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Regulating Dogs, Goats, Companions and their Humans 1898-1998: Modern to Post Modern Pets

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Abstract

Franklin and White (2001) present the results of a content analysis on animal-related stories in the Tasmanian newspaper, *The Mercury*, over the period 1949-1998. The research was designed to test the thesis presented in Franklin's (1999) earlier publication. In summary, Franklin (1999) links the characteristics of a post or late-modern society, ontological insecurity, misanthropy and risk-reflexivity with their manifestations in animal-human relations. Based on Franklin's, and others, research pet owners are creating much more specific sentimental connections with their dogs and cats. This contrasts with how dogs and cats are regulated increasingly as a threat in need of control. In NSW pets, now 'companion animals', are regulated via many prohibitions on where they can be and what they can do in a given area. Using the characteristics of post-modern human-animal relations described by Franklin, as Franklin and White (2001) did, this paper examines the changes in the legislative regulation in New South Wales, over the period 1898-1998, of pets and their humans to see if they indicate a shift to a post-modern society. The acts to be considered are the *Dog and Goat Act (NSW) 1898*, the *Dog Act (NSW) 1966* and the *Companion Animal Act (NSW) 1998*.

Introduction

Franklin and White (2001) present the results of a content analysis on animal-related stories in the Tasmanian newspaper, *The Mercury*, over the period 1949-1998. The research was designed to test the thesis presented in Franklin's (1999) earlier publication, *Animals and Modern Cultures*. In summary, Franklin (1999) links the characteristics of a post or late-modern society with their manifestations in animalhuman relations in the following ways. Ontological insecurity experienced in post-modern societies is offset by the security given by companion animals. The post-modern experience of misanthropy and a decline in the belief in the centrality and moral superiority of humans is linked to rise in zoocentrism (the acknowledgement that animals may have some moral standing). An increase in risk reflexivity in post-modern societies is interconnected with a rise in animal-related risk assessments. Based on Franklin's, and others, research pet owners are

creating much more specific sentimental connections with their dogs and cats, as are people more generally with 'wildlife'. This contrasts with how cats and dogs are regulated increasingly as a threat in need of control and prescribed ways of being. In NSW pets, now 'companion animals', are regulated via many prohibitions on where they can be and what they do in a given area. Using the characteristics of post-modern human-animal relations described by Franklin, as Franklin and White (2001) did, this paper examines the changes in the legislative regulation in New South Wales, over the period 1898-1998, of pets and their humans to see if they indicate a shift to a post-modern society. The acts to be considered are, the *Dog and Goat Act (NSW) 1898* (DGA), the *Dog Act (NSW) 1966* (DA) and the *Companion Animal Act (NSW) 1998* (CAA).

Franklin (1999: 57-9) argues that risk reflexivity, the threats posed to animal by humans through environmental degradation, threats of extinction, habitat encroachment, have drawn animals closer to human beings. This has required humans to feel and acknowledge the dependence of animals.

Animals have become a human moral responsibility (Franklin 1999: 59). Also risk reflexivity is related to the threats posed by animals to humans. Franklin (1999: 60) argues this comes about through the intervention of science and technology in the processing of 'natural' foods into foods for commercial production, for example, the BSE crisis in beef production. Misanthropy, in the current context, means a dislike of humanity based on its destructive and selfish use of animals and the environment. Historically it was less important in the nineteenth and first half of the twentieth century and became more prominent in the 1970s and 1980s as the benefits of modernity began to diminish and the problems of industrial capitalism became clearer (Franklin 1999: 55). In this period it was no longer possible to see humans as benign and good. Franklin (1999: 55) argues that the social changes in this period, mass unemployment, regional impoverishment, and political changes, the emergence of the new right, reduction of the welfare state and promotion of profit at any cost, favoured an extension of misanthropy. Also in this period animals were under increasing threat from habitat destruction, extinction and environmental damage.

It became possible therefore to identify with animals under conditions of common adversity (Franklin 1999: 55).

Animals came to be seen as being good, natural and normal in opposition to what humanity represented and a more caring relationship with animals made it possible for humans to feel that helping animals was morally valuable and worthwhile. Animals act as 'moral counterbalance' to human actions. Franklin argues:

The ontological insecurity deriving from the fragmented and fugitive nature of post-modern labour markets, communities and domestic relations is evident in changed relationships with pets (2001: 224).

Basically pets are now considered to be companions, that is, they offer a form of ontological security through being dependent, predictable and consistently available. Companion animals offer a form of ontological security in the face of a seemingly less secure world.

Taking up Franklin and White's (2001: 236) suggestion this paper is examining the regulation of pets/companion animals as a site of human-animal relations. The legislative changes and the parliamentary debates are obviously a response to something, for example, a stray dog problem or the need to manage dogs that are left home alone as a result of changing patterns of employment. These pieces of legislation codify a set of norms about how pets, humans and others should behave in their various interactions. The particular norms are contested in the debates through the parliamentary process, which eventually reaches the agreed codification. Do these changes come from and show a shift from modernity to post-modernity? Is the 1998 legislation indicative of post-modern human-animal relations? Franklin and White (2001: 224) suggest that there is some consensus on the mid to late 1970s as a critical period of transition from modernity into late or postmodernity. Based on this, the shift from DA 1966 to the CAA 1998 should indicate a shift into postmodern animalhuman relations with the DGA providing a kind of pre-modern check. Using Franklin's characteristics of post-modernity the legislation and debates can be analysed to answer these questions. The legislation is analysed through the following categories: control or management of pets/companions

and their humans, pet/companion registration and administration, and legal liability for damage or injury caused by a pet or companion.

Comparative Analysis of the Legislation 1898-1998

Franklin's indicators, decline in anthropomorphism, rise in zoocentrism, changing sentiments and rise in animal-related risks, are to some extent evident in the different acts covering the three different years/eras 1898, 1966 and 1998. In general, and predictably, the clearest differences are between the DGA compared to the later acts. The differences between the DA and the CAA are there but less distinct and not necessarily indicative or symptomatic of post or late-modern societies.

Control/Management Provisions

All the acts examined are concerned with the control and management of pets. The more specific forms of control/management considered are: seizure and destruction of pets and, connected to this, is access to public and private space, classification of dangerous or nuisance pets, and responsibilities of owners.

The changes in the provisions covering the seizure and destruction of pets certainly indicate a rise in sentimentality about animals as more humane ways of removing/destroying dogs are introduced. Section 12 (1) of the DGA allows for seizure of an unregistered dog by any person, the justice of the peace must be informed and the owner is given twenty four hours, or more dependent on the justice's decision, to retrieve the dog, or it will be killed. Section 12(2) allows a dog that is not under the control of a competent person and has no collar to be killed immediately by any person and a reward is given upon presentation of the dog's tail to the magistrate. These provisions show little in sentimentality towards dogs and there is no 'category blurring' as the dogs are not being treated like humans in any way. In late-modern societies animals are socially unique because of

...their potential to be like us and for the categorical boundary between humans and animals to be blurred (Franklin 1999: 194).

As would be expected, and in support of Franklin's thesis, the provisions do not show dogs are being a response to ontological insecurity. However, the provisions could be seen as a response to animal-related risks which is contrary to Franklin's thesis but whether this is based in a form of risk-reflexivity is unclear as dogs have, since the first legislative reference to them in 1830, been configured as a nuisance and danger.

Under similar circumstances in the DA (s10) a dog in a public place or on unauthorised private property and not under effective control by a competent person, can be seized by police, council workers or any person and the dog is then placed in a council pound and the owner notified. This act establishes a formal system of housing unwanted or lost dogs and legislates procedures for a more humane treatment of them. The provisions for seizure are very similar in the DA and CAA (ss63-64) and are clearly more humane than the DGA. Dogs cannot be killed on the street via the CAA and DA and are instead housed and maintained while an attempt is made to contact the owner. This shows a more sentimental attitude towards dogs and perhaps a sense that they are at least partial moral beings deserving of some level of treatment similar to humans (the moral standing of animals is discussed by Franklin 1999: 196-7). Given that both later acts express a similar level of sentimentality this does not indicate a shift in human-animal relations from modernity (1966 DA) to late or postmodernity (CAA 1998).

There are differences between the acts as to what triggers seizure of a dog. In 1981 the DA was amended and 'For the first time in the history of the legislation in New South Wales an attempt was made to control the access of dogs to public places' (Law Reform Commission 1988: 10). This was done via s8(1) making a person guilty of an offence if their dog was in a public place and not under the effective control via a leash or equivalent. The CAA goes further than this by listing a number of areas in which dogs and cats are expressly forbidden (ss14,30), including, food preparation areas, children's play areas, recreation areas and public bathing where dogs are explicitly prohibited, school grounds, childcare centres, wildlife areas, and cats are prohibited in food preparation and wildlife areas. If the owner is present and refuses to remove the dog or cat an authorised person can remove it, if the owner is not present any person can remove

the animal. Specifying these areas is new. The original DA only covers Inclosed Lands, unauthorised private property and a public place with the addition of a lack of effective control, which is similar to the DGA. The CAA (s13) also requires dogs be under effective control in public places, if not, the same seizure laws apply as above depending on whether there is an authorised officer or 'any person' present. The CAA shows a more humane treatment of animals but restricts their access to public spaces more than the previous acts. Restricting access suggests a response to the apparent risks posed by dogs and cats. Taken together there is a possible increase in sentimentality (which is also present in the DA) in how seized dogs are treated and a rise in the perception of animal-related risks in the CAA compared to the other acts. From 1981 the legislation restricts dog's access to public places as an overt response to the risks and nuisance posed by dogs, and then cats. These provisions support the conditions in late-modern societies in which pets are loved as family members, giving ontological security, and simultaneously feared for the risks they pose to others.

The DGA and the DA do not classify animals as dangerous or nuisance (although special provisions are made for greyhounds, alsatians, bull dogs and bull mastiffs). However, the CAA has categories of nuisance dogs (s21) and cats (s31), dangerous dogs (Part Five) and restricted dogs (ss55-58). The nuisance cat and dog, and the restricted dog provisions are new, and the dangerous dog provisions build onto those in the amended DA. Prima facie the legislation shows an increase in the perception of animal-related risks concerning, for example, dog attacks or annoying cats and dogs. However, the parliamentary debate (addressed in detail in another paper) locates the risk in the behaviour of the animal but locates the source of the risk with the animal's human. In Franklin's terms this is a form of misanthropy.

All acts have explicit or implicit responsibilities of owners and government agencies and agents (councils or police). The responsibilities in common include registration of the pet, administration of the registration system, keeping the dog under effective control in public, not allowing the dog to attack animals or humans or damage property, and that the dog, then cat, be identified with a collar and identification plate or tag (or microchip for

cats s29 CAA). The major difference is that the CAA has *codified and named responsibilities*. In Part 3 there are two divisions covering dog owner's responsibilities, Part 5, Division 4 covers responsibilities of owners of dangerous dogs and Part 4 covers cat owner's responsibilities. This codification could be a response to a sense that individuals lack control over major aspects of their lives, like employment, interest rates and security. So that what can be controlled in a post or late-modern societies are dogs, cats and their humans. These provisions in the CAA could indicate a legislative response emanating from the insecurities generated by post-modern societies. However it could also, and perhaps instead, indicate a response to the changed patterns of urban development in which people live in more densely populated areas and work longer hours without any one being at home. All of which leaves dogs and cats in closer contact with others and often home alone for long periods to create a nuisance. This compares to patterns in the 1960's that were almost, as a generalisation, opposite with less dense housing, more people at home, shorter working hours.

Registration and Administration Provisions

From the DGA on the basics of registration are similar. Each act sets out the procedure for registration, the age the pet must be registered at, the penalties for failure to register or false description and the duration of the registration period. The administrative procedures become more detailed and sophisticated in line with new information technologies and expectations of governments. Both the later acts show more concern about the welfare and future of the dog than did the DGA. Compulsory microchipping provides the possibility of dogs, and cats, being more effectively returned to their owners as a way to cut down on the number of animals destroyed.

This could indicate a heightened sentimentality towards the pets but, within its technological bounds, the DA shows a similar concern and for similar reasons (as well as removing strays), this can be seen in the relevant parliamentary debates. These provisions indicate very little change in sentiments towards dogs between 1966 and 1998.

Legal Liability Provisions

Each act establishes criteria for the legal liability, civil and criminal, of owners when their pet destroys property or injures a person or other animal. For civil liability the changes minimal and are irrelevant for current considerations. In criminal liability The CAA (s16(1)) extends the original DA back towards the DGA by making it an offence

...if a dog rushes at, attacks, bites, harasses or chases any person or animal ..., whether or not any injury is caused to the person or animal.

There are some exceptions to this(s16(2), including if the dog was being mistreated, if the animal or person was trespassing or if the dog was acting in reasonable defence of a person or property). Section 16 of the CAA has re-enacted criminal liability for attacks on private property. Section 17 of the CAA makes it an offence for a person to *encourage* a dog to attack, bite, harass or chase a person or animal whether or not injury is caused (with some exceptions s17(2)). This was not part of the DGA or DA. Basically the CAA has extended criminal liability beyond the scope of either the DGA or the DA. This could indicate a rise in animal-related risk assessment in the 1990s but it was also present in the late 1800s. This would require further investigation, but the changes may also indicate more general shifts in the criminal law.

Conclusion

Franklin and White's research (2001: 235) showed that, minimally animal-human relations have changed in the given period. There was also from the 1970s a rise in sentimentality, and an increase in coverage of animal-related risks. This supports a move towards a post-modern society. But the authors also found the research could support accounts of modern or amodern societies and evidence of the relevance of modern sociological factors, including gender and class. The analysis of the legislation had a similar ambiguous result. Some of the changes are consistent with the characteristics of a post or late-modern society and some are inconsistent or there are other equally plausible explanations. The overall effect suggests that the theories are not sufficiently appropriate to analyse legislative changes or the analytical framework itself has limitations for understanding legislative changes. Different methodologies offer a potentially more useful analysis that would place the regulation of pets within broader changes to patterns

of governing, for example, the methodologies based around governmentality including, Rose (1999) and Dean (1999).

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