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Chapter I

A history of extending legal rights

I find myself in agreement with those theorists who acknowledge man’s developing social capacities. Charles Darwin observed these “social instincts” which he believed were responsible for the pleasure some animals feel in fulfilling their social capacities. *Decent of Man* discusses a theoretical evolution of man’s social nature. It correlates man’s development of “intellectual power” to an ability to track the more distant consequences of his actions. When man became capable of experiencing impulses like sympathy or empathy, they were largely limited by the range of this intellectual power. As this ability grew in scope man’s concerns bloomed outward onto the welfare of not just his cohorts but also to other less useful members of his society (e.g. “the imbecile [and] the maimed”). His ability to sympathize grew widely and abstractly, as today we find ourselves able to exert sympathy towards animals, and even plant life (Decent of Man, CH 3). Christopher Stone, in his work *Should Trees Have Standing?—Toward Legal Rights for Natural Objects,* makes an interesting observation in reviewing Darwin’s work. He shows us that the history of the law seems to corroborate Darwin’s account of a dynamic and progressive human social-sympathetic behavior.

Within the immediate social groups of early men, we have a record of changing social relationships among our familial actors as well as familial outsiders. In the past many persons who today we recognize as worthy of individual rights, relatively speaking, had none. Women and children make up much of this historical record. Early accounts of infanticide give a clearer picture of this. Not much is known about the public sentiments surrounding the earliest cases of infanticide, but the archeological evidence does suggest that it was a “commonplace” practice among ancient cultures (INFANTICIDE). The bulk of this evidence, however, hails from the records of ancient Greece and Rome, and within these societies, it seems that the practice was legitimized in a variety of ways “ranging from population control to eugenics to illegitimacy.” Whether given legitimate reason or not it is clear that the practice of infanticide puts the desire to fulfill some mandate ahead of any conception of rights for the child. The childen of antiquity were regarded more like extensions of a man’s property. Paternal figures in ancient Rome had far-reaching control of their families, and could choose to give their daughter away in marriage, give their son a wife, divorce their child, or even sell their child (Stone [Maine]).

Of course, the relationship we share with young children has gone through much change since the days of ancient Rome. Our legal system has made dedicated legal provisions to the cause of protecting young persons. Consider the formation of the Department of Health and Human Services, also known as the “Children’s Bureau” in 1912 (Cornell #1). Also note Title 42, U.S. Code Chapter 67, detailing the laws surrounding child abuse, prevention, and the reform of adoption procedure (Cornell #2). Stone notes that each “successive extension of rights to some new entity has been, theretofore, a bit unthinkable.” Despite pushback from what some would consider “unthinkable” history has shown that under certain circumstances we are capable of evolving on what and whom we view as worthy of protection, rights and indeed, who is worthy of being called a person.

We find a powerful example of this within the animal rights movement, which has seen much development in recent history. As early as 1641, colonial America began enacting legal code preventing “tirrany or crueltie” towards animals kept for “man’s use” (Animal Protection). Prevention of cruelty to animals was of particular importance to the humanist activists of the 19th Century England, who campaigned for protection to animals from cruelty as well as for a number of human rights proposals of the time including anti-slavery and woman’s suffrage (movement animal). Our early human predecessors likely could not have conceived of a future where whole government institutions are dedicated to the protection of animals and yet our own U.S. government has several in place to do just this. The U.S. Fish & Wildlife Service, the National Park Service, and the Environmental Protection Agency are just some out of large list of agencies burdened with some duty to the well-being of animals and the environment.

Works cited:

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