"Dogs ARE Persons!" (The Other Side of the Debate)

Harold Herzog, Animal Studies Repository
In a previous post (Are Dogs People? Really?), I criticized a recent New York Times op ed (Dogs Are People, Too) in which Dr. Gregory Berns argued that brain imaging studies suggest that dogs (and possibly other animals) are “persons” and are thus entitled to legal rights. While many readers agreed with me, the post also generated some excellent comments by readers who disagreed. In the spirit of encouraging dialog on issues related to the treatment of other species, I am giving this post over to the voices of three of my most thoughtful critics. (This is a little longer than most Animals and Us posts. However, their comments are well worth reading in their entirety.)

Note that I stand by my original critique of the New York Times essay. However these responses to my post are an excellent overview of the case for considering animals "persons" under the law. I think they merit exposure on this forum and should be given serious consideration.

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The Participants:

Michael Mountain was a founder and for many years President of Best Friend Animal Society in Kanab, Utah. He is the editor of Earth in Transition. For an extended description of my visit to Best Friends several years ago and my evening-long conversation Michael in Kanab on the moral status of animals, see the last chapter of Some We Love, Some We Hate, Some We Eat).

Lori Marino is a dolphin researcher and neuroscientist at Emory University. She is the Science Director of the Nonhuman Rights Project and the founder and Executive Director of the Kimmela Center for Animal Advocacy, Inc.

Hoss Firooznia is an animal protectionist from Rochester, New York. He has a degree in cognitive science.

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Michael Mountain’s first comment.

I'm not a scientist so I can't argue issues about the canine caudate nucleus! But from a legal point of view, we have to be careful not to confuse what we mean when we talk about "people", "persons" and "humans". "Humans" are a species. A "person", according to the law, is any entity
with a capacity for legal rights. (Corporations and ships are recognized as persons. So, in India, are Hindu idols.) And "people" can mean just about anything you want it to mean!

Greg Berns tells me in an e-mail that his original title for his NY Times article "Dogs Are People, Too" was "Dogs Are Persons, Too" but that he was prevailed upon to change it in order to be "more accessible to the average reader." I think it's just confused the issue. Dogs will never be "humans". They may very well be recognized as persons one day. And most of us with dogs already consider them to be people and don't care what that means!

When we consider whether dogs or any other nonhuman animals should be recognized as legal persons, we're simply considering whether they can have any legal rights. We're not asking whether they should be viewed as humans - any more than they or we should be viewed as ships!

So the question isn't whether MRI scans show that they have emotions just like humans. What a judge will have to consider first is whether a particular nonhuman animal is self-aware, has advanced cognitive abilities and is reasonably autonomous. If the answer is yes, then we can argue that this animal needs to be recognized as having certain basic legal rights – specifically the right to bodily liberty and bodily integrity. Not "human rights", but rights appropriate to who he or she is.

The Nonhuman Rights Project is getting ready to file a writ of habeas corpus on behalf of a nonhuman animal. We will be petitioning the court to recognize that he/she has the legal right to bodily liberty and bodily integrity. This is a first-of-its-kind case, and will most likely be filed in the next few months on behalf of a great ape or an elephant. By definition, if the judge – and then, more importantly, a state high court – agrees that she has this most basic legal right, then that means she is a legal person. (Not a human, not "people", but a person.)

Meanwhile, right now, she remains a "thing"—a piece of property with no more legal rights than your DVD player or your kitchen table. (Cruelty laws provide that there are certain things you may not do to her, just as there are laws preventing me from stealing your kitchen table. But the table itself has no rights at all.)

Gregory Berns is right in saying that it may be many years before a dog is recognized as a legal person. We just don't have the scientific evidence to petition on their behalf. But we do have that evidence when it comes to great apes, elephants and certain dolphins. (Also possibly for certain birds.)

From my reading of Berns's article, what he's done is to add another piece to the growing body of evidence supporting the argument that humans are not the only animals with emotions, self-awareness and autonomy. This kind of evidence may, in turn, help to support future cases where it's being argued that particular nonhuman animals deserve certain fundamental rights that are relevant to their species and are in their own best interests.

Michael.
Hal’s response to Michael:

Michael….You may not be a scientist, but you are a very smart guy. My intuition is that “persons” = “human persons”. However, as I learned in an animal law conference a couple of years ago from David Favre of the Animal Legal and Historical Center, when it comes to the law, my intuition is wrong. (In short, you are right.)

I do, however, continue to have problems with excessive broadening of the term “person.” The Supreme Court’s Citizens United decision that corporations are persons will possibly destroy American democracy. If embryos are determined to be persons by the courts, Roe v Wade goes down the tubes. My view is that is that considering corporations, chickens, Hindu idols, and embryos “persons” broadens the term to the degree that it becomes meaningless.

My intuition (admittedly, a lousy source of moral guidance) agrees with you that creatures like great apes, whales and dolphins merit some rights (e.g., the right to life, the right to not be caged). However, my intuition does not extend these rights to birds, Hindu idols, and the groundhog which is eating my flowers. Some have argued that we need different categories of “persons.” —say, “human persons” and “non-human persons.” However, this gets us back to where we started. I assume, by the way, that personhood implies, at very least, the right not to be eaten. Animal activists will applaud this. However, the courts are not immune to public opinion, and the 95% of Americans who eat meat consume 10 billion non-human persons a year.

Finally, my objection to Berns’ op ed is also based on that fact it overstated the importance of the MRI study’s results. (I agree that his methods are groundbreaking.) Scientists have long known that the caudate nucleus was involved in emotions in human and non-human animals. Further, I think it implied that the Emory team had discovered that dogs had emotions. Not true. Hopefully, Greg Berns’ new book will give due credit to scientists dating back to Darwin who investigated the emotions of dogs. Today this includes top researchers like Adam Miklosi, Brian Hare, Alexandra Horowitz, Kurt Kotrschal, Julia Kaminski, Joseph Call, etc., etc. etc. Dog cognition labs are spring up faster than weeds in my flower garden.

Thanks for your insightful comments!

Hal

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Michael’s response to my response:

Hal,

We fully expect that, as you suggest, one of the first questions that will come up in court is: "If I agree with you that this chimpanzee is a legal person with the capacity for certain specific rights, are you going to be back here next week with a cow and a chicken and a pig?"
This is the "slippery slope argument" and, as Greg Berns' article suggests, dogs may, one day, indeed find themselves off the menu, too. (Take note, China and Korea!). It's the same slippery slope that the famous judge Lord Mansfield had to confront when attorneys for the American slave James Somerset went to court in London in 1772. Somerset, who had been brought to London by his owner, Charles Steuart, had escaped and been recaptured, and was now lying in chains on a ship that was about to leave for the sugar plantations of Jamaica. But a group of abolitionist attorneys petitioned the High Court, using the writ of habeas corpus, that Somerset should be recognized as a legal person with appropriate rights to bodily liberty.

Steuart's attorneys couldn't prove that Somerset was subhuman, so they argued, instead, that this was a slippery slope and that if Lord Mansfield set a precedent by granting him his freedom, this would lead to the collapse of the sugar and cotton industries in the American colonies—and the downfall of the entire Western economy.

Mansfield pleaded with both sides to settle their differences out of court because he knew where this was leading. But they stood their ground. And so the judge issued his ruling, saying that "though the heavens may fall" he had no choice but to conclude that slavery is "odious" and that Somerset had to be set free. This was all still before the Declaration of Independence, but it soon led to similar cases up and down the newly born United States. In the north, judges ruled mainly pro-freedom; in the south, several states went so far as to pass laws that negated habeas corpus altogether for slaves! Eventually it took a civil war to settle the matter.

So yes, there is a slippery slope. And who knows where all this will lead. But that didn't stop Lord Mansfield from doing what he knew was right. And it should not stop us from agreeing that the science is solid when it comes to great apes, elephants and dolphins. And that one day it may be solid in relation to cows, pigs and dogs, too. Even your groundhogs!

P.S. I would argue that naysayers are, in fact, worrying about the wrong slippery slope. It's not the granting of legal rights to other animals that's going to cause problems to us humans, but rather our failure to grant those rights. By treating them as "things" and "property" to be commoditized and exploited at will, we're already doing untold damage to ourselves, too.

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Lori Marino’s comments

Hal… In your criticism of Greg Berns’ MRI study with dogs you set up a number of straw men. First, Greg never equated activity in the caudate nucleus with personhood. In the NY Times article he was simply exploring the issue of personhood for members of other species. Indeed, as Michael Mountain has said, personhood has to do with legal criteria and basic species-specific rights. Greg is not claiming that dogs are humans (despite the media’s take on the issue).

Second, you claim that personhood in dogs would mean not “imprisoning” them and “forcing” them to play fetch. But dogs are domesticated and have co-evolved with us to enjoy some of the same environments and activities. Playing fetch with a dog is no more “forceful” than playing catch with a child or friend. Your argument here doesn’t stand up.
Third, as you know, behaviorism has more to do with the reluctance to theorize and acknowledge thought processes in other animals (i.e., what is in the "black box"). It is not about the specific techniques used to train someone. Sure, Greg used standard conditioning to teach the dogs to go inside the MRI scanner but that is totally beside the point of the study. The behaviorist methods simply take the place of asking the dog to do so in English. You know that. It isn’t an inherent aspect of what Berns was trying to explore.

Fourth, although we always need to be careful when interpreting neuroimaging findings, the fact is that the caudate is an evolutionarily highly conserved structure which has been shown now to be differentially activated in dogs under the same conditions which would activate the caudate in humans – positive experience. That is not definitive but pretty strongly suggestive inferential evidence that there is something shared between dogs and humans.

If we were to take your criticism seriously then we would need to throw out the entire corpus of literature on neuroimaging in humans and other animals. All of neuroimaging work is based on the same logic and inference as Berns used in his study.

Finally, I was struck by one statement you made in your blog about having to recognize and respect the autonomy of dogs. It seems to me that you think dogs are not autonomous and should not be respected as autonomous beings. If I am misinterpreting your statement, let me know.

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Hoss Firooznia’ Comments

Hal wrote:

"[Leslie Irvine] writes, 'If we recognize the intrinsic value of animals’ lives, then it is immoral to keep them for our pleasure, regardless of whether we call them companions or pets.' If, as Dr. Berns claims in the title of his op ed, 'Dogs Are People, Too', how can we justify imprisoning them in our houses...?"

It's not clear to me why "recognizing the intrinsic value of animals' lives" is supposed to be so problematic. Certainly, recognizing animal personhood would proscribe cruel treatment, but it wouldn't necessarily mean an end to companion animals.

Not all legal persons have complete autonomy. After all, we recognize the intrinsic value of human children – we even grant them the legal status of "persons" – yet that doesn't exclude us from "imprisoning them in our houses" and compelling them to do all sorts of things (e.g., eating vegetables, doing chores, going to school) that run counter to their immediate interests.*

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My last words – Thanks to Michael, Lori, Hoss and other thoughtful commentators for prodding us to think more deeply about these issues.