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Canadian Perspectives on Animals and the Law

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Book Review

Vaughan Black, Peter Sankoff & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law, 2015).

It is commonplace to affirm that animal law is much more developed in the United States than in Canada; animal abuser registries are being implemented,¹ animal law degrees are offered,² and prosecutions of animal abusers occur frequently,³ for example. However, the tide is changing in Canada as well, the legal norms and case law becoming increasingly aligned with the social norms surrounding the treatment of animals. An example of this is the recent adoption by Quebec of a new status for animals in its *Civil Code*, the *Loi visant l'amélioration de la situation juridique de l'animal*, adopted on December 4th, 2015.⁴ There are also new challenges the courts must face in issuing judgments on laws relating to animals. Recent manifestations of this have been, for example, the *Her Majesty the Queen v. D.L.W.*⁵ case before the Supreme Court, the first time the highest court of our land ruled on an animal protection provision.⁶ Also, a highly anticipated trial by the animal rights community is that of Anita Krajnc, charged with criminal mischief for giving water to dehydrated pigs in a slaughterhouse transportation truck.⁷ The trial, set to be held in the summer of 2016, will be a decisive moment in defining a sustainable balance between morality and (il)legality as concerns animal activism. Animal law is thus a burgeoning field in Canada, which renders *Canadian Perspectives on Animals and the Law* all the more relevant.

The editors have accomplished a wonderful job of reuniting contributions that, as a whole, have a lot to offer to both the jurist neophyte in animal law and the jurist who has been actively interested in this field, but as well to non-jurist individuals seeking avenues for a better treatment of animals in our society through the use of law. The volume is rich in exploring such avenues, many of which are largely under-explored.

1. See Arin Greenwood, "Tennessee Will Soon Have First Statewide Animal Abuse Registry," online: *The Huffington Post* (18 November 2015), online: <www.huffingtonpost.com>.

2. See Center for Animal Law Studies, online: Lewis & Clark Law School <law.clark.edu/centers/animal_law_studies/>.

3. See "Top 5 Prosecuted Animal-related Crimes," online: Animal Legal Defense Fund <www.aldf.org>.

4. *Loi visant l'amélioration de la situation juridique de l'animal*, SQ 2015, c 35.

5. *R v DLW*, 2016 SCC 22, [2016] SCJ No 22.

6. "Animal Justice Fights for Animals in Canada's Top Court," online: Animal Justice Canada <www.animaljustice.ca>.

7. Jacy Reese, "Woman Charged With Criminal Mischief for Giving Water to Thirsty Animals," online: *The Huffington Post* (15 October 2015), online: <www.huffingtonpost.com>.

Recognizing the novelty of the field, the inclusion of philosophers as authors is most welcome, as, on the one hand, the philosophical bases of animal law are still debated, and on the other hand, this compensates for the fact that a burgeoning field of law necessarily includes abstract elements still to be socially, legally and jurisprudentially determined.

Part I, *A Philosophical Prelude*, is constituted of Angus Taylor's chapter, *Philosophy and the Case for Animals*. Taylor, a professor of philosophy at the University of Victoria, proposes a very complete introduction to the moral elements underlying animal law, setting the grounds for adequately analysing this field of law, which cannot realistically be conceptualised as technocratic. Indeed, such philosophical bases and ensuing debates must be acknowledged by the reader, constituting the intellectual tools needed to question fundamental principles and concepts of our legal system, rather than only its concrete results in the form of laws and case law. As such, the thoughts of philosophers such as Peter Singer, Gary L. Francione, Elisa Aaltola and Martha C. Nussbaum are presented, in order to explore the concepts of sentience, personhood, dignity and autonomy, speciesism and degrees in moral statuses.

Part II, *The Fundamental Prohibition: Unnecessary Suffering*, exploring the punitive aspects of animal law, opens with a chapter by one of the editors, Katie Sykes, called *Rethinking the Application of Canadian Criminal Law to Factory Farming*. We learn that factory farming is excluded from the scope of section 445.1(a) of the *Criminal Code* through an "implicit farming exemption," which is rooted in a 1957 decision, *R v Pacific Meat Co.*⁸ The "unnecessary" element represents the fundamental motivation for excluding factory farming practices from constituting cruelty in a criminal sense; Professor Sykes refutes this interpretation, and this chapter exposes her convincing argument.

Chapter 3, *Traffic Tickets on the Last Ride*, also written by one of the editors of the volume, Vaughan Black, poses an important moral conundrum. Indeed, Professor Black introduces the reader to the existence of administrative monetary penalties for offences in factory farming related to animal suffering,⁹ an alternative method much more frequently used than accusations under criminal law. However, such penalties are of a clearly lesser gravity; the question thus becomes, should we privilege quantity over the symbolism of severity, as a dissuasive mean?

8. *R v Pacific Meat Co* (1957), 24 WWR 37, 119 CCC 237, [1957] B.C.J. No. 98 (Co. Ct.).

9. Through the implementation of the 2000 amendments to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, SC 1995 c 40.

Part III, *The Fundamental Classification: Property*, includes contributions on the property concept, thereby analysing the implications of one of the preferred affirmations of people seeking a chockfull effect about the legal status of animals in Canada: “Did you know that your dog is of the same legal value of your kitchen table?” Chapter 4, *A Monkey in the Middle: Reflections on Darwin the Macaque and the (R)evolution of Wild Animals in Canadian Common Law*, by Mary J. Shariff, professor of law at the University of Manitoba, addresses a legal confusion as concerns the classification of wild animals under property law. The case in point is that of Darwin, a Japanese macaque who made headlines when found, dressed in a coat and diaper, in an IKEA parking lot in 2012.¹⁰ This exposes the unclear classification determinants by courts between *ferae naturae* and *domitae naturae*, leading to a discussion on the relevancy of legal concepts inspired by “ancient game policy” used in this case and similar ones. Chapter 5, *The Canadian Seal Hunt as Seen in Fraser’s Mirror*, written by Professor Lesli Bisgould, renowned in animal law namely for her volume *Animals and the Law*,¹¹ and Peter Sankoff, co-editor of *Canadian Perspectives on Animals and the Law*, celebrates the dissent of Chief Justice Catherine Fraser in *Reece v. Edmonton (City)*.¹² Justice Fraser manifested empathy, seldom demonstrated in Canadian judgments, towards an elephant held in captivity at the Edmonton Valley Zoo, Lucy, and invited the (legal) society to question the treatment of non-human sentient beings by law. Professors Bisgould and Sankoff name this “Fraser’s Mirror,” and propose to apply it to the case of the Canadian seal hunt, which is used to exemplify how our property regime sanctions the fact that animals first and foremost serve human interests, through its incoherencies and immoralities.

Part IV, *Different Communities: Municipal, Aboriginal, and International*, explores normative levels lesser addressed where animal law is concerned. The potential and limits of municipal law are analysed through the example of Toronto’s by-law prohibiting shark fin sales, which later failed to be upheld following an Ontario Superior Court judgment,¹³ in Cameron Jefferies and Eran Kaplinsky’s chapter, *Municipal Governance and Innovative Shark Conservation Efforts: Problems and Prospects*. The University of Alberta law professors’ message is globally positive,

10. “Darwin the IKEA Monkey,” *The Toronto Star*, online: < www.thestar.com >.

11. Lesli Bisgould, *Animals and the Law* (Toronto: Irwin Law, 2011).

12. *Reece v Edmonton (City)*, 2011 ABCA 238, leave to appeal to SCC refused, [2011] SCCA No 447.

13. *Eng v Toronto (City)*, 2012 ONSC 6818.

however, demonstrating the possibly powerful effects of local lobbying and group actions, and ensuing media coverage.

Chapters 7 and 8 address indigenous law as it interrelates with animal law, and the difficult task of reconciling both without infringing on either. Will Kymlicka and Sue Donaldson, acclaimed authors of *Zoopolis: A Political Theory of Animal Rights*,¹⁴ present the intersections, as well as the discrepancies, between their theory of animal rights and the indigenous conception of animals in their chapter, *Animal Rights and Aboriginal Rights*. Furthermore, they propose a “strategy of engagement” for addressing the ethical elements at the heart of discussions on the human treatment of animals. Constance MacIntosh, aboriginal law professor and Director of Dalhousie’s *Health Law Institute*, presents a global portrait of the history and present-day state of indigenous law as it relates to animals, as well as the most often inadequate framework of Canadian law, in her chapter *Indigenous Rights and Relations with Animals: Seeing Beyond Canadian Law*.

Chapter 9, co-written by one of the editors of the volume, Katie Sykes, with Joanna Langille, Furman Academic Fellow at New York University School of Law, and Robert Howse, professor of international law at NYU School of Law, offers an overview of the current state of international law as concerns animals and Canada’s position within or towards such developments. As such, *Whales and Seals and Bears, Oh My! The Evolution of Global Animal Law and Canada’s Ambiguous Stance* addresses important landmark judgments for international animal law, but also, unfortunately, “Canada’s regressive stance in the international legal debates on whales, seals, and polar bears.”¹⁵

Part V, *New Tactical Approaches*, presents exciting and encouraging prospects for actions based in legal means for a better treatment of animals in Canada. Maneesha Deckha and Sarah Runyon, respectively professor at the University of Victoria and criminal litigation and appeals lawyer, introduce readers to the far-reaching limitations organisations face when wishing to obtain (or maintain) charitable status in Canada. *Charities, Animals, and Social Change: Charting a More Charitable Approach to Animal Advocacy* explains that an anthropocentric conception of animal welfare is what characterises the possible activities of organisations for such a status to be attributed or upheld, rather than an animal rights-

14. Sue Donaldson & Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Don Mills: Oxford University Press, 2011).

15. Vaughan Black, Peter Sankoff & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law, 2015) at 234.

based activist and political approach. Camille Labchuk, now Executive Director of Animal Justice Canada, proposes an easily accessible mean for denouncing the dominant advertising discourse on animals destined for human consumption, which often veils violent realities, in chapter 11, *What Does False Advertising Have to Do with Animal Protection?* This chapter is thus also of particular interest for practitioners and researchers in consumer law. Finally, Sophie Gaillard, lawyer and campaigns manager at the Montreal SPCA, and Peter Sankoff, co-editor of the volume, conclude with their chapter on the potential of private prosecutions. *Bringing Animal Abusers to Justice Independently: Private Prosecutions and the Enforcement of Canadian Animal Protection Legislation* exposes the restrictive conditions under which this could be accomplished whilst remaining positive that, if the right opportunity should arise, such a criminal law avenue could result in the legal advancement of animals in Canada.

Animal law is slowly but surely transforming into an inevitably important field of law in Canada, as our lives are socially intertwined with animals through eating, wearing, and cohabiting with them. Thus, our behaviours towards them must be legalized, which should include moral debates. *Canadian Perspectives on Animals and the Law* provides a complete introduction to animal law in the country, as well as different avenues for legal action for those who might be disappointed with what such law currently has to offer in terms of animal protection.

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