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The Discussion Around the Legal Status of Animals

Most legal systems in the world acknowledge two types of legal entities: legal persons and legal property. Legal persons can be further divided into physical (human beings) and abstract (corporations). In the legal context, the term ‘person’ is far from synonymous with ‘human’: not every human being can be a legal person (think of children, for example) and not every legal person is a human being (think of Safeway). But animals have traditionally fallen into the category of legal property, not legal person – together with cars, houses, and other items we make use of to make our lives easier, more comfortable, and more enjoyable.

There are a few obvious problems with categorizing animals as legal property. For one, such a characterization of animals reflects an archaic scientific conception of their nature: beings that, as Descartes thought in the 17th century, are mere ‘automata’ who do not actually feel and think and cannot form authentic emotional bonds. Today, we are aware that animals are much more sophisticated and human-like creatures than Descartes imagined. Another problem with categorizing animals as legal property is that animals are vastly different from all the other items in the category of legal property: unlike inanimate objects, animals can act independently of human control, can experience suffering and pleasure, can make plans and execute them, and, to varying degrees, they engage in intelligent thinking.

Precisely because under current law animals are not classified as ‘legal persons,’ they do not have too many meaningful legal rights. Until relatively recently in human history, in fact, they had no legal rights at all. During the second half of the 20th century, various efforts have been made across the world to expand the legal prerogatives of animals. These gradual efforts led to the ‘dereification’ of animals in the national laws of several countries, starting from the 1980’s – this means that they are no longer regarded as mere ‘things’ or ‘properties,’ but as something in between other kinds of legal property and a legal person. A related effort has been made to legally acknowledge the sentience of animals (their ability to feel pain and pleasure), and thus to grant them basic protection from inhumane treatment. Notably, the Lisbon Treaty of the European

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Union of 2008 states that “the [European] Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals.” This gradual legal recognition of animals’ needs and natures may help pave the way for even more ethical animal welfare laws in the near future.

While these provisions have modified the degree to which animals are subject to being treated like inanimate objects, however, they have not gone so far as to put animals in the category of legal persons. Even though animals remain far from obtaining legal personhood, some of their legal rights are now recognized. The Animal Legal Defense Fund gives a few examples of such rights: animals are protected by criminal anti-cruelty laws; they can be included in domestic violence protection orders in some U.S. states; and they can be the beneficiaries of legally enforceable trusts. Unfortunately, though, these legal rights are limited to domesticated cats and dogs and do not extend to other companion animals (such as reptiles or rabbits), to wildlife, or to the majority of animals used in experimentation (such as rodents and birds).

Some people may find it absurd that animals should be recognized as legal persons - after all, it would be absurd to grant them the power to vote in the elections or purchase goods. But the interests and rights of current legal persons vary depending on their nature: for instance, abstract legal persons such as corporations do not have the right to vote, either. Granting (some) animals the status of a legal person therefore would not have to be equivalent to granting them all the legal prerogatives that adult humans have (such as the right to vote). But it could mean, for example, that they could not be used in painful experiments or housed in inappropriate and abusive conditions. Giving animals the legal protection animals need and deserve by virtue of their sentience, intellectual capabilities, and emotional potential would mean granting them certain necessary negative rights (rights *not* to be exploited or abused) and positive rights (rights to be aided in times of need or treated accordingly). The most important right that animals would gain if they were recognized as legal persons would be the right not to be used as resources for the sole benefit of human beings. This right, of course, could be limited or ‘weighed’ against human rights, in case of conflict - so it would not have to mean that no animal can ever be eaten or used in a medical experiment; it could just mean that the treatment of farm, lab, or companion animals would be more heavily regulated and enforced than it is currently. To give a concrete example, it

would mean that companion animals such as birds or small mammals could not be tortured or killed without the abuser's facing some form of legal punishment.

In the last five years, there have been more progressive examples of granting animals more legal rights or even attempting to grant them legal personhood (on a case-to-case basis). For example, a 2014 court decision in Argentina recognized a zoo-born orangutan Sandra as a 'subject of rights' and a 'non-human person.' In 2013, the lawyer Steven Wise from the Nonhuman Rights Project began testing the U.S. law in order to see if chimpanzees could be granted legal personhood and, in particular, the right to bodily integrity. His goal was to free several chimpanzees who had been confined to tiny cages and mistreated. Despite not winning his case, Wise's request was taken seriously and gained substantive media visibility, reviving the discussion about the legal personhood of animals. Legal scholars such as David Favre (Michigan University), Jay Shooster (NYU), or Antoine Goetschel (Global Animal Law) are also developing strong academic cases for granting animals legal personhood.

Finally, it is worth asking: on what biological or social basis could chimpanzees and other great apes be potentially granted legal personhood? As many years of research have shown, great apes are self-aware, can successfully learn a human sign language and communicate through it, are able to form meaningful friendships, and can think creatively. This is to say that they share many of the intellectual, imaginative, and emotional capabilities that we human beings have. Moreover, the category of 'human species' also comprises people of very different abilities: think of human infants or about people who are severally psychologically or physically incapacitated. Despite these differences, we do grant such people the same basic legal rights as able-bodied, adult human beings - even if they cannot exercise the same legal duties as the rest of us. This is perhaps because what matters most to us is the ability to have conscious experience, emotionality, a sense of self, and bonds of care and interdependence - and not a person's intellectual capabilities. Being a 'legal person' with fully fledged legal rights is not equivalent with being a human being. Therefore, there would be nothing oxymoronic in creating a category of 'non-human legal persons' in order to protect creatures who, after all, share a large number of capabilities with us.