

## INTRODUCTION

It is a scientific fact that human beings are animals. Genetically we are almost identical to other primates and the evidence for the psychological and behavioural similarity between human beings and other animals is continually increasing, as ethologists make new discoveries. Nowadays it is extremely difficult to find a single feature or ability which would set us apart. Still, we tend to conceive of ourselves as beings that differ from animals—not only because we are accustomed to thinking that our psychological and other abilities differ in degree, but especially because we think that we are qualitatively different. Despite scientific evidence, we have adopted a profound cultural conception of a radical disparity between us and them.

What are the origins of our cultural conception that there is such a difference between human beings and other animals? Why do we consider animals as radically different from ourselves? The answers to these questions are difficult to find because the story is complicated and probably quite ambiguous. However, it seems to me that one thing is certain: the difference has not always been a part of our cultural imagery—at least in the form it has taken today. In the course of history, people have conceived of the relationship between human beings and other animals in different ways, and past people have not always shared our preconceptions.<sup>1</sup>

A striking effect of an alternative conception of the status of non-human animals is the once conventional practice of trying them in courts of justice.<sup>2</sup> During the Middle Ages (and beyond),<sup>3</sup> animals were commonly

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<sup>1</sup> For historical perspectives on the relation between human beings and animals, see Jennifer Ham & Matthew Senior, eds., *Animal Acts: Configuring the Human in Western History* (New York: Routledge, 1997); A.N.H. Creager & W.C. Jordan, eds., *The Animal/Human Boundary: Historical Perspectives*, Studies in Comparative History (Woodbridge: University of Rochester Press, 2002); Alain Boureau, *L'Empire du livre: Pour une histoire du savoir scolastique (1200–1380)*, Histoire 85 (Paris: Les Belles Lettres, 2007), 187–99.

<sup>2</sup> This curious practise has received little attention from modern scholars. The most important studies are E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London/Boston: Faber and Faber, 1987) (originally published by William Heinemann, London: 1906); Walter Woodburn Hyde, "The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times," *University of Pennsylvania Law Review* 64:7 (1916): 696–730; and William Ewald, "Comparative Jurisprudence (I): What Was It Like to Try a Rat?" *University of Pennsylvania Law Review* 143:6 (1995): 1891–1905.

<sup>3</sup> The practise prevailed well beyond the Middle Ages. The majority of the cases, reports of which are still extant, are from the 15th, 16th, and 17th centuries. However, we cannot conclude that it was more common to try non-human animals in the Early Modern

put on a trial because of the crimes they had committed: for example, rats were prosecuted for destroying the crops, swine and dogs were charged for murder, a rooster was accused of laying an egg, and insects were brought to trial for devouring the vineyards. The variety of species of trialled animals and their alleged crimes is vast. The prosecuted animals were sometimes sentenced to death, sometimes excommunicated, and sometimes imprisoned, but interestingly enough they were not always found guilty. Thus, although one might be tempted to think that the practice was only ceremonial, it was not. It was not obvious beforehand that the outcome of the trial would turn out to be detrimental to the prosecuted animal, and during the processes the culprits were considered as much persons in the face of the law as any human being.<sup>4</sup> The extant records of animal trials show us that the difference between men and beasts was conceived of differently in the medieval field of jurisprudence than it is done today. Also the ordinary people—farmers whose fields had been ravaged by mice, wine growers whose vineyards had been devastated by noxious insects, and parents whose children had been devoured by murderous swine—who laid the charges against animals must have understood these creatures in a way that differs from our modern perspective. They did not see anything bizarre in this practice. They drew the boundary between human beings and non-human animals in a different way than it is drawn nowadays—regardless of whether we draw it on the basis of our cultural conception, which places a radical disparity between the two, or on the basis of scientific evidence, which diminishes the difference yet does not incite us to try rats for alleged crimes.

As non-human animals were treated—to some extent at least—on a par with human beings, so human beings were considered to be animals. Medieval philosophers, especially from the thirteenth century onwards, tended to follow the Aristotelian definition according to which human

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period than in the Middle Ages on the basis of extant reports because in the Middle Ages the registers of the courts were imperfectly kept and also because the archives have been destroyed either partially or totally (Evans, *The Criminal Prosecution*, 137). It is probable that the registers from the Early Modern period simply survived better than those of the Middle Ages.

<sup>4</sup> Ewald, "Comparative Jurisprudence (I)," 1902–5; Evans, *The Criminal Prosecution*, 18–20, 37–50, 153–54, 298–303. Evans lists cases of animal trials between the years 825 and 1906 (*ibid.*, 265–86). However extensive the list is, it seems to contain only the cases in which the accused were found guilty (*ibid.*, 136). It is important to note that in the Middle Ages the owner of a sentenced animal was not held responsible for its actions. Quite the contrary, sometimes the owner was remunerated for the loss of the executed beast (*ibid.*, 155).