squirrel. Until the point of capture, the squirrel has self-ownership. Assuming that the property rules of the state allow Susan to assert title with the capture of the animal, then self-ownership is lost or transformed into human ownership. The fragility of the title asserted by humans over wildlife is reinforced by the existence of the property rule that that if the squirrel escapes back into its natural habitat, then Susan will lose her title. It evaporates with the disappearing squirrel.(28) Thus, the existing property rules relating to wild animals do not hinder assertions of self-ownership.

Also, under existing concepts, it is fair to state that the newborn human is self-owned.(29) Certainly in the negative sense, no one else is the owner of human Susan.(30) The extent to which state legislatures have sought to regulate the sale of human body parts is additional support for the conceptual existence of human self-ownership.(31) Susan's parents, while not having ownership, nevertheless have obligations toward Susan, and while she is a minor they certainly have physical possession and considerable control over Susan and what she experiences.(32) But within the common law states today, these obligations do not rise to the level of having title in Susan, that is, the ability to use, kill, or transfer ownership to another. So our human child, like the squirrel, is not a being owned by a human and, therefore, must be considered to have self-ownership.

Our rock poses a different kind of problem. It has no "self" to which the concept of self-ownership can attach. It is not alive. Also, assuming that this rock, like all ageless rocks, is sitting on a tract of land, then property law dictates that the owner of the land has ownership of all the rocks located on, below, and above the land itself.(33) The rock is part of the land ownership. Within the United States, all land is owned by someone--if not a private party, then by a government.(34) Rocks in the Antarctic and on the moon, where no human asserts ownership of the underlying land, may be free from human ownership claims,(35)

but, as rocks have no self-interests, even in these locations it is not useful to say that they have self-ownership.

Last, but certainly not least, is the cat Zoe. While Zoe has a set of self-interests to which can be attached the concept of self-ownership, title to her, unlike the Yellowstone squirrel, already rests in another: the human owner of the mother of Zoe is considered to be the owner of all offspring of the animal.(36) Title to Zoe rests with the Willards.(37) This ownership is distinguished from the ownership of the rock primarily by the fact that prevention-of-cruelty laws apply to owners of pets but not to owners of rocks.(38) Also, while rocks do not tend to harm humans of their own accord, animals can cause harm, and their owners may be liable for such harm.(39) The Willards can sell the cat, give the cat away, put the cat in a trust, leave the cat by will to Aunt Mae, or kill the cat in a non-cruel manner.(40) In making decisions about the cat, the Willards may or may not adopt those courses of action which are in the best interest of the cat.

The focus of this Article is to shift the nature of the relationship between the owner and the animal from that which is like the ownership of the rock to that which is more like, but not identical to, the custodial relationship of the human parent and the human child. The concept of self-ownership is one useful construct towards this new view. While this proposition is not compelled by existing legal precedent, its establishment is not significantly hindered by existing legal precedent either. The critical hurdle for acceptance of this new concept is the perceptions and beliefs of individuals. If an individual believes that nonhuman animals are deserving of consideration in our moral and legal universe, then the legal concept of self-ownership will find fertile ground in which to flourish. Having established the concept of self-ownership of living beings not owned by humans, the focus of the Article will now turn to the creation of a legal mechanism which will allow the law to recognize self-ownership for those animals presently owned by humans.

II. CREATION OF THE NEW EQUITABLE PROPERTY INTEREST

A. The Roots of the Concept of Equity and Equitable Title

For several centuries after William the Conqueror initiated the feudal system in England (1066), all that existed in common law England relating to the ownership of land were the concepts clustering around the idea of feudal tenure which would evolve into legal title.(41) During this time there was considerable evolution as to the scope of power assertable by the private owner (legal title holder). The law slowly shifted away from the king having primary control over the use of and title to land to the private individual (lords and knights) having primary control.(42) After the Statute Quia Emptores (1290), the English land laws began to take a form that we would recognize today, with the individual able to make an inter vivos transfer of interest in land without having to have the permission of the king or an overlord.(43)

Thereafter, there developed a separate set of rules relating to land use and possession, articulated and enforced by the representatives of the king, not the courts, which became known as the rules of equity. The need to implement these rules, which did not seek to overturn the rules of law but to coexist with them, supported the slow creation of a separate legal system, known as the Court of Chancery.(44) These rules evolved from petitions of mercy granted by the king, to petitions granted by the privy counsel of the king under the supervision of the chancellor, and, ultimately, to a separate court system.(45) This court is considered to have been in full existence by the end of the reign of Henry V (1413-22).(46) As the petitions became

standardized and the courts' decisions became more predictable, the claims were transformed into equitable rights.(47) One of the primary concerns of the equitable court was unfair use of the legal rules of ownership by landowners.

For over a century, equitable concepts coexisted as a separate set of rights and obligation for landowners.(48) During this period, it could be said that land ownership had two sides or aspects, those enforced in equity and those enforced in law. Indeed, an individual could hold an equitable interest in land, which the courts of law would not acknowledge. After the Statute of Uses (1536), many of the equitable rights were migrated into the legal system, and, thus, the courts of equity lost jurisdiction over a number of property title issues.(49) However, the courts of equity retained jurisdiction when a legal title holder had an active duty for the benefit of another.(50) In this way, one person could be considered to have legal title and the other equitable title. Today this division remains, and it is the cornerstone for the creation and control of trust, as it allows two individuals to have an interest in the same property, but with different obligations and benefits.(51)

Equitable courts asserted control in broader circumstances than just the issues of land use and ownership. The courts of chancery asserted jurisdiction when they believed that the application of the rules of law resulted in unfair, unjust, or inequitable outcomes.(52) Equity continues to be the area in our system of jurisprudence that allows the correction of harsh or unfair outcomes.(53) It deals with obligations and relationships, not with money damages.(54) For a considerable time in the United States, the dual English legal system has been merged into one system for almost all cases. The rules of law and equity for both real and personal property are now exercised by one integrated judicial system.(55) All this historical development leaves us with two related but separate points. First, property ownership can have a division into legal and equitable title. Second, while there is no longer a court of equity, concepts of equity continue to exist in order to provide flexible tools of fairness for the courts.

B. The Division of Ownership into its Legal and Equitable Aspects

Today an equitable interest in land is usually created by a deed sufficient to satisfy the requirements of the state in which the land is located.(56) Thus, present owner O, by deed, may convey an equitable life estate in the family farm to daughter D. After the conveyance, the state of ownership will be that both O and D have an interest in the family farm. D has an equitable life estate, and, during D's life, O has the legal title, plus the remainder in fee simple, both legal and equitable. At the end of D's life, the equitable interest comes back to O, who will thereafter have both legal and equitable fee simple. During D's life, D has the right to use the land or to receive the proceeds from the farming on the land. Because of D's interest, O's title is in the nature of that of a trustee.

Property concepts historically developed first for real property, then many of the attributes of ownership were transposed into the system of personal property.(57) Thus, today the ownership of personal property can also be separated into legal and equitable title.(58) All owners have the lawful ability to separate the title of their personal property into its two components and convey those separate components to others.(59) If O is the owner of one thousand shares of Microsoft stock, O may have personal and tax motivations for the establishment of a trust. Thus, O can transfer the stock to a family trust. Under this trust, Trustee X holds the legal title to the stock (including the power to sell the stock), while son S has the right to receive the income or the increase in value of the stock on an annual basis so long as S is alive. (S would not have the power to sell or transfer the

stock.) This might be desirable because of S's age. S has an equitable (life estate) interest in the stock while X has the legal title. X does not have total freedom to do as he or she might with the property. X's legal title, as a trustee, is encumbered with specific duties of loyalty toward S.(60)

In addition to formal instruments of trust for personal property, the common law has an informal mechanism for sharing title and possession known as a bailment. The owner of a racehorse may say to his daughter, "I want you take my horse Lightning for five years and see if you can make a winner out of him." This would not be a sale or gift of the animal, as the father is not relinquishing present or future ownership. Instead, the legal category most likely to be used to define this relationship is that of a bailment. The father retains title, but the daughter has lawful possession and control of the horse.(61) This is just an informal method of creating a division into legal and equitable title. The daughter has the right to use the horse, but not to sell the horse to another. This relationship is like that of a trust in that the equitable title holder has possession and control over the asset without having the ability to dispose of the legal title of the horse. It is not like a trust in the sense that in this case the legal title holder, the father, can dispose of the title of the horse without regard to the interests of the daughter.

Most of our personal property does not have the value of one thousand shares (or even ten shares) of Microsoft stock or of a racehorse. Therefore, it is seldom worth the transaction costs to formally create legal categories or formally divide the title into two estates. The Willards, in trying to decide what to do with Zoe as she grows up might have any one of the following conversations with their Neighbor:

1. "Zoe is a great little cat, she is yours." (The cat is physically given to Neighbor.) This is a transfer, by gift, of full ownership, of both the legal and equitable title from the Willards to Neighbor.

2. "For payment of $10, you may have Zoe for a year and breed her if you wish, but then we want her back." The Willards want to keep title while allowing use and possession to shift to Neighbor. This would most likely be characterized as a bailment. Both parties have an interest in Zoe that a court of equity would recognize (e.g., the court would issue an injunction for the return of the cat if Neighbor refused to do so after a year).

3. "Knowing how much you [Neighbor] have come to love Zoe, we want to you to consider her yours, but we need to keep her for three months." (This declaration is made in the presence of six Willard family members as well as Neighbor.) This may be considered the oral creation of a trust, whereby the Willards retain legal title, but Neighbor immediately receives an equitable interest in Zoe.62 Henceforth, the Willards may not do with Zoe as they wish, but must take into account the interests of Neighbor.

Thus, there are a number of possible transactions that allow for multiple party interests in living personal property, where at least one party's interest can best be characterized as equitable in nature. In the first example, after the physical transfer, the

Neighbor could decide to put the cat to death, and the Willards could not object. In the second and third examples, during the time that two interests exist, the possessory estate could not kill the cat because of the interest of the other human. (This analysis assumes the traditional view that even if the cat has an interest in not being killed, she has no legal voice before the courts.)

C. Transforming Title into Legal Personhood

Having acknowledged that it is well within the legal mainstream to create and transfer equitable interests in personal property, an expansion of a second, related concept must be considered. Who is capable of holding a legal or equitable title? While historically only humans could hold title, is it not conceptually possible for other living entities be a holder of title, at least to the limited extent of holding their own equitable title? If self-ownership is an acceptable concept, is it not appropriate to say that title is being held by "self"? How might the equitable title of an animal be transferred to the animal itself? Presently the private owner of an animal can do certain intentional acts that impact the title status of the animal beyond the transferring of it to another human. First, an owner can abandon his or her domestic animal. Abandonment is an intentional relinquishment of all title and interest in personal property which should be evidenced by some explicit act.(63) It may be a criminal act to abandon an animal,(64) but it can be effective in the property law realm so that the abandoned animal is without title and without a human owner.(65) An abandoned domestic animal has his or her title (legal and equitable) go into "never-never" land. No one has it, but it is readily obtainable by another human taking possession of the animal.(66) During this interim, perhaps it is useful to consider the animal itself as possessing the title. But in this case, the animal is incapable of stopping a human from taking/transferring the title upon the occurrence of specific events relating to the exercise of dominion and control over the animal. A second fact pattern is where an owner of a wild animal can return title to a wild animal by releasing him back into his natural habitat. As a released wild animal regains self-control, it also regains self-ownership.

If the legal and equitable owner of an animal can change the title status completely by intentional acts, is there a policy reason to object to the returning of part of the title to an animal? Could not an owner of an animal return or transfer the equitable interests of the animal to the animal? Such a transfer would be but a partial return of title, a hybrid form of self-ownership.

The history of our legal system contains a striking parallel to the issues of property status and the transforming of property status into legal personality. There have been times when human beings were held as personal property, but by a property instrument the status (legal personality) of a slave could be changed to that of free person.(67) Both the mature Roman legal system and the early legal system of the United States dealt with these issues. One difference is that, for most of Rome's history, human slavery was widely accepted as preferable to being slain by the victor's sword during war.(68) In the United States, there were sharp lines of difference about the moral acceptability of slavery. In both legal systems, the legal status of a slave could change a number of different ways.(69) In both systems, methods existed by which humans in the status of property could be transformed into legal persons, that is, obtain status within the legal system. This could occur by legal instrument done by the owner, or by operation of law,(70) even if it was against the will of the owner.(71)

In parallel to this history, there are two methods by which a change of legal status might occur for nonhuman animals. The first is by the explicit private action of an existing title holder. An example in the context of this Article would be when an individual owner of an animal signs a carefully drafted instrument which transfers the equitable title of the animal to the animal.(72) The

writing should be sufficient to make clear the owner's intention of creating a new legal status for his or her animal and the understanding that some legal consequences will follow from the action of signing the document.(73) The signature on the document may or may not reflect the presence of financial consideration (a voluntary sale or a girl inter vivos). This status might also be created by an individual in his or her will.(74) To distinguish animals with this new status (legal personality), they will be referred to as "self-owned animals" (equitably self-owned).

In the human slavery context, one court stated "that unless restrained by positive enactment, a testator may, by his will, effect the manumission of his slaves, by vesting the title to them in trustees, for the purpose of their removal to a free state, there to enjoy their freedom.(75) The possibility of a change of legal status by private action was available for the Roman as well as the American slave owner. The most common method was by operation of a will.(76) During portions of the Roman era, inter vivos transfer could also occur.(77) For most times in the United States, a slave owner could free slaves in his or her will,(78) or freedom could be purchased or given.(79) The North Carolina Supreme Court upheld a trust for a slave, allowing the slave to be the beneficial equitable owner of the trust.(80)

One modest issue concerning private transfer of interest should also be addressed: that of delivery of a deed.(81) Animals are not likely to understand the importance of the document, nor are they able to keep such a document. Additionally, it would be hard for the benefits of the document to be realized unless some third party is aware of the change of status for a particular animal. In other words, how is notice to the world obtained for the self-owned animal? How is any subsequent purchaser to know whether they are getting legal title or both legal and equitable title of the animal? A number of possibilities exist. One is to mark the animal with a tattoo of a universal symbol for that status. Then anyone seeking to purchase an animal would, by normal inspection of the animal, ascertain that the particular animal is equitably self-owned. Another possibility is to file the document in a specific depository where an inquiry can ascertain the status of an animal. This possibility still requires some method of identification of the animal so that the subject of the document can be clearly ascertained. While land deeds are recorded in the courthouse of the county in which the land is located, given the mobility of animals and their owners, an alternative to local recordings of documents is required. In the absence of a formal system, only a person who knew or should have known of the equitable self-ownership will be bound by the requirements of the new status.

The second method for creation of a new legal status for domestic animals is by operation of law, which can occur either by the actions of the judiciary or by adoption of new legislation. Change of status by operation of law might arise in a number of situations. As previously discussed, a wild animal under the personal ownership of a human will gain equitable (and legal) title if she is released back into her natural habitat.(82) This is by operation of common law principles and does not require the actions or relate to the intentions of any human owner.

In the future, a legislature may find it appropriate to adopt legislation that would have the effect of causing the involuntary transfer of equitable ownership to a class or species of animals. For example, a legislature might decide that the scientific evidence of the nature of primates supports the proposition that every human owner of a primate should respect the nature of these primates and requires, as a matter of law, that equitable self-ownership be acknowledged for all primates held by humans.(83)

Once the separation of legal and equitable title occurs for any one animal, then the nature of having legal title will change, as the legal title holder must recognize and take into account the interests of the equitable title holder. Part of the nature of this obligation can be found in the area of trust law. Human animal owners are presently subject to the restrictions of anti-cruelty and licensing laws, but this is a duty owed to the states, not to the animals.(84) If an animal had equitable title, then a legal title owner would have obligations both to the state and to the equitable title holder, the self-owned animal. By taking, assuming, or purchasing the separated legal title, a subsequent human owner will also be subject to existing obligations toward both the state and the self-owned animal.

D. Human Retention of Legal Title and Duty of Care

While some authors have urged the elimination of the concept of title as it applies to animals,(85) it is neither advisable nor feasible at this time. A key issue that the existing property law addresses is who is responsible for the care of this animal. Under our present system, full responsibility comes with ownership.(86) Most animals within the domestic control of humans are not capable of self-care, regardless of their age, and if released or abandoned by their human owner would find themselves in an environment hostile to their existence. Therefore, at present, it is important that legal ownership continues to exist so that responsibility for the care of the self-owned animal can be squarely placed on a specific human.

Also for the foreseeable future, animals, even self-owned animals, could have economic value, and the only practical way to keep track of and transfer this value is through property ownership. Consider, for example, a racehorse. While the horse, Midnight, has her own intrinsic value as a living being, and this value is acknowledged by owner Jed who transfers her into an self-owned animal status, the horse will still have value in the external world of commerce.(87) The new existence of equitable self-ownership does not preclude the realization of commercial value upon sale of an animal. However, the commercial value may well be negatively impacted, as the use of an animal must take into account the interests of the animal.(88)

Another variation on the issue of value is what should happen at the death of the animal. If an animal dies, then self-ownership is destroyed, and the owner of the legal title has full title in the physical body of the self-owned animal. In effect, there is a reversion of title back to the legal title holder. It is meaningless to talk of duty to the animal after it is dead; it is then no different than a rock.

Finally, the continued use of legal title will exist so long as different jurisdictions have different laws about the status of animals. If an owner takes an animal from a jurisdiction that does recognize equitable self-ownership into one that does not, then the laws of the jurisdiction where the animal is located will govern the relationship. Since legal title would always be present, there will continue to be certainty as to ownership and responsibility for an animal, regardless of where he or she travels.

III. SOME ATTRIBUTES OF BEING A SELF-OWNED ANIMAL

A. Shift from Trustee to Guardian

Having established the concept that an owner of an animal might have only the legal title, and thus be like a trustee, it is time for a modest word shift. While the term "trustee" was used in the prior analysis to build upon existing concepts in the law, it is not the best term to proceed with into the remainder of the Article. The trust concept was used as a bridge concept, because it supports the idea of dividing the title of property into its two parts, and because the owner of the legal title has a legal duty to the equitable owner of the property. Obviously, this new relationship is different in that the owner of the equitable title is also the subject matter of the legal title that is held by the human. Thus, there is a blending of corpus and self-ownership in this new animal relationship that does not exist for a non-living asset trust. An additional distinction between a traditional trust and the one suggested for animals is that a trustee is an individual with legal title and a financial accountability to another, the equitable owner. When the subject matter of the trust is non-living property, this is fully appropriate. However, as this Article seeks to establish that living beings are different from non-living entities, the primary obligation of the legal title holder will not be financial accountability, but "being" accountability. The holder of legal title to a self-owned animal should be judged more in the context of a parent to a child than a bank to its customer. Such individuals may have some financial duties, like the parents of minor children, but the primary context for judgment of legal duties will be that of the quality of life of the animal. Thus, henceforth the holder of legal title will be referred to as the animal's guardian, while the holder of the equitable title will continue to be referred to as the self-owned animal.

B. The Dimensions and Initial Contours of Equitable Self-ownership

Having created a new legal status for animals, it is important to develop a context in which to describe the contours and consequences of this new legal status. This topic will require books to be written in the future, but for now, a brief view upon opening the door should be sufficient to understand the potential dimensions of the concept. After the creation of this new property status, nothing changes about the nature or interests of the self-owned animal, as they have no knowledge of what property status we might impose upon them. The changes will arise in how we humans consider and relate to the animals in question. The premier relationship being created is between the self-owned animal and the guardian. The nature of the duty toward the self-owned animal will arise out of two primary legal sources, anti-cruelty laws and the concepts developed for defining the parent-child relationship.

Upon opening the door into this new room of jurisprudence for self-owned animals, the viewer will immediately notice the decor of traditional equity along the walls and the ceiling. Standing in the door, the viewer can smell the mixture of fresh air blowing in through the window and the familiar odors of centuries of equity. It is a pleasing mixture, a mixture sure to draw the viewer into the room for a closer look. The source of the familiar odor is a certain mist in the room that does not allow crisp clarity of view but is comforting nevertheless. It is the broader concerns of equity, justice, fair dealing, and balancing of interests that have shaped the room. Equity, within the mist of the ages, has always sought to balance the conflicting interests of entities within its bounds when the law seemed inadequate to do so. Now that Zoe and the other self-owned animals have a room, there are new interests that existing concepts and legal principles must take into account. Zoe will provide flash and dashes of color as she tumbles across the floor and climbs this new furniture. For her it is just another room to explore, but for us there is much to contemplate as to what it might mean to have a cat sit upon the couch of "do not inflict harm or pain upon another."

Closer in, the viewer will see several groupings of heavy furniture built upon the long-existing anti-cruelty laws.(89) These laws provide a basic context for the specific obligations owed to all animals to assure freedom from "unnecessary pain and suffering," as well as the affirmative duty to provide for the physical well-being of animals (food, water, shelter, and veterinary care).(90) But the colors and textures of this grouping are different than might be expected because while in other rooms the obligations upon which the furniture is built were owed to the state, in this room those duties of care are also owed to the self-owned animal.

What interests of the self-owned animal will the guardian need to take into account? The focus should be on life-supporting and species-defining activities. Consider the example of a human infant who has an interest in receiving food so he or she can live and grow. It is an interest recognized by adult humans and easily asserted, such that if it is shown that a human with responsibility is ignoring this fundamental interest of an infant for which they have responsibility, then the courts may intervene and do whatever is required to fulfill that interest.(91) This can occur whether or not the infant has self-awareness of the interference with his or her self-interest. The human may or may not have breached the duty to the state as set out in criminal law, but the court will certainly have the authority to make sure that the needs of the child are met.

It is equally clear that a dog, a horse, or a snake has an interest in living, and that society presently expects those interests to be satisfied by the responsible human owner (keeper, trustee, or guardian). Thus, there have long existed the prohibitions or commands of criminal anti-cruelty law.(92) The difficulty, until now, has been in allowing anyone other than the state, through its prosecutors, to protect or assert the unfulfilled interests of nonhuman animals within either the civil or criminal side of the legal system. As it may now be asserted that the nonhuman animal has equitable self-interest within our new legal paradigm, civil equity courts should be available to hear claims of substantial interference with such fundamental interests. That a human recognizes the interference and asserts it on behalf of the self-owned animal does not diminish the legal vitality of the interest or the ability of a court to address this interference.(93)

For example, consider if Zoe was owned by someone who enjoyed the infliction of pain by extinguishing lit cigarettes against the cat. Today the state would have the right to bring a criminal action. But this would not help pay for the veterinary bills to help Zoe recover from the injuries. In our new room, Zoe could sue, certainly to obtain an injunction to stop the battery and additionally to recover at least actual damages in the form of veterinary care, if not also damages for intentional infliction of emotional distress, pain and suffering.

While the civil protection of interests could be done by government agencies, just as they do today for the protection of the interests of human children, in the world of limited resources it is more likely that private parties will be called upon to protect and assert the interests of the self-owned animal. Today the owners of equitable interests in a trust may bring an action to question the actions or inaction of the legal title holder of trust property, the trustee. While this will require the appointment of an equitable guardian ad litem, this is a natural process that courts can easily handle, with or without additional legislation.(94)

If one has previously visited the room of jurisprudence concerned with the duty of the parent to the child, those shapes and colors will be strongly represented in our new room for the self-owned animal. The closest parallel to the nature of equitable self-ownership and the relationship between legal and equitable ownership is that of minor children with their lawful guardians.

It is the duty and right of the responsible adults to raise the children in a way they see fit, so long as certain critical interests of the child are met. Thus, the parent may discipline a child but may not abuse the child.(95) The parent must allow for the mental development of the child,(96) as well as the appropriate level of food, water, and shelter for the child.(97) The parent must also provide for medical assistance when the child has a need, even if it is against the religious beliefs of the parents.(98)

Consider the present power of equity to deal with the relationship of human parent to human child. Every state has laws governing how a human can adopt a child(99) and, thus, take on legal obligations toward the child. If the legal formalities are not met, then there is no adoption and no ability of the child to claim the status of heir to the adult. Thus, it is a "cut and dried" issue in the courts of law. But if the same court puts on its equity hat and believes a fundamental unfairness will result if a child is not found to have been adopted, the court could hold that an equitable adoption had occurred, with the result that the child can be considered the heir of the person who in all other respects acted as parent to the child in question.(100) Thus, even in the absence of specific legislation, the courts can deal with balancing the interests of the parties before the court.

Likewise, there will have to be a balance between the desires and resources of the human legal title holder, the animal guardian, and the interests and needs of the self-owned animal. Just as the parents of the child must sort out what is in the best interests of their children, so the animal guardians must, in the first instance, decide what is in the best interests of the self-owned animal for whom they are responsible. If Mr. and Mrs. Neighbor have responsibility for Zoe, and they find themselves in the circumstances of separating and divorcing, then the issue of what to do with Zoe must be addressed. The issue will not be resolved by reference to who wrote the check for Zoe or which human wants Zoe the most, but rather what is in the best interests of Zoe. If Mr. and Mrs. Neighbor cannot reach that decision mutually, then the courts are empowered to step in and make that decision.

The second category of relationships is between the self-owned animal and others besides the guardian. As entities with legally recognized interests, self-owned animals have sufficient status as juristic persons so as to be able to hold equitable interests in other property. Thus, a chimpanzee with self-owned animal status could have an equitable interest in a building or a bank account. Property could come to him or her by gift, will, or perhaps through purchase by the guardian on the chimpanzee's behalf. The guardian of the self-owned chimpanzee will be a trustee for such assets with an obligation to use the assets for the interests of the equitable owner, the chimpanzee. The self-owned animal's interests will most likely be characterized as in the nature of a life estate or, perhaps, a fee tail. What if the self-owned animal should have assets at her death? As the possibility of an animal writing a will is not realistic, and some disposition of title is necessary, it will be presumed that the holder of the legal title of the property will obtain the equitable title, unless the prior owner of the asset has made other arrangements.

Besides these expanded property rights, a self-owned animal will have tort law available to protect his or her interests. For example, if a vengeful neighbor should shoot Zoe with a bow and arrow, two causes of action in tort will arise: the first by the guardian for losses to the guardian(101) and the second by Zoe for her losses and her pain and suffering. An interesting policy debate will be how to split punitive damages between the guardian and the self-owned animal. The flip side to this ability of the self-owned animal to sue will be the ability of others to sue a self-owned animal for injuries or damages caused by the self-owned animal. In other words, the law of torts, in a slightly modified form, will be within the room of jurisprudence set aside for the use of self-owned animals. Another area deserving of reflection and writing is the degree to which self-owned animals

should partake in the contractual income or contest winnings that arise out of their efforts.

There are many possible topics of discussion once the issue of animals as juristic persons is taken under consideration. How can the legal system best accommodate, in an efficient manner, the protection of the interests of animals and the balancing of the interests of the self-owned nonhuman animal with the human animal? This author welcomes the thoughts and articles of others who are willing to enter into this new area of jurisprudence.

CONCLUSION

Animals are not humans and are not inanimate objects. Presently, the law has only two clearly separated categories: property or juristic persons. But, by using existing concepts of property law, it is possible to construct a new paradigm that gives animals the status of juristic persons without entirely severing the concept of property ownership. It is a blending of the two previously separated categories. The new status can initially be created by the actions of individual humans, but in time the legislature may want to speak on the topic and regularize some of the rules and relationships. Creating this new status will impose duties upon the guardians. The potential legal duties can be ascertained by reference to our long-existing anticruelty laws and the obligations existing within the parent-child relationship. When these sources do not provide a sufficient answer, the powers of the court of equity can be tapped to resolve disputes. With these steps, the issue of justice for nonhuman animals can begin to be addressed.

(1.) See, e.g., JOHN A. HOYT, ANIMALS IN PERIL 95-108 (1994) (addressing wildlife issues); Susan L. Goodkin, The Evolution of Animal Rights, 18 COLUM. HUM. RTS. L. REV. 259, 261-67 (1987) (describing the treatment of laboratory animals); David J. Wolfson, Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production, 2 ANIMAL L. 123, 133-35 (1996) (giving examples of accepted farm practices); Forum: The Benefits and Ethics of Animal Research, SCI. AM., Feb. 1997, at 79-93 (debating the necessity and utility of animal experimentation).

(2.) If animals are moral persons, then their interests need to be taken into account in moral decisionmaking. See ANIMAL RIGHTS AND HUMAN OBLIGATIONS passim (Tom Regan & Peter Singer eds., 1976) (collecting essays from classical to modern times on animal nature, human obligation, and animal rights); TOM REGAN, THE CASE FOR ANIMAL RIGHTS 235-41 (1983) (developing a theory of animal rights rooted in animals' nature--their consciousness, sentience, and ability to have beliefs, preferences, and emotions); PETER SINGER, ANIMAL LIBERATION 123 (1977) (arguing that humans' current treatment of other species is based on arbitrary discrimination); Mary Midgley, Persons and Non-Persons, in IN DEFENSE OF ANIMALS 52-62 (Peter Singer ed., 1985) (claiming that emotional complexity, rather than intellectual ability, is the defining characteristic of personhood); Juan Carlos Gomez et al., Nonhuman Personhood, in ETICA & ANIMALI (1998) (presenting, through a series of essays, arguments for personhood as a moral designation). If animals are moral persons, then should they not also be legal persons and have their interests protected within the legal system? One of the first writers on the issue was Henry Salt, who in 1912 published a short work that started with the sentence: "Have the lower animals `rights?' Undoubtedly--if men have." Henry S. Salt, Animals' Rights, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS, supra, at 173-78. The roots of the moral debate are centuries old, with Jeremy Bentham perhaps being one of the key figures in the debate. See Jeremy Bentham, A Utilitarian View, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS, supra, at 129-30 (basing consideration for animals not on their linguistic or rational capacities but on their capacity for suffering).

(3.) See GARY L. FRANCIONE, RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT 1-31 (1996) (criticizing the animal welfare movement as advocating that animal exploitation be merely regulated rather than abolished); Steven M. Wise, The Legal Thinghood of Nonhuman Animals, 23 B.C. ENVTL. AFF. L. REV. 471, 546 (1996) (tracing the conception of animals as things from ancient cosmology to modern law); see also Thomas G. Kelch, The Role of the Rational arm the Emotive in a Theory of Animal Rights, 27 B.C. ENVTL. AFF. L. REV. 1, 2-3 (1999) [hereinafter Kelch, Role of the Rational] (concluding that there is no single principle on which to base animal rights and that compassion has been neglected as a basis for rights theory); Thomas G. Kelch, Toward a Non-Property Status for Animals, 6 N.Y.U. ENVTL. L.J. 531, 582 (1998) [hereinafter Kelch, Non-Property Status] (arguing that animal rights should be teleologically based, rather than based on special characteristics such as sensibility and identity over time, in order to protect a broader range of creatures).

(4.) See Steven M. Wise, How Nonhuman Animals Were Trapped in a Nonexistent Universe, 1 ANIMAL L. 15, 18-30 (1995) (explaining how the "chain of being" view of the universe as set out by the Greek philosophers created a construct under which the Greek and Roman legal system allowed humans total domination of other animals, as well as children and slaves).

(5.) Several writers have recently expressed opposition to the concept of changing the legal status of animals. See Richard A. Epstein, The Next Rights Revolution?, NAT'L REV., Nov. 8, 1999, at 44, 44 (claiming that to understand animals as anything other than property would undermine human society); Marshall H. Tanick, Legal Terminology Could Prove Punitive to Dog Owners, DOG WORLD, Jan. 2000, at 95, 95-96 (warning that if dog owners are considered guardians, they will be held to an unrealistically high standard of care); see also David R. Schmahmann & Lori J. Polacheck, The Case Against Rights for Animals, 22 B.C. ENVTL. AFF. L. REV. 747 (1995) (portraying animal rights as a challenge to human progress and freedom). Some nonlegal writers think the issue is a joke and only worthy of a few lines of satire. See Walter Shapiro, Kangaroo Court? A Case of Animal-Rights Absurdity, USA TODAY, Aug. 20, 1999, at 8A; Frans B.M. de Waal, We the People, (and Other Animals).... N.Y. TIMES, Aug. 20, 1999, at A21. Both of these articles were in response to an article in the New York Times that discussed the growing movement for animal rights within the legal profession. See William Glaberson, Legal Pioneers Seek to Raise Lowly Status of Animals, N.Y. TIMES, Aug. 18, 1999, at A1; see also William Glaberson, Redefining a Jury of Their Peers, N.Y. TIMES, Aug. 22, 1999, [sections] 4, at 1.

(6.) See Kelch, Non-Property Status, supra note 3, at 545-54, 580-84 (surveying existing laws and the ability of the common law to change and urging a new approach); Steven M. Wise, Hardly a Revolution: The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy, 22 VT. L. REV. 793 (1998) (analyzing the development of "rights" in the common law context and how animals rights can be justified under a traditional "rights" framework). But see infra notes 85-88 and accompanying text (arguing that, at least for the time being, legal ownership should continue to exist).

(7.) See infra notes 56-62 and accompanying text.

(8.) See infra notes 63-84 and accompanying text.

(9.) See infra notes 89-107 and accompanying text.

(10.) "In civilized society, men must be able to assume that they may control for beneficial purposes what they have discovered and appropriated to their own use, what they have created by their own labor, and what they have acquired under the existing social and economic order." ROSCOE POUND, THE HISTORY AND SYSTEM OF THE COMMON LAW 263 (1939); see also The Nature of Property and Value of Justice, in THE NATURE AND PROCESS OF LAW 365-433 (Patricia Smith ed., 1993) (assembling essays on the definition of and justification for property).

(11.) Obviously, property law also deals with the nonphysical in such areas as intellectual property rights, but the issues of nonphysical property will not be considered in this Article.

(12.) "[P]roperty means not the thing itself, but the rights which inhere in it." WALTER B. RAUSHENBUSH, BROWN ON PERSONAL PROPERTY [sections] 1.5 (3d ed. 1975).

(13.) As much of animal jurisprudence is based upon Greek philosophy and Roman jurisprudence, its principal concepts were established well before the division between civil and common law. See Wise, supra note 4, at 42. For example, in the Supreme Court case of Geer v. Connecticut, 161 U.S. 519 (1896), the Court developed the concept of the state ownership doctrine with a historical review of Roman law as well as subsequent developments in both civil and common law jurisdictions. See id. at 522-27.

(14.) For a discussion of the rights of property ownership, see POUND, supra note 10, at 28485. The word "object" is used at this stage because it is not yet necessary to distinguish between animate and inanimate subjects, but such a distinction will soon be important.

(15.) For example, the Civil Code of Louisiana stated:

> A slave is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry and his labor. He can do nothing, possess nothing, nor acquire any thing, but what must belong to his master. (Civil Code, Art. 35.)
>
> The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, or so as to maim and mutilate him, or expose him to the danger of loss of life, or to cause him death. (Art. 173.)