

The Rights of Animals: A Very Short Primer

Cass R. Sunstein*

Abstract

Do animals have rights? Almost everyone believes in animal rights, at least in some minimal sense; the real question is what that phrase actually means. By exploring that question, it is possible to give a clear sense of the lay of the land—to show the range of possible positions, and to explore what issues, of theory or fact, separate reasonable people. On reflection, the spotlight should be placed squarely on the issue of suffering and well-being. This position requires rejection of some of the most radical claims by animal rights advocates, especially those that stress the “autonomy” of animals, or that object to any human control and use of animals. But this position has radical implications of its own. It strongly suggests, for example, that there should be extensive regulation of the use of animals in entertainment, in scientific experiments, and in agriculture. It also suggests that there is a strong argument, in principle, for bans on many current uses of animals.

I. Dogs, Cats, and Principle

There are nearly sixty million domestic dogs in the United States, owned by over thirty-six million households. Over half of these households give Christmas presents to their dogs. Millions of them celebrate their dog’s birthday. If a family’s dog were somehow forced to live a short and painful life, the family would undoubtedly feel some combination of rage and grief. What can be said about dog owners can also be said about cat owners, who are more numerous still. But through their daily behavior, people who love those pets, and greatly care about their welfare, help ensure short and painful lives for millions, even billions of animals that cannot easily be distinguished from dogs and cats. Should people change their behavior? Should the law promote animal welfare? Should animals have legal rights? To answer these questions, we need to step back a bit.

Many people think that the very idea of animal rights is implausible. Suggesting that animals are neither rational nor self-aware, Immanuel Kant thought of animals as “man’s instruments,” deserving protection only to help human beings in their relation to one another: “He who is cruel to animals becomes hard also in his dealings with men.”¹ Jeremy Bentham took a different approach, suggesting that mistreatment of animals was akin to slavery and racial discrimination. “The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but

* Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, Law School and Department of Political Science, University of Chicago. I am grateful to Emily Buss, Gary Francione, Martha Nussbaum, Richard Posner, Janet Radcliffe Richards, and David Wolfson for valuable comments on a previous draft. Alexandra Baj provided valuable research assistance.

¹ Immanuel Kant, *Lectures on Ethics*, trans. Louis Infield (New York: Harper Torchbooks, 1963), at 240.