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Animals and the Law: A Selected Bibliography

Gerald Magavero

The literature of Anglo-American law regarding animals is almost totally devoted to the pragmatic study of the nature and extent of ownership of animals and the rights and responsibilities arising therefrom. This narrow view of the bond between men and animals is eloquently expressed in the confident and innocent assertion of William Blackstone that "In the beginning of the world we are informed by holy writ, the all bountiful creator gave to man dominion over all the earth, and over the fish of the sea, and over the fowl of air, and over every living thing that moves upon the earth. This is the only true and solid foundation of man's dominion over external things."¹

The savage mind sees the relationship between men and animals as a far more complex one.² It perceives no clear line of demarcation between men and beasts. The latter are attributed thoughts, emotions, and even the power of speech. Vengeance must be taken against animals who have killed relatives where vengeance would be exacted from humans for the same acts.

The attribution of moral sense to animals, although relatively rare in Western thought, has occasionally appeared in legal literature. An unsigned article entitled "Prosecutions Against Animals" published in the *American Jurist* (1829) gives several bizarre accounts of legal proceedings against animals. An elaborate prosecution, conducted in 1531 in Autun, France, was against the rats infesting the area. The ecclesiastical judge was petitioned to excommunicate them, but precedent first demanded a bill of prosecution, a summons, and the appointment of a defender. The appointed defender initiated a number of motions of a dilatory nature. One required an additional summons be read in every parish because of the wide dispersal of his clients. He obtained further delays by noting default of his clients should be attributed to the distance and dangers of the trip through a countryside with many cats. When all

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dilatory pleas had been exhausted he appealed to the court, "What can be more unjust than those general proscriptions which overwhelm whole families in one common ruin, which visit the crime of the parents on the children, which destroy indiscriminately those whom tender years or infirmity render equally incapable of offending?"

Other accounts were given of the hanging of a hog that had killed a child, and the joint public execution of a man and mule for the crime of bestiality, one of many similar executions.

Though perhaps absurd to the rational contemporary mind, these atavistic attitudes, represent a religious sensitivity binding men closely with animals. The relative weakness of this bond in the West, combined with a vastly increased human population following the Industrial Revolution, have led to the virtual annihilation of many species in Europe and North America. In the main, only those species susceptible to domestication and of economic utility were saved from general destruction. The dog and cat are notable exceptions. Despite their relative lack of utility, they have increased in numbers that have alarmed urban planners. The incredible growth in the pet population may well represent an attempt by contemporary urban man to recapture his ancient sense of unity with the animal kingdom. If so, an appeal to reason in the form of proposed zoning laws restricting ownership of pets in congested urban areas is likely to encounter formidable emotional opposition.

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