

Animals' Place in Legal Theory: Introduction to the Special issue on Animals' Place in Jurisprudence

Deborah Cao

Published online: 22 August 2010
© Springer Science+Business Media B.V. 2010

What is an animal? To some, an animal is a family pet, a companion or a family member. To others, it represents food, a tool for agriculture, commodity, resource or part of the landscape. In the eyes of the law in most countries, an animal is property, either personal property or property that belongs to no one. However, we all know but often neglect to remind ourselves that above everything else, animals are lives, living beings that breath the same air as you and I. Animals, above all, are sentient beings as the law in the European Union now recognises,¹ beings that have their own lives and existence independent of humans.

Non-human animals have been significant to human evolution and society. In particular, animals have had a long association with Western law originating from the biblical goring ox as analysed in the article by Professor Jackson in this special issue. From a different tradition, an animal, called *xie zhi*, was regarded as the symbol of law and justice from ancient China (see the image of the animal in my paper in this issue). Thus, animals, both imagined and real, have been linked to human law and legal culture in the long history of legal development. Despite the long association between animals and law, animals do not figure prominently in legal philosophising. Animals have been regarded as objects in law and as personal property. However, ever since 1822 when the first modern animal protection legislation was enacted in England protecting some animals from human abuse and violence, with the popular modern animal liberation movement generated in the 1970s with Professor Peter Singer's book *Animal Liberation* [2], and with the increasing number of adopted statutes protecting animal welfare in different countries, 'dignified existence' for animals is now being recognised as an issue of

¹ The *Protocol on Protection and Welfare of Animals* annexed to the *Treaty of the European Community* and now incorporated as part of the *Treaty of Lisbon* states that the member states of the European Union desire "to ensure improved protection and respect for the welfare of animals as sentient beings."

D. Cao (✉)
Law School Socio-Legal Research Centre, Griffith University, Brisbane, QLD 4111, Australia
e-mail: d.cao@griffith.edu.au

justice, calling for the notions of basic justice, entitlement and law to be extended across the species barrier [1]. Animals have served as a signifier and symbol of law in the long history of human civilisations. Now they should have a place not only in law but also legal philosophy as subjects of law.

In this special issue, we have five articles addressing different aspects of animals and law, both in the West and the East, from different perspectives. First, we have the paper ‘Liability for Animals: An Historico-Structural Comparison’ by Professor Bernard S. Jackson. Professor Jackson provides us with an erudite and detailed account of civil liability for animals in a range of ancient, mediaeval and modern legal systems, using semiotic analysis to supplement the insights of conventional legal history, and balancing diachronic and synchronic approaches. His paper goes into great detail in the Jewish and Roman sources but provides new semiotic insights into the most famous animal, the goring ox, in Western law, and the law associated with it.

In the next article, ‘Zoologian Jurisprudence’ by Piyel Haldar examines the iconography and role of animals in medieval and early modern bestiaries. Haldar describes that in being without original sin, ‘God’s creatures’ were deemed proximate to divine perfection and to salvation. The paper argues that animals, whether symbolic or actual, both instructed man’s moral behaviour and ushered man towards salvation, thus, it is argued, animals are key to understanding how modern law may eventually co-ordinate itself in relation to the concept of a future salvic moment.

‘The Animal—A Subject of Law? A Reflection on Aspects of the Austrian and German Juridical Systems’ by Sabine Lennkh addresses the black letter law of animal protection in Austria and German. It outlines and examines certain aspects of the law related to animals in these two countries considering it as a potential juridical approach whereby animals have been granted consideration and protection in contemporary laws in these two jurisdictions.

From a different perspective, Irina Knopp’s article examines *United States v. Stevens*, a case recently considered by the US Supreme Court, and its relation to animal law and freedom of speech issues. While animal rights advocates wish to frame the case through an anti-animal cruelty perspective, those seeking to protect freedom of speech see the case as an issue of first amendment rights. The article argues that the Supreme Court justices should have recognized the *Stevens* case as an important development in animal rights and held that the statute was based on a narrowly tailored, substantial government interest, with the protection of animals from harm overshadowing any possible speech or expression that is found in crush videos, dog fighting videos and the like.

Lastly, ‘Visibility and Invisibility of Animals in Traditional Chinese Philosophy and Law’ by Deborah Cao presents animals from a different source and angle, discussing the conception of animals in traditional China. The author points out that despite the different conceptualisation of animals in ancient Chinese philosophy and despite the fact that there were legal provisions concerning animal protection in Chinese imperial law more than a 1,000 years ago, the attitude towards animals in Chinese life is dictated by the central concern for human affairs and the instrumental value placed on animals. There is a gap in thought and actuality.

The gap discernable from the philosophical thought on animals and the reality regarding animals in China may not be limited to China at all. Perhaps, we should all pause and reflect upon whether there is such a gap in our own professed attitude and actual behaviour towards animals and how to address and fill the gap, in law, legal philosophy and in our everyday life and action. After all, legal philosophers should be more than just of the armchair variety, but practical ones as well.

References

1. Nussbaum, M.C. 2006. *Frontiers of justice: Disability, nationality, species membership*. New York: Harvard University Press.
2. Singer, P. 1975/1995. *Animal liberation*. New York: Random House/New York Review Book.