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Kant on Duties to Animals

Nelson Potter

According to Kant we human beings are finite rational beings, who also have an animal nature. Kant occasionally speculates that perhaps on other planets there may be quite different sorts of finite rational animals. But of course we have no specific knowledge of any such. Given that fact, all of our duties are duties to other human beings. We can have no duties to God because he is not an object of possible experience. There are no human beings such that they have only duties and no rights – they would be slaves or serfs. And the apparent duties that we have to abstain from cruel treatment of (nonhuman) animals are, it turns out, not direct duties to such animals, but duties to ourselves, and merely indirect duties with regard to animals.

“Duties to animals” in the Kantian context is an issue about the scope of morality. Does our “moral community” include non-human animals or not? Kant’s version of the moral community seems to be the kingdom of ends, and it is clear that this kingdom includes only finite rational beings like you or me, dear reader. There are arguably two versions of the issue of duties to animals: the legal and the ethical. Perhaps there were no laws in Kant’s day against cruelty to animals, but such laws since Kant’s day have been widespread at least among European and American societies for well over a century. The ethical question would ask whether we have ethical duties to abstain from cruelty to animals (apart from any legal provisions) for which we should be moved to action by inner moral motivation. Such duties would be analogous to the ethical duties we have that underlie laws against assault or theft, or they could be analogous to the imperfect duties we have to promote the welfare of others and render assistance to others in need, duties which are not enforced by laws. But there would be no direct duties to animals, either legal or ethical, if animals were outside the scope of morality. We will return to these two elements of duties to animals at a later point.

The answers to such questions of the scope of morality must be a part of our understanding of Kant’s practical philosophy, alongside other such issues as imputation, freedom, and criminal punishment that have been of concern to Professor Hruschka in his many contributions to understanding that philosophy, and more particularly Kant’s philosophy of law.

When Kant states his claim about our having only indirect duties to animals, he makes similar statements about our having indirect duties also to beauty in plants

and lifeless nature, neither of which should be wantonly destroyed. But in this paper I will confine my attention to his views on animals, for they raise questions that plants or lifeless beauty do not. And to further focus our attention, I will discuss Kant's duties to animals only in relation to what I'll call paradigm animals, i.e., animals to whom we surely have duties, if we have duties to any animals. Most or all invertebrates would be excluded as non-paradigm, because they do not have nervous systems well enough integrated to undergo pain and suffering in the way that is all too familiar to us humans. Paradigm animals will be larger, more familiar animals, mostly mammals, whom we humans often deal with or make use of in one way or another: dogs, cats, cattle, horses, oxen, rabbits, mink, perhaps chickens, and so forth. If we have duties to *any* animals, we have duties to such as them, it seems reasonable to say, and the main extension of scope of duties we are interested in here is the extension from humans to these most promising animal candidates for being bearers of such rights. How far we might seek to extend duties to animals beyond these animal paradigms is a complicated topic that is beyond the scope of this paper.

There is a further related complication I want to declare beyond the scope of this paper. There are certain non-human animals who are similar enough and indeed in an evolutionary sense close enough to us to raise questions about whether they might be in some significant way rational beings. Think of chimpanzees, bonobos, or perhaps dolphins, whales, or gorillas. It is sometimes argued that because some of these creatures are so similar to human beings, the constraints against scientific experiments upon human subjects should also be applied to them. Or to take such even more difficult hypothetical cases about which our knowledge is limited: what should we say about our ethical relations with the various extinct species of *Homo erectus* or *Homo neanderthalis*? Such creatures may indeed have been semi-human, and limited in their capabilities in the way racists used to claim that humans of other races were. Such creatures would have been similar enough to us humans to raise difficult questions about where to draw a line distinguishing between human and nonhuman, and yet they would be more different from us than any individual *Homo sapiens*.

This whole issue of duties to animals might seem like a peripheral and unimportant question for Kant's ethical theory. Kant himself only briefly and occasionally alludes to it. And there is not much substantive normative disagreement between Kant and moderate opponents of cruel treatment of animals. Kant thinks it is wrong wantonly to inflict pain on animals. Some might say that given Kant's position that such duties are only indirect, it will not be possible for him finally to arrive at an adequately robust set of norms in opposition to animal cruelty. I have my doubts about this; that is, it seems to me that one might develop an adequately robust theory of opposition to animal cruelty based only on indirect duties. But again this is a topic that we will put to one side for the purposes of the present paper.

Kant tells us that he thinks it is all right to raise animals for meat, and to use them for labor (drawing plows or wagons). He expresses his doubts about inflict-

ing experiments on animals, but I suspect this is because such experiments as he heard of were idle and purposeless, and if this is correct then we should not be confident that he would oppose modern medical experiments generally. My own view is that it is morally acceptable to raise animals for human consumption – at least so far as any duties to such animals are concerned, provided they are raised in humane conditions and put to death as quickly and painlessly as possible. So I count myself as a moderate along with Kant on this issue. According to such a view there are duties to animals, and surely direct duties, but they are not broad enough to force us to be moral vegetarians, at least so long as we can have access to humanely raised and slaughtered meat. I call such a view “moderate,” placing it between strong animal rights views that ground opposition to the use of slaughtered animals for their meat or other uses, and opposition to much experimentation using animals, and, on the other side, the Cartesian tradition, which regards animals as machines incapable of the experience of pain. Another basis for a duty of moral vegetarianism that is unrelated to the moral status of animals may be that it is unjustifiably extravagant to feed grain and other foods to meat animals that might directly nourish humans who are in want of nutrition, because the luxury of some humans eating meat may deprive others of needed nutrition. But I mention these issues only to put them aside here, after having used them to explain what I mean by Kant’s taking a moderate position on ethical treatment of animals.

The Kantian main texts that I wish to consider are from his *Metaphysics of Morals*. The first comes from the introduction to the first part of that work, the *Rechtslehre*. Kant offers a “Division in accordance with the relation of the subject imposing obligation to the subject put under obligation.” [MS, VI: 241. Notes to Kant’s text will be given as references to the volume and page of *Kants gesammelte Schriften*, herausgegeben von der Königlich Preussischen Akademie der Wissenschaften, Berlin, 1907 and later. MS abbreviates *Metaphysik der Sitten*. Most translations include this standard pagination. The reference later to Kant’s *Critique of Pure Reason* will follow the standard practice of indicating the pagination from the first (A) and second (B) editions.] Within the *Rechtslehre* rights and duties will be symmetrical because we are considering only perfect external duties to others. There are no imperfect duties not mirrored by a right, of the sort that are to be found in its second part, the *Tugendlehre*.

Kant tells us that first, the relation of rights of human beings toward those who have neither rights nor duties has no members because “these are beings lacking reason, which can neither bind us nor by which we can be bound.” This empty classification is where Kant would put the moral relation between humans and animals. Also lacking in members, thirdly, would be the rights of human beings toward beings that have only duties but no rights,” for these would be humans “without personality (serfs, slaves)”, and there are no such. And, fourthly, also empty is the classification of rights humans have toward a being that has only rights but no duties (God).” This leaves as the only relation having members, the second, the relation of human beings towards beings that have rights as well as

duties," i.e., the relations between human and human. [MS, VI: 241] So, within *Recht* there are no unsymmetrical relations. According to the alternative to Kant's views on this matter that we want to present and consider in this paper, nonhuman paradigm animals are beings that would have rights but not duties, and so would fall in Kant's first or fourth division. We *wrong* a dog or a horse if we beat it; it has a right not to be beaten because it suffers and feels pain from such treatment. But nonhuman animals have no duties because, as Kant says, they lack reason. According to what has just been said, then, the relation of humans to animals is a relation to a being who has no duties, but only rights. That description Kant supposes applies to God, in division (4), and this would be because God is *above* duty, with that term's suggestion of a resisting inclination. We want to present and examine an alternative view, against Kant, that animals would have rights because they can suffer, but no duties because they lack the rational capabilities for such; according to this view we might say they are *below* duty. I am ready to agree with Kant that we have (4) no duties to God because he is not a possible object of experience, and that (3) there would be no human beings who would be correctly regarded as lacking personality, that is, slaves or serfs. However, classification (3) is of interest because it might be thought to apply to not fully functional human beings such as the profoundly retarded, the anacephalic, those in a permanent vegetative state, those suffering from severe senile dementia in one of its forms, and so forth. This is a group of individuals about which Kant otherwise has nothing to say. Concerning division (4) Kant elsewhere says [*Religion*, AK, VI: 99] that all duties considered from a religious point of view can be regarded as duties to God, but this fact does not alter the content of such duties, which would still be moral relations of human persons to human persons, falling under (2).

Our second main text is from his discussion of duties to oneself, a section entitled "On an amphiboly in moral concepts of reflection, taking what is a human being's duty to himself for a duty to other beings." [MS, VI: 442] I quote at length:

As far as reason alone can judge, a human being has duties only to human beings (himself and others), since his duty to any subject is moral constraint by that subject's will. Hence the constraining (binding) subject must, *first*, be a person; and this person must, *secondly*, be given as an object of experience But from all our experience we know of no being other than a human being that would be capable of obligation (active or passive). A human being can therefore have no duty to any beings other than human beings; and if he thinks he has such duties, it is because of an *amphiboly* in his *concepts of reflection*, and his supposed duty to other beings is only a duty to himself. He is led to this misunderstanding by mistaking his duty *with regard to* other beings for a duty *to* those beings. [daß er seine Pflicht in Ansehung anderer Wesen für Pflicht gegen diese Wesen verwechselt]. [MS, VI: 442. Compare Kant's discussion of "Amphibolies" in *Critique of Pure Reason*]

Now *all* duties to others also have an aspect of duties to oneself in Kant's view; thus my obligation to act as a Good Samaritan is a duty to the person aided, but also a duty to myself, that is, a duty to have sufficient respect for my own humanity to fulfill this requirement of duty. [See MS, VI: 417, Section 2, where Kant

makes this point, saying that without duties to oneself there could be no duties at all.] We can have these duties that are *only* indirect to inanimate (perhaps beautiful) nature, to plants, and to animals. As mentioned earlier, we'll here only consider the case of duties to animals.

Kant explains that wanton destruction or harm to animals uproots the agent's inner disposition that is important in his moral character, and adds that humans may raise animals for meat or use them for work. He makes a distinction between *direct* duties to animals, which we don't have, and *indirect* duties with regard to animals, which we have. [MS, VI: 443. Also see MS, VI: 413]

The issues I wish to consider here have to do with the following difficulties: (1) It seems counterintuitive to say that duties to abstain from cruel treatment of animals are not duties *to* them. For this reason we should prefer an account of such duties as direct duties if one should be available. (2) More seriously, there are *human beings* who are not rational beings: newborns, the demented, the severely retarded, the comatose, those in a permanent vegetative state, and so forth. Do we also only have indirect duties to them? This is surely an unacceptable conclusion, and yet it seems to be an implication of Kant's views concerning our duties to animals. I think many would say that we have direct duties to such non-fully functioning human beings, as part of what ought to be regarded as entailed by the Kantian idea of respect for humanity. To say we have only indirect duties to such humans is to exclude them from the kingdom of ends, or our moral community. This seems troubling. Duties that are merely "with regard to" animals or low-functioning humans have almost an accidental relation to such indirect objects. Such "with regard to" objects can be almost anything possessing instrumental value and/or which possess beauty – houses, hammers, fine china, mountains, horses, salmon, wild or cultivated flowers, colorful stones, alarm clocks, or sports cars. In contrast, direct objects of duties must have "sakes" – preferences that are internal and important to the organism and that have the potential of being expressed in its conative life and its behavior. For example, an elderly human suffering from severe senile dementia, if he were an object only of indirect duty would be such an object only for a variety of what might be termed non-intrinsic reasons: he is the father, grandfather, spouse or sibling of other humans, anyone who treats him with cruelty, contempt, utter disregard, or hatred, would be arguably thereby influenced so to treat other (fully functioning) members of the species similarly, and such actions would be wrong. Such bad treatment would also have an adverse effect on the moral character of the *agent*. These would be the only reasons for an agent's morally constraining her behavior toward such an individual. This seems to be an unacceptable view to have towards a low-functioning human or a paradigm animals, even when it is adequate to morally constrain an agent's behavior within an acceptable range.

Now the duties we have to such partially functioning humans will be relative to their interests, as is true with respect to all other individuals who have rights. The comatose and the severely intellectually challenged are not interested in lively conversation, though they may be interested in not being too hot or too cold or in

satisfying their thirst. Even here sometimes we may wish to speak of what the interests of such individuals *would* be if or when they were conscious; the comatose person may not have conscious sensations of thirst, but he retains, arguably, at least a hypothetical interest in not having his physiological functioning impaired or even halted by a lack of water. When I am trying to sleep, I am also not interested in lively conversation, though at other times I may be. My friend may despise western movies and love Wagnerian opera, while the opposite is true for me. In the same way, we might urge that boredom is a serious issue with some experimental animals (apes) and not others, or that fear of death may not find exact correlatives in most non-human animals, even our paradigms. All of these differences can make a difference as we try to draw conclusions concerning what kinds of treatment are appropriate or not for different individuals, human and nonhuman.

But in this paper we are not primarily concerned with such interest-relative differences. For Kant's main point about the differences in our duties to other humans (and ourselves) as opposed to nonhuman animals has nothing at least directly to do with such differences in interests. Surely Kant can completely agree that such interest-relevant differences in our duties to individuals, whether human or otherwise, are fully correct and acceptable. Rather Kant's point is that only rational beings can possess rights and thus bind rational beings to having duties, or, as we might put it more loosely, only rational beings are members of the moral and legal community. The consequence is that nonhuman animals are beyond the pale of Kantian duties, and hence, as he says, only the "with regard to" objects of indirect duties to ourselves.

We do need to discuss the problems this approach causes for different classes of not fully functioning human beings. In the case of newborns, for example, we might say that such are not presently functioning at the full human level but under normal circumstances of development we can have every hope that they *will*. Even a sleeping person is for a period unconscious, and hence not fully functioning according to human paradigms, or rational person paradigms, but there is every expectation that she will before long. The comatose person may or may not recover, but until all hope of recovery is gone for such a person, she would still be the bearer of rights based on the possibility of such recovery. The more difficult groups of cases are those for which there is little or no hope of recovery of such normal human functioning. After a serious head injury or stroke a human may for a time be very incompletely functioning, and it may take a long time correctly to conclude that we should lose hope of recovery. Some think there is room for debate about whether we should ever lose such hope completely. Such a loss of hope is suggested by the phrase "permanent vegetative state" used to describe the state some such persons are in. Again, this paper is not the place to discuss when if ever we should abandon hope. I will simply assume that there are some individuals for whom projecting such hopeful and beneficial changes is not at all reasonable, for example, those in a permanently vegetative state, or advanced victims of Alzheimers. Such hopeless humans, as we might describe them, appear to be quite

comparable to nonhuman animals in their behavioral capacities, especially those related to the possession of reason, and, it seems, should be treated in similar fashion within Kantian ethical theory. And this would be a major problem for such a theory, for we do not want to say that such human individuals should only be the object of indirect duties, as Kant, it seems, would specify.

This is the major problem of scope that is raised by Kant's views on duties to (nonhuman) animals. This view, it seems, must be extended to such hopeless humans as the severely retarded, those in a permanent vegetative state, those who are permanently comatose, irreversibly demented or senile, born anencephalic, and so forth. We want to resist extending a view of merely indirect duties to such individuals.

This point is used in other contexts by animal rights proponents such as Peter Singer and Tom Regan to argue for a more robust theory of animal rights. They say that if we take seriously the common idea that those humans whose rational functions in particular are quite limited are to be accorded full human rights, then in consistency we must extend such rights also to nonhuman animals. The conclusion with respect to both groups is that the classes of paradigm nonhuman animals and of humans permanently incapable of rational functioning must be treated ethically in the same way. For people, Kantians or others, with what I've called moderate views on animal rights this forces an unhappy choice: either greatly elevate the appropriate level of moral rights for paradigm nonhuman animals, or drastically lower the level of such rights accorded to humans permanently and seriously lacking in rational function.

Kant never discusses the situation of hopeless humans, as we have called them, and so, it seems, has no awareness of this unhappy dilemma, the problem seemingly implied by his views concerning our ethical duties to animals. It seems that he should be reluctant to eliminate direct duties to nonfunctional humans. And the logic of his explicit position that we have duties only to rational beings seems deeply embedded in his ethical theory, and therefore it will likely not be easy to revise in order to accommodate this present problem.

But even though such difficulties might be considerable, we certainly want to consider the question: Might there not be a possible alternative account of duties to animals within a broadly Kantian theory that would allow such duties to be direct duties, centrally and originally concerned with the welfare and avoidance of suffering for such nonhuman creatures?

Within Kant's ethical system, where would such duties arise? As we've seen, Kant himself introduces his discussion of duties to animals within his discussion of duties to oneself. Of course, all duties to oneself are ethical duties that fall in the second half of the *Metaphysics of Morals*, the *Tugendlehre*, and would fall quite outside the scope of any system of law or *Recht*. So if we accept Kant's view that duties to animals are only indirectly duties to them, and are directly duties to oneself, then the discussion should fall in the *Tugendlehre*.

On the other hand, the sorts of duties we are alleged to have to nonhuman animals, even if only indirectly, are duties such that, were they duties to other humans, would fall within the range of law or *Recht*. Cruel treatment of animals is presumably comparable to assault or related forms of mistreatment if it were directed at humans, e.g., those forms of mistreatment involved in torture, starvation or false imprisonment of the most severe sorts. And indeed, as mentioned above, many European and American jurisdictions have had laws against cruelty to animals for many years. So when such duties are regarded as direct, they are primarily legal duties to others, in relation to which there would also be corresponding rights. The fact that animals are no position to complain of bad treatment to a court is no more a reason for thinking they cannot have rights against such treatment than it is a reason for thinking an abused patient suffering from senile dementia could have no such rights. In both cases, when there are such abuses others may complain to a court representing the victim as a surrogate. There is a revision to the Kantian framework of *Recht* that such a view forces: we would now have individuals, whether nonhuman animals or incompetent hopeless humans, who are to be regarded as having rights but no duties. The complete symmetry of rights and duties that is presently a feature of Kant's *Rechtslehre* views will be lost.

We can think that Kant might believe that only humans have souls, though this is no part of his doctrine. Souls are not observable or scientifically detectable. If it were somehow known that only humans and no other animals possessed souls, then we would have a sharp distinction of kind between humans and nonhuman animals. Alternatively, this sharp distinction may in Kant's view be based on his claim that humans possess freedom or autonomy – a capacity that comes along with rationality and moral capability – and that nonhuman animals do not. It may be reasonable to say that if we wish to soften Kant's sharp distinction between humans and nonhuman animals, we would have to revise Kant's theory of freedom. Kant's views on human freedom present a major obstacle to an alternative theory of duties to animals that we could still call "Kantian." For example, various compatibilist theories of freedom and responsibility may allow for *degrees* of freedom and responsibility, and merely assign typical humans and paradigm animals different places on the same scale. Within this partially Kantian alternative we would view nonhuman paradigm animals as creatures that had rights, because they have "sakes," [See discussion of Feinberg below] but are incapable of having duties, because they lack the rational capacities, and perhaps also the freedom that having duties entails. Still, they can be viewed as not radically different in kind from humans.

Now I want to sketch a way of looking at humans *vis a vis* non human animals that is much more empirical, inductive, and less a priori and metaphysical than Kant's own views. This argument or perspective could also be useful in a non Kantian context, and as such might be at least the beginning of a reply to the arguments for animal rights presented by Singer and Regan, among others. It goes as follows:

We look at the world around us and observe the behavior of various bodies, in particular bodies that are animal organisms. Based on such empirical evidence inductively marshaled, we could say that we know of no cases where nonhuman animals possess the skills of personhood: speech, behavior suggesting the possibility of moral and motivational autonomy, etc. On the other hand most human beings possess such capabilities. So an important piece of evidence toward drawing conclusions about individuals having rights and/or duties would be that the individual has human parents and is a living member of the human species, *Homo sapiens*. Now we know that some human individuals have always lacked or come to lack characteristic human abilities. When we observe such a lack in particular humans, we have an additional question of whether the attainment or recovery of such human potential may still be possible. It seems that sometimes it is, and sometimes it is not. We expect that most newborn humans will eventually attain full human capacity, given favorable opportunities for development (which it is therefore obligatory to provide). In other cases we must be more pessimistic (e.g., Alzheimer's syndrome). Again, we also observe that there are no cases where nonhuman animals, even those in our paradigm, attain such capacities. So it is inductively reasonable to regard all of those with human ancestry, who are therefore specimens of *Homo sapiens*, as fully persons, with the rights entailed by that status and to regard none of those with nonhuman ancestry as persons. And it may even be regarded as reasonable to regard all those with human ancestry as persons even in the face of strong evidence to the contrary. For it would be deeply troubling to withdraw such a status from certain humans; doing so would raise the question about whether we might do the same with respect to other humans, for reasons good or not so good. Some might seek to exclude those of other races or religious beliefs from such rights-protection., which I take it would be bad reasons. So species membership is an important marker for an individual's having the complete package of human rights.

We might mention as another example that broadens the scope of rights that human individuals, having once been recognized as competent persons, may have rights to dispose of their property even after death, through the mechanism of the will. I recognize that wills are not necessarily to be interpreted as rights that are given to the dead, that is, as rights that reach beyond the grave. If there are other interpretations, then wills do not provide a clear and unambiguous example. But if we understand wills in this way, and hence find the legal system assigning rights even to the dead, then by a parity of argument some rights might also be extended to living nonhuman animals. The main point in this discussion is that ancestry and hence species membership can be reasonably regarded as providing strong presumptions of being bearers of rights.

One of the things that humans and nonhuman animals have in common is *interests*. Or as Joel Feinberg refers to them in an influential article, "sakes," as in "I did it for her sake." [Joel Feinberg, "The Rights of Animals and Unborn Generations", pp. 159–185 in *Rights, Justice, and the Bounds of Liberty*, Princeton: Princeton

University Press, 1980.] Humans and animals have obvious preferences opposed to being too hot or too cold, against having their bodies penetrated by knives or bullets, against hunger, and on and on. Plants and rocks cannot be said to have “sakes” in the same way. Feinberg proposes that it is such sakes that give human and nonhuman animals their rights, and hence he readily accepts the conclusion that animals have rights – because they have sakes.

Arguably, for humans we extend rights even beyond their own sakes, as when we continue to confer rights on human vegetables, the permanently comatose. Perhaps we do this merely for safety’s sake, on the off chance that such an individual might unexpectedly revive. And after all, major families of rights march along with that human pedigree, as we said above.

This characteristic human “packet” of rights is regularly assigned to all “persons,” the word of art in the U.S. Constitution, where it generally means all humans within U.S. legal jurisdiction. [The Cambridge Kant translation renders Kant’s term *Mensch* as “person,” and I believe this is the best translation.] The post-civil war amendments in the U. S. Constitution do not refer to “citizens,” though even so it is surely correct that citizens have certain additional rights, beyond those assignable to all persons, such as the right to vote. Kant himself ventures into dividing up the human packet of rights, as we might call it, when he distinguishes active from passive citizens. [MS, VI: 314–5] Merely passive citizens lack the independence of property owners, males, and adults. Kant could have added the demented, the severely retarded, and the comatose to those reduced to passive citizens. Kant’s distinction inspires outrage, first because the category of passive citizens is said to include all women, and secondly because the propertyless are excluded from active citizenship. In an era when women were almost universally excluded from full participation in society, and propertyless persons lacked the independence requisite for a full citizen (particularly in an era before the secret ballot), and were arguably merely creatures of others, perhaps they did lack the requisites of active citizenship. However, the objection is not that Kant makes the distinction between active and passive citizens, but that he extends it to these two classes it should not be extended to. It is surely reasonable, for example, to regard children as passive citizens. Perhaps the main exclusions thought of under the “passive” category are exclusions from governing, including voting, and serving as officers of government. Even though women in Kant’s day were also excluded from most professions, it seems less certain whether in Kant’s scheme this is a cause or an effect of his declaring them passive citizens. It is surely unfair to exclude the propertyless and all women because society has already placed them in a disadvantaged position, and then proposes to take other rights from them because of those disadvantages. My point is not to defend Kant’s views here, but to say the objections to it come from his overbroad use of the distinction, not the distinction itself, which does have some proper exemplars.

The point about passive citizens seems to be that they are individuals unsuited to functioning as full citizens, that is, as adequately autonomous sources of inde-

pendent decision making (voting). This is certainly the case with respect to young children. One might argue in response that as a practical matter some women, even though they live only a domestic and almost no public life, are more dominating, independent, and autonomous than some men, and the same goes for some unpropertied as opposed to propertied individuals among otherwise competent adult males. Again, I have no wish to defend Kant against such points.

But the point I want to get to is that within a Kantian scheme it may be reasonable to regard nonhuman paradigm animals as like passive citizens, though they may be somewhat more passive than even young children – and that mainly because most young children are future fully competent adults. Kant surely regarded young children and women as protected by such laws as those against assault and theft and false imprisonment. Now animals may not be protected against theft, since they cannot be legal holders of property, or false imprisonment, since they arguably have no general right of freedom, and perhaps not even against being “enslaved” (e.g., as a plow horse) or slaughtered for human use. To some extent the fact that they lack such rights may be the result of the fact that the range of “sakes” that operate in their lives to determine their rights are significantly more limited than that of most humans. For example, it seems to me plausible, though I cannot argue it here at length, that death is a different sort of evil for nonhuman animals, and so is neutering, and neither is as great an evil for nonhuman animals as for humans. The former would be true because animals do not fear or anticipate death as humans do, the latter because neutering does not mutilate and misshape the life of the neutered animal as it does a human life. These views, I admit, are controversial, and would need a more extended discussion for an adequate defense. Here I will only comment that our feelings about castration have become so strong that we are willing to deny ourselves what has often been reported to be the magnificent experience of hearing a castrato sing, and that we are also willing to deny freedom to the rapist who is willing to lose his testicles in exchange for gaining his freedom. [We also deny would be castratos the opportunity for a potentially fulfilling career.] Children are dependent upon their parents and guardians, and perhaps in similar fashion so are nonhuman animals, though in the case of both categories questions arise about whether individuals in each group may be appropriately “used” for the exclusive benefit of those who have charge of them, and without reference to their own future benefit. We are surely less willing to judge it right to give over the entire lives of children to the benefit of their guardians than we are in the case of nonhuman animals, but it seems doubtful that this difference is sufficient to sustain anything close to Kant’s more absolute distinction between those creatures who are bearers of rights and those who cannot be.

So I conclude, somewhat tentatively, that within a mostly Kantian framework we may indeed recognize that paradigm nonhuman animals are bearers of rights, against Kant’s own explicit views to the contrary. The alternative Kantian framework proposed here would be one where there was not an absolute distinction between human freedom and animal lack of freedom. It would be one in which

we were willing to look at the behavioral evidence of human and nonhuman animal behavior, which is an approach probably more empirical than what Kant was used to.

Yet such a conclusion is or at least seems to be a startling one that will cause the reader steeped in the Kantian philosophical framework considerable uneasiness. Such a conclusion seems against the grain of the main ways of thinking in Kant's ethics. It may be said that it is a deep matter that for Kant ethical concerns are limited to relations between or among human beings (duties to others), or between a human being and his own nature as such (duties to oneself). It can be urged against me that both terms of the ethical relation in all such cases within a properly Kantian framework will be anchored by a human being, and nonhuman animals are altogether inappropriate place holders here. Without making a complete reply, I can note the following points:

- (1) The resistance some feel to this position may be based on the deep cultural background of Kant's ethics, according to which humans have immortal souls capable of salvation and animals do not. But this is not explicitly a part of Kant's doctrine.
- (2) There is further the fact that if we allow that animals may not be the relational endpoints of duty-right relations, then we have problems with less than fully competent humans also being excluded in ways we presumably do not wish to do. This problem is mitigated but not eliminated by my earlier suggestion that we take membership in the human species through descent seriously, since it makes such a major difference in the likely potential for any individual, and such potential is central for determining the rights-bearing status of such an individual.
- (3) But perhaps my main point here is that even if Kant did not, we, as we attempt further to develop a Kantian ethics today, should think much more in terms of human solidarity with paradigm nonhuman animals. Such solidarity is most likely simply a post-Darwinian viewpoint, one that comes much more naturally and easily in the wake of Darwin's claim that we and the apes and indeed all other forms of nonhuman animal life have common ancestry. Darwin's theory was one that Kant could never have known of, just as he could never have known of the later developments of non-Euclidean geometries and Einsteinian physics, that impacted his views in the "Transcendental Aesthetic" of the *Critique of Pure Reason*. This commonality becomes tempered and mitigated as the similarities with respect to capabilities become less, that is, as we compare humans with bonobos, macaques, pigs, doves, fish, octopuses, and jellyfish, but it never disappears. The most important commonality is the experience of pain and the possibility of suffering. It is this fact that provides the basis for most of our (direct) duties to animals. Pain and suffering may be experienced at their most intense by humans, but the capability for both still unites every sort of creature for a long ways down the great chain of animal life.

if I am still permitted to use such an expression in this post-Darwinian time. If normal adult humans are centers of inherent dignity and value, which agents morally must take into account in calculating their direct duties to others, then so also must be paradigm non-human animals.

Zusammenfassung

Kant behauptet, daß wir nur indirekte Pflichten haben können, von Grausamkeiten und Gewalt gegen Tiere abzusehen. Pflichten dieser Art seien direkte Pflichten gegen uns selbst, um unseren moralischen Charakter nicht zu verderben, aber könnten nicht direkte Pflichten gegenüber den Tieren sein, weil Tiere keine rationalen Wesen sind. Diese Sichtweise erscheint unbefriedigend, da die Tiere die Opfer einer solchen Mißhandlung sind, wenn sie stattfindet, und die Vorstellung, daß wir keine direkten Pflichten ihnen gegenüber haben sollen, erscheint merkwürdig. Ich plädiere dafür, daß Kant, durchaus in Übereinstimmung mit seiner allgemeinen Moralphilosophie, hätte ein Konzept von *direkten* Pflichten gegenüber Tieren entwickeln können. Ein solches Konzept wäre weitaus plausibler und hätte Kant geholfen, mit allfälligen Problemen umzugehen, die sich im Hinblick auf die Behandlung von zurechnungsunfähigen Personen ergeben, die ebenfalls keine rationalen Wesen sind, sondern allenfalls potentiell. Zwar kann Kant durchaus plausibel machen, daß es die von ihm behaupteten indirekten Pflichten im Hinblick auf Tiere gibt, aber nicht, daß unsere Pflichten gegenüber Tieren auf derartige indirekte Pflichten beschränkt sind.