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Legal Rules, Moral Norms and Democratic Principles

The legal status of animals: from perpetrators of wrongs to victims of abuses

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Introductory anecdotes: the saint elephant of Trichur (Kerala), the Japanese dog Hachiko of Tokyo Shibuya Station. The animals of Bremen, the cat who inherited a fortune. Vs. the skinning of horses alive.

The categorization of animals and their differential integration in human social structures has been the object of intense anthropological research. Each culture evolved its own way of distinguishing various statuses among species and of assigning them to particular places in its cosmology. Claude Levi Strauss, Edmund Leach, Mary Douglas, Stanley Tambiah, to name only a few, have elaborated comparative systems of animal classifications and scrutinized their pragmatic consequences for human behavior with respect to hunting, consumption, use, and ritual. Animal species can be endowed by religions and philosophies with a vast range of meanings and values as preys or

predators, evil or holy, edible or non-edible, useful or dangerous, pets or pests, reincarnated humans or mere instinctual machines, among other oppositional systems. The advent of Cartesianism has imposed on Western modernity a model of the animal as a mere machine deprived of consciousness and feelings. Darwinism has contributed to bridge this ontological gap between animals and humans but has, at the same time, provided a strong rationale for the distinction between the two. In Antiquity and Mediaeval Europe, animals were conceptualized in complex semiotic webs rife with ambiguities as messengers of the god(s), embodiment of witchcraft power, objects of worship, or vehicles of curses and blessings.

In contexts in which animals were construed as agencies living within human groups or at the interface between human settlements and outside wilderness, their actions had necessary impacts on the populations and these actions had to be interpreted in view of the current legal rules and moral norms. Their occasional abnormal or destructive behaviors marked individual animals as responsible agencies whose actions were subject to categorization in terms of moral norms and legal rules. Bernard S. Jackson has documented through his early historical research and his more recent semiotic interpretation, the legal status of animal in the Ancient Near East and the Bible, in rabbinic law, Roman law, English law, and other European legal systems. As perpetrators of wrong animals were held responsible in various degrees, with or without intent, and punished accordingly. The historical record shows that trials of animals were a rather common occurrence in Western civilization. Juridical procedures against animals are well documented in Mediaeval and Modern times. Trials of animals also took place in the

United States. The Catholic Church was prone to prosecuting animals which were accused of being manifestations or instruments of diabolic power. They were treated as the witches with whom they were usually associated. The story of a Scot named Banks and his educated horse Moraco has been chronicled by several writers. The performance was observed in Paris in 1601 and thoroughly described by Pierre de l'Estoile. Eventually the man and the horse were tried for witchcraft in Rome and were condemned to be burnt alive.

The semiotic foundation of the social construction of animals as liable agents rests in part on the traditional performances of trained animals which were framed by interpretative narratives. The story of the lion of Androcles is a good example. But folktales and fables have also contributed to the attribution of a sense of moral norms to animals, a quality which justifies the accusation of a deliberate intent to transgress these norms. When elephants in an Indian circus ring perform a Hindu ritual (the *puja*) focused on a Shiva Lingam, the audience accompanies them with religious songs. Mischievous monkeys which harass people in Indian cities are not eliminated as pest but are captured by specialists who release them with all due regards in distant parts of the country. They are often causing fatal accidents but their agency as proxy of Hanuman is considered sacred and righting their wrongs too radically would constitute a still bigger wrong in the context of Hindu cosmology. There has been in human history and probably prehistory a consistent semiotic drive to endow animals with actantial status as subject, helper or opponent rather than as mere passive object of a quest. This semiotic status was a prerequisite for their legal status as punishable perpetrators of wrongs.

A semiotic sea change has occurred during the 20th century to the point that an animal trial would be unthinkable today in any part of the civil global society. A regular monitoring of human deaths caused by tigers in India today, notably but not exclusively in the Sundarban, show that elimination is considered a last resort for confirmed man eaters. The official doctrine is that rehabilitation should be the first line of defense. The same reasoning can be observed with respect to urban dogs which behave aggressively toward people. In all the cases involving tigers or other wild animals, the animals are not blamed but the responsibility is ascribed to deforestation or encroachment on their natural habitat. The guilt ultimately falls on the victims of these attacks because they are often illegal fishermen, hunters, or foresters. More generally, in contemporary civil and democratic global society, the legal status of animals has switched from perpetrators to victims of wrongs. And a corresponding legislation has emerged. It is interesting to identify the conditions of possibility of such a cognitive and moral change of attitude.

The discourses which sustain a legal semiotic landscape – let us call “landscape” the set of laws and court cases which define a norm with respect to a certain cultural territory at a certain time – can be metaphorically conceived as tectonic plates in geology. All discourses are not necessarily logically coherent but their particular semiotic consistencies compete with each other. The Darwinian discourse has normalized the notion that the ultimate *destinateur* of animal behavior is Nature in the form of natural selection. This discourse still competes with the notion of the ladder of beings that had been previously elaborated by natural philosophy. Another underlying discourse is the

Rousseauist argument for the fundamental goodness of nature and its perversion by culture. All these discourses collide at many points of their semiotic interfaces but they concur to exonerate animals from deliberate wrongdoings and to put the blame on those who interfere with nature whenever animals cause harm to humans or their properties. In addition, being at the top of the great chain of beings (whether in a creationist or evolutionist perspective), should imply a moral grandstand that should not stoop to litigate with lower beings.

Modernity has developed a kind of pervasive anxiety of anthropomorphism conceived as an epistemological sin and, from this point of view, construing animals as victims even when they are the perpetrators of wrongs, allows the human subject to transcend their own animality.

The fear of anthropomorphism is a consequence of the discourse of denial and resistance to the naturalization of humans confronted to evolutionary biology and evolutionary psychology or socio-biology, two discourses which tend to blur the distinction between humans and animals.

In contemporary society, the legal status of animals rests at the nexus of several semiotic regimes which exercise contradictory pressures for the definition of norms and their translation into legal rules.

Several remarkable symptoms can be observed.

- Extreme cases of empathy: Irene Peperberg and Alex, an African grey parrot.
- Scientific investigations of the emotions of animals (Marc Bekoff, *The Emotional Lives of Animals*, New World Library, 2007)

- The killing of circus animals on the pretext that they are happier dead than alive in a circus
- The emergence of a moral and legal definition of animal rights (John Sorenson's book on *Animal Rights* (Fernwood Publishing, 2010))
- Jane Goodall's advocacy for the (civil) rights of chimpanzees (Nature, Vol. 466, 8 July 2010, 180-181)
- The referendum in Switzerland asking whether all regions should name a lawyer for animals during judicial proceedings. Had the referendum been won, all regions in the Swiss Confederation would have been forced to assign lawyers to abused animals. Interestingly, the goal was to defend their rights and assumedly the nature and levels of compensation rather than represent them as defendants. This ultimately tends to integrate animals into the democratic process.
- The definition of dolphins (and some other animals endowed with human like cognitive and emotional competencies as "non-human persons". (Science, Vol 327 (26 February 2010), 1070-1071) with reference to a special session at the AAAS meeting in February 2010.