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The Problem of Animal Rights in Selected Works by Dorota Probučka

Problem praw zwierząt w wybranych pracach Doroty Probučkiej

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Abstract: This article presents the idea of animal rights as perceived by a Polish philosopher and ethicist, Dorota Probučka. It is divided into three sections that delve into the development and significance of animal rights from the perspectives of both proponents and critics of the idea. The first section provides an overview of the turning points in the history and evolution of animal rights, referring to the main thinkers who had the fundamental impact on their development. The second part defines the concept of animal rights and explains why extending fundamental rights to at least some non-human beings is important from both moral and legal perspectives. The third part compares the arguments of the proponents and opponents of the idea of granting basic rights to animals. The philosophers' positions presented by Probučka prove that beings capable of suffering, regardless of their intellectual abilities, deserve moral consideration. This stance is supported by numerous arguments from various fields of science, demonstrating the degree of awareness and emotional complexity of animals. These arguments should contribute to the recognition of animal rights within a moral and legal context. The article also emphasizes the need for legal reforms, including the need to introduce formal legal structures, such as the appointment of the so-called Animal Rights Ombudsman, who could represent animals at an institutional level. Considering the growing bioethical and biocentric awareness, the article emphasizes the need to redefine our attitude towards animals. It also postulates the necessity of implementing legal reforms that will make animals full participants of the moral community, which is of key importance for the future of both people and animals on our planet.

Keywords: animal rights, anthropocentrism, factory farming, vegan, animal liberation, animal ethics, ombudsman, animal welfare, law to prevent cruelty

Streszczenie: Niniejszy artykuł przedstawia koncepcję praw zwierząt z perspektywy polskiej filozofki i etyczki, Doroty Probučkiej. Jest on podzielony na trzy sekcje, które analizują rozwój i znaczenie praw zwierząt z punktu widzenia zarówno ich zwolenników, jak i przeciwników. Pierwsza część skupia się na historii i ewolucji praw zwierząt, odnosząc się do kluczowych momentów i myślicieli, którzy mieli wpływ na ich kształtowanie. Druga część wyjaśnia, czym są prawa zwierząt oraz dlaczego rozszerzenie podstawowych praw na co najmniej niektóre istoty nie-ludzkie jest ważne z moralnego i prawnego punktu widzenia. Trzecia część artykułu porównuje argumenty zwolenników i przeciwników przyznania zwierzętom podstawowych praw. Stanowiska filozofów przedstawione przez Probučką dowodzą, że istoty zdolne do cierpienia, niezależnie od ich zdolności intelektualnych, zasługują na moralne uwzględnienie. To stanowisko jest wspierane przez liczne argumenty z różnych dziedzin nauki, pokazujące stopień świadomości i złożoności emocjonalnej zwierząt. Argumenty te powinny przyczynić się do uznania praw zwierząt w kontekście moralnym i prawnym. Artykuł zwraca także uwagę na potrzebę reform prawnych, w tym wprowadzenie formalnych struktur prawnych, takich jak mianowanie Rzecznika Praw Zwierząt, który mógłby reprezentować zwierzęta na poziomie instytucjonalnym. W kontekście rosnącej świadomości bioetycznej i biocentrycznej, artykuł apeluje o przedefiniowanie naszego stosunku do zwierząt oraz wprowadzenie reform prawnych,

kótre uczynią je pełnoprawnymi uczestnikami wspólnoty moralnej, co jest kluczowe dla przyszłości ludzi i zwierząt na naszej planecie.

Słowa kluczowe: prawa zwierząt, antropocentryzm, hodowla przemysłowa, weganizm, wyzwolenie zwierząt, etyka zwierząt, rzecznik praw, dobrostan zwierząt, prawo zapobiegające okrucieństwu

Introduction

Dorota Probućka (born 1963) is a Polish philosopher and ethicist, specializing in axiology, general ethics and environmental ethics, with particular interest in animal rights. She made a significant contribution to the development of philosophical thought regarding the moral status of animals. Her key work, *Animal Rights*¹, explores the idea of animal rights as one of the most provocative and advanced themes in environmental ethics. Considered a turning point, this book marks a radical shift in perspective, giving voice to arguments in favour of granting animals basic rights to animals that would protect them from exploitation and cruelty.

The contemporary debate on animal rights attracts the attention of various specialists, including scientists, philosophers, theologians and lawyers, which highlights its growing importance and broad influence. They emphasize the need to grant basic rights to at least some animals, that would be both guaranteed at the legal level and valid at the moral level. In practice, this would mean introducing a comprehensive ban on industrial animal farming, their use in agriculture, medicine and areas related to entertainment, including recreational hunting (Probućka 2020a; 2020b). Probućka notes that these actions would require profound changes to human mentality and furthermore to our diet, primarily by excluding meat and animal products. This would represent a radical

transformation in the approach to animal rights and an end to treating them as objects. Humans have a moral obligation not only to themselves and other people but also to other living beings (Probućka 2019).

This article attempts to present the concept of animal rights inspired by the thought of Dorota Probućka. It is divided into three parts: the first discusses the history and development of the concept of animal rights, the second explains the meaning of animal rights, and the third compares the arguments of opponents and supporters of this concept from the perspective of the philosopher.

1. Historical Outline of the Idea of Animal Rights

Historically, the idea of animal rights is not new and has a long tradition dating back to ancient Rome. One of its first proponents was a lawyer Ulpian Domitius (ca. 170-223). He created the category of *ius animalium*, which classified animals as having innate rights, independent of the will of legislators or anyone else. In modern times, in the 17th century, an English writer, Thomas Tryon (1634-1703) was the first to use the term “rights” in relation to animals and accused people of aggressive attitude to them that disregarded the natural rights of other living beings (Probućka 2015, 21). In the first half of the 19th century the world’s first Society for the Prevention of Cruelty to Animals was established, thanks to, among others, a philosopher Lewis Gompertz (1779-1861). This philosopher opposed any interference in the corporeality and existence of non-human beings, on account of their having a natural right to live their own lives and govern their own physicality (Probućka 2015, 22).

¹ The book (Probućka 2015) - *Prawa zwierząt [Animal Rights]*. Kraków: Towarzystwo Autorów i Wydawców Prac Naukowych UNIVERSITAS is the second, revised edition of the book (Probućka 2014a) *Filozoficzne podstawy idei praw zwierząt [Philosophical Foundations of the Idea of Animal Rights]*. Kraków: Towarzystwo Autorów i Wydawców Prac Naukowych universitas.

Since the 19th century, Western culture has advanced two philosophical-legal doctrines: the doctrine of human rights, and the humanitarianism-inspired doctrine of legal protection of animals. None of them considered human and (at least some) non-human beings as equal in terms of basic moral and legal rights, until the third idea of animal rights appeared (Probučka 2017). At the end of the 19th century, thanks to Henry Salt (1851-1939), a significant breakthrough occurred in the way of thinking about animals and the arguments developed by this philosopher are to this day considered key to the idea of animal rights. In his line of thought, the idea of animal rights became a form of a fight against discrimination, which is always based on exploitation of weaker beings. Based on the definition of rights given by Herbert Spencer (1820-1903), Salt developed the concept of animal rights, according to which animals should have the right to manage their own life and freedom, on an equal footing with humans (Salt 1984). In his theory, Salt described the rights of wild animals, the conditions of slaughter, hunting and conducting scientific experiments. He saw the idea of natural rights being granted to animals as an evolutionary process which began with slaves, then covered women and children, and should eventually include animals as well (Probučka 2015, 23-24).

The 1960s marked a significant breakthrough in the philosophical theory of animal rights. During this period, a group of writers, philosophers, and scientists from the University of Oxford, known as the Oxford Group, vocally opposed the brutal treatment of animals in farming and scientific research. This group was led by Richard D. Ryder (born 1940), a clinical psychologist and author of numerous publications on the moral status of animals. Ryder believed that ethics based on moral rights should provide protection to those who are unable to defend their interests on their own. Ryder compared the moral status of animals, especially mammals,

to the status of small children or people with intellectual disabilities, emphasizing their powerlessness in the absence of protection. According to Ryder, unless animals such as apes and other mammals are protected under positive law, they will continue to remain on the fringes of the justice system, regardless of the level of cruelty they experience. The granting of moral and legal rights to at least some animals is the key element in seeking real change in the way they are treated (Ryder 2001). In 1978, UNESCO issued the Universal Declaration of Animal Rights, which became a culmination of the efforts of numerous animal rights organizations gaining influence at the time², including the Oxford Group (Probučka 2015, 26).

While further discussing the history of the concept of animal rights, it is worth mentioning a meeting between two influential figures in the field of philosophy and ethics at Oxford University in the 1970s: an American philosopher Tom Regan (1938-2017), who later became recognized as a major spokesman for the idea of animal rights, and Peter Singer, a philosopher from Australia, whose works had a profound impact on contemporary thought on animal ethics. This meeting also marked the beginning of a clear split in the animal rights community, between those who, like Regan, favoured full recognition of animal rights and those, including Singer, who favoured a reformist approach focused on improving the conditions of the lives of farm animals and other animals used by humans, while not questioning their ownership status. Probučka notes that Singer gained fame for his book *Animal Liberation*, published in 1975, devoted to the idea of animal rights (Probučka 2015, 26-29).

² Probučka states that in Poland, the first Animal Protection Society was established in 1864 and was one of the first in this part of Europe. It led to the introduction of a number of significant regulations concerning animal protection (1928) and regulations governing the slaughter of livestock (1936), (Probučka 2015, 23).

Singer is a supporter of the utilitarian idea of animal welfare (Singer 2002). He takes a reformist position, supported by the principle of Benthamian humanitarianism, striving to improve the living conditions of animals without questioning the validity of their use by humans and their material status (Probuca 2015, 26-27). Jeremy Bentham (1748-1832), an English thinker from the 19th century, opposed the views dominant at that time that excluded animals from the circle of moral subjects due to their lack of consciousness, rationality, self-awareness, and verbal abilities. In European philosophy, these attributes were considered crucial to moral identity, and their absence reduced animals to the rank of objects. Bentham argued that this approach allowed only for indirect responsibilities towards animals that ultimately served human interests. Bentham believed that the capacity to suffer, which is common to humans and animals, should be a key criterion of morality, and that suffering is related to the functioning of the vegetative nervous system.

Therefore, laws should account for the physical experiences of animals, without minimizing their suffering simply because they are not humans (Bentham 2000). According to this idea, Singer assumes that in relations between humans and animals, the principle of humane treatment, i.e., avoiding unnecessary suffering of animals, should prevail in legislation. Here, as Probuca points out, a new problem arises regarding the precision of concepts which gives rise to the question of what “necessary suffering” is. Bentham, followed by Peter Singer, associates these categories with the utilitarian requirement of defining and balancing the interests of people and animals. Theoretically, the Benthamian principle allows suffering of animals only in exceptional cases. However, lack of semantic precision, allows the “necessary suffering” to change its meaning. Hence, in practice, it can serve any human interest, and most of the suffering inflicted on animals has no justification (Probuca 2015, 83-86)

Probuca emphasizes that Singer’s views should not be juxtaposed with the proper concept of animal rights, because Singer does not recognize the essence of the principle of equal respect for the interests of all sentient beings. Singer’s position is based on a different philosophy regarding the concept of the nature of people and animals. His theory of well-being is based on the category of intrinsic value. Following Bentham, Singer assumes that both people and animals are neutral carriers of what is valuable – containers for pleasure (positive internal value) and suffering (negative internal value). The very existence of either a human or an animal is axiologically neutral for Singer (Singer 1978). The status of a creature depends on the degree of internal values it displays. In this way, Singer negates the concept of rights embedded in the very nature of being (Singer 1993), which clearly distinguishes him from Tom Regan and the animal rights movement.

Singer acknowledges that humans and animals have similar abilities to feel pain, but he clearly does not equate the value of their lives. In his philosophy, the axiological status of a living being is determined by the type and degree of preference satisfaction. Due to the multitude and types of preferences, humans occupy a higher hierarchical position than animals. Additionally, according to Singer, people, unlike animals, have the awareness of their mortality, and the consciousness of their own existence should ensure greater protection of their life (Singer 1993). Probuca points out that both Singer and Bentham, as utilitarians, base moral value on a consequentialist assessment of actions by their consequences, while allowing for the possibility of instrumental treatment of all beings. Singer, committed to improving the fate of animals, strongly supports reducing their suffering through reform of the animal industry, but does not push for the idea of granting animals rights in the legal sense. His approach, based on utilitarianism, permits instrumental treatment of animals, including their humane

killing, as long as it brings overall benefits (primarily to humans), which is the main point of divergence between him and Regan. Regan, unlike Singer, argues for granting rights to animals based on their intrinsic value, independent of their utility to humans (Probučka 2015, 73-75).

2. What are Animal Rights?

The concept of animal rights originates from a theory that recognizes that basic natural rights are not only inherent in human nature but are also rooted in the nature of at least some non-human beings. The creators of the philosophical underpinnings of the idea of animal rights drew inspiration from contemporary theories of human rights, adapting a number of ideas contained in these theories for the purposes of considering the relations between humans and animals. Human relationships must be based on rights that ensure that each person is treated with respect. Similarly, animals as bearers of interests should also be granted basic rights. The moral right to respect and equal treatment, which exists regardless of social practice or legislative procedures, even when these are disregarded, sets a boundary that no individual or society should transgress in pursuing their own goals (Feinberg 1974).

Therefore, an important issue is to reconcile positive law with the content of basic rights, i.e. respecting natural rights. The content of positive law should be derivable from the content of natural law. If there is a discrepancy between natural law and positive law, positive law loses its binding force (*Desuetudo*³). It then becomes an unlawful and unjust law, allowing infliction of suffering, exploitation, and objectifying treatment of sentient living beings. It causes harm to both people and animals by threatening

life, health and the fulfilment of natural needs (Probučka 2015, 36-40).

In line with this idea, animal rights advocates believe that current regulations cannot serve as a moral determinant of human behaviour towards animals, because current law enables and accepts cruel, unethical, and unfair behaviour. They postulate that basic rights should protect all those who do not have the ability to defend themselves. It is worth noting here that they support granting animals only basic rights, and not a full set of civil rights. Not all beings require the same rights – the idea is to include at least some animals within the scope of fundamental rights (Feinberg 1972). Harming humans and animals is morally equivalent: the basic moral evil is the violation of the right to bodily integrity, which should be granted and respected for both humans and animals (Ryder 1989). Only by recognizing these basic rights can we equally treat and assess the degree of wrong committed (Regan 2001).

2.1. The role of Ombudsmen for animal rights

As Probučka notes, the purposes of the changes are not special gestures of adoration, love or compassion for animals, but true respect for the rights resulting from their natural status, which would enable their inclusion in a moral community. The right to equal treatment in its basic dimension should guarantee their not being treated as objects, because not only people, but also animals, are not objects. All members included in a moral community should be entitled to a privilege (a trump) (Dworkin 1984) that would protect them from arbitrary treatment. Protection would not cover interactions between animals. Its aim would be to regulate only relations between humans and animals, giving non-human beings a legal and ethical status comparable to that of small children or people with intellectual disabilities. In the case of people, these are rights that they can strive to uphold on their own. In the case of animals, specially trained attorneys (Animal Rights Ombudsmen)

³ *Desuetudo* (Latin) means outdated, no longer custom. Provision of the law is not in effect because it is not followed. "The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed."

would appeal to the court to represent their rights (Probuscka 2015, 308-311).

Advocates of animal rights see these laws as a historical and evolutionary finale⁴ in the quest to grant basic rights to those whose marginalization continues to gain widespread acceptance. Effective animal protection cannot rely solely on empathy and the good will of individuals: it requires formal legal regulations. Although moral development is important, changes in positive law, which prohibit instrumental treatment of animals as human property, are crucial (Probuscka 2015, 37).

2.2. Why are animal rights not the same as legal protection of animals and why is the principle of humanitarianism not enough?

The purpose of legal protection of animals is to increase ethical and legislative standards in the human-animal relationship based on the idea of humanitarianism, i.e. not causing unnecessary suffering to animals. Despite the theoretical assumptions of humanitarianism, in practice this principle turned out to be insufficient. Humane treatment of animals does not translate into prohibiting their institutional exploitation, such as industrial farming or medical laboratories. They are still treated as commodities: “which can be valued monetarily, sold, purchased, insured, bred, given away in repayment of debt, and killed with impunity” (Probuscka 2015, 311), they are subordinated to the economic laws of the market, which leads to objectification and instrumental treatment. In the legal context, animals are treated as “movable livestock”, which leads to a conflict between their welfare and the economic interests of their owners. “Like a commodity, they should be produced at a minimum cost and sold at the highest possible profit because they are subject to the same economic laws as any other commodity” (Probuscka 2017).

⁴ As a species, we have gone through the process of abolishing slavery, fighting for women’s equality and granting basic rights to children. The next step is to establish an animal rights advocate and then grant animals fundamental rights.

The only thing that distinguishes them from things is that they are alive. It is their owner who decides what will happen to them – both their life and body, and how they will be used to make a profit. Probuscka cites the argument of Gary Francione (born 1954), who notes that in Western culture we have two principles that in practice are mutually exclusive. The first allows the possession of animals analogously to the possession of things, and the second demands their humane treatment. The problem is that if animals are owned by humans, and private property is one of the most fundamental values of the Western civilization, the principle of humane treatment loses its importance and becomes of secondary (Francione 1995).

According to Probuscka, a culturally and legislatively rooted status of animals as property is the main problem in executing their rights. In this model, where animals are a property, any action on their behalf is doomed to failure in the fight against the property and economic interests of the owners. A real change in the treatment of animals requires moving away from perceiving them as property and (following Regan) recognizing their rights resulting from their inherent value. Recognition of these rights should result in a legislative ban on the use of animals by humans (Regan 2001).

3. Is It Only Rational Beings who Can Have Rights? Probuscka’s Debate with Critics of the Concept of Animal Rights

Dorota Probuscka, in her book *Animal Rights*, examines and analyses the sceptical positions of various philosophers on granting rights to animals, responding by presenting the arguments of proponents and further develop their theses in favour of extending the moral and legal protection of animals.

Peter Carruthers (born 1952), Roger Scruton (1944–2020), Carl Cohen (1931–2023) and Raymond G. Frey (1941–2012) form a group of contemporary thinkers who question the possibility and justification of giving animals rights in a moral and legal

sense. Their arguments are based mainly on the belief that animals do not have necessary features, such as rationality, self-awareness, or the ability to participate in moral communities, which they consider necessary conditions for being moral entities with full rights. In “Animal Rights” Probuca addresses their positions one by one (Probuca 2015, 273-300).

3.1. Animals as irrational and unconscious creatures:

Peter Carruthers’ argument

The first philosopher that Probuca deals with in her work is Peter Carruthers, a supporter of John Rawls’ (1921-2002) view of the social contract, who believes that the social contract does not include non-human species, and that non-human animals cannot be included in a moral community. He argues that moral rights can only be granted to rationally thinking and acting creatures, which automatically excludes animals from the group of moral entities. Humans only have “indirect duties”⁵ towards animals. According to Carruthers, manifestations of animal “intelligence” are merely sets of reflexes. His concept, based on contractualism, suggests that animals cannot be participants in a moral contract because they do not have the capacity for rational thought or self-awareness. For this reason, according to Carruthers, animals do not have moral rights, and their potential protection is based on human interests, not on the moral principles assigned to them (Carruthers 1992).

Probuca criticises Carruthers’ approach, which limits the granting of moral rights

to beings capable of rational thought and making demands. She notes that most philosophers argue for animal rights not on the rationality of animals but based on the level of complexity of their nervous system, including the ability to feel pain and suffering. Carruthers ignores scientific evidence about animals’ consciousness (Low 2012), emotionality, intentionality and cognitive abilities. Adopting rationality as the only criterion for granting moral rights leads to absurdities, such as excluding small children or people with profound intellectual disabilities from having them, which is either inconsistent or leads to morally unacceptable consequences (Probuca 2015, 273-283).

The answer from the animal rights advocates comes from Mark Rowlands (born 1962), who, in his interpretation of John Rawls’ theory of justice, advocates a broader application of the principle of the “veil of ignorance” – a key element in Rawls’ theory of justice. The veil of ignorance is intended to ensure impartiality by making decision-makers imagine they have no knowledge about their own characteristics or status, which could influence their decisions. This is to ensure that the policies chosen are fair and equitable to everyone, regardless of their position in society. Rowlands proposes extending this concept to include ignorance of one’s own species, which is consistent with Rawls’ emphasis on justice and moral equality. By suggesting that a person could not only be ignorant of their race, class, or gender, but also of their species, Rowlands argues for a justice system that includes animals, not just humans. This approach seeks to prevent species-based discrimination by promoting a justice system that would, in principle, protect the rights and interests of all sentient beings, not just humans. This perspective challenges traditional views that tend to exclude non-human animals from considerations of justice and morality. Rowlands also emphasizes that moral rights do not have to cover and protect only active participants in the contract.

⁵ Recall that the term “indirect duties” refers to the idea that our duties to animals do not refer directly to animals themselves, but indirectly through the effects that our actions towards animals have on other people. This view was particularly popular among some philosophers, such as Immanuel Kant, who argued that animals were outside the moral community in the sense that they were not direct recipients of moral obligations. Kant argued that cruelty to animals can lead to the brutalization of humans and for this reason we should avoid cruelty to animals.

In his opinion, failure to understand the idea of rights and the concept of justice cannot be a condition that excludes animals from the moral community, otherwise we would also have to exclude people incapable of rational thought, including small children and people with disabilities (Rowlands 1998).

3.2. Animals have no rights because they cannot act in the moral sphere: Carl Cohen's argument

Carl Cohen believes that moral rights are only applicable to humans due to their membership in the *Homo Sapiens* species. He argues that non-human beings such as animals are excluded from the moral community due to their lack of awareness of their own claims and their inability to respond to the claims of others. According to Cohen, all people are inherently moral beings, and the moral law is "essentially human" and acquires meaning only in the context of interpersonal relationships, becoming semantically empty outside this context.

Cohen emphasizes that discussions about animal rights should not lead to giving them rights, although at the same time this does not constitute consent to cruelty to animals. He believes that humans have moral obligations towards animals, but these are not tantamount to granting animals moral rights. He argues that it is a mistake to apply human moral categories to animals that do not act within the same categories of good and evil because their behaviour is not subject to moral evaluation (Cohen and Regan 2001).

Probuscka responds to this perspective, claiming that limiting moral rights only to humans is arbitrary and believes that people's moral obligations towards animals cannot be made dependent on subjective factors, such as sensitivity or good will (Probuscka 2015, 284-289).

3.3. Animals as creatures incapable of verbal communication: Reymont G. Frey's argument

Another critical voice that Probuscka faces is that of the philosopher and utilitarian Raymond G. Frey, who claims that animals,

unlike humans, do not have interests that would qualify them to have moral rights because they lack the ability to verbally form beliefs. Frey paints a picture of an animal as a Cartesian Animated Machine, but in his interpretation, animals are just sensitive machines, devoid of any mental states, including desires, beliefs, interests or linguistic abilities. In his philosophies, Frey also deprives animals of the ability to remember. According to him, animals are only carriers of impressions and biological needs. They experience only basic sensations: pleasure and pain. Frey emphasizes that animals and humans cannot be equated, because animals do not have beliefs, and therefore cannot have desires, because belief is a necessary condition for desire. Frey equates interests with desires, which require the ability to use verbal language that allows the formulation of truth-value statements. Animals have no desires and therefore no interests, which results in a lack of moral rights. He is of the opinion that although animals can feel pain, they have no desire to avoid it because they have no conscious belief (Frey 1980).

Probuscka points out that Frey presents a mechanical perception of animals that is inconsistent with modern scientific research results (Probuscka 2015, 289-295). She also challenges Frey's argument about language skills, drawing on arguments from leading animal rights philosopher, Tom Regan. Regan challenges Frey's key assumption about the necessity of verbal language for desires and interests. The philosopher argues that it is impossible to make having beliefs dependent on verbal abilities, because learning a language requires prior, even basic, beliefs about the content being taught, which would lead to a paradox: no one would be able to learn a language or form beliefs. From a different perspective, it would be impossible to explain how young children learn to speak, already having beliefs and desires, before they acquire verbal skills. Similarly, people with intellectual disabilities express their desires, which prove the existence of basic interests, often

without the ability to communicate verbally (Regan 1983, 37-50).

3.4. Animals are not persons: Roger Scruton's argument

Roger Scruton argues against giving animals moral rights, basing his position on the concept of personhood. According to him, only people meet the criteria of being a person, which is crucial for rights. He emphasizes that moral rights require reciprocity – rights holders must also be capable of bearing obligations. Only people have the ability to lead a social life organized by verbal language, rationality, self-awareness and the ability to shape their own attitudes and design the future. These characteristics enable humans to create unique moral communities which animals cannot access due to their lack of similar abilities. Scruton argues that giving rights to animals is a philosophical mistake because these rights require reciprocity and a capacity for moral responsibility that animals do not possess. He points out that the ideas of animal rights are based on the unwarranted transfer of concepts from the field of humane treatment of animals to the area of moral rights. He emphasizes that moral obligations towards animals should not be confused with their having rights, because these rights are related to the ability to participate in a moral community, which animals are unable to fulfil. Since animals cannot participate in moral communities in a way that would require them to bear responsibilities, they consequently cannot have moral rights. Scruton points out that humans have moral duties towards animals, but these duties do not imply that animals have corresponding rights because animals are incapable of moral responsibility or participation in reciprocal moral exchanges (Scruton 2000).

Dorota Probučka, in her analysis of Scruton's position, draws attention to several important issues related to his philosophical approach to animal rights. First, she states that the philosopher uses *ad hoc* arguments, adapting the premises to fit only his theory,

which may negatively affect the objectivity of philosophical analysis. Probučka points to the issue arising from perceiving rights and obligations as interdependent. If we accept Scruton's reasoning, we should deprive of moral rights people who are temporarily or permanently unable to meet the conditions of being a person, including young children and the mentally ill, because of their inability to hold them accountable (DeGrazia 2006). Secondly, according to Scruton, there is a difference of quality, not merely degree, between humans and animals. David DeGrazia (born 1962) adopts the opposite position. He argues that the development of ethology and evolutionary zoology demonstrates that the difference between *Homo sapiens* and at least some non-human animals is merely a matter of degree. This perspective is supported by research in neurobiology, which enhances our understanding of animals' cognitive abilities and their capacity to experience and be aware of pain (DeGrazia 1996). Thirdly, Probučka summarizes that Scruton's position is a contemporary form of speciesism⁶ (Ryder 2017), because it proclaims the uniqueness of humans as the only beings capable of abstract thought, independent action and communication, as the only beings to whom moral respect is due. Scruton ignores the fact that not all people have these features, although he presents them as necessary to have a moral life and uses their lack to marginalize non-human beings (Probučka 2015, 300).

Conclusions

Dorota Probučka advocates the equality of animal and human rights, both legally and morally. She meticulously analyses and refutes the arguments of animal rights opponents, presenting the philosophical perspectives of proponents of this idea. She challenges conventional beliefs by showing that current law, based largely on

⁶ The term speciesism was first used by R.D. Ryder (1975).

an anthropocentric point of view, often condones cruel and unfair treatment of animals. Conventional morality, which is the mainstay of speciesism, divides the world into “us” and “them,” limits empathy to only one’s own group and excludes empathy towards strangers, in this case animals. Positions arguing for animal rights, as presented by Probuca, emphasize the inadequacy of a morality that discriminates against beings unable to defend their own rights, historically marginalizing not only animals but also other groups, such as children. Animals, like humans, are carriers of interests and deserve moral and legal recognition; this is currently only marginally reflected in legal systems.

Dorota Probuca argues that switching to a vegan diet, although ethically justified, is not sufficient to truly change the fate of animals. She stresses that effective protection of animal rights requires legal regulations that extend beyond personal dietary choices to include comprehensive institutional reforms (Probuca 2014b). The animal right advocates’ imperative of radical change in the way animals are perceived entails the need to redefine their legal status, which should prohibit the objectification of living beings. It is necessary to create formal legal structures that will effectively protect animal rights, including appointing an Animal Rights Ombudsmen.

Currently, due to insufficient legal regulations in many countries, including Poland, the burden of institutional representation of animals has been transferred to self-financing non-governmental organizations. The issue of the legal status of animals is still an *in statu nascendi* system. Current regulations lead to a conflict of interest because institutions responsible for animal protection⁷ are dependent on ministries focus-

ing on their production use, which weakens the effectiveness of existing protection measures. Hence the priority is to appoint the Animal Rights Ombudsman⁸ who would act similarly to the Civil Rights Ombudsman⁹, representing animals at the state level and enabling effective protection of their rights in administrative and court proceedings. The Civil Rights Ombudsman is not a government body, but a state body, which is why it is an institution provided with funds from the state budget, while remaining independent from the government. The Animal Rights Ombudsman could act similarly. They would not only have control powers, but also legislative initiative, which would allow for more effective prevention of violations and promotion of animal welfare. Additionally, the establishment of such an office would profoundly influence public awareness of the ethical and legal obligations towards animals, significantly advancing societal recognition and responsibility.

In light of the global environmental crisis, the push for cooperation and co-responsibility should be seen not merely as optional kindness but as crucial understanding that we are all part of an interconnected web. Overcoming species particularism—the indifference to the plight of non-human beings and the mistaken belief that humanity can thrive independently of the natural

maintains minimal standards. This leads to a conflict of interests between humans and animals. Therefore, it is necessary to create a body in the form of an animal rights ombudsman who could balance these interests.

⁸ Formal advocacy would include representation as a party in prosecutorial and court proceedings, performing supervisory functions regarding the treatment of animals, and initiating interventions with public authorities. The animal rights ombudsman would also be responsible for reporting problems and proposing legislative solutions.

⁹ The civil rights ombudsman (in Poland: Commissioner for Human Rights) protects freedom, human and civil rights as defined in the constitution and other normative acts. The solid rooting of the values in the constitution indicates that in order to fully respect animal rights, it is necessary to formally include their basic rights in the content of the constitution.

⁷ In theory, in Poland this role should be played by the veterinary inspection, but it is headed by the chief veterinarian, subordinate to the Ministry of Agriculture. However, the goals of the Ministry of Agriculture are concentrated around the exploitative use of animals and the optimization of production, which

environment, even if it severs these vital connections—is essential for our collective future (Probučka 2022, 139-148). In an era of growing bioethical and biocentric awareness, humanity should reassess their responsibilities towards animals, treating them not as a monolith, but as a diverse group with different needs and rights. This issue constitutes a fundamental challenge to contemporary ethics and law, calling for a re-examination of our attitude towards animals and recognizing them as full participants in a moral community, which is of key importance for the future of both humans and animals on our planet.

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