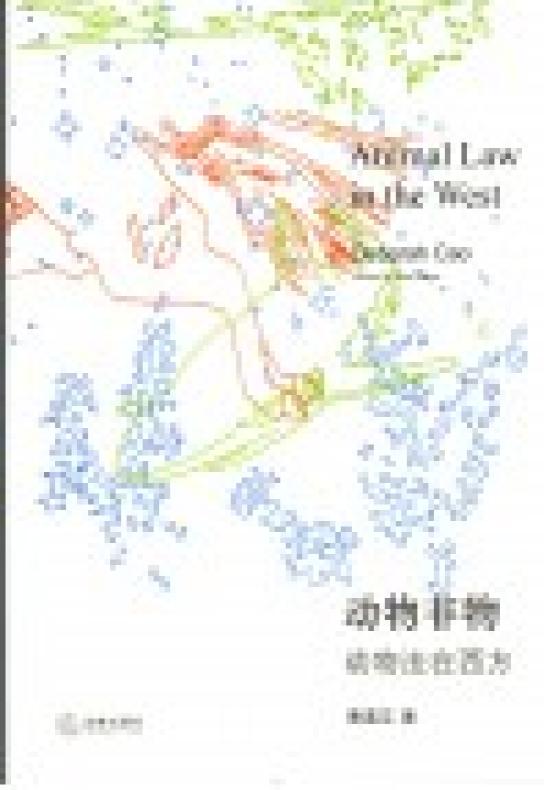


动物法在西方

曹菡艾 著



动物非物 动物法在西方

曹菡艾 著



图书在版编目(CIP)数据

动物非物:动物法在西方/曹菡艾著.—北京:法律出版社,2007.10 ISBN 978-7-5036-7785-4

[. 动… II.曹… III. 动物保护法—西方国家 IV. D912.6 中国版本图书馆 CIP 数据核字(2007)第 155757 号

© 法律出版社・中国

动物非物:动物法在西方

曹菡艾 著

责任编辑 郭 亮 程红军 装帧设计 乔智炜

开本 A5

版本 2007年11月第1版

出版 法律出版社

总发行 中国法律图书有限公司

印刷 北京中科印刷有限公司

印张 12.625 字数 239 千

印次 2007 年 11 月第 1 次印刷

编辑统筹 对外合作出版分社

经销 新华书店

责任印制 沙 磊

法律出版社/北京市丰台区莲花池西里7号(100073)

电子邮件/info@lawpress.com.cn 网址/www.lawpress.com.en 销售热线/010-63939792/9779

咨询电话/010-63939796

中国法律图书有限公司/北京市丰台区莲花池西里7号(100073)

全国各地中法图分、子公司电话:

第一法律书店/010-63939781/9782

重庆公司/023 - 65382816/2908

北京分公司/010 - 62534456

苏州公司/0512-65193110

西安分公司/029-85388843

上海公司/021-62071010/1636

深圳公司/0755 - 83072995

书号:ISBN 978-7-5036-7785-4

定价:28.00元

(如有缺页或倒装,中国法律图书有限公司负责退换)

曹滿艾 (曹翃, Deborah Cao)

毕业于上海外国语学院和北京外国语大学联合国译 员训练班,并在澳大利亚获翻译学硕士、法学士和 博士学位,现任澳大利亚格理菲斯大学(Griffith University) 副教授,在法律系社会法律研究中心 从事研究, 曾发表数十篇有关法学理论、法律符号 学、法律语言、法律翻译、法庭口译和语言权利、 中国法律语言和法律文化等方面的学术论文。著作 包括:中国法律文化专著 Chinese Law: A Language Perspective (《说法》), 2004 年在英国出版; 法律 翻译专著 Translating Law (《译法》), 2007 年在英 国出版: 法律理论编著 Interpretation, Law and the Construction of Meaning (《法律释意》,与他人合 编), 2007 年在德国出版;《联合国文件翻译》(与 赵兴民合著),2006 年在中国出版。同时担任国际 学术杂志 International Journal for the Semiotics of Law (《国际法律符号学学刊》)副主编等职。2006 年在格理菲斯大学首次开设教授动物法课程,并多 年业余支持参与动物福利机构义工。

Animal Law in the West

Animal Law in the West

她自幼便心地仁慈,只要见到受了伤的麻雀、出鸡、甚至虫豸蚂蚁之类,必定带回家来妥为喂养,直到伤愈,再放回出野,若是医治不好,就会整天不乐,这脾气大了仍旧不改,以致屋子里养满了诸般虫蚁、小禽小兽。她父亲是个屡试不第的村学究,按着她性子给她取个名字,叫作惜弱。

或许有一天,

动物世界的其他生灵可以获得原本不应被剥夺的 但只因人的残暴而遭剥夺的权利。

——[英]边沁(1748-1832)

Animal Law in the West

"动物解放"一词 1973 年首次在媒体上出现,是我在《纽约书评》发表的一篇文章中使用的。这篇文章题为"动物解放",我在文章的开始这样写道:

我们大家都熟悉黑人解放、同性恋解放和其他很多运动。随着妇女的解放,一些人认为我们的道路已经走到了尽头。有人说,以性别进行歧视是普遍接受和毫无掩饰进行歧视的最后一种形式,即使在那些崇拜自由思想的圈子里,那些长久以来因没有种族歧视而感到自豪的人均认为如此。然而,我们应该时刻提防人们谈论"剩下的最后一种歧视形式"。

在那篇文章中,我呼吁说,尽管人和非人动物之间有明显差别,但是,我们同动物共同有着感觉痛苦的能力,这即意味着,动物,同我们一样,拥有利益。如果我们完全因为动物不属于人类的原因而忽视或无视动物的利益,那么,我们这一立场的逻辑就无异于最公然的种族主义者和性别歧视主义者的逻辑,这些人认为属于他们自己同一种族或性别的人具有优越于他人的道德地位,唯一理由是他们所属的种族或性别,不论其他特性和品质如何。虽

然大多数的人可能比非人动物在推理或其他智能方面更有优势, 但是,用这一点来划线区分人和动物,理由不够充分。一些人,例 如,婴儿和智力有严重缺陷者,他们的智能低于一些动物,但如果 有人建议说我们在这些智障者身上做实验来检验家用产品安全性 能,让这些人慢慢痛苦死去,我们对此建议都绝对会深感震惊。当 然,我们也绝不会容忍将这些人禁闭在小笼箱里,然后将他们杀 死、吃掉。然而,我们愿意接受对非人动物的如此行为,这恰恰表 现了"物种歧视"——这种歧视偏见存活了下来,因为它对优势群 体比较便利,这一群体不是白人,也不是男性,而是全体人类。

我写的那篇文章和在那篇文章基础上撰写的书,时常被视为 引发了"动物权利运动",1尽管该运动的伦理立场基础不需要对 权利之说引经据典。当今有关动物道德地位的辩论所处境态同 1973 年最明显的区别是,在20世纪70年代初,几乎没有什么人认 为如何对待某个动物是一个值得慎重考虑的伦理问题,而今天,这 种想法已没有什么市场。在动物道德地位的辩论方面,当时欧美 的情形同今天中国的情形有些相似。那时没有什么动物权利或动 物解放组织,动物福利只不过是爱猫爱狗人士之闲情,为更重要的 大事操心的人最好不要对此浪费笔墨。今天,情况非常不同,人们 如何对待动物的行为时常成为新闻。动物权利组织在所有工业化

Peter Singer, 1977, Animal Liberation, New York, New York Review/Random House; 1990, revised edition, New York, New York Review/Random House; 2001, reissued with a new preface, New York, Ecco. 辛格:《动物解放》,祖述宪译,青岛出版 社 2005 年中文版。

国家均十分活跃,美国的动物权利组织"伦理对待动物协会" (PETA)现有一百万名会员和支持者。知识界也进行了各抒己见的辩论(1974年,根据一份有关动物道德地位的书目统计,从公元1年到公元1970年之间,仅撰写了94份这方面的文章作品,但从1970年到1988年,却有240份。2如果今天统计,书目数量一定会高达数千份)。有关动物的讨论不仅仅是一个西方现象,有关动物与伦理的重要著作被翻译成世界多数主要语言,包括日文、韩文和中文。

要评估这一辩论,有必要区分两个问题。第一,物种歧视本身 是否有理由站得住脚。物种歧视认为有理由单凭某一生灵是否属 于智人这一物种而因此给予或不给予优待。第二,如果不能为物 种歧视提出辩护理由,人类是否还有其他特征能让我们区别对待 人和动物,认为如何对待人比如何对待非人动物道德意义更为重 大。

认为物种本身是视一些生灵比另一些生灵更具道德意义的充分理由这一观点,往往是人们臆断的,而很少道出理由。一些人撰文好像是在辩护物种歧视,但实际上是对以上第二个问题提供了肯定的答案,辩论说人和其他动物具有在道德上的重要区别,因此让我们有理由更为重视人的利益。3确实,人和动物有一些区别,而

² Charles Magel, 1989, Keyguide to Information Sources in Animal Rights, Jefferson, NC, McFarland.

³ 例如,参见 Carl Cohen, 1986, "The Case for the Use of Animals in Biomedical Research", New England Journal of Medicine, 315:865 - 870; Michael Leahy, 1991, Against Liberation; Putting Animals in Perspective, London, Routledge.

且,在一些情形下,这些区别很重要,但最重要的事实是我们同动物共同具有感受痛苦的能力,这就是说,动物,同我们一样,拥有利益。

也许《动物非物》这本书在中国赢得广大读者的一个障碍可能 是存在着一种普遍看法,认为有关人的问题总是比有关动物的问 题更为重要。既然在中国仍然存在着贫困,有人因此会说关心动 物是本末倒置,先后次序摆得不对,也许这些关心动物的人对动物 过于感情用事,过于喜爱动物。然而,认为人类的问题一贯比动物 的问题更为重要的观点本身正是对人类特殊优待的偏见思想导致 的结果,是需要批评的。试想,一个欧洲人说,我们不应该关心亚 洲的问题,因为涉及欧洲人的问题总是比涉及亚洲人的问题更为 重要。我们肯定会合理地视这种观点为种族主义观点,肯定会拒 绝接受这种观点。那么,对于不同物种生灵的利益,我们为什么却 欣然接受类似的偏见呢? 曹受痛苦不是一件好事,不论属于哪一 物种的生灵漕受痛苦都是坏事。而且,即使人类感受痛苦的能力 在某些方面同动物遭受的痛苦不同,我们仍应该看看那些受苦受 难的动物如此惊人的数量,而且要减少或完全避免这些巨大规模 的痛苦实际上并非难以做到的事。每年,世界范围内仅用于食品 的动物,不包括鱼在内,超过千亿以上。这些动物绝大多数生活在 拥挤不堪的工厂农场的悲惨境地之中,被运走、宰割,对其利益丝 臺没有任何考虑。如果我们放弃那种认为只有我们同一物种的人 类成员遭受痛苦才值得考虑的偏见,那么,这些如此巨大的痛苦宇 宙应是我们最为关注的对象。此外,不像人类的一些问题那样难 以解决,动物绝大多数的痛苦是我们能够较容易消除的。

取缔工业饲养动物方式不仅能有助于动物,而且能帮助生产 更多而不是更少的食品供人类消费,并能消除温室气体排放和水污染的一个主要来源,也能保护否则被大型农业工厂排挤掉的小型农户作业。禁止取缔农业动物饲养工厂不能实现善待动物的所有目标,但是,在这方面对动物的伦理关怀不仅能有益于动物,而且能有益于人。

我希望《动物非物》这本书能广为读者细心阅读,因为随着中国经济日益繁荣,中国将面临着如何对待动物的重要抉择,而成万上亿的有感知生灵的命运将与此息息相关。

美国普林斯顿大学生物伦理学教授 彼得・辛格 2007 年 9 月

Preface

The phrase "Animal Liberation", appeared in the media for the first time in 1973, in an article I wrote for *The New York Review of Books*. Under that heading, I began with these words:

We are familiar with Black Liberation, Gay Liberation, and a variety of other movements. With Women's Liberation some thought we had come to the end of the road. Discrimination on the basis of sex, it has been said, is the last form of discrimination that is universally accepted and practiced without pretense, even in those liberal circles which have long prided themselves on their freedom from racial discrimination. But one should always be wary of talking of "the last remaining form of discrimination".

In the text that followed, I urged that despite obvious differences between humans and nonhuman animals, we share with them a capacity to suffer, and this means that they, like us, have interests. If we ignore or discount their interests, simply on the grounds that they are not members of our species, the logic of our position is similar to that of the most blatant racists or sexists who thinks that those who belong to their race or sex have superior moral status, simply in virtue of their race or sex, and irrespective of other characteristics or qualities. Although most humans may be superior in reasoning or other intellectual capacities to

nonhuman animals, that is not enough to justify the line we draw between humans and animals. Some humans-infants, and those with severe intellectual disabilities-have intellectual capacities inferior to some animals, but we would, rightly, be shocked by anyone who proposed that we inflict slow, painful deaths on these intellectually inferior humans in order to test the safety of household products. Nor, of course, would we tolerate confining them in small cages and then slaughtering them in order to eat them. The fact that we are prepared to do these things to nonhuman animals is therefore a sign of "speciesism"—a prejudice that survives because it is convenient for the dominant group—in this case, not whites or males, but all humans.

That essay, and the book that grew out of it, 1 are often credited with triggering what has become known as the "animal rights movement"—although the ethical position on which the movement rests needs no reference to rights. The most obvious difference between the state of the debate over the moral status of animals now and in 1973 is that in the early 1970s, to an extent barely credible today, scarcely anyone thought that the treatment of individual animals raised an ethical issue worth taking seriously. In that respect, the position in the United States and Europe was rather like that in China today. There were no animal rights or animal liberation organizations. Animal welfare was an issue for cat and dog lovers, best ignored by people with more important things to write about.

Today the situation is very different. Issues about our treatment of animals are often in the news. Animal rights organizations are active in

Peter Singer, 1977, Animal Liberation, New York, New York Review/Random House; 1990, revised edition, New York, New York Review/Random House; 2001, reissued with a new preface, New York, Ecco. A Chinese translation was published by Qingdao Publishing House, Qingdao, 2005.

all the industrialized nations. The U.S. animal rights group, People for the Ethical Treatment of Animals, has one million members and supporters. A lively intellectual debate has sprung up (The most comprehensive bibliography of writings on the moral status of animals lists only 94 works in the first 1970 years of the Christian era, and 240 works from 1970 and 1988, when the bibliography was completed. ² The tally now would probably be in the thousands). Nor is this debate simply a Western phenomenon—leading works on animals and ethics have been translated into most of the world's major languages, including Japanese, Chinese and Korean.

To assess the debate, it helps to distinguish two questions. First, can speciesism itself—the idea that it is justifiable to give preference to beings simply on the grounds that they are members of the species *Homo sapiens*—be defended? And secondly, if speciesism cannot be defended, are there other characteristics about human beings that justify us in placing much more moral significance on what happens to human beings than on what happens to nonhuman animals?

The view that species is in itself a reason for treating some beings as morally more significant than others is often assumed but rarely defended. Some who write as if they are defending "speciesism" are in fact defending an affirmative answer to the second question, arguing that there are morally relevant differences between human beings and other animals that entitle us to give more weight to the interests of humans. ³ Indeed, there are some differences, and in some circumstances they are

² Charles Magel, 1989, Keyguide to Information Sources in Animal Rights, Jefferson, NC, McFarland.

³ See, for example, Carl Cohen, 1986, "The Case for the Use of Animals in Biomedical Research", New England Journal of Medicine, 315:865 - 870; Michael Leahy, 1991, Against Liberation: Putting Animals in Perspective, London, Routledge.