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**Personhood, Animals, and the Law**

Christine M. Korsgaard

The idea that all the entities in the world may be, for legal and moral purposes, divided into the two categories of "persons" and "things" comes down to us from the tradition of Roman law. In the law, a "person" is essentially the subject of rights and obligations, while a thing may be owned as property. In ethics, a person is an object of respect, to be valued for her own sake, and never to be used as a mere means to an end, while a thing has only a derivative value, and may be used as a means to some person's ends. This bifurcation is unfortunate because it seems to leave us with no alternative but to categorize everything as either a person or a thing. Yet some of the entities that give rise to the most vexing ethical problems are exactly the ones that do not seem to fit comfortably into either category. For various, different, kinds of reasons, it seems inappropriate to categorize a fetus, a non-human animal, the environment, or an object of great beauty, as a person, but neither does it seem right to say of such things that they are to be valued only as means.

In the law, the bifurcation between persons and things or persons and property leaves non-human animals in an especially awkward position. Animals, or at least many of them, are sentient beings with lives of their own and capacities for enjoyment and suffering that seem to make some sort of claim on us. Some have very sophisticated cognitive capacities, including some sense of self. But because animals are classified as property, efforts to secure them some legal protections have

been of mixed success and have introduced a certain level of incoherence into the laws. In the face of this, some animal rights advocates have suggested that all cognitively sophisticated animals, or all animals generally, ought to be re-categorized as legal persons.

But it may be argued that those who make this proposal are ignoring something important about the concept of a person. It has generally been assumed that "personhood," whatever it is, is, or is based on, an attribute that is characteristic of human beings, and not of the other animals. In the philosophical tradition, the most common candidate for the attribute that establishes "personhood" is rationality, but understood in a specific sense. Rationality is sometimes loosely identified with the ability to choose intelligently between options or to solve problems by taking thought, but those are attributes that human beings arguably share with many other animals. The more specific sense of "rationality" refers to a normative capacity, a capacity to assess the grounds of our beliefs and actions, and to adjust them accordingly. On the side of action, for instance, it is the capacity to ask whether something that would potentially motivate you to perform a certain action is really a *reason* for doing that action – and then to be motivated to act in accordance with the answer that you get. Rationality, in this sense, is normative self-government, the capacity to be governed by thoughts about what you *ought* to do or to believe.

In fact, even some thinkers who would deny that *rationality* is the distinctive characteristic of humanity would still agree that normative self-government is both definitive of personhood and distinctive of humanity. In the empiricist tradition, the

tradition of Locke, Hume, and Hutcheson, it has been common to attribute to human beings, and human beings alone, a capacity to form so-called "second-order" attitudes – for instance, attitudes towards our own desires – that make them liable to normative assessment. Though I may desire to do something, I may also disapprove of that desire, and reject its influence over me. According to empiricists, second-order attitudes are what make human beings subject to an "ought." So many philosophers have agreed that it is in virtue of normative self-government that human beings count as persons in the legal and moral sense.

Certainly, if something along these lines is correct, it is natural to think that only human beings can have obligations. In order to have obligations, you need to be able to think about whether what you are doing is right, and to adjust your conduct accordingly. This requires a highly developed "theory of mind," as ethologists call it. An animal has a theory of mind when the animal knows that animals (herself included) have mental attitudes, such as beliefs and desires. But in order to be rational in the sense I just described, an animal must not only know that she and other animals have mental attitudes. She must also know that her attitudes are connected in certain ways – for instance, that she is inclined to perform a certain action *because* she has a certain desire. To ask whether you have a good reason for doing what you propose to do, or whether it is right, is to think about and evaluate that connection, and it seems likely that only human beings can do that.

But it is a much harder question whether being rational in this sense is necessary for having *rights*, and that is the question most pressing from the point of

view of those who seek legal protections for animals. The traditional distinction between persons and things groups the ability to have rights and the liability to having obligations together. One common view about why that should be so is that rights are grounded in some sort of agreement that is reciprocal: I agree to respect certain claims of yours, provided that you respect certain similar claims of mine. The view of society as based on a kind of social contract supports such a conception of rights. But in fact our laws do not merely protect those who as citizens are involved in making its laws: rather, they protect anyone who shares the interests that the laws were made to protect. So for instance, foreigners on our soil have rights not to be robbed or murdered, regardless of the fact that they are not parties to our own social contract. The laws that we make against murder and robbery are intended to protect certain human interests that foreigners share with citizens, and that is sufficient to give them the relevant rights. Of course, foreigners on our soil can also be made to conform to our laws – reciprocity can be required of them. But when we speak of universal human rights, we speak of interests that are shared by every human being and that we think ought to be protected, not merely of the interests protected under some actual social contract. So it makes sense to raise the question whether the other animals share the kinds of interests that our laws – either legal or moral – are meant to protect.

Animal rights advocates urge that the other animals, like human beings, do have interests. Let me do a little philosophizing about why this is so. Animals have interests because of the way in which things can be good or bad for them. Generally

speaking, we use the concepts of good-for and bad-for when we regard objects functionally. Something is good for an object when it enables the object to function well, and bad for it when it interferes with its ability to function. So we might say that riding the brakes is bad for your car, while a regular oil change is good for it. Organisms may be regarded as functional objects, "designed" by the evolutionary process to survive and reproduce. We are thinking of things that way when we say that plenty of water and sunshine are good for the plants. Because a car is an artifact made for human purposes, the ways in which things are good or bad for the car are derivative from human interests. But the way in which things are good or bad for organisms is non-derivative: things are good or bad for the organisms themselves.

What is distinctive of animal life is the *way* that it functions, which is by means of perception and action. Through perception, an animal forms some sort of representation of her environment. As a result of instinct, learning, and in the case of some animals, intelligent thought, objects in the animal's environment are represented as desirable or aversive in specific ways: as something to eat, or to flee from, or to mate with, or to take care of. Or some sort of practical representation may arise from within, as when you get hungry and find yourself irresistibly thinking about a sandwich. The animal then acts in accordance with these practical representations. The practical representations serve, though very imperfectly of course, to enable an animal to get what is good for her and avoid what is bad for her. In other words, when animals evolved, a kind of entity came into existence which actually *experiences* the goodness or badness of its own condition, or at least of some

aspects of its own condition, in a positive or negative way – as something desirable or aversive. An animal experiences its own good or ill.

So the way in which things are good or bad for animals is distinctive in that it is both non-derivative and capable of being experienced. We can describe these things by saying that animals have interests, or that there are facts about their welfare. Although our own welfare is more complex than that of the other animals, it is because we are animals, not because we are human beings or persons, that we ourselves have interests or a welfare. Animal rights advocates argue that having a welfare or interests is sufficient to ground rights. We should ask on what basis we claim rights for ourselves, and demand respect for them from each other, if it is not that we ourselves are beings with interests or a welfare?

Well, here is one possible answer. Immanuel Kant, who made the concept of a person central to his ethics, argued that a person is an end in himself, to be valued and respected for his own sake, and never to be used merely as a means. Kant claimed that the basis of that value is the capacity for rational choice, or autonomy. He also claimed that it is because of our autonomy that human beings have rights. Because human beings are rational beings, Kant argued, human beings, unlike the other animals, are able to choose our own way of life. We reflect about what counts as a good life, decide the question for ourselves, and live accordingly. In the liberal tradition, with its strong emphasis on toleration, and its antagonism to paternalism, this kind of autonomy has often been regarded as the basis of rights. We have the basic rights of personal liberty, liberty of conscience, and freedom of speech and

association, because each of us has the right to determine for himself or herself what counts as a worthwhile life, and to live that life, so long as the way we act is consistent with a like right for everyone else. Because the other animals do not choose their own way of life, they do not have rights grounded in this kind of autonomy.

But this response is not wholly satisfactory. I think we do have specifically human rights grounded in our autonomy. But the trouble with leaving it at that, is that what makes it important *to us* that our rights should be respected is not just that we value our autonomy. It is also that we value, to speak almost circularly, our welfare, our interests, or our good. Rights grounded in autonomy may often give us an *indirect* way to protect what we regard as our good. If someone cannot interfere with your freedom of speech, for example, he cannot interfere with your saying your prayers. It is in part because you care about saying your prayers, and not just because you care about your autonomy, that you care about your right to say them. This is where it becomes clear that there is a problem with dividing the world into persons and things. The other animals, who do not have autonomy, are left with no legal means of protecting their interests or their welfare. If they have no rights, they are not persons, and that leaves them to be things. But animals are not mere things, since they are beings with interests and lives of their own. Insofar as they come within the purview of human laws at all, it is because they are a subject population, and the only way to afford any effective protection for their welfare is through human laws.

It is worth emphasizing that last thought. The idea of animal rights sounds silly to some people, because it seems to suggest an insane desire to moralize nature: to imply that we should declare predation to be murder and to make it illegal, or perhaps to turn battles over territory into property disputes that get settled in court. But an advocate of animal rights need not be in favor of our trying to protect non-human animals from each other. Rather, the point is to protect them from us, from human beings. The reason only the law can do that effectively is because in a sense, the law is the reason why many of the other animals are so completely at our mercy. What I mean is this: it is not just because we are individually smarter than the other animals that human beings are able to do as we will with them. It is because human beings are so cooperative and therefore so organized. And the way that we organize ourselves is by making laws, which set the terms of our interactions and so unite us into an effective whole. If the law says it is permissible for a person to inflict torments on an animal in order to test a product, for instance, then there is nothing anyone can do to protect that animal. So it is one of those cases – and there are certainly others – in which the only thing that can afford protection against the power of the law is the law itself.

The fact that we have any anti-cruelty laws at all embodies the idea that the welfare of any being who has a welfare – a non-derivative and experienced good – is worthy of regard for its own sake. It should be protected unless there is some good reason why not. It is a further step to say that all animals are ends in themselves, never to be used as mere means to someone else's ends. But once we agree that their

welfare is to be regarded, then we do need a good reason for disregarding it. And what is that reason supposed to be? Why should our interests prevail over theirs?

The reason most frequently offered is that human beings just *are* more valuable and important than the other animals. Some theological traditions have claimed this: human beings are supremely valuable, and the world and all its contents, including the other animals, were made for our use. But in the absence of such a context, importance must be importance *to* or *for* someone or something. Perhaps we are more important to ourselves. But, then, each of us has some small circle of loved ones who are the most important people in the world to him, and we do not take that as a reason to do experiments on strangers, or eat them, or steal their organs. Something more must be said to explain the precedence that we give to ourselves.

But mainly I think we should ask ourselves, on what grounds do we ourselves claim to be valuable in the way that we claim to be – ends in ourselves, never to be used as a mere means to someone else's ends? Is it really because we have the capacity for rational choice, or is it also more simply because we have a welfare of our own? If it is the latter, simple consistency demands that, as far as we possibly can, we should treat the other animals as ends in themselves. The other animals lack normative self-government, and in that sense they are not persons; but we need not accept the idea that the world is divided into persons and property, or persons and things. Without reclassifying them as persons, we may still regard all animals as

ends in themselves, and, as such, the proper subjects of rights against human mistreatment.