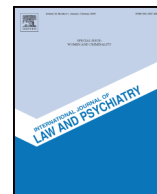




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Evolutionary continuity and personhood: Legal and therapeutic implications of animal consciousness and human unconsciousness

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ABSTRACT

Convergent lines of research in the biological sciences have made obsolete the commonly held assumption that humans are distinct from and superior to all other animals, a development predicted by evolutionary science. Cumulative evidence has both elevated other animals from the status of “dumb brutes” to that of fully sentient and intentional beings and has simultaneously discredited elevated claims of human rationality, intentionality, and freedom from the constraints experienced by other animals. It follows then that any theoretical model in which humans occupy the top of an imagined evolutionary hierarchy is untenable. This simple fact calls for a rethinking of foundational concepts in law and health sciences. A further cultural fallacy that is exposed by these converging lines of scientific evidence is the notion that the subjective inner and abstract dimension of human beings is the most true and valuable level of analysis for organizing human lives. In fact, our individual and collective minds are particularly vulnerable to elaborated false narratives that may be definitive of the particular forms of suffering that humans experience and seek to heal with modalities like psychoanalytic psychotherapies. I conclude with the suggestion that other animals may have the capacity to help us with this healing project, even as we are ethically bound to heal the suffering that we have collectively imposed upon them.

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“It is probable that sometime in the future there really will be a bio-analysis.”

(Freud, 1933)

1. Introduction

While convergent research on animal cognition, emotion, and behavior has increasingly pointed in the direction of animal “personhood,” interdisciplinary research in human cognition has simultaneously confirmed Sigmund Freud’s hypothesis that not only are human beings not always self-aware and rational, but also the human unconscious mind motivates much of human behavior; and that human consciousness is fragmented at best. The cumulative data indicate that humans—along with all other animals—think, feel, and behave from complex motives that are both conscious and unconscious, self-aware and conditioned, with variation by species and niche rather than by abstract and hierarchical valuation.¹

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¹ For purposes of this paper, I confine my focus to “interiority” as observable in thinking, feeling, and intending as indicators of personhood; all of these have been amply demonstrated to exist in nonhuman animals. For the purposes of this paper, I accept the boundaries of the scientific worldview. Consequently, I will not attempt definitions of mind, consciousness, and soul, as these involve entire literatures outside the scope of what I hope to accomplish here.

The classical philosophical arguments for human superiority, based upon assumptions about “self-evident” awareness, rationality, and complexity of individual humans have for centuries served as the foundations for political theory and legal systems that—irrationally and to the detriment of life on earth—favor humans. In his groundbreaking paper, “Apes, Continuity, and the Law,” Fouts (2004) makes the point that rationality is a property of many animal species and that rationality is only meaningful in relation to social context. “Rationality is an emergent property of sociality.. . Our ‘human rationality’ may be different, but it is just a different form, not something superior that would place us outside of nature any more than the rationality of the dog or chimpanzee would place them outside of nature” (p. 113).

Not only have we come to understand that rationality is not definitive of humans, and that it cannot be defined by the human experience of it, but we also know that humans cannot be accurately understood by way of examining the inner experience of individuals. In the words of social neuroscientists Cacioppo and Patrick (2008), “Our bodies and brains are designed to function in aggregates, not in isolation. That is the essence of an obligatorily gregarious species” (p. 120). Though we have subjective experience of being individual selves, the self has no other reality than that of subjective experience. While it is difficult to imagine this, filled as our experience is with that subjective self-story, it is easier to understand that there is no such thing as an individual human being, as evidenced by the extreme degree of infant and child

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dependence on adults not only for physical care, but also for cultural conditioning that will set the parameters for her self-story and will allow her group membership. To put it simply, other people are integral to that which we experience as “self” from before birth until death. Further, the fact that bio-emotional systems are shared across species, at least in core respects, implies that the shared emotional lives of all animals, including humans, provide a strong foundation for ethical consideration and legal status for all animals and may also permit for serious consideration of cross-species therapeutic interventions (Benvenuti, 2014).

2. Evolutionary continuity of mind

In the same year in which Dawkins published *The Selfish Gene* and arguably at the peak of the scientific reductionist worldview, Griffin (1976) published his paradigm shifting book *The Questions of Animal Awareness: Evolutionary Continuity of Mental Experience*, which he framed in these words: “The flexibility and appropriateness of animal behavior suggests both that complex processes occur within their brains and that these events may have much in common with our own conscious mental experience. To the extent that this proves to be true, many of our ideas and opinions about the relationship between animals and men will require modification” (p. 1). By contemporary standards of comparative biological sciences, these then courageous words have proven to be not only prophetic but an understatement of the body of knowledge that has grown in the few short decades since he wrote them. Griffin is of course in the lineage of Darwin (1871/1936, 1872/1998), who clearly perceived humans to be one species among many, each defined by its environmental niche and specialized adaptations.

Since the 1990s in particular, several lines of research have converged to change at the foundation the scientific understanding of animal life on earth, bringing that understanding into line with the principles of continuity predicted by Darwin and by those who later revised and extended evolutionary science. Comparative cognitive psychologist Penn (2011) summarized the contemporary flood of information from comparative cognitive and behavioral sciences, saying: “Hardly an issue of *Current Biology* or *Animal Cognition* goes by without some new effigy of human cognitive uniqueness being torn down and dragged through the mud” (p. 255). Indeed, a long series of features and capacities once thought to distinguish humans from—and to elevate humans above—other animals have been tested and have strikingly failed to find support in the scientific evidence. My own incomplete list (Benvenuti, 2014) reads, “Behaviors once thought to distinguish humans from other animals include tool making and use, the capacity for abstract thought, use of language, mathematical reasoning, self-awareness, social cognition, humor, creative play, complex emotional bonds, empathy, altruism, awareness of death (and grieving), moral sensibility, social learning and culture, political affiliation, and the capacity to know what is in the mind of the other” (p. 44).

I have found it something of a tragicomic adventure to read through the literature as one after another physical feature or behavioral capacity has been suggested by some research team to be the new “it factor,” that special something that separates humans from other animals and establishes our superiority. That project seems finally to have died, as evidenced by reluctant advice from Fitch (2005), protégé and fellow of Chomsky in human linguistics. After having declared the descended larynx to be the definitive human physiological trait that allowed for language, thought, and the emergence of mind, then having found descended larynxes in nonhuman animals, he wrote, “These new data tell a cautionary tale: we must beware of considering any human trait unique without a thorough search among animals” (p. 199).

Converging from the fields of ethology, comparative cognition, comparative anatomy, comparative psychology, linguistics, and from the neurosciences, especially affective neuroscience, we now have robust evidence that other animals share many characteristics with humans

in the domains of cognition, affect, and behavior. Significantly, the need to surrender the long project of seeking to define distinctive and superior human traits and behaviors has brought home to scientists the fact that the question of anthropomorphism is much broader and deeper than its early applications in animal studies would suggest.

3. Anthropomorphisms, for better and for worse

For decades, the charge of anthropomorphism meant that naïve observation of what looked like thought or feeling, much less language, in a “dumb brute” was merely a fanciful projection of the human observer. The charge indicated, usually with pejorative implications, the projection of our human identifications onto other animals. That singular notion, however, is only the tip of the iceberg in the matter of anthropomorphism in human thought. While the charge of naïve identification is perhaps the least of the problems of anthropomorphism, it is one which illustrates the cognitive self-serving bias that supports our idea that humans are the apex and best product of evolutionary processes.

The classic textbook illustration of such self-serving bias is the story of Clever Hans, the mathematical horse, whose trainer demonstrated Hans’ arithmetic reasoning for throngs of enthralled onlookers. Hans was believed by many excited observers to be solving mathematical problems, as he tapped out his numerical responses. However, Pfungst (1907/1911) systematically analyzed the trainer-horse communication and found that the horse’s knowledge of math could be reduced to sophisticated observer response effects by way of which the trainer was unconsciously offering Hans behavioral reinforcement for making the responses that he (the trainer) desired. Pfungst meant for us to understand that the human was conveying human knowledge to the horse in a way that could elicit a humanly meaningful response from a dumb animal. There are at least two problems with Pfungst’s work, however. First, it ignores the fact that conditioned learning is the basis of all learning, and is shared among all animals, including humans: an unconsciously rewarding teacher and a conditioned student may easily be observed in human-human interactions upon casual observation of almost any social scene, as we unconsciously reward or punish behaviors in those near to us. My first point in reconsideration of the Hans story is that the anthropomorphism demonstrated is not merely about the horse attending to social cues rather than conducting abstract human mathematical quizzes in his horsey mind; it also illustrates the anthropomorphisms of Pfungst in dismissing social cue reading as not “real” learning and the unconscious teaching as not “real” teaching.

The second and greater problem with the Hans illustration of anthropomorphism is that it was used to entirely dismiss the horse’s horsey intelligence on the basis of his having learned something only meaningful to humans by way of a learning modality that is common to all animals. No one stopped to consider what horse rationality might look like or be used for, much less whether or not humans could develop and use horse intelligence.

Panksepp and Biven (2012) note that all learning is conditioned learning at the neural level because repeated association is what creates learning, and, in older affective brain regions, unconditioned responses are evoked by lived experience, thus the brain itself, in a rare instance of hard-wiring, teaches adaptive behavior to the individual animal. I emphasize again that the cumulative scientific findings about learning, motivation, and behavior indicate that humans and all other animals think, feel, and behave from complex motives that are both conscious and unconscious, self-aware and conditioned, with variation by species and niche rather than by abstract and hierarchical valuation of “higher” and “lower” species. When evolutionary scientists say that the differences between humans and other animals are matters not of kind but of degree, what they are *not* saying is that humans are the best and others lesser than us to varying degrees. Rather, they are making the point that all animals share some features with all other animals and also differ to varying degrees from other animal species (Fouts, 2004).

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