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Law

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Introduction

The animal, as it appears in law, is almost invisible. If we were to try and understand how non-human animals are portrayed in law today, we would see that they play a handful of symbolic roles: beast, vermin, interloper, sovereign. As beasts they are cast as meat for food or for work. 'Beastliness' also becomes a characteristic of criminals and/or sexually deviant humans. 'Vermin' describes animals that seek to profit from the fruits of human labour.[1] Some animals have symbolic capital associated with sovereign power: whether as hunting trophies or protected species, they are the focus of a postcolonial imaginary. 'Interlopers' are those creatures in the twilight of sovereign law, mute and threatening.

If we look at animals as they appear in domestic and international legislation – really look at *who* appears, *how* and *why,* we begin to see that the story we are told about the (Western) progressive liberal emancipation of animals – through the saving power of sovereign law – falls apart. In this chapter I describe what these symbolic roles signify, placing animal rights, welfare and conservation law in historical context. What this context provides is a necessary frame for our imaginations to see the scope and the limitations of legislation (and commentary on legislation) *for* animals, by revealing law's animals. These are peculiar inventions of juridical minds that capture the pathos, terror and love of humans for animals and animal parts; fascinating as literature or artefact, but never to be confused with animals themselves.

We begin at the dog, as this creature has been our guide, companion, protector and provider from the beginning of human settlement.[2] The regulation of dogs, however – or more precisely, the regulation of who can keep what kind of dog, and how – has had little to do with caring for dogs, and a great deal more to do with using them as class markers. In this part we examine ways in which dog laws have been deployed over time, as well as how laws against bestiality were used to criminalise 'unnatural' intercourse, which was coextensive with homosexual relations. Next we trace the outlines of law's elephants that, like dogs, perform the work of signifying class relations. The regulation of trade in elephant bones (ivory) and bodies (shot or subjugated for entertainment and labour) has been the subject of much colonial and postcolonial controversy. Finally, we arrive at the cow. It is the cow who, perhaps more than any other animal, symbolises femininity, nature's bounty, and its total subordination. Her skin, her bones, her flesh and, most of all, her milk, are produced, traded and consumed on an industrial scale. This chapter ends with a discussion of how the regulation of that milk closely tracks the consolidation of the

British creation of subjects and claims to territory, and reflects on the ways in which thinking with animals and law enriches our understanding of both terms.

Dangerous Dogs

Dogs are our oldest companions. Our regulation of dogs (our regulation of human behaviour towards, and relationships with, dogs) therefore tells us a great deal about the changing nature of human society. Hunting dogs; racing dogs; sheep dogs; cattle dogs; lap dogs: dogs have clear roles and places within or alongside the family. Silent but communicative, and always responsive, they protect the family and its interests. Insofar as they embody their community, dogs project its status and its power – and in that power, the law of the community.[3] As keepers of that law, dogs pose a particular threat to the other law of the land: that of the sovereign (or in earlier centuries, that of the feudal and church landowners). Longstanding class war – at least in the pastoral communities of Europe[4] – has been exemplified by the state regulation of dogs' freedom of movement, and the conditions of their habitation with their keepers.

The dog's body as a site of regulatory control is a topic examined in some detail by Norbert Schindler in his study of eighteenth-century Salzburg. There, a trail of cases reveals the deep-seated antagonism between farmhands (and their dogs) and huntsmen (and their dogs), as well as the physical and symbolic threat that the working-class dogs posed to the hunters who often trespassed onto farmland, and to the hunters' quarry, which dogs may or may not have poached. Breeding made bodies a visible marker of the dog and its keeper's social status. The 'Dog Wars', as Schindler calls them, involved the shooting of dogs by the aristocracy, the imposition of dog restraints and registration requirements. This was resisted in equal measure by the peasants, who used strategies such as refusal to restrain their dogs, attacks on hunters and legal action.[5] The old territorial rivalry between farmhands and huntsmen continues to this day, as seen in the recent dispute in Romania over a law that sought to restrict the number of dogs kept by shepherds.[6] It is also seen today in the regulation and criminalisation of 'dangerous dogs' around the world, with legislation affecting working-class communities who are more likely to keep dogs bred for fighting.[7]

Schindler's 'Dog Wars' took place during the political tumult of late eighteenth-century Salzburg; similarly, a play written in 1771 satirised the medieval trial of a dog to express the political tension between England and America's Carolina Colonies.[8] Written by an Edward Long, the play, 'The Trial of Farmer Carter's Dog Porter, for Murder' is a courtroom drama of a farmer's dog tried for the murder of the local landowner's hare.[9] The play itself mounts harsh criticism of the use of dogs as a foil for class war, and specifically of the corruption of the law by the upper (hunting, landowning) classes. Before we continue, here is a short extract from the play to give you a sense of the satire at work. The entire play, around an hour long, takes place in a courtroom. The main characters are the Squire (landowner and magistrate), Counsel for the Prosecution and Counsel for the Defence (the farmer's dog, Porter):

S: Prisoner, hold your paw at the Bar.[10]
C: He is sullen, and refuses.[11]
S: Is he so? Why then, let the Counsel hold it up.

S: What is the prisoner's name?
C: P-P-P-Porter, so please your Worship.
S: What does the fellow say? We can't hear him. Speak louder!
C: Please your Worship, he won't say a word. Mute as a fish.
S: Well then, since the law stands thus – Counsel, twist a cord about the culprit's –
C: Fore-paws.
[Dog yelps]
S: Enough. That will do.
C: Aye, that's enough in law. The prisoner expresses himself in a strange language. But he can speak no other. And as the law can, not only make dogs to speak, but explain their meaning too, so the law understands and infers that the prisoner pleaded not guilty, and put himself upon trial.
D: . . . The prisoner is a Dog, and cannot be triable as a Man. Ergo, not within the intent of the statute.[12]
C: That's a poor subterfuge. If the statute respects a Man, a fortiori it will affect a Dog.
S: We are clearly of that opinion. Proceed.
C: Please your Worship . . . the deceased Mr. Hare was travelling quietly about his business, in a certain highway or road leading towards Muckingham; and then, then with force and arms, the dog violently assaulted Mr. Hare, [who] did languish, and die, in your Worship's horsepond.
D: What did you do with the body?
L: We carried it to his Worship, the Squire, and his Worship had him roasted, with a pudding in his belly, for dinner, that same day.[13]
C: Didn't you perceive the body was masticated, lacerated, or macerated, Mrs. Margery?
M: Yes, sure. I never saw one better bitten in all my life. His Worship loves the smack of a hare. He didn't leave a scrap of flesh upon the bones![14]
D: The witnesses have failed, in proving the prisoner's identity. Next, they have not proved the identity of the deceased. Thirdly, they do not prove who gave the wounds. Fourthly, not to whom they were given. Fifthly, nor whether the party died of the wounds . . . [I]f they had proved that defendant had maliciously pursued the deceased into the horse pond, it does not prove the defendant guilty of his death, because he might owe his death to the water . . . And I must say that his Worship would likewise be participes criminis, for not having filled up [the pond] to prevent such accidents. It appears further, from Margery Dripping's testimony, that the body was bitten indeed. But what body? Not the body just taken fresh out of the horse pond. No – but the roasted body. And by whom was it bitten? The defendant? No – by his Worship, who sits there on the Bench . . . Call Mr. Carter.
F: I have known the prisoner these several years . . . He has many a time deterred thieves from breaking into my house at night, and murdering me and my family. He never hated nor hurt anybody but rogues – he performed a million good offices for me, and for no other recompense than his victuals and lodging, and seemed always happy and contented with what I could afford him, however scanty the provision.[15]

C: When such low wretches as plough-drivers and corn-threshers come to affront men of such distinguished eminence and dignity as your Worship, and turn advocates for a murderer, it becomes your high character, and feel your consequence, and trample such miscreants under your feet. Therefore, if there was no other reason to offer than this, I should presume it sufficient to induce your Worship to assert your authority in the face of the world, and let the people see to what lengths you are capable of extending your power, by passing sentence of death upon the culprit at the Bar.

S: How says the statute? Are we competent for this?

C: The statute is, I confess, silent. But silence gives consent. Besides, this is a case of the first impression, and unprovided for by the law. It is your duty, therefore, as good and wise magistrate of Gotham, to supply this defect of the law, and to suppose, that the law, where it says nothing, may be meant to say, whatever your Worships shall be pleased to make it.

S: It is now incumbent upon me to declare the opinion of this high and right worshipful Court here assembled. We must execute the trust reposed in us, to oppress the poor, and flatter the rich. Shall a paltry muckworm presume to keep a dog? And not only a dog, but a dog that murders hares? . . . What is it, but the spirit of poaching, that has set all the lower class, a-hunting after hares'-flesh? You see the effects of it, gentlemen; they are all run mad with politics, resist their rulers, despise their magistrates . . . In short, gentlemen, although it is not totally clear from the evidence, that the prisoner is guilty, nevertheless, hanged he must and ought to be, in terrorem to all other offenders. Let the culprit stand up.

Porter the dog is thereby unceremoniously hanged, followed by a monologue by farmer Carter, on the loss of his dear friend.

While the play could also be read as an argument for the radical possibilities of medieval animal trials (which afforded animals some legal personality), the play serves as a warning against critics looking to find a pre-modern endorsement of animal subjectivity.[16] The authorial voice of the play does indeed cast moral judgement: on the legal argumentation of the defence just as much of the prosecution; on the corruption of the landowner-turned-magistrate; on the poverty of the class system, and on the callous dismissal by the lawyers of the dog Porter and of his relationship with farmer Carter. It does personify Porter to some extent. And of course it does not seek to resurrect law in any way – as a social and legal commentary one can easily imagine it successfully performed today, with relevance for a working class still subjected to the conditions and techniques of governance that found its formative beginnings in the 1700s. In one sense, the portrayal of the dog as a victim shows an understanding of the violence that is commonly enacted upon both working-class human and non-human animals. The play's author clearly sympathises with Porter and gives him some standing; by putting him in the dock, he makes the dog visible to the law.

All this, however, has very little to do with dogs in and of themselves. First, these trials attributed legal personality to animals as a technical means of resolving legal problems, and while these technical means are interesting to lawyers, they are not an indication of better or worse social morality at the time.[17] Second, an investigation

reveals that the play was probably written by Thomas Paine (one of the Founding Fathers of the United States) while he was still working as a minor customs and revenue officer in Sussex, shortly before he moved to the British American colonies and published his pamphlet *Common Sense* (demanding American independence from Great Britain).[18] The play – and by inference, the legal architecture that it references – thus refuses any great salvation of the dog (or of the human's relationship with the dog), using the animal on trial more or less as a conceit for a very different kind of complaint against the British establishment.[19]

Dogs' bodies are thus regulated from conception to death: how they look, move, express themselves – what they are interested in, where they live, what they eat, who they see, when and with whom they procreate, where they go and how they die.[20] Dogs' bodies are regulated with this intensity because of the equally intense passion with which they are bonded to humans, and the threat they therefore pose to the state that makes a counter-claim to the body of the human. It is therefore no surprise that despite living in close quarters with dogs, forming deep affective relationships with them and gaining positive physiological benefits from stroking dogs, the expression of any kind of sexual desire by humans towards dogs (or of dogs towards humans) is strictly taboo.[21] As a taboo, this desire – any kind of emotion that transgresses the strict human-animal hierarchy and separation – is forbidden in law.[22]

Framed in terms of lack of consent and harm to the (usually animal) victim, moral outrage is a common ingredient in both legislation and judgements pertaining to 'bestiality'. Notably, those same questions of consent and harm do not arise when it comes to keeping, killing and eating animals. If we wonder, then, why bestiality in particular might evoke such severe moral and legal opprobrium, we need to think about what kind of threat it poses to the authorities. From as early as Aquinas's *Summa Theologica*, written in the thirteenth century, bestiality – alongside homosexuality – has been characterised as a sin against nature/God.[23] The sin in particular pertained to *unproductive* sex, or sex that was thought to have had the potential to create 'monsters'; in England and Sweden both homosexuality and bestiality became a capital crime.[24] While prosecution of bestiality reached a highpoint in Europe in the seventeenth century, it was decriminalised by the time the Napoleonic Code was instituted in 1810 (aside from in England and the United States).[25] We might infer from this that the state was heavily invested in 'productive' relationships of a heterosexual nature that would create and sustain a labouring workforce. It also suggests that the modernising state was anxious to cast a clearer boundary between human and animal – an important distinction, as the invention of the state was predicated not only upon the idea of the state body being a *human* body, but also on the idea of the sovereign head of state being a threshold entity between the human and non-human world.[26]

Endangered Elephants

Just as the regulation of dogs reveals a great deal about our human histories, so too does the regulation of our relationship with elephants tell us about our changing relationship to 'nature'. If we look at the development of early international conservation law we can see that it is driven by a European colonial elite to sustain a supply of

symbolically important animals such as elephants for the preservation of a particular hunting culture.[27] If we look at the development of later international conservation law we can see the clear influence of British Romantic ideas, which valorise the preservation of 'nature'. This preservation of 'nature' (unsullied by human 'culture') enables humans to cultivate an aesthetic appreciation for it, which in turn ensures their ontological separation from it by means of an ocular power.[28] Not content with simply gazing upon the elephant, however, we have found a way of consuming it as well: in this enterprise, international law plays a central role.

In the imperial context of the nineteenth century hunting became a mode and expression of European dominance over colonial territories. In the British possessions – particularly in India and Africa in the late nineteenth century – the hunt was a ritualised display of authority. Not only did it give colonial administrators an excuse to parade their weaponry through villages in a show of dominance; it also enabled them to keep an eye on the villagers themselves.[29] The popularity of the imperial hunt drew on a longstanding tradition of hunting that went hand in hand with the enclosure of common lands by the British parliament in the sixteenth and seventeenth centuries.[30] The development of high-velocity weapons in the late nineteenth century, together with an increasing demand for hunting trophies and other animal commodities back in England, led to a rapid decimation of colonial megafauna. At their first international conservation conference, held in 1900 in London, hunters-turned-conservationists decided to place prized African animal species in 'schedules', from those requiring more protection to those requiring less. The conference participants consisted of members from 'civilised' European nations: African nations were not invited.[31] Game legislation also created 'poachers' of Asian and African subsistence hunters, while offering colonial administrators and some white settlers the new status of 'civiliser-protector' – to misquote Gayatri Spivak: saving brown animals from brown men.[32] Early conservation law thus sought to preserve a privileged position for colonisers by using elephants (and other 'local' animals) as placeholders of value, creating stories about British heroism and Oriental/African barbarism in the process.

The interwar period saw the establishment of the *Society for the Preservation of the Fauna of the Empire*, whose membership (made up of prominent members of the British establishment, colonial administrators and white settlers) pressed for the transition of the system of nature reserves (where deforestation and hunting were regulated) to national parks (which required the removal of villages from these zones altogether, and further restricted hunting). This marked a significant shift in conservation discourse, aligning with late Victorian ideas about the 'cruelty' of the working classes and of 'animal welfare' as indicating a higher sensibility in its proponents).[33] These early twentieth century developments led, after the Second World War, to a consolidation of the special status conferred upon elephants and other charismatic megafauna, who became the focus of a new international agreement called the *Convention on International Trade in Endangered Species of Fauna and Flora*.[34] This Convention (among many other functions) monitors the illegal killing of elephants as well as the illegal trade in elephant parts (primarily tusks, for ivory).[35] What is interesting about the Convention is that it does not prohibit the killing of threatened and endangered animals altogether, as might be expected by a layperson who presumes the Convention to be an expression of a shared global morality.[36] Rather, it seeks to secure the

survival of privileged species of animals in order to allow their continued consumption by humans.

This is a crucial distinction, and one that reveals something about the role that law plays in regulating our relationship to both the idea of the animal, and to individual non-human animals. International law – the Convention, among other international agreements and regimes pertaining to trade and the 'environment' – creates a domain of the sacred for us, into which certain animals or places may be placed, forbidden to humans. Those very international agreements and regimes also include functions that allow for the movement of those animals and places across thresholds that authorise and justify the consumption of them, by humans.[37] This kind of psychic work that law undertakes, crafting our social symbolic order, is not one that is commonly recognised by the legal discipline. And yet, it is looking at animals – following the movement of elephants, in this instance, across legal thresholds – that reveals a critical aspect of the human-animal relationship.

Holy Cows

As endangered species 'protection' can be read (in light of the historical regulation of hunting) as a euphemism for the preservation of the right to exploit, so too can animal 'welfare' laws be understood as a euphemism for the preservation of the right to violate animals. The owners of pets, zoo animals and food animals all have obligations to provide bedding, food, space to stand or sit, shade, and so on as required by the relevant act. No protections of animal welfare extend, however, to the most basic features of the good life: freedom of movement; the right to live; choice of food; bodily autonomy and integrity; and sociality with members of one's own species.[38] And the kinds of animals named in welfare laws differ from state to state and from culture to culture. The slaughter of reindeer, for example, has special mention in Finnish legislation.[39] Cats and dogs are included in the definition of 'animals' in Korean welfare law, alongside other livestock such as chicken, ducks and goats.[40] Kangaroos in Australia – a beloved comical icon – are farmed and hunted on an industrial scale.[41] In animal welfare laws in general, 'vertebrates' where specified, usually only extends to mammals, with fish, amphibians and reptiles often excluded altogether. And the other half of the animal kingdom – protozoa, echinoderms, annelids, molluscs, arthropods, crustaceans, arachnids and insects – are rarely the subjects of legal discussion.[42]

If we are to look at animals in law – really to look at them, avoiding the ideological minefield that 'Animal Law' (in the form of welfare, rights and conservation laws) presents – we must therefore look elsewhere. And when we do, we find that animals are, in fact, everywhere. Whether by their presence (as stock; food; textile; labour; medical model, etc.) or in their absence (killed by, or simply being invisible or unimportant to human economy), animals can be found in every kind of law. Trade law; planning law; intellectual property law; family law; tax law: the list goes on. In these laws, the symbolic form (indicated by its proper name) is often substituted by the desecrated body: pig/pork; skin/leather; family/stock; cattle/beef; breast/udder. Or alternatively, animals may take different forms in law altogether, appearing instead as risks, substances, activities and metaphors.

Let us, then, turn to one species that we can track quite easily across these laws, and in different forms. Along with the dog and the elephant, the cow is a figure with a powerful symbolic resonance across human cultures.[43] *Chattel* rather than *familia*, both sacred *and* profaned, cows have always lived among us and sustained us. And, increasing in importance over the past century, they have given us milk on such a scale that it has become ubiquitous throughout our food systems. As mammals, we need milk to survive infancy; as a species, we (in the West, and increasingly in the East) consume it in nearly everything that we eat.[44] The story of how cows' milk has come to be our primary food and a driver of our global economy is a fascinating one. While there is no room here to examine histories of milk regulation,[45] I will briefly outline what we might learn about the importance of cows' milk to the state by tracing their co-evolution.[46]

The British government took on the production, distribution and consumption of milk as its lawful domain from as early as the 1870s, following the invention of the railway and refrigeration in the 1840s and the discovery of pasteurisation in 1864. They provided for official inspections,[47] set hygiene requirements[48] and ensured standards for commercial sale,[49] laying down a governance framework for the establishment of milk industries in their colonies through the late nineteenth century.[50] By the early twentieth century, the supply system for milk was the most highly organised of any food product in the UK and the most industrialised in the world.[51] The system was further centralised during the interwar period, with the creation of a government-run Milk Marketing Board that set standard prices and purchased surplus milk throughout the UK.[52] The Board actively marketed and promoted the consumption of milk, creating programmes for the distribution of subsidised milk in schools, to expectant mothers and to those on welfare throughout Britain.[53] It managed the largest insemination programme in the world, shaping breeds of dairy cattle on a global scale.[54]

Despite the fact that cows' milk is produced for calves, countries around the world (led in many ways by Britain) have ensured that it has become a primary food for human men, women and children. Despite significant moral, religious, geographical, environmental, economic and social obstacles to the production, distribution and consumption of milk, states have invested – and continue to invest – in regulatory regimes that facilitate national and international dairy industries. Why? A range of historical, feminist, literary and sociological scholarship suggests that the state has struggled, since its inception in the seventeenth century, to control the symbolic (and subsequently, the material) life of milk, given its affective power.[55] The regulation of milk production has focused on the dissuasion of wet-nursing (of babies by both humans and animals); the substitution of human breastmilk with cows' milk and milk formulas; the creation of a dairy industry which relied on adult consumption of milk; and the exportation of technologies that would establish milk industries in other colonies/postcolonial states. The feeding of milk to citizens in this way has enabled states to shape the affective and economic relations between women and children; humans and animals; citizens and the state; the centre (London/Europe) and the periphery (regions that become reliant on the subsidies and trade of the dairy industry). What we discover when we track the cow as it really appears in law (remembering that there is a great deal more to do than simply looking at the regulation of its milk)[56] is how central she is to the life of the state, then and now.

Conclusion

While some animal welfare or conservation laws set out certain animals as 'good' and others as 'bad', other laws place animals on scales that determine which will be sacrificed and which will be saved, depending on their necessity or symbolic value. Much campaigning for law reform is focused on trying the make the law 'good': in animal *rights* fora, campaigning seeks to extend law's magic circle of protection from humans to apes, to elephants, to whales, and so on.[57] In animal *welfare* fora, campaigning seeks to improve the comfort and well-being of animals without undermining the anthropocentrism that situates non-humans in opposition to, or inferior to, human beings. Both the animal rights and animal welfare movements presume law to be a neutral or benevolent medium that can be shaped to progressive ends.

In this chapter I have shown the ways in which animals populate the legal imaginary, and yet, as I claimed in the introduction, the animal is almost invisible to sovereign law. There are three key reasons: first, because the way in which law produces its own knowledge about animals is limited to its very particular technical requirements. Second, because the vast majority of animal species are never mentioned by name in any law, as only a handful of symbolically resonant, vertebrate animal species and subspecies are of concern in the political domain.[58] Third, because law's impact on animal lives is actually ubiquitous – it is not restricted to agreements about wildlife or pets, but extends through international trade law, the law of the sea, planning laws, food safety laws. By refusing to step into the fantasy that law has an ahistorical or apolitical aspect that can somehow transcend the moral and political ambiguities that mark other kinds of engagements with animals, we can begin to really look – at animals and at law – and to learn about what they reveal about one another.

Notes

1. The term 'vermin' was in common use in international conservation agreements up until 1925 (when it was removed by colonial powers from a draft *Convention for the Protection of African Fauna and Flora* on the basis that the concept was not sufficiently well defined).
2. DNA research indicates that dogs may have been domesticated/bred out from wolves in southern East Asia around 33,000 years ago: Guo-Dong Wang et al., 'Out of Southern East Asia: The Natural History of Domestic Dogs across the World', *Cell Research* 26 (2016), pp. 21–33.
3. My thanks go to Shaun McVeigh for his paper on 'the law of the dog' at the workshop *Dogs, Pigs and Children* at SOAS, University of London on 12 September 2013. Norbert Schindler also refers to the special role of dogs as law-keepers: '. . . dogs, as guardians of the house and markers of the boundary between indoor and outdoors, were buried beneath the threshold that they had protected, beside the hearth or at the corner-posts of the house'. See Schindler, 'Dog Wars and Human Rights: Perceptions of Political Despotism at the End of the *Ancien Régime*', trans. Richard Deveson, *German History* 24:1 (2006), p. 23. See also Marie Fox, 'Taking Dogs Seriously', in *Law, Culture and the Humanities* (2010), p. 6.
4. Dogs were not necessarily the focus of state domination everywhere. In seventeenth-century Japan, for instance, all dogs were protected by the fifth Tokugawa shogun Tsunaoyshi, under his 'Laws of Compassion' (生類憐みの令 *Shōruiawareminore*), which ensured food and housing for all stray dogs: Beatrice Bodart-Bailey, *The Dog Shogun* (Honolulu: The

University of Hawaii Press, 2006). See also e.g. Donna J. Haraway, *The Companion Species Manifesto* (Chicago: Prickly Paradigm Press, 2003).

5. Schindler, 'Dog Wars and Human Rights'.
6. A law was passed in Romania in December 2015 (supported by hunting members of the Romanian elite) that restricted the number of dogs shepherds could keep and banned the grazing of sheep during winter. Thousands of shepherds descended on Parliament in protest, resulting in an emergency ordinance that would allow the law to be changed: Associated Press, Bucharest, reported in *The Guardian*, 'Romania Lifts Sheepdog Limit After Shepherds' Protest', 16 December 2015, <http://www.theguardian.com/world/2015/dec/16/romania-lifts-sheepdog-limit-after-shepherds-protest> (accessed 28 August 2017).
7. See the documentary film *Going to the Dogs* directed by Penny Woolcock (UK, 2014), produced by Jack Woodcraft and Matt Hay, which juxtaposes the criminalisation of dog-fighting in working-class England against the legalised world of hunting for sport.
8. E. P. Evans painstakingly compiled all recorded medieval trials of animals in his book *The Criminal Prosecution and Capital Punishment of Animals* (London: William Heinemann Press, 1906). Animal trials were concentrated in France, Italy and Germany, with only three recorded instances in England. One of those instances involved a dog tried in 1771, which might have been a reference to the trial described in the satirical play by Edward Long: Piers Beirne, 'A Note on the Facticity of Animal Trials in Early Modern Britain; Or, the Curious Prosecution of Farmer Carter's Dog for Murder', *Journal of Crime, Law and Social Change* 55 (2011), pp. 359–74.
9. Edward Long, 'The Trial of Farmer Carter's dog, Porter, for Murder, Published from the MS. of Counsellor Clear-Point' (London: Bodleian Library Vet. A5 d. 1156, 1771). The copy lodged at the Bodleian Library was apparently performed at the 'Mumsford' coffeehouse (coffeehouses were often places for literary performance and informal political discussion during the seventeenth and eighteenth centuries).
10. [S] J. Bottle, President of the Court and Squire (owner of the land on which the hare died).
11. [C] Counsel for the Prosecution.
12. [D] Defence Counsel.
13. [L] Laurence Lurcher, Witness (who, while drunk, saw a dog chasing a hare).
14. [M] Margery Dripping, Witness (cook to the Squire).
15. [F] Farmer Carter, owner of Porter the dog.
16. That is, enabling them to be addressed by courts as legal subjects, rather than merely as property. See for example Victoria Ridler, 'Dressing the Sow and the Legal Subjectivation of the Non-human Animal', in Yoriko Otomo and Edward Mussawir (eds), *Law and the Question of the Animal* (London: Routledge, 2013), pp. 102–15.
17. For detailed descriptions of animal jurisprudence, see Edward Mussawir, 'The Jurisprudential Meaning of the Animal: A Critique of the Subject of Rights in the Laws of *Scienter* and Negligence', in Otomo and Mussawir, *Law and the Question of the Animal*, and Edward Mussawir, 'By the Hands of Rhea: Notes on the Juridical Meaning of the Bear', in Yoriko Otomo and Cressida Limon (eds), *Australian Feminist Law Journal* 40:2, *Dogs, Pigs and Children: Changing Laws in Colonial Britain* (2014), pp. 229–51. See also Cary Wolfe, *Before the Law: Humans and Other Animals in a Biopolitical Frame* (Chicago: University of Chicago Press, 2012).
18. Piers Beirne, 'A Note on the Facticity of Animal Trials'. Beirne traces this authorship through the biographers of Thomas Paine, three of whom identify Paine as the author of the play.
19. In the archives the play is attributed to Edward Long, the long-term colonial administrator of Jamaica and vocal opponent of the abolition movement. If this is indeed the author, the play makes no sense insofar as it expresses a political position diametrically opposed to Long's own, and contradicts those in his other publications.

20. Laws and policies, both domestic and international, deal primarily with: the keeping of permitted and banned breeds of dog; the registration of dog breeders; standards of dog food; banned behaviours (such as biting, defecating, chasing, hunting or fighting); how they can be killed, and where they can be buried.
21. Arveen Bajaj, 'Pet De-Stress', *Vital* 1:42 (2005), p. 42; Simon Daniels, 'Animal Magic', *Nursing Standard* 23:8 (2008), p. 28, and Rachel Hajar, 'The Therapeutic Value of Pets', *Heart Views* 16:2 (2015), pp. 70–1.
22. For detailed examinations of animals, law, domesticity and sexuality, see essays in *Australian Feminist Law Journal* 40:2, *Dogs, Pigs and Children: Changing Laws in Colonial Britain* (2014).
23. Thomas Aquinas (1265–74), *Summa Theologica*, Art. 11: ' . . . it is contrary to the venereal act as becoming to the human race . . . this is called "the unnatural vice" . . . by copulation with a thing of undue species . . . called bestiality . . . [or] by copulation with an undue sex, male with male, female with female . . . this is called the vice of sodomy'. See *St Thomas Aquinas, Summa Theologica*, vol. 1 (London: Forgotten Books, 2007).
24. For more on this topic see Courtney Thomas, '"Not Having God Before His Eyes": Bestiality in Early Modern England', *Seventeenth Century* 26:1 (2011), pp. 149–73.
25. See John Canup, 'The Cry of Sodom Enquired Into: Bestiality and the Wilderness of Human Nature in Seventeenth-Century New England', *Proceedings of the American Antiquarian Society* 98:1 (1988), pp. 113–34, and Don Gorton, 'The Origins of Anti-Sodomy Laws', *Harvard Gay & Lesbian Review* 5:1 (1998), pp. 10–13. For commentaries on more contemporary aspects of the regulation of bestiality, see Frank Ascione, 'Bestiality: Petting, "Humane Rape," Sexual Assault, and the Enigma of Sexual Interactions between Humans and Non-human Animals', *Anthrozoos* (2005), pp. 120–129; Michael Roberts, 'The Unjustified Prohibition against Bestiality: Why the Laws in Opposition Can Find No Support in the Harm Principle', *Journal of Animal & Environmental Law* 1:2 (2010), pp. 176–221, and Brian Holoyda and William Newman, 'Zoophilia and the Law: Legal Responses To a Rare Paraphilia', *Journal of the American Academy of Psychiatry and the Law* 42:4 (2014), pp. 412–20.
26. Adriana Cavarero critiques the phallocentrism of the 'organology' of the sovereign state: see in particular her *Stately Bodies: Literature, Philosophy and the Question of Gender* (Ann Arbor: Michigan Press, 2002). Jacques Derrida opens up many productive lines of inquiry in his lecture series, beginning with this problem (see in particular 'Second Session', in *The Beast and the Sovereign*, vol. 1, trans. Geoffrey Bennington (Chicago: University of Chicago Press, 2009).
27. See Yoriko Otomo and Mario Prost, 'British Influences on International Environmental Law: The Case of Wildlife Conservation', in Jean-Pierre Gauci, Robert McCorquodale, Jill Barrett, Andraž Zidar and Anna Riddell (eds), *British Influences on International Law* (London: British Institute of International and Comparative Law, 2015).
28. See Yoriko Otomo and Stephen Humphreys, 'International Environmental Law', in Anne Orford and Florian Hoffman (eds), *Oxford Handbook on International Legal Theory* (Oxford: Oxford University Press, 2016).
29. On the conservation history of elephants, see also Elizabeth Garland, 'The Elephant in the Room: Confronting the Colonial Character of Wildlife Conservation in Africa', *African Studies Review* 51 (2008), pp. 51–74, and Rachelle Adam, *Elephant Treaties: The Colonial Legacy of the Biodiversity Crisis* (Hanover, NH: University Press of New England, 2014). On the history of conservation and preservation, see John MacKenzie, *The Empire of Nature: Hunting, Conservation and British Imperialism* (Manchester: Manchester University Press, 1997); Annie Kameri-Mbote and Philippe Cullet, 'Law, Colonialism and Environmental Management in Africa', *RECIEL* 6:23 (1997), pp. 23–31, and Harriet Ritvo, 'Destroyers and Preservers – Big Game in the Victorian Empire', *History Today* 52:1 (2002), pp. 33–9.

30. See David Brown and Frank Sharman, 'Enclosure: Agreements and Acts', *The Journal of Legal History* 15:3 (2007), pp. 269–86; S. J. Thompson, 'Parliamentary Enclosure, Property, Population and the Decline of Classical Republicanism in Eighteenth-Century Britain', *The Historical Journal* 51:3 (2008), pp. 621–42, and Alvaro Sevilla-Buitrago, 'Territory and the Governmentalisation of Social Reproduction: Parliamentary Enclosure and Spatial Rationalities in the Transition from Feudalism to Capitalism', *Journal of Historical Geography* 38 (2012), pp. 209–19.
31. *London Convention for the Preservation of Wild Animals, Birds and Fish in Africa* (adopted 19 May 1900).
32. Gayatri Spivak's well-known quotation is 'white men are saving brown women from brown men'. See her essay 'Can the Subaltern Speak?' (1985), in Cary Nelson and Larry Grossberg, *Marxism and the Interpretation of Culture* (Champaign: University of Illinois Press, 1988), p. 293. The discourse on poaching is gendered as well as raced – an examination of pamphlets produced at the time in England and her colonies shows that photographs of 'poachers' depict African men, while photographs of killed 'victims' are usually 'mother-and-child' affairs.
33. For a historical contextualisation of the animal welfare movement, see Natan Sznaider, 'Pain and Cruelty in Socio-Historical Perspective', *International Journal of Politics, Culture and Society* 10:2 (1996), pp. 331–54.
34. Convention on International Trade in Endangered Species of Fauna and Flora (signed on 3 March 1973; entered into force on 1 July 1975) 993 UNTS 243 ('CITES'). 'Charismatic megafauna' is a phrase often used in the industry to describe those species imbued with qualities that humans associate with sacredness: majesty, mystery and energy/size. On the topic of the conservation of elephants in particular see Ed Couzens, *Whales and Elephants in International Conservation Law and Politics* (New York: Routledge, 2014).
35. It does so through two key programmes: MIKE (Monitoring the Illegal Killing of Elephants) and ETIS (The Elephant Trade Information System).
36. CITES members, for example, voted in 2007 to allow a one-off sale of ivory to Japan and China: Decision made at the fifty-fifth meeting of the CITES Standing Committee on 2 June 2007, SC55 Doc. 10:2. (Rev.1).
37. An example of such a function is the power of the Conferences of the Parties, which can decide to move a species into or out of an appendix. The species covered by CITES are moved into and out of three appendices. Trade in Appendix I animals or their parts is permitted only in exceptional circumstances. Trade in Appendix II species is monitored through a system of import and export permits so as to ensure viable stock. Appendix III species are protected in at least one country but not by all CITES members, and trade in those species may be controlled. For a reflection on the ontotheology of postwar international conservation law, see Yoriko Otomo, 'Species, Scarcity and the State', in Otomo and Mussawir, *Law and the Question of the Animal*, pp. 166–74.
38. The extent to which most humans are also able to access these things is debatable (after all, what constitutes 'choice' in late capitalism?), but non-human animals and particularly domesticated animals are restricted in the extreme by techniques of human governance.
39. Despite purporting to promote 'animal health, happiness and general welfare', the Finnish Animal Welfare Act 247/1996 (one of the world's most far-reaching pieces of animal welfare legislation) includes provisions for animal breeding, farming, training, sale and slaughter. The reindeer (which, like the kangaroo, is a national icon) gets specific mention in the Finnish Animal Welfare Decree 396/1996 in the context of the slaughter of reindeers farmed for consumption: section 14 (7).
40. Article 2 (1) Korean Animal Protection Law, 1991.
41. An icon of Australia, almost 90 million kangaroos and wallabies were lawfully killed for commercial purposes between 1992 and 2012: an estimate provided by the NGO Voiceless,

relying on statistics gathered from the Australian Government Department of Sustainability, Water, Population and Communities. Available at: <https://www.voiceless.org.au/the-issues/kangaroos> (accessed 28 August 2017).

42. It should also be noted that those minimal obligations attaching to the owners of those few identified types of animal are rarely enforced due to lack of political/social will and the generally weak nature of provisions in welfare legislation.
43. See for example Donald Sharpes, *Sacred Bull, Holy Cow: A Cultural Study of Civilization's Most Important Animal* (New York: Peter Lang Press, 2006), and Jeremy McInerney, *The Cattle of the Sun: Cows and Culture in the World of the Ancient Greeks* (Princeton: Princeton University Press, 2010).
44. The annual production of milk globally is estimated to be 735 billion litres, and the leading global corporate supplier of milk, Fonterra, states that it aims 'to be the natural source of dairy for everyone, everywhere, every day' (<https://www.fonterra.com/au/en/About>, accessed 20 December 2015).
45. There are two global histories of milk currently available: Deborah Valenze, *Milk: A Local and Global History* (London: Yale University Press, 2010) and Hannah Velten, *Milk: A Global History* (London: Reaktion Books, 2010). An excellent analysis of milk regulation has been undertaken by Peter Atkins: *Liquid Materialities: A History of Milk, Science, and the Law* (Farnham: Ashgate, 2010).
46. I have written about this at some length in 'The Gentle Cannibal: The Rise and Fall of Lawful Milk', *Australian Feminist Law Journal* 40:2 (2015), pp. 215–28.
47. The Public Health Act, 1875.
48. The Dairies, Cowsheds, and Milk Shops Order, 1885.
49. The Sale of Milk Act, 1901.
50. The British Colonial Office, for example, was eager to establish national milk industries and distribution networks in Australia and India, despite the unsuitability of dairy to hot climates and vast geographical distances. For more on 'Operation Flood', see Shanti George, 'Stemming Operation Flood: Towards an Alternative Dairy Policy for India', *Economic and Political Weekly* 22:39 (1987), pp. 1654–63; Pratyusha Basu and Bruce Scholten, 'Crop-Livestock System in Rural Development: Linking India's Green and White Revolutions', *International Journal of Agricultural Sustainability* 10:2 (2012), pp. 175–91; and Martin Doornbos and Liana Gertsch, 'Sustainability, Technology and Corporate Interest: Resource Strategies in India's Modern Dairy Sector', *The Journal of Development Studies* 30:3 (1994), pp. 916–50.
51. Peter Atkins, 'The Growth of London's Railway Milk Trade, c. 1845 to 1914', *Journal of Transport History* 4:4 (1983), pp. 208–26.
52. John Empson, 'The History of the Milk Marketing Board, 1933–1994: British Farmers' Greatest Commercial Enterprise', *International Journal of Dairy Technology* 51:3 (1998), pp. 79. In the United States, a similar institution goes by the name of the 'Milk Security Program'.
53. The marketing of milk itself is very interesting, with posters produced by the Empire Marketing Board (1926–33) drawing parallels between the 'purity' of milk and the moral purity of women and children; the 'whiteness' of milk and the whiteness it would engender in women's skin, and the 'wholesomeness' of milk and the goodness of the state that produces it for its (female and infantile) citizens. These posters are devoid of cows, focusing primarily on normalising the production and consumption of cows' milk as a primary food. See Stefan Schwarzkopf, 'Markets, Consumers, and the State: The Uses of Market Research in Government and the Public Sector in Britain, 1925–1955', in Harmut Berghoff, Philip Scranton and Uwe Spiekermann (eds), *The Rise of Marketing and Market Research* (Basingstoke: Palgrave Macmillan, 2012), pp. 171–92. For an analysis of milk advertising (in the U.S.), see Andrea Wiley, '"Drink Milk for Fitness": The Cultural

Politics of Human Biological Variation and Milk Consumption in the United States', *American Anthropologist* 3 (2004), pp. 506–17.

54. John Empson, 'The History of the Milk Marketing Board', pp. 77–85.
55. Farmers and regulators around the world are struggling to decide what to do with the industry as they face overproduction, under-consumption, animal welfare concerns, climate change concerns, health concerns linked to the use of hormones, and farming lobbies keen to retain state subsidies in the face of deregulation – see current debates around national and regional deregulation, World Trade Organisation disputes over milk subsidies, and animal welfare issues related to milk production and to genetic modification.
56. We might also examine, for example, the regulation of milking sheds and slaughterhouses; of milkmaids; of the leather trade; of kept animals; of meat sales; of transport; and of breeding. A closer investigation of law's historical role in the creation of the global milk grid is also warranted.
57. See generally Yoriko Otomo and Edward Mussawir, 'Thinking about Law and the Question of the Animal', in Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds), *Handbook of Research Methods in Environmental Law* (London: Elgar, 2017).
58. It is to my constant amazement that there are scales of life that will remain entirely invisible to the ocular world of law: tardigrades, for example, are microscopic water creatures around 1mm long, able to survive not only freezing and boiling temperatures, immense pressure and radiation, but also life in space. They are able to live for over ten years without sustenance or water, and around 17 per cent of their genetic material is foreign: see e.g. Thomas Boothby et al., 'Evidence for Extensive Horizontal Gene Transfer from the Draft Genome of a Tardigrade', *Proceedings of the National Academy of Sciences of the United States of America*, 28 September 2015.