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# Missing the Apes of the Trees for the Forest

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Most importantly, as Maneesha Deckha notes, the legal personhood for animals should be abandoned as a goal because it is steeped in “exclusionary” and “reductive” biases. Throughout its history the concept of personhood, with its rationalist bent, has traditionally excluded women and people of color admitting, until relatively recently, only white men into its fold. While personhood is no longer limited to white men, it will be forever marred by these constitutive prejudices, it is therefore an unlikely vehicle for progressive change.<sup>7</sup>

Ultimately, while Thompson raises an interesting question about how enabling science and law to communicate more effectively might make it easier to secure rights for great apes, the personhood argument upon which he relies, and its ‘like us’ bias, seem to carry more risks than benefits for advancing apes’ and other animals’ rights.

### Notes

1. Gruen, Lori. “Rethinking Personhood: Recognizing sameness and valuing difference,” Paper presented at “Personhood beyond the Human Conference,” Yale University, December 7, 2013. Available at: <https://www.youtube.com/watch?v=MGh5qgZ6wZs>
2. “Objectives,” Nonhuman Rights Project, December 1, 2018. <https://www.nonhumanrights.org/who-we-are/>
3. “Litigation,” Nonhuman Animal Rights Project, December 1, 2018, <https://www.nonhumanrights.org/litigation/>
4. Bryant, Taimie L. “Similarity of Difference as a Basis for Justice: Must Animals Be Like Humans to Be Legally Protected from Humans?” *Law and Contemporary Problems*, vol. 70, n. 1, *Animal Law and Policy*, winter 2007, p. 210. 207-254.
5. See Francione, Gary L. *Animals as Persons: Essays on the Abolition of Animal Exploitation*. New York: Columbia University Press, 2008. Columbia University Press.
6. Gruen, “Rethinking Personhood.” See also, Cupp, Richard L. “Gorilla’s Death Calls for Human Responsibility, not Animal Personhood,” *The Conversation*, June 3, 2016. <https://theconversation.com/gorillas-death-calls-for-human-responsibility-not-animal-personhood-60360>
7. Property Status?” in John Sorenson and Atsuko Matsuoka, eds. *Critical Animal Studies: Toward a Trans-Species Social Justice* (London: Rowman & Littlefield, 2018), pp. 213-214. 209-233.

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## Missing the Apes of the Trees for the Forest

Carlo Alvaro

The debate over ape personhood is of great social and moral importance. For more than twenty-five years, attorney Steven Wise has been arguing that animals who have cognitive complexities similar to humans should be legally granted basic rights of autonomy. In my view, granting personhood status and other rights to great apes are attainable goals. But how should we go about it? My worry is that Thompson’s suggested strategy relies on Kantian ethics, in particular on Kant’s notion of autonomy. In fact, I am worried about Kantian ethics in general because of its influence on morality and ultimately on our legal system. The problem is that Kant’s ethical system is rather strict because, accordingly, only those beings that have a rational nature can constrain us morally. By rational nature, Kant referred to one’s capacity to govern one’s self by autonomous, rational choice. Humans are rational beings and thus are morally important; they are ends-in-themselves because they are autonomous and capable of un-

derstanding and legislating moral laws. Of course, not all humans are rational. There are the so-called marginal cases, small children, the feeble minded, and more, who are not autonomous. We may speculate as to what Kant might have thought of such individuals, but he never addressed the issue. Unfortunately for animals, Kant regarded them as mere means to our ends because they cannot govern themselves by autonomous rational choice. For Kant, Animals are objects without intrinsic moral value. In his *Lecture on Ethics* (1779), Kant said: “But so far as animals are concerned, we have no direct duties. Animals are not self-conscious and are there merely as the means to an end. That end is man” (Kant, 239-241). Consequently, humans do not have direct moral obligations toward animals.

Some Neo-Kantians argue that the view propounded by Kant can still speak in favor of animals. For example, Christine Korsgaard argues that Kant conflates two conceptions of “end-in-itself.” One is the source of normative claims recognized by all rational agents. And the other is someone who is able to give force to a claim by participation in morality. Animals cannot be ends-in-themselves in the second sense because they lack rationality and autonomy. But it does not follow that animals cannot be ends-in-themselves in the first sense: “there is no sense in which they can obligate us” (Korsgaard, 21).

Korsgaard points out that as rational beings, we do not legislate, for example, against being lied to, being injured, being cheated on, etc., *only* because we are autonomous and rational beings, but also – perhaps most importantly – because bad things can assault our animal nature. In other words, “we object to pain and torture or injury because they are bad for us as animal beings” (28). Kant himself held that respect for our rational nature involves respecting our animal nature. This is the ground for his arguments about our duties to ourselves, our self-preservation, the enjoyment of food, and sex. In the *Metaphysics of Morals* (1797), Kant discusses duties to ourselves as animal beings with respect to our animal nature. He covers the duties not to commit suicide, not to maim or disfigure oneself, not to masturbate, and more. Also, in *Religion within the Boundaries of Mere Reason* (1793), Kant argues that our animal nature is one of three “original predispositions to good in human nature” (Kant, 74).

Thus animal nature is important. However, did Kant overlook the implications of his own principle regarding animals? I think not. Having an animal nature may be a sufficient condition for having direct duties to other rational beings – but not a necessary condition. Our animal nature is, after all, “attached” to, comes with, a rational nature; but animals (according to Kant) are completely devoid of a rational nature. There is no clear textual evidence that Kant overlooked the possibility that animal nature be a source of normativity. Furthermore, there is no textual evidence that Kant would regard animal nature *alone* as important enough to regard animals as ends-in-themselves.

The fundamental problem with Kant’s moral view is that it is ultimately concerned with notions of obligation and right conduct. The problem is the very conception of morality as a set of universal and authoritative norms by which all moral agents are categorically obligated to follow. My position is that such a conception of morality is defective; it is the very reason why nowadays animal advocates and lawyers have to

fight for animal rights. Deontology (and consequentialism as well, by the way) tells us to view the world from an individualistic point of view where one calculates what is right. Morality in my view is not about ourselves and how we use our individual reflections to derive categorically imperative norms. Rather, it is about relationship, care for others, and compassion. Thus, I question the concept of granting personhood on the basis of whether the animal in question is human-like.

My feeling about duty morality and the Kantian concept of autonomy is that they seem plausible in theory, but fail in practice. Our moral outlook toward the environment, I want to suggest, has been disciplined by deontic (and utilitarian) principles. Such theories force us to accept the false dichotomy of individuals as rational or not rational; and make us wonder about our rational duty toward others. If we employ this kind of ethic to frame our moral questions, we find ourselves arguing abstractly about duty and rights, while missing other important aspects of morality, such as compassion, care, relationship, and the acquisition of good moral character. Thus, I do not find it surprising that we currently face an environmental crisis and that we have to prove that animals are morally important.

An alternative approach to morality is virtue ethics. Virtue ethics is primarily focused on good moral character. It suggests that we should approach morality by doing what is honest, charitable, compassionate, and do not do what is dishonest, uncharitable, and callous. Knowing right from wrong first requires cultivation of our moral character. We should acquire virtues such as temperance, justice, and compassion, and practice temperate, just, and compassionate acts, at the right time and for the right reason. If the virtue ethics approach is right, we should abandon deontic and consequentialist principles and do what we can to acquire those virtues, and teach them to our children, in the hope that future generations may revert the environmental damage that has already been done and the speciesist bias that society has toward animals. In my view it is a virtuous character – and not the Kantian notion of autonomy – that will enable us to regard all animals as morally important and not as property.

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#### Peter Woodford

Let me first thank Shawn Thompson for his thoughtful and fascinating essay that takes us to the front lines in legal battles over protections for apes. I am grateful for the opportunity to comment, and here I would like to focus on the concept of autonomy and on both the promise and peril of tying this notion too closely to the philosophy of Immanuel Kant in considerations of animal rights.