

BOOK REVIEW

LAW AND THE QUESTION OF THE ANIMAL: A CRITICAL JURISPRUDENCE YORIKO OTOMO AND ED MUSSAWIR (EDS)

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This new volume is a welcome addition to the *Law, Justice and Ecology* series published by Routledge. As the editors, Yoriko Otomo (School of Oriental and African Studies, University of London) and Ed Mussawir (Law School, Griffith University) note, there has been a striking growth in interest in the area of animal law. This has led to the expansion of literature in the field, much of it concentrating on an exploration of the laws which govern animals or treatments that advocate strongly for animal rights and welfare. In contrast, this book ‘introduces a somewhat different voice to the field’¹ by providing a theoretical analysis with, as the title suggests, a focus on jurisprudence. In doing so the book ‘seeks to fill a significant gap in the academic material dealing with the emerging discipline of animal law as well as the philosophical and critical theoretical engagement with the category of ‘the animal’.’²

The theoretical focus of the book is introduced by the editors in Chapter 1, and is facilitated by its organisation into three themes: genres, cases and habitats. In *The animal protagonist: representing ‘the animal’ in law and cinema*, Connal Parsley addresses human–animal relations and the representation of animals in the medium of cinema. He notes that ‘modern law and cinema are both important sites for the inheritance of a certain tradition of the representation of life, and particularly animal life towards the production of a specifically human form of life.’³ He notes that ‘[b]etter care for animals is now intimately a question of the extension of the person–rights paradigm to more and more forms of life.’⁴ In Chapter 3, Piyel Haldar explores some circumstances in which humans and non-human animals are treated equally: where they are both treated with a ‘lack of dignity that is based on the disavowal of the intellect.’⁵ The author uses the device of the witness giving evidence to further explore this area, stating that it is ‘only by rendering the human to the status of animal that the law is able to measure the very veracity of testimony.’⁶

Cressida Limon, in Chapter 4, considers the patentability of life and ‘the concept of invention... reconsidered in light of the invention of animals’.⁷ She raises the issue of the tension between the patentability of inventions versus natural reproduction. Limon notes the

¹ Yoriko Otomo and Ed Mussawir (Eds), *Law and the Question of the Animal: A Critical Jurisprudence*. (Routledge, 2013) 1.

² Ibid 9.

³ Ibid 16.

⁴ Ibid 29.

⁵ Ibid 36.

⁶ Ibid.

⁷ Ibid 55.

acceptance of biotechnological reproduction of animals but the exclusion of humans as patentable subject matter as a further example of the separation of human and non-human living beings. She usefully summarises the issues surrounding the point in time at which a human embryo comes into existence and the ethics of transgenic animal production, focusing on the ‘themes of invention and biological reproduction’.⁸ Limon points to inconsistencies between the patenting of transgenic non-human animals and the ban on patents of human reproduction.

In *Chimpanzees in court: what difference does it make*, one of the most readable contributions in the book, Cimea Barbato Bevilaqua explores ‘non-human beings as subjects of rights’⁹ through litigation involving chimpanzees. She examines these court cases from the perspective of challenging the concept of animals as things. Several arguments are advanced, including that chimps ‘possess the supposedly essential qualities that constitute and distinguish the human subset of entities encompassed by the legal category “person”’.¹⁰ This contribution thus addresses the question of ‘who are the living beings that can be considered subjects of rights and why’,¹¹ concluding with the conundrum of recognising that animals are not ‘things’, but also that they are not ‘human thus creating “another difference”’.¹² Chapter 6, by Ed Mussawir, examines another critical legal issue, legal liability for the damage caused by animals. He considers negligence and, in particular *scienter*, by which the quality of being an animal is ‘the element that may legally define its wrongfulness’.¹³ Civil liability for animals is therefore explored as another ‘approach to the elusive technical meaning that an animal has in jurisprudence.’¹⁴

This consideration of animals before the law is complemented by Chapter 7, *Dressing the sow and the legal subjectivation of the non-human animal*, in which Victoria Ridler touches on the animal trials of the Middle Ages before exploring other instances where animals have been personified in law. She notes the offensiveness of categorising non-human animals as property, which fails ‘to reflect our moral sentiments’ and pre-supposes ‘a hierarchy ... in which the human animal held *dominium* over all other beings’.¹⁵ In Chapter 8, Dinesh Joseph Wadiwel examines the history of whipping of humans by humans (eg, slavery and military punishment) and the arguments put forward to support its continued use in horse-racing (ie, the lower sensitivity of animals and/or the lesser significance of their suffering).¹⁶ He opines that in the context of horse-racing it is a ‘regulated form of violence’¹⁷ and ‘sovereign domination’.¹⁸ This issue is explored further with the author concluding that ‘disarmament of human sovereignty is as important as recognition of animal sovereignties’.¹⁹

The book then turns to ‘place’ with Marc Trabsky, in *Law in the marketplace*, exploring another form of violence on animals – the slaughterhouse – through a spatial history of the Queen Victoria Market premises in Melbourne. This site has been used as a human burial

⁸ Ibid 56.

⁹ Ibid 75.

¹⁰ Ibid 76.

¹¹ Ibid 77.

¹² Ibid 85.

¹³ Ibid 96.

¹⁴ Ibid 99.

¹⁵ Page 113.

¹⁶ Ibid 119.

¹⁷ Ibid 117.

¹⁸ Ibid 120.

¹⁹ Ibid 129.

ground, a slaughterhouse and later as a place for trade of animal products. Andreas Philippopoulos-Mihalopoulos, in *The normativity of an animal atmosphere*, explores a conception of animal law through the study of nomadic shepherds and their flocks, and 'hunger'.²⁰ In the final chapter, Yoriko Otomo explores animals as endangered species, common heritage and a common concern. The author contends that current international environmental law efforts to conserve endangered species enable 'the commodification of all remaining animal life that has not been domesticated'.²¹ Significantly, Otomo draws attention to the incongruence of current legal frameworks which at once recognise biodiversity as having marketable true value as well as priceless intrinsic value.

The volume thus covers a variety of issues from an equally diverse range of authors and perspectives. These topics range from animal rights and welfare issues, to sovereignty as an alternative to those approaches; animals as the object and subject of law, invention and commodification, and animals before the law. A key theme running through the volume, and a gap which the book seeks to fill, is the animal rights movement's neglect of jurisprudence. In this sense, the book is not what would traditionally be expected of a text on animal law but this appears to be precisely what the editors intended. The book does address animal rights and welfare issues by exploring case studies of animals as property and their treatment as recipients of welfare concerns. The collection, however, goes much further by providing a range of contributions addressing theoretical, philosophical and ethical foundations of animal law of importance now and for the future. In particular, it explores the link between the lack of recognition of animals as the subjects of rights and issues surrounding humans being given such rights.

This book no doubt makes an important contribution to the field of animal law. The only criticism relates to the readability of the volume. Despite each chapter being of manageable length, several are quite dense. This is unfortunate as it will make parts of the book inaccessible to broad audiences including those unfamiliar with the field. However, this is not uniform and other chapters, particularly those in the middle of the book, are more readable. The volume may have benefited from some early chapters explaining the underlying concepts and critical issues in the field for those new to the area of animal law.

Nevertheless, by exploring issues in animal law from a variety of, and in some cases novel, perspectives this collection makes a significant contribution to the literature in this area. The book includes highly theoretical and philosophical discussions, complemented by thought-provoking case studies. The style is likely to suit philosophers rather than practitioners of animal law, of which, undoubtedly, there is a growing number.

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²⁰ Ibid 156.

²¹ Ibid 167.