The Unity of Being: Groundwork for a Theory of Obligations to Other Animals

by

Michelle Man Ha Tse

A thesis submitted in conformity with the requirements for the degree of Master of Laws

Faculty of Law
University of Toronto

© Copyright by Michelle MH Tse 2015
The Unity of Being: Groundwork for a Theory of Obligations to Other Animals

Michelle Man Ha Tse

Master of Laws
Faculty of Law
University of Toronto

2015

Abstract

Is there a condition that we recognize in other animals that we must uphold as having absolute value, and that can limit our conduct as a matter of moral imperative? Animals are excluded from direct concern in Kant’s moral philosophy because they do not share in the condition that grounds the moral imperative, namely, the capacity to determine one’s own ends through reason. The reason we value our capacity for free election, however, is because it is the means by which we, as free beings, become unified with our own end. The condition of absolute worth that we must uphold, therefore, is in the unity of our purpose in our being. Animals, as an end of nature, are unified with their own end in their original condition and, therefore, share in the condition that all rational beings must uphold as an absolute value and an end in itself.
I would like to express my sincere thanks to my supervisor, Professor Peter Benson. I am indebted to him for his generous and exacting guidance through the works of Hegel and Kant, and for his encouragement and wisdom as my mentor and professor. I left every one of our meetings energized, inspired, and daunted by the work ahead of me. The most significant part of those meetings, however, would often only come to me weeks, or months, later, when I was stuck on a problem I could not solve. In these moments, I would recall some question Professor Benson had raised earlier, whose significance I could not grasp at the time, and it was in these questions that I would often find the key to some of my most difficult problems. It was an incredible privilege and a revelation to attend Professor Benson’s lectures on Hegel. His joy and enthusiasm for knowledge and understanding, and his rigorous approach to scholarship, is an example I will strive to emulate in my own studies.

I would also like to thank Professor Angela Fernandez, for agreeing to be the second reader for this thesis, and for organizing the wonderful gatherings of the Jackman Humanities Institute Working Group, Animals in the Law and Humanities, from which I have benefited greatly. I appreciated her warm support throughout the year.

Lastly, I would like to thank Yshia Wallace and River, for everything.

M Tse
August 2015
## Table of Contents

Acknowledgments ................................................................................................................. iii

Table of Contents .................................................................................................................... iv

Introduction ............................................................................................................................. 1

1 Moral Philosophy - Kant ....................................................................................................... 7
   1.1 Freedom and constraint ............................................................................................... 7
   1.2 The presupposition of freedom as a property of the will ........................................... 9
   1.3 The moral law is an entailment of freedom that binds us in so far as we are free .......... 12
   1.4 The absolute value lies in human reason .................................................................... 13
   1.5 Persons and things ..................................................................................................... 15
   1.6 Animals as irrational nature are empty of the absolute value .................................... 16

2 Law ....................................................................................................................................... 18

3 Moral Philosophy – Christine Korsgaard ............................................................................ 36

4 The Unity of Being .............................................................................................................. 42

5 The Formula of the Unity of the Being ............................................................................. 52
   5.1 Violations of the unity of the being .......................................................................... 52
   5.2 Ending life .................................................................................................................. 56
   5.3 Human life ................................................................................................................... 59

Conclusion ............................................................................................................................... 60

Bibliography ............................................................................................................................ 64
Introduction

Can we be restrained in our action toward the other animals, not as a requirement flowing from our obligations to other persons or from feelings of compassion or mercy, but as a matter of moral imperative arising from the recognition in the constitution of an animal of something that we must value, and that makes it in itself an object of respect?

Why should it worry us how we treat those creatures among us who could have no recourse against our absolute power; creatures, as Hume says, who are “possessed of such inferior strength, both of body and mind, that they [are] incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment”? And furthermore, why would their interests concern us when we are not assured that they would return the kindness were our positions to be reversed? It is simply because as human beings with the moral powers of reason, we live according to law rather than according to our power and desire. So we are interested in the principle of our actions and, in fact, we would lose our own moral status if we were not.

In North America and much of the world, human beings conduct themselves in relation to animals under the notion that animals may be used merely as a means to an end that we have chosen for them, whether as mass produced commodities for the food and fibre industry, as objects for research and experimentation, as characters for display and entertainment, or as labourers and companions. Animals are treated, in other words, as things. They are locations in which we enact our own will. It is morally permissible to use things as a means to our ends because things are conceptually empty of any morally relevant value. Things may, therefore, be occupied by the human will without contradiction. How did we arrive at the conception of animals as things, and is our conception consistent with what we must uphold as an absolute value under our moral law?

As it must be with any kind of being, we would only be justified in our present actions towards the animals we use if they are the things that we believe them to be. The conception of animals as things we may occupy for our own ends is firmly established in our moral and legal systems. Yet we are not untroubled in our belief. However well settled these beliefs, there is a doubt we share that is awakened by the fact of animal suffering, when we are made aware of it. Our doubts have only deepened as the scale and intensity of animal exploitation grows, and as we begin to learn more about the complex mental and emotional lives of animals. These two factors — the unconstrained and relentless human use of animal lives, and the doubts arising from the impact of our actions — arouse what Kant calls our “moral feeling”. Kant tells us that at the foundation of our moral powers of reason as human beings lies an antecedent predisposition to “moral feeling”, that makes us interested in the moral character of our actions in the first place, and susceptible to the thought of duty. Our natural disposition for moral feeling is the essence of our humanity. It is what gives us the moral powers by virtue of which are ends in ourselves, and objects of respect. Without this disposition to moral feeling, Kant tells us, we would be “morally dead”, and “humanity would dissolve [...] into mere animality and be mixed irretrievably with the mass of other natural beings.”

In other words, without moral feeling we would not be human. We would lose the moral powers that constitute humanity, and become indistinguishable from the animal nature from which we have set ourselves apart. Without these moral powers we would lose our own moral standing. We could claim no rights and receive no duties under the moral law. We are thus compelled, if we are human beings with moral powers, to assure ourselves that the ground of our conduct

---


4 Kant, *Metaphysics*, *ibid* at 6:400.
towards other beings is consistent with our own moral law, and not merely driven by our inclinations and desires. We must ask ourselves whether there is some condition that we must respect in the being of the animal that can limit our actions as a matter of moral imperative, or are they really just things that we are entitled to subject to our will as far as we are able? We are moved, as human beings, to find the reason in our actions and beliefs.

A moral imperative is an assertion that there is something that we must uphold as having absolute value, and can, therefore, limit our actions. Thus, the moral imperative must have as its foundation a condition or capacity that every person must respect as a matter of necessity. For this reason, the possibility of a moral imperative presents a conundrum for beings that take themselves to be free. Freedom here refers to freedom in the Kantian conception, which is defined by the capacity to determine one’s actions through reason alone, unconstrained by external causes such as inclination and desire. This kind of freedom makes it possible to act from respect for the moral law in the first place, and is what gives our conduct moral meaning. Yet this same freedom means that the choices of such a being cannot be externally necessitated.

Thus, our moral obligation, whether to each other as human beings or to the other animals, is not only a question about what we value, it is also essentially a question about necessitation. The moral imperative restricting our conduct towards other animals, if it exists, must be grounded in our belief that there is a condition within the animal that we must uphold as having absolute value.

This is why the moral imperative cannot be established by focusing solely on building the case that other animals share important traits and capacities with humanity, such as the capacity for sentience, intelligence, emotion, language, or for complex social relations. We may value these traits or capacities because we believe them to be essentially human, or for some other reason. Their presence in other living beings may arouse our moral feeling and motivate us to attend to the moral quality of our actions in the first place. Insight into our commonality with other living beings can also help us determine which beings come under the condition of absolute value once it has been identified. Shared traits and capacities by themselves are not, however, the basis for the moral imperative. In order to ground the moral imperative regarding our conduct toward other animals, the condition that limits our actions must be something that we not only share with other animals, but also something that necessitates us as free and rational beings. If the
conditions we share with the other animals do not necessitate us, then the moral obligation is not established, and evidence of our similarities cannot ground the moral imperative by cumulative force.

Animals are presently excluded from the obligations we owe to our fellow human beings because the protections of the moral law are believed to rest on conditions that are unique to humanity. Thus, our relationship to animals is not directly governed by any traditional theory of moral law. It simply lies in the lawless region where our obligations to each other come to an end. If we are governed at all in our treatment of animals, it is only by the dictates of our individual conscience. No moral necessity burdens our conduct. We have an abiding sense, however, that our conduct towards animals implicates us morally, and should be subject to some restraint. It is recognized both morally and legally that we must refrain from acts of violence and cruelty towards animals that would be morally corrosive to our relations with other human beings, but we are precluded by our moral theory from recognizing a direct moral duty to animals themselves. In other words, while our moral sense causes us to question our absolute entitlement to animal lives, it has not found an answer in reason for restraining our use on the grounds of protecting an animal’s own interests. Laurence Tribe has described the difficulty of formulating our intuition regarding the treatment of other animals into a rational argument:

I certainly haven’t solved the problem of how best to persuade others to share one’s deep intuition that chimps and dolphins and dogs and cats are infinitely precious — like ourselves, and that it is unjust, that it is obscene and evil to treat them as things that anyone can really own. […] But how do we persuade people to view the situation that way? How do we persuade people that these creatures have rights and must be allowed, through others as their spokespersons, to press moral claims? I don’t claim to have figured that out. The secret to making that case may well reside at a level deeper than rational argument and deeper than
Our moral sense remains un-actualized in reason because, while we have an intuition that other animals share an essential condition with us that we value, and that should be recognized in our actions, we are having trouble identifying what it is that we value in other beings that we must also uphold as an absolute value for ourselves.

The purpose of this paper is to begin the task of identifying what it is that we must value in other animals, and to articulate the form of reason driving our intuition. Its concern will be to delve more deeply into what we believe to be of absolute value in ourselves, both as distinct from and in common with other beings, as opposed to searching for a new value that we ought to uphold. It will critically examine ideas in moral philosophy and statements of law in order to bring our beliefs to light. The objective is to arrive at an understanding of what we must value in ourselves that is closer to our intuition, so that we can formulate a more satisfying foundation for our rights and obligations that honors both the unique value we have to ourselves, and the common value we share with other beings.

The starting point for this investigation is Kant’s account of the moral law. Kant’s account first of all helps us understand the problem of moral necessitation and how it is that we come to be necessitated. He defines what a moral imperative must be. This framework allows us to assess his solution to the problem, and guides us in identifying the moral imperative that can limit our actions towards animals, if it exists. Second, we see in Kant’s account the reasoning by which animals come to be excluded from direct moral consideration. For Kant, the condition that we must uphold as an absolute value and an end in itself is found in human reason and, specifically, in our capacity as rational beings to freely determine our own ends. Humanity, as the source of the final end is, for this reason, an end in itself. It is this conclusion that by necessity renders all of non-humanity and irrational nature empty of absolute value as an end in itself. From this perspective, animals and all irrational nature are only a means to an end, a vast unoccupied field

---

in which the human will can be enacted without contradiction. Third, we see in Kant’s account our own beliefs about the condition we value absolutely, as expressed in both our moral and legal consciousness. The moral position of animals as merely things that may be used as a means to an end is reflected almost perfectly in the position of animals under the law. We also find reflected in the law, the competing conviction that animals are something more than things, and that our treatment of them implicates us morally. The tension between these views destabilizes and worries the law governing our relationship to animals, but does not supply the grounds for restructuring its basic framework of obligations.

Part one of this paper examines Kant’s account of the moral law and of our obligations to other animals. In part two of this paper, we examine the position of animals in the law through a Kantian lens. The goal in these sections is to understand the reasoning by which animals have been excluded from direct moral and legal consideration, and the full implication of this exclusion for both human beings and for animal beings. The method is to use these accounts to reveal our own beliefs about what it is that we must value in ourselves and in other animals.

The remainder of the paper turns to the task of identifying what it is in the constitution of the animal that we must uphold as a condition of absolute worth, if it exists. Part three of this paper will examine the work of the Kantian philosopher, Christine Korsgaard, toward this goal. In Korsgaard’s account, the condition that we must uphold as an absolute value is a final good, which lies in the evaluative capacity of both animal and rational nature. While this account expands the source of absolute value to include animal nature, it does not satisfy the requirement of necessitation because it does not explain why we are bound to uphold the good as valued by our animal natures as a matter of necessity.

Part four of this paper identifies the condition of absolute worth that every person must uphold as a matter of necessity, and the source of dignity, as the unity of the being with its own end that exists in all animal nature and rational nature. This is not a value that we must adopt anew, but a value that we already uphold when we uphold our capacity to freely determine our own ends. This is because our capacity to set ends has value by virtue of its utility as the means by which we become unified with our own end, and not because it is a final end in itself. We uphold our freedom as a practical matter in order to uphold our unity with our own end. The fundamental difference between human beings and animal beings lies in how they come to be unified with
their own end. Human beings come into the world without a predetermined end, and are in this sense unfinished. We must give final ends to ourselves, and in this way complete our stories. We do this by choosing under freedom. Animal beings, on the other hand, come into the world wholly merged with their own fixed end in their original condition. As a merger, an animal is its end. Kant tells us that the condition of living organisms as an end is something we must presuppose in order to think about their possibility. A living organism is something we can only think of as the product of a causality that we cannot comprehend. We must presuppose, for these practical reasons, that a living organism is an end of nature, or a natural purpose. The idea of an intrinsic and inalienable purpose within, or expressed as, an animal being repudiates the notion that animals are empty things that can be occupied by the human will without contradiction. It is through human use and occupation that the unified purpose of the animal is displaced or extinguished. We make animals into things through our occupation of them. The condition of emptiness is, therefore, an effect of human use, so it cannot serve as the justification for human use.

Part five of this paper provides a formulation of the moral imperative that limits human action towards other animals, as grounded by the absolute value of the unity of the being with its own end. In order to uphold this condition, we must never act in a way that would sever a being from its own end through occupation or use. This means that every person is prohibited from turning animals and human beings into things. The final part of this paper will explore the practical applications of this moral imperative.

1 Moral Philosophy - Kant

1.1 Freedom and constraint

The historical exclusion of animals from the moral law has not been the result of a specific theory or serious reflection about the lives of animals and how we should ethically relate to
them.\textsuperscript{6} Their exclusion results from the fact that the rights and obligations of our human moral systems rest on conditions that cannot be naturally extended to other animals. Thus, in order to understand how animals have been excluded from the moral law, we must understand how we have arrived at the conditions that ground our moral obligations, and the criteria that these conditions must meet. The question of what grounds our moral obligations, whether to our fellow human beings or to other animals, is bound up with the question of how it is possible for us to be morally obligated at all. We must first have an idea about \textit{how} we can be bound before we can evaluate or propose ideas about \textit{what} binds us. Only then can we discover the scope of our obligation, if it exists. Kant’s account of the moral law provides a starting point for an inquiry into our obligations to animals because it describes the nature of the problem of moral necessitation and what is required to overcome it. This allows us to understand and evaluate Kant’s account in light of the concerns that he was addressing, and shows us the requirements that any revised account must meet, should Kant’s account be found wanting.

The question of how we are bound is at a deeper level just a question about how we are free. Freedom, in Kant’s conception, is the capacity to determine our own ends through reason alone, unconstrained by external forces such as inclinations or desires. We can only act from respect for moral law if we are free in this sense, as rational beings and the authors of our own actions. Freedom is, therefore, what makes it possible for us to be governed by law. It is what makes morality possible. At the same time, freedom is what makes the possibility of the moral imperative a problem. For Kant, a categorical moral imperative is capable of necessitating the will of free and rational beings, with “no free discretion with regard to the opposite”.\textsuperscript{7} But how is it possible to necessitate beings who do not take themselves to be necessitated? How, in other words, is it possible to consider ourselves “as free in acting, and thus still take ourselves to be subject to certain laws”?\textsuperscript{8} The idea of our freedom creates a conundrum for thinking about the possibility of the moral imperative. Our obligation under moral law is only possible if we are


\textsuperscript{8} \textit{Ibid} at 4:450, 4:420.
free. But our freedom seems to make it impossible for us to be externally necessitated. For the
being that is free to choose how to act, the predicament lies in determining whether there is some
way she must act, whether there is some value or standard that she must uphold. From this view,
freedom is a sea where there is nowhere to stand and nothing we can hold that does not give way.
It is our ancient anxiety. Kant writes that reason “can see neither the necessity of what exists, or
what happens, nor of what ought to happen, unless a condition under which it exists, or happens,
or ought to happen, is available as its foundation. […] That is why it restlessly seeks the
unconditionally necessary”.<sup>9</sup> If the moral imperative is possible, it must be grounded in a
condition of necessity. This is the central problem that Kant attempts to address in the
Groundwork, and his account of the condition that grounds the moral law must be understood as
a search for necessity.

The task of identifying the condition that grounds the moral law is, therefore, not just a problem
of identifying some condition or quality that we should uphold because it is important to us,
whether because it is uniquely or essentially human, or for some other reason. It is unavoidably
also a problem of the possibility of necessity. The problem of constraint is, therefore, a problem
of freedom. But if freedom is the problem, then it is also the solution. As Kant shows us, the
shape of freedom and its limits are the same. His solution to the conundrum of freedom lies in
the insight that freedom in its full conception contains both a negative and a positive aspect. It
not only releases us from determination by alien causes, it entails obligations that bind us in so
far as we are free. The moral imperative that binds free beings, therefore, must lie in the
conception of freedom itself.

1.2 The presupposition of freedom as a property of the will

The insight that freedom is the force that can bind us does not by itself allow Kant to prove that
the moral imperative is possible, because it does not prove that our freedom is real. Kant tells us
that it is beyond the boundaries of human reason to explain or fathom how the freedom of the
will is possible, or to comprehend how the categorical imperative, as a “practical unconditional

<sup>9</sup> Ibid at 4:463.
necessity”, is possible. The moral law cannot, therefore, rest on the reality of our freedom as an empirical matter. Our inability to prove that our freedom is “something actual” in the empirical sense does not end our enquiry, however, because our experience of the world goes beyond the world of appearances.

Our experience of freedom arises from a feature of the human condition that allows us to perceive ourselves as separate from the immediate experience of the body, and to remove ourselves to an abstract mental realm. In his study of brain function and structure, psychiatrist, Iain McGilchrist, writes that our capacity to stand apart from what is given evolved with the expansion of the frontal lobes of the human brain:

The defining features of the human condition can all be traced to our ability to stand back from the world, from our selves and from the immediacy of experience. This enables us to plan, to think flexibly and inventively, and, in brief, to take control of the world around us rather than simply respond to it passively. This distance, this ability to rise above the world in which we live, has been made possible by the evolution of the frontal lobes.

This dissociative power gives us the capacity to cognize the world in two fundamentally different ways. As members of the sensuous world, we are determined by the laws of nature. As members of the “world of understanding”, we are detached from the sensuous world, and we experience ourselves as free. Our freedom in this abstract realm is a form of alienation from the things of experience, including ourselves in so far as we exist in time and space and are subject to the desires and impulses of the body.

---

10 Ibid at 4:458-4:463.
11 Ibid at 4:463.
13 Kant, Groundwork, supra note 7 at 4:451-452.
These different standpoints of experience are described by Kant, in the *Critique of Pure Reason*, respectively, as the phenomenal world, in which we passively receive the appearances or objects of the sensible world, and the noumenal world, in which “we regard ourselves as the first causes or ultimate sources of these inner appearances.”¹⁴ This distinction also appears in the *Critique of Practical Reason*, as the difference between the sensuous nature under empirical conditions, and the supersensuous nature, “not empirically given yet possible through freedom”.¹⁵ Kant describes this difference as one “… between the laws of a system of nature to which the will is subject and a system of nature which is subject to the will… in the latter, the will is the cause of the objects.”¹⁶ Human beings, as noumenon, are an unconditioned cause of its objects, and in this way we are free.

Human freedom, and the freedom of all rational beings, therefore, is “an object of thought or understanding”, rather than “an object of knowledge” in the phenomenal world or the world of sense whose objective reality can be explained as an empirical matter or proved by pure reason.¹⁷ Freedom is, therefore, only the idea of freedom. But it must be presupposed for practical purposes that freedom is a property of our will, on the grounds that every rational being must regard itself as having a will that is free.¹⁸ Kant asserts that every rational being is conscious of its reason as an independent causality with regard to its actions. He states that “[r]eason must view herself as the authoress of her principles, independent of alien influences”.¹⁹ In this practical sense, a rational being “cannot act otherwise than under the idea of freedom”.²⁰ She must regard herself as free and affirm that her freedom is real. And in so far as she takes herself to be free, she is bound by what freedom entails. Thus, the categorical imperative is possible, Kant explains, “to the extent that one can state the one presupposition on which alone it is


¹⁶ *Ibid*.


¹⁸ Kant, *Groundwork, ibid* at 4:447-448.

¹⁹ *Ibid* at 4:448.

²⁰ *Ibid*.
possible, namely the idea of freedom, and likewise that one can also see the necessity of this presupposition, which is sufficient for the practical use of reason, i.e., for the conviction of the validity of this imperative, and hence of the moral law as well…”

1.3 The moral law is an entailment of freedom that binds us in so far as we are free

The idea of the freedom of the will binds us in its concept, and it also binds us as a condition that we cannot contradict in our willing. The idea of governance by law belongs to the concept of the free will. Kant explains that the will is “a kind of causality of living beings in so far as they are rational.” As a causality, the concept of the will contains within it the idea of laws by which results are produced. The will can be understood as, “thought as a capacity to determine itself to action in conformity with the representation of certain laws.” A free will is, therefore, not lawless by virtue of its freedom. It must instead be “a law to itself”. If we take ourselves to be free, then we must take ourselves to come under laws that we make for ourselves. For this reason, “a free will and a will under moral laws are one and the same”, and “if freedom of the will is presupposed, morality along with its principle follows from it, by mere analysis of its concept.” Kant is now able to move us from the concept of the moral law to the requirement for universalization. The first step in this move is found in the concept of the moral law. The moral law is only a law that our maxims for acting must necessarily conform to. So we know that the moral law must hold for the maxims of every rational being. It must, in other words, be universal. Thus, the single entailment of the conception of the free will is that we must act only

21 Ibid at 4:461.

22 Ibid at 4:446.

23 Ibid at 4:427.

24 Ibid at 4:440, 4:447.

25 Ibid at 4:447.
on maxims that we can will as a universal law, and it is from this imperative that all imperatives of duty can be derived.\textsuperscript{26}

From this formulation of the categorical imperative we can now generate another formulation of the categorical imperative to address the specific question of whether there is a supreme limiting condition on our actions. In order to hold universally for all rational beings, the condition that limits all action must first of all be an absolute value, rather than a conditional or hypothetical object that derives its value from some further end. It must be its own final end, serving no further end. It must be, in other words, an end in itself, “something the existence of which in itself has an absolute worth”.\textsuperscript{27} Only then can the ground of a possible categorical imperative “lie in it, and only in it alone.”\textsuperscript{28} This means that no other value can be put in the place of it. If we uphold such a condition, we do so for itself and not as means for achieving any other end. But if we are bound to uphold such a condition, it will be for a second reason, namely, that it implicates our freedom. It must be a condition that every rational being must uphold \textit{in so far as they take themselves to be free}.\textsuperscript{29} Thus, the categorical imperative that limits our actions as rational beings must rest on a condition of absolute value, and that condition must be one that we must uphold as an expression of our freedom.

1.4 The absolute value lies in human reason

In Kant’s conception, the final end does not lie in any particular thing or condition. Final ends exist only when they are determined as such by the rational will.\textsuperscript{30} Thus, the final end can only be identified in its source: the rational nature. In this world, rational nature belongs only to human beings. Only human beings, according to Kant, have the capacity to determine its own

\textsuperscript{26} \textit{Ibid} at 4:421, 4:446-447.

\textsuperscript{27} \textit{Ibid} 4:428.

\textsuperscript{28} \textit{Ibid}.

\textsuperscript{29} \textit{Ibid} at 4:429.

ends through reason, unconditioned by any external cause. Humanity is, therefore, an end in itself because it is the source of all final ends. As Kant writes:

Now in this world of ours there is only one kind of beings with a causality that is teleological, i.e., directed to purposes, but also so constituted that the law in terms of which these beings must determine their purposes is presented by these very beings as unconditioned and independent of conditions in nature, and yet necessary in itself. That being is man, but man considered as noumenon. Man is the only natural being in whom we can nonetheless cognize, as part of his own constitution, a supersensible ability (freedom), and even cognize the law and the object of this causality, the object that this being can set before itself as its highest purpose […]

His existence itself has the highest purpose within it; and to this purpose he can subject all of nature as far as he is able, … Now if things in the world, which are dependent beings with regard to their existence, require a supreme cause that acts in terms of purposes, then man is the final purpose of creation. For without man the chain of mutually subordinated purposes would not have a complete basis. Only in man, and even in him only as moral subject, do we find unconditioned legislation regarding purposes. It is this legislation, therefore, which alone enables man to be a final purpose to which all of nature is teleologically subordinated.”

Kant’s account of the final end rests on the claim that only through determination by reason can the final end exist, and secondly, that in this world, only human beings by virtue of their rational nature can be the source of the final end. Our status as the source of the final end, and as an end in ourselves, is a condition that we are bound to uphold, for we cannot repudiate this condition without at the same time contradicting our rational nature. Every rational being must, therefore, uphold humanity as an end in itself, for doing so is an expression of our freedom. The status of

humanity as such serves then as the ground for a second formulation of the categorical imperative: the formula of humanity. Under this imperative, upholding the condition of humanity as an end in itself means that we must be prohibited from acting on any maxim that would allow us to use humanity as merely a means to an end. Thus, Kant’s formulation of the imperative is: “So act that you use humanity in your own person as well as in the person of any other, always at the same time as an end, never merely as a means.”

1.5 Persons and things

By defining rational nature as the only condition of absolute value, Kant’s account necessarily identifies irrational nature as having only conditional value and, therefore, as merely a means to an end. The value assigned to rational nature is what delineates the boundary between persons and things. As an end in itself, rational beings cannot be used as merely a means to an end. Its status as a final end necessarily means that “no other end can be put in its place.” Such beings are, therefore, called persons and their status as “an object of respect” limits all choice in how they can be treated. By contrast, non-rational beings that lack the capacity for autonomous self-determination are of only conditional value as a means to an end that is not its own. Such beings are, therefore, called things because another end can be put in its place without contradiction. Kant thinks that we may, therefore, use such beings as merely a means to an end:

Beings whose existence rests not indeed on our will but on nature, if they are non-rational beings, still have only a relative worth, as means, and are therefore called things, whereas rational beings are called persons, because their nature already marks them out as ends in themselves, i.e., as something that may not be used

32 Kant, Groundwork, supra note 7 at 4:429.
33 Ibid.
34 Ibid at 4:428.
merely as a means, and hence to that extent limits all choice (and is an object of respect).\textsuperscript{35}

1.6 Animals as irrational nature are empty of the absolute value

So where does this leave nonhuman animals, beings who do not share in rational nature,\textsuperscript{36} and yet do not seem to us to be merely things in the way that inanimate objects are things; the enigmatic beings that Luc Ferry called, “Neither Man Nor Stone”?\textsuperscript{37} As Ferry observed, the truth of their suffering is evidence that removes them from the category of things, and allows us to see that “the animal, analogon of a free being, appears to bear a certain relationship to us, whether we like it or not.”\textsuperscript{38} Kant also recognizes that animals are not merely things. In his lectures, Kant tells us that animals are analogues of humanity, and that cruel and inhumane treatment of animals damages our own humanity and our moral relations with other persons.\textsuperscript{39} The fact that animals can move us morally makes them distinctly different from mere thing. Yet, in Kant’s account, animals, as irrational nature, must nonetheless fall under the category of things.

A thing is simply an object or being that can be used or occupied to serve an alien purpose without contraction. Things by definition cannot be violated or interfered with, as there is nothing in a thing itself that resists or contradicts its use or occupation. They are conceptually empty of moral value in themselves. Animals are things in Kant’s account because they do not have the capacity to freely set their own ends, so they do not have absolute value as an end in

\textsuperscript{35} Ibid.

\textsuperscript{36} Allen W Wood and Onora O’Neill, “Kant on Duties Regarding Nonrational Nature” (1998) 72 Proceedings of the Aristotelian Society, Supplementary Volumes 189 at 200-201 [Wood & O’Neill], argues that animals have a share in “fragments or underpinnings” of rationality that we are bound to respect.

\textsuperscript{37} Luc Ferry, \textit{The New Ecological Order}, translated by Carol Volk (Chicago: University of Chicago, 1995) at 43 [Ferry]

\textsuperscript{38} Ibid at 46.

themselves. Thus, they are empty of the only condition that can constrain our action and prohibit us from using them merely as a means to an end.\textsuperscript{40}

By locating absolute value solely in human reason, Kant’s account effectively empties all animals of any absolute value in itself that could constrain human action, and makes all animals available for occupation by the human will. It establishes the prerogative of humanity, as rational nature, to give its form to all sensuous nature including its own sensuous nature.

The notion that animals are empty is not, however, a description of reality. Animals are not literally empty, in the way that say, a car without a driver is empty, or a light without a light bulb is empty. The conception of animals as empty is a permission to \textit{take them to be empty}. It describes an entitlement to treat the content of an animal as though it does not count. Our conception of animals as things that may be occupied without contradiction simply authorizes the destruction of any content that contradicts the expression of our will. This idea of the emptiness of animals, and what it means precisely to use an animal under this line of thinking, can be illuminated by its explicit expression in Hegel’s philosophy, which recognizes that the occupation of living beings requires us to destroy what it is. Occupation is recognized as eviction, which necessarily implies the opposite of emptiness. According to Hegel, every person has the absolute right by virtue of our freedom to put his “will into any and every thing”,\textsuperscript{41} “to destroy the thing and transform it into his own”, because a thing does not have a free will and, therefore, “has no end in itself”.\textsuperscript{42} Occupation, Hegel tells us, is “the pre-eminence of my will over the thing … made manifest when I endow the thing with some purpose not directly its own. When the living thing becomes my property, I give to it a soul other than the one it had before, I give to it my soul.”\textsuperscript{43}

We will explore more fully the meaning of this privilege we are given under the moral law to occupy another living being in Part IV. The point in this section was simply to use Kant’s moral philosophy to help us understand how it is that we come to be morally bound, and the condition

\textsuperscript{40} Kant, \textit{Metaphysics, supra} note 7 at 6:442; Kant, \textit{Critique of Practical Reason, supra} note 15.


\textsuperscript{42} \textit{Ibid} at para 44 (Additions).

\textsuperscript{43} \textit{Ibid} at para 44 (Additions), and also paras 51, 52.
of absolute value that can limit our actions. We saw that in Kant’s account, the absolute value that we must uphold in so far as we are free and rational beings is humanity as the source of absolute value in the world, by virtue of its capacity to determine its own ends. By positing human reason as the only source of absolute value in the world, Kant’s philosophy denies every other animal, as part of non-humanity, absolute value as an end in itself, and excludes them from direct moral consideration. To put it in a more informal way, that may better reflect commonly held views, it is only the capacity for reason in another being that limits our actions. Thus, we may use other animals and all non-humanity for our own ends because we have the capacity for reason and they do not. It is the prerogative of reason to impose its form on irrational nature. As we see in the next part, these conceptions are expressed in the position of animals under the law.

2 Law

The position of animals in the law can be seen as a practical fulfillment of Kant’s ethical ideas about the moral status of animals. Examining the law through a Kantian lens not only gives us a deeper understanding of the law, it reveals our public commitment to the ideas that Kant articulates about the place of animals in our moral systems. It brings our beliefs further to light.

Legally and morally speaking, animals are considered things that human beings are entitled to use as merely a means to an end. The privilege granted to us by law to use an animal as an instrument for our own ends, contains within it the freedom to compromise or sacrifice the welfare of an animal where necessary to facilitate that use. This privilege is maintained by a legal position of non-interference, exemplified in the exemptions removing the vast majority of animal harm from coverage under anti-cruelty laws. The offence of cruelty in most jurisdictions in Canada and the United States has generally been directed at the infliction of pain, suffering, or injury on an animal unnecessarily or without justification. What is necessary, of course, can only be defined relative to some end or purpose. What may be considered necessary depends on

---

the purpose that is being pursued. Necessity under these provisions does not, however, explicitly control what kind of purpose may be legitimately pursued. As Lamer JA wrote in *R v Menard*:

> “Without necessity” does not mean that man, when a thing is susceptible of causing pain to an animal, must abstain unless it be necessary, but means that man in the pursuit of his purposes as a superior being, in the pursuit of his well-being, is obliged not to inflict on animals pain, suffering or injury which is not inevitable taking into account the purpose sought and the circumstances of the particular case. In effect, even if it not be necessary for man to eat meat and if he could abstain from doing so, as many in fact do, it is the privilege of man to eat it.\(^{45}\)

Since almost every human purpose, except a depraved or senseless purposes, is seen as a valid justification for compromising or sacrificing an animal’s welfare, almost every human use of animals is exempted from the legal prohibition against cruel or inhumane treatment of animals. So defined, the law creates a wide sphere of animal use that is privately regulated and effectively free from state interference on matters of animal welfare. What can we make of our apparent concern for animal welfare in light of this privilege of unconstrained use?

In both our moral and legal systems, the welfare of an animal is recognized as an important concern, but it is not because animals are in themselves objects of respect. What the law prohibits are acts of cruelty that are unnecessary to further any valid purpose. This reduces the application of such prohibitions to a small group of situations in which an animal is harmed for irrational or sadistic reasons, or for some other socially unacceptable reason. The limit on human action towards animals in law, therefore, is defined not by the impact of an action on the welfare of an animal, but by the reasons or the purpose motivating them. The offence of animal cruelty is not directed at acts of harm to animals per se, but at prohibiting the enactment of particular motivations or principles of action. Thus, legal prohibitions on animal cruelty only appear to be directly concerned with the welfare of animals, but this appearance is illusory. Our susceptibility

\(^{45}\) *R v Menard* (1978), 43 CCC (2d) 458 (Que CA) at para 51.
to this illusion is recognized by Kant, in *The Doctrine of Virtue*, as the result of an “amphiboly in [our] concepts of reflection”, that confuses our duties with regard to other beings for a duty to those beings.”

As Kant explains, there is and can be no direct duty to other animals as irrational beings. There is only a direct duty we owe to ourselves not to corrode our natural sympathetic dispositions, and thereby oppose our humanity, by engaging in acts of cruelty. Kant’s account of our duties to ourselves and our duties in regard to animals helps explain the rationale underlying the prohibition against acts of wanton cruelty, and why anti-cruelty prohibitions are directed at an actor’s motivating principle of action, rather than at the welfare of animals per se.

If there is a belief that the law protects the welfare of animals in itself, then, as Kant says, this belief is likely to be mistaken. In Canada and the United States, there can be found in most jurisdictions laws that prohibit a person from committing acts of animal cruelty, generally defined as causing unnecessary pain and suffering to an animal. Yet virtually every creature raised, captured, used or killed by human beings for industrial or institutional purposes is effectively excluded from the protection of such provisions, either by exception, or because the harmful act in question is regarded as necessary to achieve some socially approved purpose.

Where regulatory standards for animal handling have been enacted for specific situations, such as the transport and slaughter of farm animals, they are so minimal, and apply to a context that is so completely destructive of an animal’s welfare, that it is difficult to characterize such requirements as welfare measures except in the most vitiated sense. Thus, in Canada, an animal may be subjected to electrical prods during the slaughter process, but not to the “face, genital, or anal region”; a food animal awaiting slaughter should have access to potable water; animals in transit should be able to stand in a natural position without touching a deck or a roof, and; animals may be beaten during loading and unloading, but not “in a way likely to cause injury or undue suffering.”

---


48 *Ibid* at s 65.

49 *Health of Animals Regulations*, CRC, c 296, 142(a).

50 *Ibid* at s 139.
The illusory quality of the protections available to animals under anti-cruelty or animal welfare laws is most vivid in respect of farmed animals. Over 9 billion animals die in food production in the United States every year, compared with approximately 218 million animals killed in research, testing, education, fur production, hunting and at animal shelters, combined.\(^{51}\) Of all animals that are used by humans in the United States, including companion animals, 98 percent are farm animals. As Wolfson and Sullivan have observed, given these numbers, it is fair to say that from a statistical perspective, “all animals are farmed animals.”\(^{52}\) Yet, contrary to general belief, farmed animals have no effective protection under the law. Legally speaking, “they simply do not exist.”\(^{53}\)

There is no federal law governing the treatment of animals on a farm in the United States. The \textit{Animal Welfare Act}, which is the primary federal legislation regulating minimum standards for the treatment of animals in interstate or foreign commerce in the United States, excludes all farm animals.\(^{54}\) Two federal laws apply to the treatment of farm animals outside the farm. The \textit{Humane Methods of Slaughter Act} requires that all livestock for slaughter, except livestock slaughtered in accordance with religious requirements, be “rendered insensible to pain” before being “shackled, hoisted, thrown, cast, or cut”.\(^{55}\) Birds, however, which represent more than 95 percent of farm animals slaughtered in the United States, are excluded from the humane slaughter requirements of the \textit{Act}.\(^{56}\) The other federal law applies to the transportation of farm animals. The \textit{Twenty-Eight Hour Law} establishes the maximum period that animals may be in transport before unloading, rest, watering and feeding, although this period may be extended to


\(^{52}\) Wolfson & Sullivan, \textit{ibid} at 206; Matheny & Leahy, \textit{ibid} at 325.

\(^{53}\) Wolfson & Sullivan, \textit{ibid}.

\(^{54}\) 7 USC § 2132(g) (definition of “animal”).

\(^{55}\) 7 USC § 1902.

\(^{56}\) Matheny & Leahy, \textit{supra} note 51 at 334; Wolfson & Sullivan, \textit{supra} note 51 at 207-208.
36 hours on request, or because of accidents.\textsuperscript{57} These transport restrictions do not apply if the transport carrier contains water, food, and an opportunity to rest.\textsuperscript{58} Like the \textit{Humane Methods of Slaughter Act}, the \textit{Twenty-Eight Hour Law} has been interpreted to exclude poultry, and, until 2006, did not apply to the transport of animals by trucks, the mode by which 95 percent of all farm animals are transported.\textsuperscript{59}

Criminal anti-cruelty statutes exist at the state level, which prohibit acts of cruelty and the neglect of an animal in one’s care. The majority of these statutes exclude conduct toward animals that are part of customary practices in farming, and in other contexts, such as research, hunting, and veterinary practices.\textsuperscript{60} These exemptions appear to be broad enough to exclude from prosecution “virtually any farming practice, no matter how painful to animals”, so long as it has been adopted by the farming industry.\textsuperscript{61} This includes practices that have been adopted across the farm animal industry in large factory farming operations, where animals are held in intense confinement systems in high densities, and are kept alive and economically productive in noxious, barren environments by the use of genetic modifications, drugs and technology.\textsuperscript{62} As Matheny and Leahy report, the vast majority of farm animals in the United States never spend time outdoors; “they spend their entire lives overcrowded with tens of thousands of other animals, living in their own manure, in barren sheds. Most farm animals cannot engage in natural behaviors such as foraging, perching, nesting, rooting, and mating, and many are not even able to turn around or fully stretch their limbs.”\textsuperscript{63} Widespread farming practices have significantly

\textsuperscript{57} 49 USC § 80502(a).

\textsuperscript{58} 49 USC § 80502(c).

\textsuperscript{59} Matheny & Leahy, \textit{supra} note 51 at 335; Joan E Schaffner, \textit{An Introduction to Animals and the Law} (Hampshire, England: Palgrave MacMillan, 2011) at 108 [Schaffner].

\textsuperscript{60} Wolfson & Sullivan, \textit{supra} note 51 at 212-213; Matheny & Leahy, \textit{ibid} at 336-337; Wise, “Evolution of Animal Law”, \textit{supra} note 44 at 100.

\textsuperscript{61} Matheny & Leahy, \textit{ibid} at 337; Wolfson & Sullivan, \textit{ibid} at 213-215.


\textsuperscript{63} Matheny & Leahy, \textit{ibid} at 329.
impaired animal welfare. According to the Humane Society of the United States, “extensive scientific evidence shows that intensively confined farm animals are frustrated, distressed, and suffering.” HSUS reports that as a result of genetic modifications, animals will remain economically productive, by growing, reproducing and laying eggs, even as their welfare becomes severely compromised. For instance, selective breeding of “broiler” chickens has resulted in birds with dramatically accelerated growth, but whose bodies “are on the verge of structural collapse.” Ninety-five percent of the egg-laying hens in the United States live in “battery cages” stacked in tiers, with 5-10 birds in a cage, with a floor space of less than 8” x 10” per hen. Professor of Animal Husbandry, John Webster, wrote that industrial chicken production is, “in both magnitude and severity, the single most severe, systematic example of man’s inhumanity to another sentient animal.” Other common practices include the performance of painful surgical procedures on animals, often without anesthetics, in order to minimize the harm that they can cause to each other as a result of overcrowding, and for economic reasons. Pigs have their teeth clipped and their tails cut, boars have their tusks cut, cattle undergo castration, branding and dehorning (a procedure described as “excruciating torture” in the case of Ford v Wiley), chickens have their beaks cut, male breeder chickens have their toes cut, and their combs removed with scissors.

As Wolfson and Sullivan have argued, customary practice exemptions have effectively delegated the authority to define criminal acts of animal cruelty to the farm animal industry. In the rare case that state anti-cruelty legislation does apply to the treatment of a farm animal, for instance, if the practice in question is not customary but novel, the practice must still be shown to be


66 Supra note 62.


68 (1889) 23 QB 203.

69 Supra note 62.

unjustifiable or unnecessary to amount to cruelty. It is likely that an otherwise cruel practice would not constitute unnecessary cruelty where it is for food production, or for medical or scientific research.

In recent years, direct voter initiatives at the state level have succeeded in securing constitutional and legislative amendments to phase out specific farming practices that many members of the public consider cruel and inhumane, such as battery cages for laying hens, sow gestation crates, and veal crates. For instance, in 2002, Florida voters secured a constitutional amendment banning sow gestation stalls that became effective in 2008. In 2006, Arizona voters passed legislation prohibiting the use of sow gestation crates and veal crates that became effective in 2012. Similar initiatives were implemented in California, Oregon, Maine and Michigan. In response to this trend, Ohio voters supported a legislative initiative brought by the agricultural industry to protect “Ohio farms and families”. This legislation establishes a board with the authority to create animal welfare standards, but in carrying out its duties, the board is only authorized to consider impacts on human health and farms. Aside from the legislative initiative in Ohio, these expressions of citizens’ concern about the welfare of animals reveal an underlying belief about the moral implications of our treatment of animals that seems inconsistent with our conception of animals as things. This tension will be discussed further at the end of this section.

Another example of the withdrawal of legal protection from the most obvious subjects can be found in the provisions of the Animal Welfare Act, which provides for the humane treatment of animals used for research and experimentation, and for exhibition. The Act addresses the conditions of animals used in research by requiring the Secretary of the Department of Agriculture to promulgate standards to ensure, inter alia, that animal pain and distress are minimized in experimental procedures, and, where a procedure is likely to cause pain to an

71 Ibid at 211-212.
72 Taub v State, 296 Md 439 at 443-444 (Md, 1983).
73 Schaffner, supra note 59 at 110.
74 Ibid at 111.
75 7 USC § 2131 and 2132(h). The Act’s requirements apply to animal exhibitors such as “carnivals, circuses, and zoos”, but “fairs, livestock shows, rodeos”, among other exhibitions, are excluded.
animal, to use analgesics, anesthetics, tranquilizers, or euthanasia, except where “scientifically necessary”. The Secretary must also require the lead researcher of a project to consider alternatives where the procedure is likely to cause pain or distress for an experimental animal. The Act requires each research facility to establish an Institutional Animal Care and Use Committee (IACUC) that will be responsible for assessing research or experimental programs in light of the needs of the research facility and the welfare of the animal subjects, and for ensuring compliance with the Act and Regulations. The Secretary may not, however, prescribe any standard or requirement that would interfere with the “design, outlines, or guidelines… [or] performance” of any actual research or experimentation as determined by a research facility. This means that there can be no legal regulation of the purposes of a particular project, or of the means by which the project’s purposes will be achieved. A more significant shortcoming of the Act lies in the fact that its requirements do not apply to the use of birds, mice, or rats, the animals that account for approximately 90 to 95 percent of the animals used for research and experimentation. Birds, mice and rats and all vertebrates are covered, however, under the federal Public Health Service guidelines for biomedical and behavioral research involving live animals that is supported through the PHS. The *Health Research Extension Act of 1985*, requires that these research projects must comply with PHS policies and guidelines, including the *Public Health Service Policy on Humane Care and Use of Laboratory Animals*, as well as the *Animal Welfare Act*.

Farm animals remain excluded from the *Animal Welfare Act*, even when they become experimental research subjects for the farm industry. So long as this research is not in need of funding or support through the Public Health Service, it also falls outside the coverage of the PHS guidelines. A recent investigative report by The New York Times uncovered details of

---

76 7 USC § 2143(a)(3)(C) and also (D), which advises that animals should not be used in more than one major operative experiment from which it is allowed to recover, except where it is scientifically necessary.

77 7 USC § 2143(a)(3)(B).

78 7 USC § 2143(b) & (c).

79 7 USC § 2143(a)(6)(A).

80 7 USC § 2132(g) (definition of “animal”); Cohen, *supra* note 51 at 13; Schaffner, *supra* note 59 at 74-76.

81 PL 99-158.
experiments conducted at the United States Meat Animal Research Center in Southern Nebraska, a facility located on the site of an old ammunition depot from the World War II era. The Center, which was opened in 1964, and houses about 30,000 animals, conducts experiments on farm animals with the aim of making livestock bigger, more prolific, and more profitable. In 2004, the center began a project to create “easy care” sheep, a breed of domesticated sheep that could survive without human help. Domesticated sheep are completely dependent on human beings, and ewes are known to abandon their newborns. Ranchers must, therefore, bear the costs of monitoring the mother and her baby, and maintain buildings for this purpose. In order to identify the ewes that would nurture their babies without human assistance, the center sent pregnant sheep to give birth in open pastures. When many of the mothers abandoned their newborns so did the scientists: “[t]hey withheld help for the newborns […] — till death, if necessary — to test whether mothers would respond to the young ones’ growing desperation.” Lambs were left to die in the pastures, many of them succumbing to coyote attacks.

Records obtained through the Freedom of Information Act also revealed experimental projects to increase the size of pig litters by removing a pig’s ovaries, experiments to reduce fertility loss by implanting tubes in a pig’s brain for the injection of hormones, and experiments to shorten the intervals between pregnancies by “gently crushing” the fetuses inside a pig to make more room in the uterus. For 31 years, the Center also ran a “Twinning Project”, to engineer higher twinning rates in cattle. The death rate for twins and triplets was four times higher than that of single calves, due to deformities, entanglement and complications during birth. Despite resistance from meat producers troubled by the number of dead and deformed calves, the Center claimed that it still made financial sense for ranchers to use twinning cows since, “[t]he combined weight of surviving twin cows was nearly 50 percent more, on average, than for conventional cows.” The Times found evidence of animal deaths from exposure and lack of veterinary care, and of experimental surgeries being performed at the Center by unskilled and

---


85 *Supra* note 82.
untrained staff. There is one staff veterinarian on site, but none of the 44 scientists employed by the Center are veterinarians, and none have medical degrees.

The Meat Animal Research Center monitors its own research activities with no effective oversight by the Department of Agriculture, its parent agency. The experiments conducted at the Center are not covered by the Animal Welfare Act, which exempts farm animals that are used in experiments for the improvement of the agricultural industry, and the Center has not voluntarily joined any independent oversight organization to assess its activities.

The exemption of most animals used by humans for industrial or institutional purposes from legal regulation on the specific issue of animal welfare, also holds true in the Canadian context. The Criminal Code prohibits the willful infliction of unnecessary pain, suffering or injury to an animal or bird. The definition of “necessity” is interpreted to exclude generally accepted practices adopted by the farming industry and for other institutional uses. This “implicit farming exemption” can be traced to a few scant judicial comments that appear to have shut the door on the application of the criminal anti-cruelty law to farm industry practices. The exemption for the infliction of “necessary” pain and suffering to animals does not appear to be limited to farming practices, but applies generally to conduct in furtherance of any “economically productive enterprise or… socially accepted purpose.”

Provincial Anti-cruelty legislation, which contains prohibitions against causing an animal to be in distress, explicitly exempts pain and distress caused by generally accepted agricultural or other institutional or customary practices. Under the Ontario Society for the Prevention of Cruelty to Animals Act, for instance, the standards of care prescribed under the Act do not apply in respect

86 7 USC § 2132(g) (definition of “animal”).
87 RSC 1985, c C-46, s 445.1(a).
88 Bisgould, supra note 62 at 71-72; Katie Sykes, “Rethinking the Application of Canadian Criminal Law to Factory Farming”, in Peter Sankoff, Vaughan Black & Katie Sykes, eds, Canadian Perspectives on Animals and the Law (Toronto: Irwin Law, 2015) 33 at 33, 38 [Sykes].
89 Sykes, ibid at 42; In R v Pacific Meat Co (1957), 24 WWR 37 at para 14 (BC Co Ct), the court held that the employees of a slaughterhouse did not violate the anti-cruelty provisions of the Criminal Code by their method of slaughter, which involved shackling and hoisting hogs by one leg, 15 feet in the air, and swinging the conscious hog against a metal wall, before cutting the hog’s throat, because it was done “to provide food for mankind.”
90 Sykes, ibid at 38.
of “an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry” or other “prescribed activities”. Hunting is excluded from the Act, as are animals in possession of a “registered research facility” under the Ontario Animals for Research Act. Generally accepted farming practices are set out in voluntary Codes of Practice, developed by the National Farm Animal Care Council, which consists of governments and industry stakeholders, and one animal welfare organization. The Codes of Practice approve of all of the widespread practices adopted in intensive factory farming operations described above. As in the United States, the definition of what amounts to cruel treatment of farm animals contrary to the Criminal Code is determined largely by the farm animal industry itself.

The Canadian Federal Health of Animals Regulations establish requirements for preventing injury and suffering to animals during transport, such as a prohibition on beating an animal “in a way likely to cause injury or undue suffering” during loading and unloading, and on the transportation of animals in vehicles or carriers that are likely to cause injury or undue suffering as a result of inadequate ventilation or exposure to weather. Depending on the circumstances and the species, animals may be confined in transport without rest, water or food for a maximum

---

91 Ontario Society for the Prevention of Cruelty to Animals Act, RSO 1990, c O.36, s 11.1(2); Similar exemptions can be found in other provinces: Animal Health and Protection Act, RSPEI 1988, A-11.1, s 8(2); Animal Health and Protection Act, SNL 2010, c A-9.1, s 18(3); General Regulation, NB Reg 2000-4, s 4(2); Animal Protection Act, SNS 2008, c 33, s 21(4); The Animal Care Act, CCSM c A84, s 2(2), 3(2), 4(1) & (2), 6(2); The Animal Protection Act, SS 1999, c A-21.1, s 2(3); Animal Protection Act, RSA 2000, c A-41, s 2(2); Prevention of Cruelty to Animals Act, RSBC 1996, c 372, s 24.02; Animal Health Protection Act, CQLR c P-42, s 59.9.15; Animal Protection Act, RSY 2002, c 6, s 3(3); Animal protection legislation in Nunavut and the Northwest Territories applies only to dogs: Dog Act, RSNWT (Nu) 1988, c D-7; Dog Act, RSNWT 1988, c D-7.


93 RSO 1990, c A.22, s 1.1(1).

94 National Farm Animal Care Council, online: <www.nfacc.ca>.

95 Bisgould, supra note 62 at 198-200; National Farm Animal Care Council, online: <www.nfacc.ca/codes-of-practice>.

96 Health of Animals Regulations, CRC, c 296, s 139.

97 Ibid at s 143.
of 36 to 72 hours. The Federal Meat Inspection Regulations provide that animals being slaughtered should not be subjected to “unavoidable distress or avoidable pain”, and that electrical prods should not be applied to the face, genital, or anal region of the animal. Animals not slaughtered in accordance with religious requirements are to be “rendered unconscious” before being bled. As in the United States, these requirements for slaughter do not apply to birds or rabbits, who may be hung and slaughtered by decapitation while still conscious.

The interpretation of what constitutes the infliction of “necessary” pain and suffering on an animal under the anti-cruelty provisions of the Criminal Code appears to be wide enough to exclude not only farmed animals but also animals used for research, testing and experimentation. The prohibitions against causing pain and distress to animals under Provincial animal protection statutes generally do not apply to the treatment of research or experimental animals, as a result of exemptions for generally accepted practices. Some jurisdictions specifically exempt treatment of animal research subjects that follow standards established by the Canadian Council on Animal Care (CCAC), or require compliance with such standards. The CCAC is an independent non-profit organization with a voluntary membership of animal research and experimentation stakeholders including veterinarians, academic faculties, scientists, government bodies, members of the research industry, and one humane society. The CCAC provides an assessment program for research projects involving the use of animals, but unlike the IACUC in the United States, the CCAC does not have a statutory foundation. Research facilities are required to participate in the CCAC assessment program in order to receive government funding, and each participating facility must establish its own Animal Care Committee to oversee the treatment of animals in

98 Ibid at s 148.


100 Ibid at s 79(a).

101 Ibid at s 79(b).

102 Animal Protection Act, RSA 2000, c A-41 s 2 (Alberta); Animal Protection Regulation, Alta Reg 203/2005, s 2(1) & (2) (Alberta); Animal Protection Act, SS 1999, c A-21.1, s 2(3)(a) (Saskatchewan); Animal Care Act, CCSM, c A84, s 4(1); Animal Care Regulation, Man Reg 126/98 s 4(4) & (5) (Manitoba); General Regulation, NB Reg 2000-4, s 4(2) (New Brunswick); Animal Protection Regulations, PEI Reg EC71/90, s 5 (Prince Edward Island).

103 Canadian Council on Animal Care, online: < www.ccac.ca/en_/about/governance/members >.
research and experimentation.104 Ontario is the only province that has enacted specific legislation dealing with the use of animals in research in provincial research facilities.105 The Ontario statute provides for the registration and licensing of research facilities and facilities that supply animal research subjects, and imposes a requirement on research facilities to establish its own Animal Care Committees, similar to Animal Care Committees under the CCAC assessment program. As with the treatment of farm animals, the treatment of research and experimental animals is governed by industry’s own standards.

The legal status of animals is a mirror of the moral status of animals in Kant’s philosophy. We are entitled in law to determine the purposes that animals, as things, will serve, whether as an economic commodity or a subject for research. This entitlement in law includes the freedom to do what is necessary to accomplish our chosen end. The actions we may take in pursuit of our object are governed primarily by the rules of rational necessity, which overrides any concern for the interests and welfare of an animal. These are rules that Kant refers to as imperatives of skill, that dictate the practical actions one must will in order to actualize one’s object, in so far as one is rational,106 and are incorporated into the definition of the offence of cruelty, which privileges all acts that are considered necessary to facilitate the use of an animal for its assigned purpose. As we have seen, the law protects the freedom of the farm animal industry and the research industry to engage in practices that are rationally or scientifically necessary to fulfill its purposes, and to determine for itself what is a necessary practice. The status of animals as things that may be used as merely a means to our ends implies that they may be subject to an invasion of their interests whenever rational necessary requires it, in order to render them serviceable for that end. Under this conception, animals cannot be the subjects of a direct legal or moral duty.

What constraints that do apply to our actions towards animals do not arise from a direct concern for the welfare of animals, but from the purpose motivating our actions. This is why the law views actions that have an identical impact on an animal’s welfare differently, depending on the purpose for the action. Food production, economic profit, and medical or scientific research, are reasons that we, as a society, have decided are valid justifications for harming the welfare of

104 Canadian Council on Animal Care, online: < www.ccac.ca/en_/assessment/acc >.


106 Kant, Groundwork, supra note 7 at 4:415, 4:417.
animals. Much of the treatment visited upon animals for these purposes, would constitute prohibited acts of cruelty in any other context. For instance, the killing of millions of male chicks, which are byproducts of the egg industry, by maceration or by asphyxiation in large plastic bags or containers, is permitted as a customary practice of food production. Killing animals in this manner would most certainly amount to prohibited cruelty in a non-farming context, although it is uncertain whether such conduct would be permissible in the research context.

In a recent study approved by the Institutional Animal Care and Use Committees of the Cold Spring Harbor Laboratory, in New York state, mice were put through an experiment to study the idea of learned helplessness, or despair. The mice were placed in a cage and subjected to unpredictable and inescapable foot shocks for two trial periods over a period of two days. On the third day, the mice were given a chance to escape. The investigators then removed the brains from the mice to observe any changes. The study revealed that a certain percentage of mice did not try to escape when the opportunity was finally made available to them, but remained in the corner receiving shocks, indicating that these mice had learned that their situation was hopeless and had given up trying to better their condition. Another version of this experiment is called the “forced swim” or “behavioral despair” test, which was described by an experimenter as follows:

107 Since what amounts to a valid justification is determined by our societal values, they are also subject to change over time, and across cultures. We may have at one time valued our enjoyment of animal circuses and marine parks without complication, but our views on whether this enjoyment is a valid justification for the pain and deprivations caused to the animals in such entertainments appear to be shifting: Richard Pérez-Peña, “Elephants to Retire From Ringling Brothers Stage”, The New York Times (5 March 2015), online: www.nytimes.com>; “Mexico Introduces Circus Animal Ban”, BBC News (18 March 2015), online: <www.bbc.com>; Emmet Berg, “San Francisco Board Approves Wild Animal Performance Ban”, Reuters (21 April 2015), online: <www.reuters.com>; Linda Biebel, “New Ontario Law Bans Breeding and Sale of Orcas”, The Toronto Star (28 May 2015), online: <www.thestar.com>; Nick Allen, “California Could Ban SeaWorld Killer Whale Shows”, The Telegraph (8 April 2014), online: <www.telegraph.co.uk>.


Rodents forced to swim in a narrow space from which there is no escape adopt, after an initial period of vigorous activity, a characteristic immobile posture, moving only when necessary to keep their heads above the water. The animal’s immobility was interpreted as indicating they had learned that escape was impossible and had adopted an immobile position to conserve energy, viewed anthropomorphically as if they had given up hope of escaping from this stressful situation.\textsuperscript{110}

These are not novel tests. Despair inducing trials have been conducted since the 1950’s in the tradition of the studies performed by Curt Richter, at John Hopkins School of Medicine, who found that rats forced to swim without escape would usually drown within 15 minutes, but that rats who had once been released from immersion would swim for almost three days before drowning, on the energy given to them by what Dr Richter surmised was “hope”.\textsuperscript{111}

If I were subject my pet to such trials merely to satisfy my curiosity or to ease my boredom, such actions would amount to the willful infliction of unnecessary distress and suffering to an animal under the \textit{Criminal Code}. It is clear from these examples, that the prohibition against animal cruelty is not externally directed to the harm suffered by an animal as a result of human actions. Rather, the prohibition is directed internally to the principle for such actions. Legal prohibitions against animal cruelty, in other words, do not recognize animals as subjects of direct legal concern. They simply prevent persons from engaging in acts of cruelty against animals for purposes that are of absolutely no social value, or are corruptive of our social values.

As Kant recognized, we are liable to confuse the duty we have \textit{in regard to} other animals with a duty \textit{to} those animals. The welfare of an animal is only indirectly protected as a result of a duty we owe to ourselves to refrain from engaging in cruel acts, because they corrode our natural disposition for sympathy, and thereby oppose our morality:


With regard to the animate but nonrational part of creation, violent and cruel treatment of animals is far more intimately opposed to a human being’s duty to himself, and he has a duty to refrain from this; for it dulls his shared feeling of their suffering and so weakens and gradually uproots a natural disposition that is very serviceable to morality in one’s relations with other men.\textsuperscript{112}

The duty that Kant describes is robust:

The human being is authorized to kill animals quickly (without pain) and to put them to work that does not strain them beyond their capacities (such work as he himself must submit to). But agonizing physical experiments for the sake of mere speculation, when the end could also be achieved without these, are to be abhorred.\textsuperscript{113}

Yet this duty, Kant tells us, still only “belongs indirectly to a human being’s duty with regard to these animals; considered as a direct duty, [...] it is always only a duty of the human being to himself.”\textsuperscript{114}

Kant’s view describes a common judicial understanding that animal cruelty legislation "does not define an offence [...] against the rights of the animals that are in a sense protected by it. The offence is against the public morals, which the commission of cruel and barbarous acts tends to corrupt."\textsuperscript{115} This understanding of the animal cruelty prohibition confines its application to a

\textsuperscript{112} Kant, \textit{Metaphysics}, supra note 3 at 6:443.

\textsuperscript{113} \textit{Ibid.}

\textsuperscript{114} \textit{Ibid.}

\textsuperscript{115} \textit{Commonwealth v Turner}, 145 Mass 296 at 300, 14 NE 130 (1887); \textit{Commonwealth v Higgins}, 277 Mass 191 at 194, 178 NE 536 (1931); \textit{Animal Legal Defense Fund Boston Inc v Provimi Veal Corp}, 626 F Supp 278 (D Mass, 1986); \textit{Stephens v State}, 3 So 458 at 458-459 (Miss, 1887).
narrow category of cases where harm to an animal is senseless or motivated by depraved or sadistic purposes. In the Canadian case of *R v Menard*, Lamer JA, as he then was, appeared to recognize that the criminal offence of animal cruelty was “enacted for the protection of animals themselves”. It is clear from the reasons for decision, however, that the offence is not ultimately defined by harm to animals themselves, but by the impact of our actions on our own moral integrity, which dictates that we should inflict no more harm than is necessary to achieve our purposes. In this sentiment, Lamer JA echoes the prevailing understanding of the purpose of anti-cruelty laws:

Within the hierarchy of our planet the animal occupies a place which, if it does not give rights to the animal, at least prompts us, being animals who claim to be rational beings, to impose on ourselves behaviour which will reflect in our relations with them those virtues we seek to promote in our relations among humans.\(^\text{117}\)

Once this rationale is understood, we can appreciate how an apparent concern for animal welfare can stand alongside the infliction of the most terrible kind of violence on animals without the threat of moral discord. It is not, therefore, paradoxical for us to learn that Leibniz, who was praised by Kant for carefully returning a tiny worm to its leaf after observing it, for he “would have been sorry — a natural feeling for a humane man — to destroy such a creature for no reason”,\(^\text{118}\) was also a strong advocate for vivisection. The Russian scientist Ivan Pavlov, who pioneered the “chronic” experiment, in which animals are surgically altered and studied over time, also expressed that he felt a “deep sense of regret” and “bitter reproach” whenever he dissected and destroyed a living animal, but endured this discomfort “in the interest of truth, for

\(^{116}\) *R v Power* (2003), 176 CCC (3d) 209 at para 7 (Ont CA); Bisgould, *supra* note 62 at 78-87.

\(^{117}\) *R v Menard* (1978), 43 CCC (2d) 458 (Que CA) at para 49.

\(^{118}\) *Kant, Lectures, supra* note 39 at 27:459.
the benefit of humanity."119 Kant’s account of our indirect duties in regard to animals is a rationalization of these seemingly inconsistent sentiments.

Yet the acknowledgment that there is a moral dimension to our treatment of animals seems to undermine our conception of animals as merely things, for why should our conduct toward them implicate our humanity if they were merely things? Why, as Luc Ferry asked, should such beings arouse either compassion or sadism in us, except that these sentiments operate on that part of the animal that we know is not mere thing?120 It is this knowledge, that we share with animals some condition of value that removes them from the category of things and that is evidenced by their suffering, that complicates our designation of animals as things. While we have a conviction about the value of animals, we have not found a way to express this belief in the laws that govern our relationship to animals. As one commentator observed, Kant’s explanation of indirect duties does not seem to fully express our “moral motivation” for refraining from harming animals, which seems to include more than a concern for other human beings, but a direct concern for the animal itself:

I want to stop animals from suffering because I feel compassion for their suffering and wish to alleviate it, and not solely because I want to treat other humans well. We seem not to be recognizing what is morally important in responding to animal suffering. In the words of Christian-utilitarian Soame Jenyns, “the carman drives his horse, and the carpenter his nail, by repeated blows,” but, as Jenyns recognized, there is a salient difference between the two acts of driving. One impacts the welfare of a sentient creature and the other does not, and this difference would seem to be a crucial part of what we are responding to. To paraphrase a famous recent expression from Bernard Williams, the indirect justification is “one thought too many.”121

---


120 Ferry, supra note 37 at 46-47.

121 Garrett, supra note 6 at 70.
Our inability to express this moral motivation is where our laws seem to be the least satisfactory. It is a deficiency that some Kantians have sought to address, with uncertain results.\textsuperscript{122} The recognition of animals as an object of respect within the Kantian system is precluded by fact that the condition that grounds the moral law, namely the capacity to freely determine one’s own ends, necessarily excludes irrational animal nature. Any attempt to bring animals within the moral law must, therefore, reject or revise this central claim in Kant’s philosophy, yet still satisfy the requirements of what the moral imperative must be. In the next section, we will examine a significant attempt to extend Kant’s theory of obligation to other animals through a revision of the ground of the moral law, undertaken by the philosopher, Christine Korsgaard.

3 Moral Philosophy – Christine Korsgaard

Christine Korsgaard argues that the moral imperative to treat humanity always as an end in itself and never merely as a means to an end can be extended to other animals “despite what [Kant] himself thought.”\textsuperscript{123} As we have seen, Kant’s search was for something of absolute worth that could ground a possible formulation of the categorical imperative that expressed how our actions could be limited. In order to express this limitation, Kant had to identify the condition that could serve as something that every rational being was bound to uphold. The condition first of all had to be a condition of absolute worth in itself; and second, in order to bind all rational beings as a formulation of the categorical imperative, it had to implicate our freedom. Kant described absolute worth in terms of an objective or end: “something \textit{the existence of which in itself} has an

\textsuperscript{122} Wood & O’Neill, \textit{supra} note 36; Alexander Broadie and Elizabeth M Pybus, “Kant’s Treatment of Animals” (1974) 49 Philosophy 375, rejecting Kant’s account as contrary to common understanding; Christine M Korsgaard, “Fellow Creatures: Kantian Ethics and Our Duties to Animals” in Grethe B Peterson, ed, \textit{The Tanner Lectures on Human Values}, vol 25 (Salt Lake City: University of Utah Press, 2005) [Korsgaard, “Fellow Creatures”]. Emer O’Hagan, “Animals, Agency, and Obligation in Kantian Ethics” (2009) 35 Social Theory and Practice 531 at 531, describing Kant’s account of our moral obligations to nonhuman animals as “one of the most unsettling aspects of Kant’s ethics”.

\textsuperscript{123} Korsgaard, “Fellow Creatures”, \textit{ibid} at 82.
absolute worth, […] as an end in itself.” In Kant’s view, final ends exist only when they are determined as such by a free and rational being. Thus, humanity, as the only rational nature with the capacity to set ends for itself, is the source of the final end, and therefore an end in itself. This description by necessity confines the final end to entities that have the capacity to freely determine their own ends and this, as we have seen, necessarily excludes the recognition of non-rational beings as ends in themselves.

Korsgaard challenges Kant’s claim that rational nature is the exclusive source of absolute value in the world. She does this by expanding the source of absolute value to all beings who can relate and respond to its own condition as good or bad, or as welcome or unwelcome. What is finally good is good because it is endorsed by a being that has the capacity to confer value by relating to its experiences as good or bad. According to Korsgaard, other animals and our own animal natures are just these value-conferring beings. Thus, all animal natures that have the capacity to have a final good are the source of the final good, and must be respected as such. This is why Korsgaard refers to the condition of absolute worth as a final “good” rather than a final end. Korsgaard’s conception of the absolute value is not strictly equated with the capacity of rational nature to set ends for itself, as it is in Kant’s account.

Korsgaard constructs the conception of the final good from two ideas. The first is the Aristotelian idea that the “good” is a matter of well-functioning. According to Aristotle, every substance or entity “is matter so organized as to serve some purpose or function”. The function of a living thing is “to secure the continuing existence of its own form” through staying alive and reproducing. Korsgaard tells us that, in postulating that a living being is organized to function in this way, Aristotle did not mean that living beings were designed for the purpose of surviving. It is simply the form or arrangement that a living being takes as a “functionally organized

124 Kant, *Groundwork, supra* note 7 at 4:428.


127 *Ibid* at 18.
The second idea is the Kantian notion that value can only exist for someone, or from some point of view. Value is relative, Korsgaard says, to “our valuing capacities.” In Korsgaard’s view, the final good for a being is not an object of experience or a sensation that has intrinsic goodness that beings can “have” or possess through their capacity for consciousness or sentience. The property of goodness does not exist prior to the existence of someone who relates to her experiences as good or bad. In other words, “everything that is a good is good to or for some sensate being.” This is why the Kantian view holds that the absolute value must lie in the source of value. From the Kantian perspective, value does not exist apart from the being that values it.

Thus, Korsgaard argues that the final good is “something that is essentially relative to the condition of some person or animal”. It is something that a conscious being responds to as something good for its well-functioning and, therefore, as “welcome”. It is this “relational state” that confers value on things in the world, and brings the good into existence. The good is not something that is floating around in the world that we acquire and possess, but something we make by our relation to it as something we welcome or something we reach for as good for our well functioning. Thus, the source of the final good resides in all beings that stand in an evaluative relationship to their own condition and responds to its condition as welcome or unwelcome in terms of its well-functioning.

---

128 Ibid.
129 Ibid at 10.
133 Ibid at 4.
Under Korsgaard’s conception of the final good, all animals, including human animals, are the source of the final good, and all animals as such can be considered as having absolute worth as an end in themselves within the Kantian conception of absolute worth. This is because an animal is by its essence, “something that stands in an evaluative relationship to its own condition”. Korsgaard finds support for this claim from Aristotle’s idea that it is the essential function of an animal to evaluate its own condition and its environment and to respond to its condition in a way that preserves its form. An animal confers value in this way and is the origin of the final good because “the animal monitors her own functioning and has positive evaluative attitudes towards things that promote her own functioning and negative ones towards the things that will inhibit it.” In fact, Korsgaard explains, “the concept of a being with a final good, and the concept of an animal — are pretty much co-extensive.”

What it means to be well-functioning and, therefore, what is valued as a final good, will be different for different kinds of beings depending on their capacities. Our different capacities change the way we carry out our functions. A human being, by virtue of her capacity to freely determine her own ends, has a form of life that is governed by moral or normative conceptions. And so the human good includes as a dimension of functioning well, one’s moral values and self-conceptions. Thus, Korsgaard tells us that when we pursue our good through moral legislation, we “are just doing, at our own level of intentionality, what every animal does by its very nature: we are expressing and enacting our concern for ourselves. So viewed,


136 Ibid at 19-21.

137 Ibid at 35; Korsgaard, “Relational Nature”, supra note 125 at 19-20; Korsgaard, “Personhood”, supra note 134 at 5-6. In an earlier formulation, Korsgaard developed the idea that, for a living thing, the preservation of its own identity, by maintaining its own existence, is its own end. The experience of pain is normative for a living being when it is perceived as a “threat […] to the preservation of its identity”, and a reason to change its condition: Christine M Korsgaard, The Sources of Normativity (Cambridge, UK: Cambridge University Press, 1996) at 148-153 [Korsgaard, Normativity].


139 Ibid at 21.


141 Ibid.
morality is just the human way of being an animal.”\textsuperscript{142} For human beings, good is a matter of our choosing. In the case of other animals, well-functioning is not a matter of choosing according to principle, but a reflexive evaluation based on instinct and inclination. The final good for other animals is, in this sense, determined. Yet, in Korsgaard’s view, all animals make their final good their “end”. Human animals do this by rational determination, and nonhuman animals by “going for”, or “identifying with”, their own good.\textsuperscript{143} All animals and animal nature are, therefore, equally a source of what is finally good, and what is of absolute worth as an end in itself. What we uphold, then, when we take ourselves to be an end in ourselves, is the value we have as the source of what is finally good, and this includes not only human beings, but every conscious being that is capable of having a final good. Thus, Korsgaard argues that, “while it is our rational nature that enables us to value ourselves and each other as ends in ourselves, what we value, what we declare to be an end in itself includes our animal nature as well as our rational and human nature.”\textsuperscript{144}

Korsgaard’s unique theory helps us to see that what is of absolute worth and an end in itself is not confined to the domain of rational nature, but can lie in the evaluative relation of all beings to the experience of their own condition as good or bad in terms of their well-functioning. As an absolute value, the final good of all animals, including human animals, can be upheld and respected in itself as something good in itself. The finality of the value makes it a valid candidate for grounding a possible categorical imperative.

In order to bind all rational beings as a ground of the categorical imperative, however, the condition of absolute worth must also implicate or express our freedom. As we have seen, it is the idea of our freedom that necessitates us as free and rational beings. If we are bound as rational beings to uphold the final good of all animal natures it must be because it is necessary for us to do so \textit{in so far as we are free}.\textsuperscript{145} We do not know, under Korsgaard’s theory, why it is that as free and rational beings we must uphold the final good of our animal natures as a matter

\textsuperscript{142} \textit{Ibid} at 35.

\textsuperscript{143} Korsgaard, “Relational Nature”, \textit{supra} note 125 at 19-20; Korsgaard, “Having a Good”, \textit{supra} note 130 at 420.

\textsuperscript{144} Korsgaard, “Moral Animals”, \textit{supra} note 131 at 34.

\textsuperscript{145} Kant, \textit{Groundwork}, \textit{supra} note 7 at 4:429.
of necessity, or why it is an expression of our freedom. In fact, upholding the final good as it is valued by our animal natures appears to undermine the idea of our freedom.

Our animal natures pursue or welcome their final good, and thereby confer value on it, through “instinctive evaluative attitudes – desire and aversion, pleasure and pain, fear and interest – towards things that affect her functioning.”\footnote{Korsgaard, “Origin of the Good”, supra note 125 at 19.} Their valuations are, in other words, wholly determined. Animal natures do not have the capacity to respond to their own condition and environment unconstrained by external causes, such as their inclinations and desires. They do not have the capacity to determine their choices and actions freely in Kant’s conception.

As autonomous natures, we have the capacity to stand back from immediate experience and to cognize the world from an abstract, or noumenal, standpoint in which we are independent of the determining forces of the world of sense. Our experience of freedom is defined by our capacity to determine our actions unconstrained by the inclinations and desires of our animal natures. Morality is possible because we are able, from this autonomous standpoint, to impose laws on our animal natures, as members of the sensuous world. In other words, morality is possible because we cannot be obligated by what is good or bad for our animal natures. We cannot, therefore, be free in our determinations if we take what is evaluatively good for our animal natures to be the source of normativity for our determinations.

Human beings may subject their bodies to pain and deprivation to serve a purpose that their autonomous self has willed, without violating the moral imperative. Our rational nature can, for instance, go toward that which our animal nature rejects, and we can refuse what our animal nature would welcome. We can engage in a hunger strike to pursue our political objectives. We can engage in pursuits that destroy what is good for our well-being from the point of view of our animal natures. From the Kantian perspective, our own animal natures are a kind of “thing” that we can sacrifice as a means to an end we determine, independently of what is good or bad for our experiential selves. Korsgaard acknowledges that what is good for human beings, as both autonomous natures and animal natures, may include functioning well in a moral sense, \textit{in addition} to functioning well as sensible beings.\footnote{\textit{Ibid} at 38.} This accounts for the fact that the final good

---

\footnote{Korsgaard, “Origin of the Good”, supra note 125 at 19.}
\footnote{\textit{Ibid} at 38.}
for human beings may be something unwelcome from the point of view of our animal natures, and that is just what a final good means for a human being. What this recognition does not account for, however, is the fact that in order to function as moral beings at all, what is good or bad for our animal natures cannot be the source of normativity for our actions. The way in which human beings as rational natures confer value and, therefore, confer value on ourselves as an end in itself, is through the negation of external determinations, and this includes the negation of value as determined by our animal natures. It does not follow, therefore, that when we uphold ourselves as an end in ourselves, we are also upholding our animal nature as an end in itself.

4 The Unity of Being

What do we believe is the condition of absolute worth that every person must respect as a matter of necessity, and who has a share in this condition?

The dominant belief in our moral and legal consciousness is that other animals do not share in the condition that demands our respect. As we have seen, Kant helps us to articulate our belief that the condition must be a final end, and the final end lies in reason. Humanity is the source of the final end as the only type of being with the capacity for reason. Human beings cannot, therefore, be used merely as a means to an end and are called persons. This conclusion relegates all animals and irrational nature to the category of things that may be used as merely a means to an end because they are empty of the condition of absolute value, and are, therefore, empty of the only condition that can resist or contradict occupation by an alien purpose. As such, animals are conceived of as available for occupation by the human will without contradiction.

This dominant view, however, fails to express our awareness that animals are more than merely things, and that our moral concerns regarding their treatment are motivated not just by the moral health of our relations with other human beings, but by a value we recognize within the animals.

As Kant implicitly recognized, it is the fact of animal suffering that gives our conduct towards them a moral dimension. It is the shared condition that we can most easily observe, and that
makes us aware that animals are not mere things, and so arouses our moral concern. This explains why the condition that we have most commonly identified as potentially capable of making moral demands on us is the capacity for suffering, and sentience in general. This capacity cannot be recognized as the condition that grounds the moral law, however, because pleasure and pain is not considered an end in itself from the Kantian perspective, and does not necessitate us as free and rational beings. Therefore, the capacity for sentience cannot serve as the condition of absolute value that can limit our actions.

Professor Korsgaard has suggested that other animals engage in a type of evaluation that allows them to confer value in a way that parallels the determination of ends through rational reflection, and so they must also be a source of absolute value. Korsgaard’s revision creates a sort of duplicate version of Kant’s account of value that locates the final end in a form of choosing, only it is an irrational type of choosing which she refers to as welcoming, or going for, on the basis of instinctual evaluative attitudes. The blueprint for this revision is Kantian. So the source of value still lies in the reflective distance between a being and the end that it values. In order to bring animals within this frame, Korsgaard tells us that within the instinctual actions and responses of animal nature, there exists an evaluative distance that is analogous to rational reflection. As we have seen, this account fails to explain why we must uphold the evaluative judgments of our animal nature as an absolute value as a matter of necessity.

What then is the condition that we share with animals that we must also uphold as an absolute value and an end in itself? In this section, I will posit that the final end that we must respect lies not in the capacity of a being to freely choose or to instinctually reach for its end or good, but in the unity of a being with its own end. The final end does not lie either in the end by itself, or in the being that has the capacity to confer value upon it, but in the unity of the being with its own end when the distance between them is closed. What we value when we value our capacity to choose our own end, is the union of our end in our being. Whether the end in our being is rationally determined, instinctually valued, or inherent in our original condition is irrelevant to the value of the union. Our dignity lies in the unity in which we are complete. In all beings, therefore, it is the unity in the being with its own end that we must uphold as an end in itself. I will argue that animals are a final end because we must presuppose that they are unified with their purpose as part of their original condition. As such, we can be restrained as a matter of moral imperative from acting in a way that divides an animal from its essential purpose.
Human beings, in the Kantian conception, are the only beings who can freely choose their own ends, but they are also the only beings who need to do so. Much has been made of this strange gift and rightly so. This moment of detachment from nature is the source of all the powers and troubles of humanity. It gives us an opening, however narrow, to shape our own way of life heretical to nature’s “code”, and to shape the world and its forces to our own purposes. To this moment belongs, not only the possibility of morality, but also every great change in human history, every human invention, and every act of self improvement and destruction. From the human point of view, it is everything. So of course we have made much of it.

But the ends we achieve through our powers of freedom should not be confused with freedom itself. Freedom is not an accomplishment of humanity, in the sense that we have somehow succeeded in freeing ourselves from the bonds of nature. It is not a capability in the sense of a competency or skill we have acquired by dint of our efforts. It is simply a condition we find ourselves in, the possibility of which is a mystery that cannot be comprehended by reason. This condition of freedom means that we come into the world without a fixed and inalienable purpose. We are, from the Kantian point of view, “nothing as determined by nature”, as compared to animals. Our final ends are not given to us by nature. We must somehow give ourselves our final ends. We are in this sense unfinished, and this is why we experience our lives as “projects” or narratives that we seek to fulfill in the time we are given. So our lives are unwritten stories we must tell ourselves through our choices. Freedom enables us to make these choices. It is the way we complete our stories.

But what is the value of election by itself? What makes this capacity something we value? It must be because this is the way a human being gives purpose to himself, to his choice and his actions. There is no value to our choosing except for its value as the means by which we become unified with the end of our choosing. The final end in itself, and the thing of absolute worth and the source of dignity, therefore, is in the unity of our purpose in our being. The final end, in other

148 Ferry, supra note 37 at 6, 11; Korsgaard, “Moral Animals”, supra note 131 at 12-14.

149 Kant, Groundwork, supra note 7 at 4:459-4:463.

150 Ferry, supra note 37 at 9.

words, lies in the manifestation of our end. But it is our capacity for election that we uphold as a practical matter because our ends are an unfixed multiplicity, neither given in advance nor stable over time. Therefore, in order to uphold our unity with our final ends over time, we must uphold the value of our elective freedom. And we do this by demanding respect for the exclusivity of our *jurisdiction* over the choice of our own ends. Our elective power must be *reserved* to us alone and no one else, because this is the only way a free being can become unified with his own purpose.

We are bound to uphold the unity of the being with its own end because our unity is not only an expression of our freedom, it is the object of our freedom and what gives our freedom value. It is freedom’s end. We uphold freedom as a means of achieving our final end of unity with our purpose.

This is the form of life for a human being and all rational beings that act under the idea of freedom. For such beings final ends are things that do not exist until we determine them to be such through reason. It is not something contained within us or expressed through us in our original condition. Final ends are something we must bring into existence. In Kant’s terminology, the final end is what we determine for ourselves free from external constraint. Under Korsgaard’s modified theory, the final good is what we reach for, guided by our instinctual evaluative attitudes. Both accounts ultimately conclude that final ends or goods can only exist in the world through some form of judgment or striving toward an object of determination or desire. Thus, only those beings who have the capacity to reach for their final ends or goods in this way can be the source of the final end or good and, therefore, of the absolute value.

It is an implicit assumption in these accounts that all beings stand at a distance in relation to their final ends, or final goods. But this premise only describes the human experience as rational beings. Only the human being comes into the world without an intrinsic or predetermined final end. Only the human being, therefore, must unite with her own final end through free choice, so only the human being values free choice. From the standpoint of other beings who are themselves a unity of purpose and being and who are, therefore, a purpose in itself, election or valuation is not necessary or relevant in uniting such beings with their purpose. Such beings are already complete as a final end in itself. The Kantian account of absolute value, including
Korsgaard’s account, begins with a bias toward the standpoint of the human being that drives us toward the conclusion that the source of value must lie in the procedure by which a free being, or an analogous being, becomes united with her own final end or good. From the perspective adopted by these accounts, every being is either a human being, or is measured against human beings, and so every being must find its value in a human-like way. If we adopt this standpoint, then it is inevitable that the only beings that can be a source of value in the world will be those beings who can and must strive toward or choose their final end or good. Beings, in other words, who are like human beings.

What is the standpoint of the other nonhuman beings? In what relation do they stand to their final ends or goods, if these exist? Kant is inconclusive about the condition of purposiveness in natural organisms, or organized beings. In the Critique of Judgment, Kant develops the idea that animals and plants are, provisionally, “natural purposes” or “natural ends”. Kant tells us that a living organism, or organized being, is a unity that can only be thought of as the object of a causality determined by a concept. In other words, we can only think of it as an end. A purpose or end, Kant says:

… is the object of a concept insofar as we regard this concept as the object’s cause (the real basis of its possibility): and the causality that a concept has with regard to its object is its purposiveness…

We think of a living organism in this way because each part of the living organism is determined by the concept of the whole, and each part is possible only in relation to the whole. In this respect, it is not unlike an artifact, such as a watch. To think of a natural organism in this way, however, means thinking of it as the object of a “causality that only reason can have.” Such a causality seems to require us to imply the presence of a conscious intention or a will. But a living

152 Kant, Critique of Judgment, supra note 31 at § 64, 369-370.

153 Ibid at § 10, 220.

154 Ibid at § 64, 370.
organism is subject to natural processes. We have no ground for assuming that nature sets ends intentionally – “the organization of nature has nothing analogous to any causality know to us.”\textsuperscript{155} We must suppose, however, that a living organism is an end of nature or a “natural purpose”. As Kant tells us, as an “organized and self-organizing being, living organisms “cannot be an instrument of art, but can be an instrument only of nature”, that cannot be explained in purely mechanistic terms.\textsuperscript{156} As natural ends, living organisms are a “formative force that propagates itself”.\textsuperscript{157} A living organism is distinguished from an artifact because each part of the organism “reciprocally produce each other”; they “combine into the unity of the whole because they are the cause and effect of their form”.\textsuperscript{158} The parts and the whole of the organism are interrelated as both means an ends, and in this way a living organism is “both cause and effect of itself”.\textsuperscript{159} Kant states that while we can “think” of nature as a causality, “we cannot grasp it.”\textsuperscript{160} As knowledge, the idea of a natural purpose or natural end is a mystery. Yet, the possibility of such organisms can only be thought of as natural purposes:

[O]rganized beings are the only beings in nature that, even when considered by themselves and apart from any relation to other things, must still be thought of as possible only as purposes of nature. It is these beings, therefore, which first give objective reality to the concept of a purpose that is a purpose of nature rather than a practical one, and which hence give natural science the basis for a teleology…\textsuperscript{161}

\textsuperscript{155} Ibid at § 65, 375, and § 61, 359.
\textsuperscript{156} Ibid at § 65, 374.
\textsuperscript{157} Ibid.
\textsuperscript{158} Ibid at § 64-65, 369-376.
\textsuperscript{159} Ibid.
\textsuperscript{160} Ibid at § 64, 371.
\textsuperscript{161} Ibid at § 65, 376.
Kant does not assert that living organisms are actually natural purposes. Rather, Kant believes that we can use the concept of natural purpose heuristically, as “a remote analogy with our own causality in terms of purposes generally”,162 to allow us to engage in reflective judgment. In other words, we must presuppose for practical purposes that living organisms are an end in which a concept is expressed, although the existence and nature of this causality is a mystery to us.163 So what I am suggesting is that in the same way that Kant built the moral law out of the presupposition of our freedom, we can build a conception of animals on the basis of the presupposition that we must make of their existence as an end of nature.

The mystery in which this causality is enshrouded is the same mystery that enshrouds the freedom of the human will. We cannot fathom how a living organism is a natural purpose just as we cannot fathom how the human will can choose its own ends under freedom. It is the mystery of how a being becomes unified with its purpose. The only difference lies in the location of the curtain beyond which we cannot probe. In the living organism, we perceive the purpose but not the causality. In the human being, we perceive the will but cannot fathom its freedom. In both cases, Kant tells us that we can only presuppose their possibility as a practical matter.

Kant’s suggestion that the “peculiar nature of [our] cognitive powers” as human beings compels us to apply a teleological understanding to living organisms has not necessarily been supplanted by Darwin’s theory of evolution by natural selection.164 Although the theory of natural selection appears to have provided a purely mechanistic explanation for the structure and functions of living organisms, teleological or purposive explanations continue to pervade contemporary biology, where the traits of organisms are frequently, but often evasively, described in terms of their purpose or function.165 Nor does Kant’s presupposition of living organisms as natural ends

162 *Ibid* at § 65, 375, § 61, 360-361.

163 Although Kant’s discussion of living organisms extends to plant life, the account in this paper will leave for another day the obligations we may have to plants.

164 Kant, *Critique of Judgment, supra* note 31 at § 75, 397-398.

compel us to commit to the idea that such organisms are the objects of a conscious design or
divine will, contrary to contemporary scientific understanding. Kant emphasizes that when we
think of living organisms as natural ends, we are not deciding something about the object itself.
We are merely applying a subjective principle for reflective judgment because of the nature of
our own cognitive powers. It is also possible to view living organisms as natural ends without
supposing that they are the objects of an intentional design. Philosopher Hannah Ginsborg has
argued that Kant’s conception of purposiveness in living organisms simply means that it is
governed by normative constraints and does not necessarily imply the existence of an intelligent
designer or conscious intention:

[W]e can regard something as an end, without regarding it as in fact a product of
design, simply by regarding its structure and behaviour as governed by normative
constraints, but without taking those constraints to be represented in the mind of a
designer. … It is not essential to something’s being an end that its production be
the result of intention. All that is essential is that it be governed by normative
constraints, and that is compatible with its being the product of natural processes
rather than design.166

What is important for our purposes is not, however, the precise nature of the causality Kant is
referring to. What is important here is that we suppose that the living organism is an end of
nature, whether nature as a causality is described as a concept or as a normative constraint, with
each possibility simply representing different levels of incomprehensibility. Also not important
here is the question of the purpose of traits that we find in a living organism, such as whether the
purpose of a wing is to help a bird to fly, or the question of the purpose that an organism is meant
to serve in the world, such as whether grass exists so that sheep can eat it. Our concern is not
with purpose in the sense of something that a living organism has, but purpose in the sense of
what a being is. A living organism as a whole, rather than in its parts, and as an end of nature,

Varela, “Life After Kant: Natural Purposes and the Autopoietic Foundations of Biological Individuality” (2002) 1
Phenomenology and the Cognitive Sciences 97 at 98.

166 Ginsborg, ibid at 326-327, 237-241.
does not have a further purpose. That is what it means to be an end. For nonhuman organisms, its status as an end of nature is fixed in its original condition, and not subject to further election. A nonhuman living organism, as a natural end, is a complete merger with its own end. Thus, a thing that is a natural purpose is its purpose, and in this sense, its purpose is intrinsic and inalienable. It is a unity.

If we can only think of living organisms in this way, then we can only conceive of animal nature as an end in itself. As a being that is itself a final end, animals cannot be thought of as things that are empty of the content required to resist or contradict occupation and use.

Thinking of an animal as a purpose in itself has serious implications about what it means to treat animals as things. An animal that is a purpose in itself is not empty to begin with, so it is not a thing to begin with. In order to use or occupy an animal, including a human animal, one must, therefore, sever the unity of the being with its intrinsic or chosen purpose. One must overtake the part of its existence that is a mystery. Since a natural purpose is wholly merged with the being that embodies it, the separation of a being from its intrinsic purpose amounts to the separation of a being from itself in its essence. It is what Hegel described as depriving the body of the soul and soul of the body. To occupy another being in this way is to make it into a thing. The emptiness of a being subjected to occupation is an effect of use. Its emptiness cannot, therefore, be the ground that justifies use.

Our conception of animals as empty and available for the “endowment” of the human will implies that the reason we may use animals is because they are empty. This conception has allowed us to avoid acknowledging that we must remove the content that resists displacement in order to enact our will in the being of another animal. We must, in other words, reduce animals to the condition of a thing in order to use them. Physical force and confinement is one way in which we have accomplished this transformation. Minks and chimps are caged or chained. Whales and dolphins are captured and penned. Horses are “broken”. Young elephants undergo what can only be described as an extended program of torture in which their spirits are “crushed”, to make them comply with human demands. For farmed animals in systems of

---

167 Jennifer Hile, “Activists Denounce Thailand’s Elephant “Crushing” Ritual”, *National Geographic* (16 October 16 2002), online <news.nationalgeographic.com>, describes the Asian tradition of phajaan, or “crushing” the spirit, a method of bringing young elephants into lifelong submission and control for human use, which involves roping
confinement, every function and condition, from their existence to their genetic make-up, is under the absolute control of human beings. Domestication and breeding for docility can be considered an ex ante form of evisceration, that severs the purpose from an animal before the animal comes into existence. Other forms ex ante interference include proposals that seek to genetically or selectively “disenhance” farm animals in ways that would render them less reactive to pain, stress, and suffering, such as the breeding of blind chickens, or the creation of pigs without sentience through genetic modification.\(^{168}\) Such measures would remove those very conditions by which we have recognized animals as more than mere things, and that arouse our moral concern to begin with, and thereby close that small window through which we are exposed to the moral dimension of our actions.

It is possible to view the occupation of another being as experientially analogous with torture in the sense that both operations involve the erasure of a being’s possession of itself. The act of torture can be distinguished from other acts of violence by the phenomenology of complete rightlessness on the part of the victim as a “pure object” of the torturer.\(^{169}\) As Professor Sanford Levinson has suggested, torture “in a profound sense, is less about concrete acts than about the creation of a phenomenological reality of total control.”\(^{170}\) The goal of torture, then, is the total eviction of a being from herself, and the simultaneous occupation of such being by the person who controls her. While pain and, therefore, the body, may be used to dispossess a being of herself, or to “break” a being’s will, dispossession through acts of occupation or torture may be achieved through appropriate environmental control, without the need for the infliction of pain.\(^{171}\) Many of the animals subject to human use are under total control in this sense. Animals under total occupation in human systems of control, who are removed of their essence, return a distorted image of our own original condition of emptiness, but without the powers of humanity and immobilization in small crates, beatings, stabbing the ears and feet with spikes and nails, sleep-deprivation, hunger and thirst.

---


170 Ibid at 151.

171 Ibid.
necessary to achieve the dignity of unity. And this image confirms the emptiness that justifies their use. Our unyielding conception of animals as empty, in the context of these practices, is perhaps something we need on a psychic level. We could not abide the reality of our actions and still retain our moral identity, if we conceived of animals as anything but empty things.

If there is a reason for the moral law at all it must be to protect us in the unity of our being with our own end, which is the source of our dignity.

5 The Formula of the Unity of the Being

We can now attempt to formulate a moral imperative based on the condition that we have identified as the final end that every person must uphold, namely, the unity of each living being with its intrinsic or chosen end. Once we have formulated the imperative, we can examine how it would apply in different situations.

The moral imperative that expresses the absolute value we must uphold is this: that every being with moral powers must always treat the unity of a being with its purpose as an end in itself, and should not act so as to sever the unity of a being through occupation or use. We are prohibited under this imperative from turning animals, including human animals, into things.

Since the unity of a free being with its purpose is elective, we must respect the unity of a free being as an end in itself by respecting the exclusive jurisdiction of free beings to determine their own ends.

5.1 Violations of the unity of the being

Whether an action constitutes a violation of the imperative against severing a living being from the purpose it embodies depends on the purpose that is expressed in that being and that can be observed by us. The expression of purpose can be observed in living beings in three aspects. The purpose lies first, in the physical *functions* and capacities of a living being, such as growth, reproduction, movement, sight, feeling, flying, swimming, walking, and in the case of the human
being, the capacity for self-determination. As some members of the former United Kingdom Farm Animal Welfare Advisory Committee voiced, it should be impermissible for humans to prevent other animals from engaging in their natural functions:

[T]he fact that an animal has limbs should give it the right to use them; the fact that a bird has wings should give it the right to spread them; the fact that both animals and birds are mobile should give them the right to turn around, and the fact that they have eyes should give them the right to see.  

Second, we can find purpose expressed in the behavior of living beings, such as nesting, ranging, migration, self-preservation and defence, pain and threat-avoidance, playing, keeping oneself clean, foraging, hunting, and so on. Third, we can observe purpose in the social interactions of living beings, such as mating, communication, caring for offspring, connection to groups and formation of hierarchies.

So for example, the earthworm appears to have the function of growth, digestion, burrowing, producing waste, and the capacity for reproduction. If I was in the forest on a rainy day and decided to dig up some earthworms and add them to my garden to help aerate the soil there, or to add them to my compost bin so they could turn organic material into compost, I have not prevented these worms from expressing any of their functions. If I took a wolf pup from her litter, however, and decided to enclosed her in my garden, to satisfy my will that she should live out her days as my muse or as a display for profit, then I have violated the manifest purpose expressed in her being, as an end of nature, to play, to range, to hunt, to patrol her territory, to mate and to belong to social groups of other wolves.

I will now use this example of the wolf pup to illustrate the different ways in which an impermissible division of the being with its purpose can occur. First, I can attempt to occupy this

---

young wolf by force. I can keep her caged and perhaps restrained in chains. I can temper her
strength and dull her senses with drugs, and I can attempt to “train” her or simply dominate her
using physical punishment and coercion.

Second, I can attempt to occupy this wolf pup through favor and persuasion. I can attempt to
socialize her to be close to humans and to come to rely on humans while she is young. I can
“train” her through positive reinforcement techniques, and through nurturing and guidance, to
perform certain behaviors willingly, and to refrain from behaviors I don’t want. I can try to
supply the social interaction that she now lacks as a result of my action.

A famous example of this kind of “friendly” occupation is the case of Lucy, a female
chimpanzee who was raised as a human child in the family of a psychotherapist in Oklahoma, as
a social experiment. 173 Lucy was taken from her mother the day she was born after her mother
was drugged. She was taught sign language as part of an ape language project. She dressed in
clothes, served tea to guests, ate with silverware at the table, perused magazines and had a pet
cat. She became deeply bonded to human beings and was only sexually attracted to human
males. When she became too strong and destructive for her human guardians, at around age 12,
Lucy was sent to a nature reserve on an island in Gambia, in an attempt to re-introduce her to the
wild. Lucy’s psychological and physical condition deteriorated over the next 10 years until her
death. She refused to eat food found in nature or associate with other chimps. During her time
on the island, she consistently expressed her extreme distress and her desire for human
companionship in sign language to her human rehabilitator. Someone might argue that at least in
the early part of Lucy’s life, her human guardians did not physically harm her, but in fact
enriched her with language and learning and social interaction albeit with human beings. While
this may be true, this experiment took away her capacity for behaviors in which her purpose was
expressed, and the conferral of alien purposes upon her does not negate this violation or make
her whole.

Examples of a more familiar kind are not difficult to find. Dogs and cats that humans use for pets
have been bred to be completely dependent on us for their care and survival. In most urban areas,
dogs are not permitted to be at large without a human owner. Such animals are completely vulnerable in our human environments and cannot live on their own, even if they still retained some capacity to do so. Like Lucy, many of these animals are abandoned or given up by their owners when it is no longer convenient to continue caring for them. In the United States, approximately six to eight million cats and dogs enter animal shelters each year, and 2.7 million of the healthy adoptable animals are euthanized.\textsuperscript{174} Pets acquired through the shelter system, or as strays, can be sold to research institutions for use in experiments by “Class B dealers”.\textsuperscript{175} The Ontario \textit{Animals for Research Act} authorizes and establishes procedures by which research facilities may acquire animals from municipal animal pounds after a minimum redemption period of three days.\textsuperscript{176} The maximum fee that can be charged to a research facility is $6 for a dog, and $2 for a cat. The legislation prevents a pound operator from euthanizing an animal, with some exceptions, until all requests for animals from research facilities have been satisfied.

Third, I could attempt to occupy the wolf ex ante through a program of genetic modification or breeding in the hopes of ultimately creating wolf pups with traits that I prefer, such as docility or a certain kind of body type. I may do this in order to harvest wolf fur, or to extract a hormone that wolves produce that is used in a drug that is in high demand.

If I were to commit any of these acts, I would be dividing this young wolf, or other wolves, from almost every expressed purpose that she embodies, except for the most basic of her bodily functions. Such actions are, therefore, prohibited by the categorical imperative to uphold the unity of the being with its own end. In the third case of ex ante interference, however, it appears that no expressed purpose would be violated, because the interference occurs before the being comes into existence and there is, therefore, no observable expression of the being as a purpose. The violation of the unity of the being with its own end still occurs in this case, however, because such ex ante actions interfere with the means by which a being comes to be unified with

\begin{footnotes}
\item[174] Human Society of the United States, “Pets by the Numbers” (30 January 2014), online: HSUS <humanesociety.org>.
\item[176] \textit{Animals for Research Act}, RSO 1990, c A.22; Bisgould \textit{supra} note 62 at 220-222.
\end{footnotes}
its own end. This kind of violation is analogous to an interference with the capacity of human beings to freely determine their own ends. It violates the way a being achieves unity.

How does this guide us in our conduct toward all the beings who have already been denuded of the functions and behaviours that are an expression of its intrinsic purpose? How are we to uphold the unity of such beings? How are we to uphold the unity of the domestic dog, for instance, many of whom are entirely dependent on human support, perhaps happily so? The domestic dog that we know as pets, and indeed many other domesticated animals, are an example of all three ways in which we occupy another living being, through force, persuasion and through ex ante programs of breeding and genetic modification. Such creatures are, therefore the product of a long history of violations of the categorical imperative to uphold the unity of beings. In order to respect the unity of such beings now as an object of respect means that we must substitute, in so far as we are able, the traits and behaviours we extinguished. We must supply, in other words, what we took away, and in doing so attempt to repair the disunion as far as it is possible to do so. This includes providing for such creatures in terms of physical and psychological preservation and well being, and social interaction and connection. This is something humans failed to provide for Lucy in her adult years, and for the millions of pets we abandon every year. Our duty to provide for the animals we have domesticated does not include replacing its function of reproduction through breeding, however, since breeding would be a continuance of the initial violation.

5.2 Ending life

Now, what if instead of doing any of these things to the wolf pup, I simply shot her? She would not have been divided from the purpose she embodied. She would die complete, unoccupied by my will. Does this action violate the unity of the being?

An action we take that ends the life of a being, except a human being, does not violate the unity of that particular being with its own purpose. It may, however, constitute a violation of the unity of another living organism. It can be argued that the earth as a biosphere is a system that is analogous to a living organism within Kant’s conception of a living organism as a unity whose
parts are reciprocally a cause and effect of each other and of the whole.\textsuperscript{177} The biosphere can be defined as either one large ecosystem or a super-ecosystem comprised of all ecosystems, containing all living organisms from every source, including all their dead matter and waste, that functions as a complex single unit, interacting with and exchanging matter and energy between spheres, cycling chemicals and performing biological functions, such as photosynthesis, respiration and decomposition.\textsuperscript{178} Its parts are only possible in relation to the whole, and each part “combines into the unity of the whole because they are the cause and effect of their form”.\textsuperscript{179} As such, we must presuppose that the earth, as a biosphere, is the object of a causality and an end of nature.\textsuperscript{180}

The \textit{existence of life} on earth is the observable expression of the biological earth as an end of nature. But this does not mean that life should not come to an end, or that the ending of life would divide the unity of the earth and the purpose it is. Upholding this unity requires us as rational beings to uphold the existence of life, and this includes a requirement to uphold our own existence. Upholding our own existence can require us to end another life. So in order that our actions should always uphold the existence of life, our actions in ending life must be \textit{for} life. In other words, we affirm life in ending another life by doing so only when it is necessary to uphold life in ourselves or in something or someone else. Necessity in this context controls what may be considered to be a permissible purpose, as well as the permissible means for achieving our purposes. So for instance, this means that if one kills an animal for food, the killing must not only be rationally necessary for the purpose of obtaining food, obtaining food from an animal must also be necessary for life or survival.

There are four possible reasons we may have for taking the life of other beings. First, we may be permitted to take a life to preserve ourselves from a threat that a being poses to our life or our security of the person or abode. The killing of a mosquito that feeds on us would fall within this

\textsuperscript{177} Kant, \textit{Critique of Judgment}, \textit{supra} note 31 at § 64-65, 369-374.


\textsuperscript{179} Kant, \textit{Critique of Judgment}, \textit{supra} note 31 at § 64-65, 369-374.

\textsuperscript{180} \textit{Ibid} at § 64, 370-371, § 65, 375.
category. Although the bite of one mosquito does not usually threaten our lives, any being that feeds on our bodies can be taken by us to violate the security of our person, although not necessarily so. Second, we may be permitted to take a life to secure the means for our survival, to sustain one’s own life with necessary food, shelter, and clothing. A third reason we may have for taking a life is for human advancement and flourishing, but it is uncertain whether taking a life for these reasons should be permitted. This category may or may not include scientific and medical research, which seems to straddle the third category of advancement and flourishing and the second category of killing for survival. Overcoming disease appears to go beyond survival to extending life, although it may be argued that extending life goes to the purpose of upholding life. Permission to kill other animals for such purposes may, however, be of limited usefulness, since it would not grant us permission to use live animals for research and experimentation in a way that would result in the division of an animal from its own end. Another difficult consideration is whether the practices that sustain our culture are necessary for human survival. The question arises because human life is not only about physical survival, but involves intellectual, spiritual and social needs that many would consider to be a matter of survival. The question under this third category is whether taking life for the purpose of our advancement or flourishing can also fall under the second category as a matter of human survival, which includes more than mere subsistence. It is a question that should be open for debate. Fourth, we are not permitted to take life for trivial reasons unrelated to our defence, survival, advancement or flourishing. Ending life for these reasons does not affirm life and violates the unity of the earth and the purpose it is. Killing that is unnecessary for our survival, killing for domination or sport, and killing for no reason or trivial reasons falls under this category.

While it may be permissible to end life for the reasons set out in the first two categories, and possibly the third category in some instances, the obligation to uphold the existence of life precludes actions that would cause the total destruction or extinction of any form of existing life through eradication or destruction of habitat.
5.3 Human life

Yet if it is permissible to kill another being for my own survival and to do so is, in fact, an affirmation of the existence of life, is it permissible to kill another human being for my own survival?

It is not a violation of the unity of the earth and the purpose it is for us to end the life of another person for our own survival. We must be prohibited from taking a human life, even for our own survival, for another reason that lies in our freedom. As already discussed, ending the life of a nonhuman being does not violate the unity of that being because its purpose is complete. By contrast, the human being, by virtue of her capacity to freely determine her own ends, must become unified with her purpose through election. This makes the final ends of human beings an unending possibility, subject to continual change so long as they live. Taking a human life prematurely closes the door on any future determinations of one’s own ends and, therefore, constitutes a violation of the unity of a free and rational being with her future ends that are yet to be determined.
Conclusion

What sets us apart as human beings from the other animals among us? It is not the capacity for language or intelligence in its many earthly forms, or our capacity to feel joy, pain or frustration, or to construct complex social relationships. What sets us apart as human beings are our moral powers of reason, which we have by virtue of our experience of reflective freedom. Freedom is the unique force in the human experience. Freedom is not a straightforward idea, but a manifold. Its iterations define the form of our lives. Our experience of freedom releases us from nature’s "code", and this enables us to be an unconditioned, purely spontaneous, causality in the world that is analogous to the determining forces of nature. So it installs a power in humanity to freely set our own ends through reason, and to exploit the objects and beings we find in the world for our own purposes. Freedom also constrains our power because we cannot contradict our own freedom in our willing, in so far as we take ourselves to be free. At the same time, our freedom means that our final ends are not given to us by nature in our original condition, and in this sense we are "unfinished". So we must somehow give final ends to ourselves. We must write our own stories, and in this way become unified with our own ends. We must complete our narratives. And freedom, in yet another iteration, is the means by which we become unified with our own ends.

In Kant’s account of the moral law, the condition of freedom, and in particular, our capacity to freely determine our own ends through reason, is the condition of absolute value that every rational being must uphold as a matter of necessity. Animals and all irrational nature that lack these uniquely human powers are, therefore, empty of the absolute value, and are considered things that may be occupied by the human will without contradiction. This conception of animals governs our relationship to animals under the moral law, and is reflected in the structure of our obligations in relation to animals under the law.

Although we must uphold our freedom as the force that defines our unique form of life — it gives us a power and limits that power, and it makes us “unfinished” according to nature but
gives us the means for completion in our own ends — our powers of elective freedom are not by itself the final end that we must value as free and rational beings. Our elective freedom is only the means by which we become unified with the end of our choosing. It is our completion that is the final end, and that gives our freedom its value. So when we value our capacity to freely set our own ends, what we value is the means by which we become unified.

Every living being is or is becoming what it is as an end. For all such beings, the thing of absolute worth lies in the unity of our being with what we are as an end. Thus, the unity of our being, and the dignity it expresses, is the condition that we must uphold in ourselves that we share with the other animals, except that in our case, as human beings, we must uphold freedom as a part of our unity.

An animal is a unity, a final end in itself that cannot be conceived of as lacking the moral value that is capable of resisting or contradicting its occupation by an alien purpose. It cannot, therefore, be conceived of as an empty thing that can be used as merely a means to an end. We have been thinking with Kant that we are justified in using animals as a mere means to an end because they are conceptually empty of the condition of absolute value. But in reality, when we use an animal in this way, we are merely taking them to be empty. In order to enact our will in the location of the animal, we must destroy the content that resists displacement — we must evict from the being its own inalienable end. It is through these actions that we turn an animal, including human animals, into things. The empty condition of animals is a consequence of human use. It cannot, therefore, be the ground that justifies our use of animals.

When we divide a being from its fixed or chosen end, we repudiate the unity of a being with its own end, and so we repudiate the condition that we must uphold as having absolute worth in itself. The conclusion that the unity of an animal is a condition that we must uphold as a matter of moral imperative is, from the point of view of human society and human desires, massively inconvenient. As Steven M Wise has observed, “nonhuman animal products are so omnipresent that one cannot live and not support the abuse of nonhuman animals.”

81 Professor Wise reports that a cow’s body parts will end up in products as far ranging as fertilizer, crayons, ink, pie

crusts, matches, fire extinguisher foam, musical instruments, and plywood.\footnote{Ibid.} Using other animals to fulfill our own ends is something we desire to do, something we have the power to do, and something we seem to have always done as far as we were able. Under such forces, how could we do otherwise? But if the true ground of our actions lies in these entrenched desires and habits, then what exactly does it mean when we say we are free? What does it mean to say that we have the capacity to determine our actions unconditioned by the forces of nature, and that it is by virtue of this capacity that we may subject other animals to our will as far are we are able? What does it mean to stand on our capacity to act from reason, rather than from inclination and desire and the historical precedent of our actions, if we then adopt these external forces as a second nature that determines our choices? If it is true that we cannot act otherwise than in accordance with these external forces, then we must revise the story we tell ourselves about who and what we are. If this is true, then our conception of the other animals as things that we may use as merely a means to our own ends is not a conclusion we arrived at through reason, but by the external forces of precedent and desire, backed by the power to fulfill that conception. And it is our \textit{reason}, uncorrupted by desires so deep and so long-satisfied, that has been the persistent voice within us, casting doubt on our conceptions and insisting that we might be otherwise than how we have been.

We must value the unity of the being because there is simply no other home in this world for us except in our own being. To divide a being from itself, to possess them, to occupy them, is to destroy the only place in the world they can be. And this destroys our natural dignity, which is contained in the union. We recognize what dignity is in a human being or an animal being, who retains some essence of himself under forces that would seek to obliterate this essence and inhabit him completely. Our dignity is expressed when we refuse destruction, by continuing to express our own end in what ways are left to us. And we are stripped of our dignity when our refusal is disregarded, and we are forced apart from our own being.

There is a powerful example of what I am talking about in a book called \textit{We Animals} by the Toronto photographer Jo-Anne McArthur.\footnote{Jo-Anne McArthur, \textit{We Animals} (New York: Lantern Books, 2014) at 186.} There is a photograph in the book of a chimp named Ron, who had been the subject of surgical experiments over many years. McArthur
reports that during those years, Ron lived in a five-foot by five-foot by seven-foot cage suspended above the ground. The photograph is taken at a later time, when Ron was at a chimp sanctuary. Although Ron was free to roam at the sanctuary, he mostly stayed indoors, where he would arrange his blankets in a circle and sit within it. In this photograph, Ron is sitting with his legs crossed and his hands folded gently in front of him. He is inside his carefully arranged ring of colourful blankets, and he is gazing forward. It seems to me that our moral law is just like Ron’s circle of blankets. It can stop no one. It is not an impenetrable wall that cannot be scaled. No brigade stands behind it. It is just an assertion, backed by no force. But its insistence is somehow impassable, or impassable without effecting some irreversible change in us, because it arises from our own dignity and the dignity of every living being.
Bibliography

JURISPRUDENCE


*Commonwealth v Turner*, 145 Mass 296, 14 NE 130 (1887).

*Ford v Wiley* (1889), 23 QB 203.


*R v Power* (2003), 176 CCC (3d) 209.

*R v Menard* (1978), 43 CCC (2d) 458 (Que CA).

*Stephens v State*, 3 So 458 (Miss, 1887).

*Taub v State*, 296 Md 439 (Md, 1983).

SECONDARY MATERIAL: MONOGRAPHS


SECONDARY MATERIAL: ARTICLES


Wang, Minghui, Zinaida Perova, Benjamin R Arenkiel, & Bo Li. “Synaptic Modifications in the Medial Prefrontal Cortex in Susceptibility and Resilience to Stress” (2014) 34(22) J Neurosci 7485.


SECONDARY MATERIALS: NEWS & WEB SOURCES, REPORTS, CONFERENCES, ETC


“Biosphere” National Geographic Encyclopedic Entry, online: <education.nationalgeographic.com/encyclopedia/biosphere>.
Canadian Council on Animal Care, online: <www.ccac.ca>.


———. “Pets by the Numbers” (30 January 2014), online: HSUS <humanesociety.org>.


National Farm Animal Care Council, online: <www.nfacc.ca>.
