What is Animal Law?

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Interest in animal law is at an all-time high. In the USA and Canada in particular the study of animal law has mushroomed over recent decades, with some 167 law schools having offered courses or classes in the subject. Moreover, over the past 20 or so years a number of specialist legal practices devoted to animal law have been founded such as the Nonhuman Rights Project (NhRP) in the USA, Animal Justice in Canada, Voiceless in Australia, Tier Im Recht in Switzerland and Advocates for Animals in the United Kingdom, to give just a few examples.

But how ought we understand animal law? One view might be that animal law is simply any branch of law that involves nonhuman animals (hereafter simply 'animals'). So animal law is that part of criminal law relating to (inter alia) animal cruelty offences, the part of international trade law that deals with live exports, the part of environmental law concerning species conservation and control, the part of tort law that imposes liability on the owners of animals for the damage that their animals have caused to others and so on. We can call this perspective on animal law *the parasitic view*. On this view animal law can be seen as reducible to the sum-total of all the other branches of law that involve animals in some way.

One initial concern with the parasitic view of animal law is that it looks as if it could be so broad that it could encompass huge swathes of law. After all, a very substantial part of human activity has implications for animals in one way or another. To avoid the over-extension of the notion of animal law, a defender of the parasitic view could impose a threshold requirement on what type of involvement of animals would be necessary for an area of the law to constitute animal law. For example, animal law might be understood as all areas of law in which nonhuman animals are an important factor. Of course, if this path is gone down then the next step is to determine criteria for what constitutes 'importance' for these purposes.

But even if adequate criteria can be established to determine when there is a sufficient nexus between animals and a particular branch of law so as to allow that branch to fall under the rubric of animal law, it is far from clear whether this is the best way to understand the term, because whilst the parasitic view is (potentially) coherent it is not a very interesting. On this view, animal law has no distinctive features of its own, no autonomous existence and corresponding principles to guide its study or its jurisprudence. It is a mere patchwork quilt of disparate legal norms awkwardly stitched together by its object of inquiry.

To see how banal this view of animal law is, consider the following analogy. Imagine a university establishes a new course called 'knife law'. The knife law course would examine subjects such as: criminal liability for offences related to possession and use of knives; property law relating to ownership of knives; international trade law relating to the import and export of knives; family law relating to how knife collections are distributed between estranged couples in divorce proceedings and so on. Such a course would immediately beg the question: why, of all the potential objects of inquiry, would one want to inquire into the law of knives?

What is the purpose of animal law? Why specifically study the law relating to animals rather than in relation to trains, shoes, hurricanes, pencils, mountains, skyscrapers and so on? It seems to me that what makes animals different from these other entities is that they are not merely *objects* in whom human beings have interests but also *subjects* who have interests of their own, or at least a subset of those of them who are sentient beings do. The task of the animal lawyer I take it is to figure out to what extent, if any, the

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interests of animals ought to be protected by the law and how they ought to be protected, if at all. Call this *the teleological view* of animal law.

On the teleological view, what distinguishes animal law as a discipline and practice then is not the formal bodies of law it engages – criminal law, human rights law, international trade law etc. – but rather its particular modes of enquiry into them, for example: 'how are animal interests (not) protected by these bodies of law?' and 'how should they be protected (if at all)?'. Thus an animal lawyer and non-animal lawyer could look at exactly the same body of law but their focus would be different. If an international trade lawyer examines EU law to find out the rules around live export they are studying *law involving animals* but they are not necessarily studying *animal law*. The animal lawyer asks a specific question: how do (or how should) animal interests be considered in interpreting EU law as pertaining to live export?

Of course this view of animal law as being the body of law concerned with how animal interests are (not) legally protected raises many more questions than answers. For example: how ought 'animal interests' be understood? I do not have space to answer this question but I would note that animal interests need not necessarily be understood as welfare interests. In the Swiss constitution animal dignity is protected, the NhRP are arguing that their nonhuman clients possess autonomy interests worthy of legal recognition and in some jurisdictions certain species are protected on the basis that they are sacred.

Whilst I believe animal law involves the study of the place of animal interests in the law, I do not think there is any inbuilt normative orientation in animal law as to which interests should be protected, to what degree they should be protected and by what means they ought to be protected. These issues are precisely the areas of inquiry for the nascent field of animal law.