

BETWEEN THE SPECIES

Review of How to Count Animals, more or less

Authored by Shelly Kagan

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Introduction

In *How to Count Animals, more or less*, Shelly Kagan sketches and argues for a hierarchical account of moral status. Although the book is fairly lengthy at 304 pages of text, Kagan is correct in calling it a sketch, since what this book provides us with is a foray into one aspect that a comprehensive ethical theory must include, in his view, if it is to be plausible. Even so, the work that he does, if one accepts hierarchy, opens up many different avenues to be further pursued in animal ethics.

Kagan's Sketch

Before introducing Kagan's hierarchical theory of moral status, we must attend to his distinction between moral standing and moral status. Having *moral standing* means that a being counts morally in itself, such that we can owe moral duties to it, or morally wrong it in itself. On the other hand, *moral status* involves the specifics of how much a being counts in our moral calculations, and what requirements govern our behavior towards it.

The traditional way of construing the principle of equal consideration of interests, such that interests of the same quantity are to be treated the same, gives us the view that Kagan takes as prevalent in animal ethics, and which he argues against, namely *unitarianism*. According to unitarianism, there is one moral status. Similar interests should be treated similarly. Kagan's hierarchical reinterpretation of the principle of equal consideration of interests helps us to understand his view. Properly understood, the principle of equal consideration of interests tells us to treat interests that are similar in terms of morally relevant features similarly. It is the case, however, that a morally relevant consideration is to whom or what the interest belongs. If, say, a quantitatively similar pain belongs to a person on the

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one hand, and a nonhuman animal which is not a person on the other, then this pain is more significant in the former case. Beings that have psychologically richer capacities, whether in the actual world, potentially, or modally, have more important interests.

When it comes to value theory, or the theory of the good, differential moral status matters in a number of ways. For example, distributive principles will be weighed more heavily towards the interests of higher beings. Nonhuman animals still fall under distributive principles, whether egalitarian, sufficientarian, prioritarian, or desert, but their interests are less weighty in fulfilling these principles because they have a lower moral status. In the case of the value of well-being, a similar quantity of well-being will be more valuable in the case of a being with higher rather than lower status.

In the case of moderate deontology, nonhuman animals and marginal cases have deontological rights that are based on autonomy (or agency, or whatever else may ground such rights), but these rights are weaker because of the possession of less autonomy. The psychological capacity that grounds deontological rights is less rich, so the rights are not as strong.

Kagan appreciates the fact that critics may worry here about the problem of normal variation. If different psychological capacities grant a being different status, whether in our theory of the good or concerning deontological rights, then it seems that human beings will vary in their moral status because they have different capacities. The critic will find this unacceptable.

Kagan has an answer here. We can construe the hierarchical account of moral status as wed to practical realism, and thus get a *limited hierarchy*. On, say, rule consequentialism (or other

foundational ethical theories), it is too cumbersome in practice to take into account minute differences in status. Instead, we will need no more than half a dozen or so categories of status. This gives us a *step function*, such that moral status is hierarchical in that it goes up, but the categories themselves are uniform until we go up to the next category. In such a way, we can avoid the idea that normal adult humans should be treated differently because of different levels of psychological capacities. Severely disabled humans will count for less than normal adult humans in Kagan's view, but their modal status increases their moral status above their psychological peers.

Kagan's Arguments

Why accept a hierarchical account of moral status? Kagan gives us a few arguments here. First, the unitarian strategy to avoid the absurd consequence that there is a moral tie when we are faced with the choice of saving a mouse or a human from drowning seems to implicitly lead us to hierarchy. The unitarian avoids a moral tie by saying that the life of the human is more valuable in being longer and fuller of more valuable goods. Saving the human avoids the greater harm. In employing this strategy, however, the unitarian will seem to be committed to a standing presumption in favor of those beings with richer psychological capacities over those with the poorer ones. This seems to imply hierarchy.

Second, Kagan gives an argument from distributive principles. When we combine unitarianism with any distributive principle (and we must endorse a distributive principle), then we run into absurd consequences. In the case of an egalitarian principle, since normal adult humans have richer lives than those below them in capacities, we have a standing duty to redress this natural inequality by attending to the well-being of

nonhuman animals. Similar absurdities follow from joining the other distributive principles with unitarianism.

Third, in the case of deontology, unitarianism would preclude a castaway from taking the life of a nonhuman animal, whether a deer, fish, etc. in order to save his own life. In the case of absolutism, this would be because the right to life has no threshold. In the case of moderate deontology, this would be because the threshold for infringing the right to life of the nonhuman animal could not be met if its moral status is the same as a human. One could try to go the route of restricted deontology and not include nonhuman animals among those who have deontological rights, but Kagan rightly thinks that whatever capacity grounds deontological rights will not be wholly absent in the case of nonhuman animals, and thus neither will such rights be absent, albeit they will be weaker.

Kagan's Critics

In this final section, I will briefly survey and address just a few criticisms made against Kagan that seem natural enough to make, and likely to have broad appeal in the animal ethics community, but which I believe are nevertheless mistaken. My counter criticisms will be against general theoretical considerations rather than providing a defense of Kagan's more specific arguments.

First, Andrius Gališanka notes that because Kagan grants nonhuman animals moral standing, and acknowledges that the way we treat them is morally horrendous, his approach has liberating potential (Gališanka 2021, 370). This liberating potential, however, is said to be tempered by the hierarchical account of moral status. This is, of course, true to some degree. If nonhuman animals have a lower status than humans, then

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there are cases in which nonhuman animals will lose out in our calculations. An instructive example of this is Kagan's own, in which it is permissible to kill a nonhuman animal in order to preserve the life of a castaway. At least in this case, Kagan seems to get the right answer. Getting the right answer is more important than the mere fact that nonhuman animals may lose out, because sometimes they probably should. We will only hit a snag when the hierarchical approach gives us the wrong answer, and this remains to be seen. Liberating potential, then, is only relevant when that liberation is itself legitimate.

Second, Jeff Sebo has called into question Kagan's reliance on moral intuition in idealized, simple cases (Sebo 2021, 695). There are a few worries that Sebo has here. First, we may tend to underestimate the capacities of nonhuman animals. Second, we may tend to underestimate the moral status of nonhuman animals because a) we have a speciesist bias, and b) we may be unwilling to make the radical changes that a proper consideration of nonhuman animals requires. Sebo thinks that Kagan's book may be particularly susceptible to biases that corrupt our intuitions because he relies on a bottom-up rather than top-down methodology, i.e., on moral intuitions in individual cases rather than moral principles.

There are a few questions to ask here. First, is Kagan himself corrupted by speciesist (or other) biases in constructing his theory? Second, even if the first question is answered in the negative, is it the case that those who adopt the hierarchical approach that Kagan has started may not do their due diligence to avoid speciesism and misuse this theoretical apparatus?

In the first case, Kagan certainly seems to have taken great care in writing his book. Kagan is a critic of the moral atroci-

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ties we commit against nonhuman animals, and takes pains to point out that his theory does not preclude that judgment. To point out that speciesist biases are deeply entrenched is not to prove that Kagan cannot transcend them through responsible critical reflection. Furthermore, Kagan could easily retort that his critic may be caught in a sub-culture, namely the one of animal ethics, that has had its own entrenched ideas that are non-hierarchical. If we focus too much on our social situatedness, then we can preclude ourselves from making judgments that we really can plausibly make.

As for the second point, this seems more serious, especially since Kagan wants us to think hierarchically in our daily interactions with nonhuman animals. The answer to this question will depend on who we are considering. No doubt some people could fail to uphold their epistemic duty to rid their minds of undue biases, but this need not doom the hierarchical approach in its applications and further extensions. There is a healthy degree of care to have in ridding ourselves of bias, but I think Sebo has offered us a stronger prescription for skepticism in animal ethics than is merited.

It seems common in the secondary literature to view Kagan's book as an impressive, clever contribution to animal ethics, but not ultimately successful in persuading the reader. I myself find a hierarchical view to have some intuitive plausibility, and Kagan's book to helpfully sketch what this implies for animal ethics. Returning to the point of liberating potential, it could even be a practical strength of accepting hierarchy that it coheres with common sense, so that humans are more broadly willing to endorse the view, and it can still address our heinous treatment of nonhuman animals. It is likely the case that Kagan even has this practical usefulness in mind when he says, "The

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moral theory with regard to animals that we need to be defending is indeed a hierarchical one; and until that fact is more widely recognized in the philosophical literature, I suspect that many of our efforts to secure decent and just treatment for animals will be doomed to failure.” (Kagan 2019, 303). The idea is that, in addition to being the theoretically correct view, hierarchy, in according with common sense, is not the stumbling block to animal liberation that unitarianism could be.

References

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