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Some Thoughts on the Definition of Animal Law

Tero Kivinen

It is really laughable to see what different ideas are prominent in various naturalists' minds, when they speak of "species;" in some, resemblance is everything and descent of little weight—in some, resemblance seems to go for nothing, and Creation the reigning idea—in some, descent is the key,—in some, sterility an unfailing test, with others it is not worth a farthing. It all comes, I believe, from trying to define the undefinable.¹

Trying to define animal law is a lot like trying to define species. The latter come in so many shapes and sizes that a single definition can hardly do justice to all of them. Likewise, there are many things that arguably deserve to be called animal law but are otherwise more or less incomparable. Definitions, like rules, suffer from the problem of open texture; it may well be impossible to account for all contingencies. So instead of trying to propose some supposedly exhaustive definition for the words 'animal law', what I'll rather do is describe three distinct phenomena I believe are worthy of the name. Whether it might be possible to come up with a disjunctive definition that could accommodate all three I leave for others to debate.

According to Bruce Wagman and Matthew Liebman, 'animal law covers all aspects of the law—legislative, judicial, regulatory, executive—that deal with issues pertaining to nonhuman animals.'² I suppose most animal lawyers would find an approach like this at least somewhat agreeable given how often I've seen people propose something similar in literature. Animal law, then, is essentially law (*genus*) that has something to do with animals (*differentia*). A definition of this kind leaves plenty of room for interpretation and disagreement, of course. Does inheritance law, for example, count as animal law, animals being inheritable property, or must there be some more significant involvement of animal interests before a rule or institution is deemed to be sufficiently about them? And what about law itself—can we meaningfully attach the label to something written in cuneiform thousands of years ago, or is it only fitting to speak of law in a more modern context?

Animal law is quite obviously a *field of law*. Yet do we not also speak of animal law when we think about that (very respectable) class of human activities that seek to understand the area just described? We write about animal law in journals and textbooks, we teach it at universities, we talk about it in conferences and seminars. We research it, debate it, and devise models and theories to make sense of it. I don't know about you, but from where I'm standing, it looks like animal law is not only a field of law; it's also an *academic discipline*. In fact, this special section (not to mention the journal in which it appears) is a pretty good example of what I'm talking about. As we all sit in front of our keyboards and think how best to arrange our thoughts on the matter before writing them down for others to read, are we not ourselves engaging in and contributing to what might arguably be called animal law?

So far so good: animal law is a field of law *and* an academic discipline. But I think there's one more aspect to be considered still, one I believe Joyce Tischler describes quite nicely when she reminisces how

[w]hat we now call Animal Rights Law or Animal Law began when attorneys consciously considered animal-related legal issues from the perspective of the animal's interests, when they began to view the

¹ Francis Darwin (ed), *The Life and Letters of Charles Darwin, including an Autobiographical Chapter*, vol 2 (John Murray 1887) 88.

² Bruce A Wagman and Matthew Liebman, *A Worldview of Animal Law* (Carolina Academic Press 2011) 7.

*animal as the de facto client, and where the goal was to challenge institutionalized forms of animal abuse and exploitation.*³

Think about all the hard work done by the Animal Legal Defense Fund and the Nonhuman Rights Project. And let us not forget all those proposed amendments, draft treaties, and universal declarations that have been put forth over the past few decades. Animal law, it seems to me, can also be understood as a *social justice movement*, a distinct kind of *activism* that seeks to influence the way we permit animals to be treated. This is not meant as an insult or criticism. I'm merely trying to account for something we don't quite get if we focus on animal law solely as an area of law or some (supposedly) value-free academic enterprise. There's a strong rhetorical element to the way animal law is being practiced, taught, and written about. And seeing as how this activist element predates the academic study and teaching of animal law, it'd be a shame if we failed to account for it properly.

To wrap things up, I believe there are at least three different things we may legitimately refer to as animal law. One concerns all those parts of a legal system that have something to do with organisms classified as animals. Another has to do with academic activities such as research and teaching. And a third one is about trying to use law as a vehicle for social and political change. Who knows, perhaps the contributions to this special section will allow us to formulate a one-size-fits-all definition for animal law. Perhaps not. But even if we can't *define* animal law, we can surely *describe* it. It'd be nice, of course, if we could define all things as easily as we once defined men as rational animals. But sometimes reality turns out to be too complicated. Just ask any biologist.

³ Joyce Tischler, 'The History of Animal Law, Part I (1972 – 1987)' (2008) 1 Stanford Journal of Animal Law and Policy 1, 3.