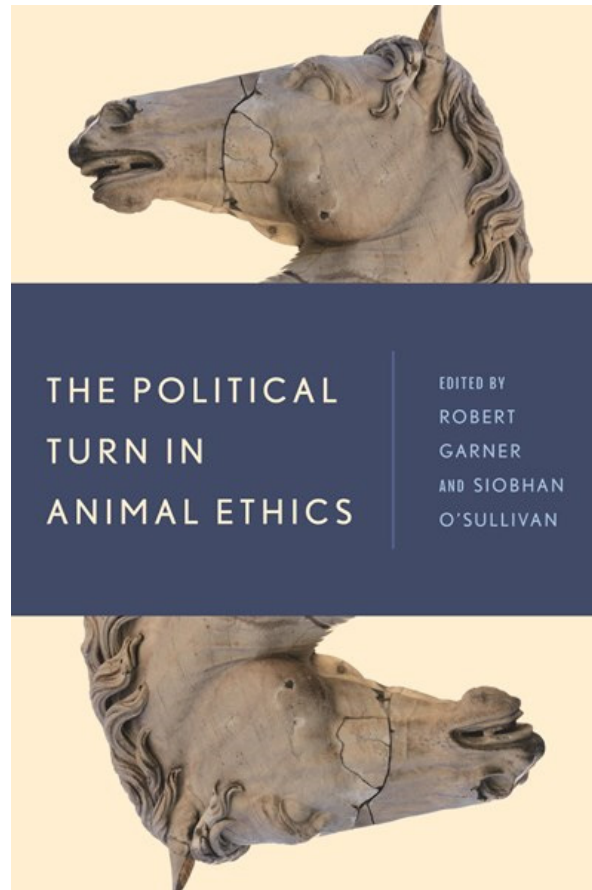


Review Essay

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Animals, Law, and Power

Robert Garner and Siobhan O'Sullivan, eds. *The Political Turn in Animal Ethics*. London: Rowman and Littlefield International, 2016. £85.00 hc; £29.95 pb; £29.95 e-book.



Those who wish to explore animal ethics from a political perspective will be interested in the essays included in *The Political Turn in Animal Ethics*, edited by Robert Garner and Siobhan O'Sullivan. The “political turn” refers to the political turn in animal ethics, as well as the “animal turn” in political theory. Taken together, the 10 essays and editorial

introduction in this collection suggest new possibilities for creating a better world for animals. For example, some contributors focus on what the state should or could do, while others examine humans' roles — as political actors — in interacting with state and institutional positions. Most of the essays create a basis from which we can seriously begin to address power structures that impact animals' lives.

The editors' goals are twofold: to determine the parameters of the political turn and to determine the extent to which this shift represents a truly new direction in animal ethics. Though establishing firm topical parameters seems unlikely due to the ever-expanding array of ethical concerns raised by our interactions with and effects on animals, the questions undertaken by these essays are addressed through the familiar methods and theoretical lenses of political theory. So we might say that the first goal has been met as to manner and substance of approach, but not as to subject matter.

Not enough heft exists within these pages to accomplish their second goal. In an anthology, writers write about a range of topics. While these topics might represent new directions, great gaps exist in areas that aren't discussed, and unanswered questions emerge from issues that are addressed. Thus, the collection does not entirely succeed at establishing the extent to which scholarship in this field represents a genuinely new direction. However, this is not necessarily a bad thing; it simply appears to be a misplaced goal.

A more apt goal would have been something like this: to showcase representative works of political theorists illustrating the "political turn." And this, of course, can be quite valuable for those interested in animal ethics who might harbor a belief that the field has grown quite stagnant. The political turn literature has indeed breathed fresh perspectives into old debates.

As with any anthology, some essays are more innovative than others. All contributors discuss issues we would expect to be addressed by political theorists who are interested in animal ethics, including obligations arising out of a sense of justice, alternatives to citizenship models, and why political systems are not working for animals. Examples of those discussions can be found in Alasdair Cochrane's "Labour Rights for Animals," Robert Garner's "Animals, Politics and Democracy," and Dan Lyons's "Animal Protection Policy in the United Kingdom: From Symbolic Reassurance to Democratic Representation," respectively.

The nature of an edited collection of essays is that some will contain redundancies, one to the other. In a newly defined field this may be unavoidable, as everyone situates their own work within the existing literature, and all build off of a common notion of perceived inadequacies in animal ethics moral philosophy. Readers will see many references, for example, to Sue Donaldson and Will Kymlicka's *Zoopolis: A Political Theory of Animal Rights* — certainly a leading piece in this field, but whose authors are unfortunately absent as contributors to this particular collection. Likewise, there is no shortage of references to the work of Tom Regan and Peter Singer, which is not the least surprising.

This collection does many things right. Certainly the most exciting ideas that emerge from these writings that suggest clear paths forward for thinkers and activists alike can be collected into two topical areas: direct rescue as a political act, discussed in Steve Cooke's "Understanding Animal Liberation," and the suffering of "invisible" animals, addressed by Siobhan O'Sullivan's "Animals and the Politics of Equity." The most compelling applied theory emerges in the forms of labor rights for animals (Cochrane), enfranchisement of animals (Garner), and a justification for refusing to defer to political institutions, which rests upon the rejection of the status quo of moral pluralism related to animals (Friederike Schmitz's "Animal Ethics and Human Institutions: Integrating Animals into Political Theory"). These stand as shining examples of the forward-thinking possibilities inherent in political turn literature.

Cooke's and O'Sullivan's essays are the stars in this collection. Both move their respective topics forward substantially with fresh perspectives. Cooke's work is truly new, well-argued, and brave enough to venture into areas heretofore considered off-limits by many animal ethicists. He characterizes direct rescues of animals — both open rescues and covert rescues — as political acts. According to Cooke, during open rescues, liberators show deference to the political institutions in which they are working. If covert, then the rescue itself indicates a rejection of the oppressive political system in which the rescuers are working. His discussion of the consequences that befall direct action rescuers is an excellent overview of the exercise of state power. Though Cooke does not mention it, it seems that recognition of direct rescue as political act *could* legitimize these activities as countermeasures to oppressive (to animals) governmental and legal systems. In other words, safely ensconced in political discourse, the once off-limits topic of direct rescue comes into focus as not only one that might be addressed, but one that we are compelled to address politically in a more engaged manner than the currently accepted status quo responses: flat refusal to engage or rote response of disavowal. Though it is not entirely clear whether Cooke endorses direct rescues at all,

he does point out that too much deference is given in open rescue to the oppressors themselves.

As for O'Sullivan's work, her discussion of the invisible suffering of animals provides clear articulation of an endemic problem. Animals who are to be used by humans are hidden; consequently, they receive fewer legal protections. When harms are known by the community, those harms are more likely to be addressed through legal restrictions. But hidden animals do not benefit from the value-enforcing gaze of the community. The current status quo concerning the treatment of animals offends liberal democratic values.

Taken together, these essays create a solid platform from which to launch a serious critique and analysis of power — at the individual, institutional, and state levels. Cook's and O'Sullivan's works set up this possibility skillfully. However, in a book about political theory and animal ethics, one would expect to see power addressed in a more direct and sustained manner. In the here and now, power may eclipse in importance the property status of animals because it is something that could be meaningfully addressed within existing legal frameworks. Power — who holds it, how it is exercised, and what its limits are — underlies all harms to animals. Indeed, what seems missing from this collection is an essay that directly addresses the concept of power.

As such, I provide a brief sketch of my ideas of power in this context.¹ I see a bifurcation here of the types of power that can be exercised at the individual level: direct action power and strategic placement power. Direct action power mostly benefits individual animals, while strategic placement power potentially benefits large numbers of animals. A person can use direct action power, such as engaging in open or covert rescue.² Alternatively, a person can use strategic placement power by assuming high-level positions in institutions such as universities, governments, corporations, or religious organizations. However, a person would have to be very lucky or very wily to successfully exercise both types of power over long periods of time. This is because the exercise of direct action power carries the risk of getting caught. Besides the immediate legal problems, getting caught delegitimizes a person from exercising strategic placement power (probably) forever. A person with a criminal record — or worse, labeled as an “eco-terrorist” or “fanatic” — will be unlikely to be able to place herself or himself into an influential institutional position.

So — the very lucky and the very wily aside — people may have to choose between direct action and strategic placement if they wish to exercise power at the individual

level. Trade-offs exist both for the individual person and for the animals. Direct action power is appealing because the lives of individual animals are important, though strategic placement power may have a larger impact on groups of animals. With the exercise of direct action power, individual animals may be removed from dangerous or deadly situations. However, the person who exercises direct action power may face criminal sanctions and lifelong disenfranchisement from meaningful participation in influential institutions (i.e., disenfranchisement from exercising strategic placement power) – not to mention the personal costs as well (e.g., loss of income opportunities, etc.). With strategic placement power, it is possible that no intercession can be made for individual animals (or only in rare circumstances), but the effects of actions taken are large in scale. However, the person who exercises strategic location power may have to “look the other way” when observing a situation where an individual animal needs immediate intervention.

Regarding direct action power, the law could respond to morally motivated lawbreaking by reliably recognizing a justification defense (rather than a defense of the excuse variety, or refusal to recognize any defense at all). Cooke’s work touches on morally motivated lawbreaking. Much more could be developed in this field. For example, if a justification defense were applicable to direct rescue, this would shift the discussion – at the state level – from one centered on “terrorist” acts to something else entirely, such as “exercising rights of conscience.” My point is that we can build upon theoretical bases in law – in forms that are already familiar (e.g., justification as complete defense) – to change the power dynamics between the state and the individual. Likewise, O’Sullivan’s observations about invisible animals seem a logical platform upon which to explore the consequences of hiding animals “used” by humans to areas that extend beyond her well-argued piece. For example, the sweeping up of animals to remove them from our communities either directly (e.g., animal control and “kill” shelters) or indirectly (e.g., loss of habitat due to human encroachment) is the status quo exercise of power (by the state or by other institutions or organizations, as the case may be). These exercises of power disenfranchise human beings from their natural right to see animals. As such, we are harmed by alienation of the natural world, and animals are harmed by loss of liberty and home (ranges, habitat, etc.) As state or institutional power is exercised in this context, harms are simultaneously realized by both people and animals.

As to strategic placement power, a growing number of animal advocates are assuming high-level positions. For example, as I have discussed elsewhere (Johnson), universities are now routinely offering courses in human-animal studies (differing titularly one from the other), with some leading to degrees or certifications. This increase in available

offerings is, of course, directly related to the fact that people behind such programs are exercising strategic placement power. We can assume that as such programs work with industry and government to place their graduates, the effects of strategic placement power will be dispersed. Perhaps strategic placement power in government and industry will not be too far behind.

Of course, power is diffuse and not positioned in or from any particular point (Foucault, *History* 94–96; Foucault, *Power/Knowledge* 142), so a discussion of individuals exercising strategic placement power is something of a shorthand. However, without strategic placement of individuals who want to help animals, institutions simply have little or no incentive to change on their own. Thus, the potential effects of the exercise of strategic placement power should not be underemphasized.

Those who exercise strategic placement power as lawmakers in local government are particularly well positioned to prevent harm to animals, given the historical effectiveness of jurisdictionally focused exercises of power. For example, in the United States, many “dry” jurisdictions exist (e.g., dry counties, dry cities), where the relevant government has exercised its power to prohibit the sale of alcoholic beverages. Without addressing the intricacies of the legal mechanisms and machinations that provide legal basis for this exercise of power,³ jurisdictional power could potentially be exercised to provide animal “safe havens” within entire jurisdictions where, for example, Cochrane’s labor rights and/or Garner’s enfranchisement principle are mandated by law. Whoever happens to hold lawmaking positions where this occurs — our hypothetical lawmakers — will need political theorists to help craft legislation that creates an inclusive place for animals. Political turn literature can help with this.

But in the meantime, the political turn literature could address some of its weaknesses. For example, despite the many fine attributes of Cochrane’s proposal for rights for animals, the work fails to provide a satisfactory account of basic legal classifications of property and persons, which leads to some unnecessarily fuzzy categorical assertions about the property status of children, employees, and citizens. Additionally, Cochrane’s account of autonomy reveals a particular commitment to a rather stringent requirement of self-reflection by the agent regarding his or her own life choices (e.g. Benn 228–229⁴; Raz 204⁵) while wholly ignoring criticisms of that requirement that might lead to different conclusions. Cochrane’s autonomy allows him to deny that animals have inherent interests in their own freedom, but he could broaden his view to recognize that, for example, rational assessment of one’s choices is not the only way decisions are made. Even if we choose to focus on rationality, it is far from settled that at least some

animals cannot or do not engage in the type of self-reflection necessary to meet this requirement. Moreover, while potential confusion could exist regarding which type of autonomy is being discussed, personal autonomy is presumed, despite the many characteristics it shares with moral autonomy (e.g. Waldron 307–329).⁶ For Cochrane, continued ownership of animals and use of animals for human purposes is fine, provided that their rights are not violated. Though animal use as we currently know it could not be continued under his theory of labor rights, he maintains that some uses of animals would meet these requirements and therefore pass muster.

Schmitz's essay stands in nice contrast to Cochrane's work because she notes that "ownership" of animals used for commercial use impedes state recognition of their interests or rights. This critique of ownership of animals challenges the moral permissibility of using animals. Schmitz encourages consideration of strategies that could be employed to change society for the betterment of animals. Her focus on institutions seems aptly placed. However, in all, the essay offers a vague hope that "something" could be done, with little actual direction about how to do it. For example, Schmitz does not necessarily believe that legal compulsions are the best way to make things better for animals, given the infringement on people's personal freedoms, but she does not address why anyone should have freedom to infringe upon a living being's interests to begin with. Despite these shortcomings, some of her observations provide provocative guidance. For example, if moral pluralism as it applies to animals provides no reason to respect current political institutions that allow atrocities to continue against them, does that mean that animal advocates have no reason to abide by laws when acting on animals' behalf? Schmitz should recall that political theory essentially demands application, so a fudging on how good ideas might be made policy is a missed opportunity for our hypothetical lawmaker interested in "safe animal" jurisdictions.

Kimberly Smith's central claim in "A Public Philosophy for the Liberal Animal Welfare State" asserts that the best understanding of American liberalism is that it treats domesticated animals as members of the social contract. As such, she proposes a system that excludes non-domesticated animals. She also favors words like "livestock" and "wild animals," apparently unaware of the harms imposed upon animals by the use of subjugating terms. Perhaps more disturbingly, the work proposes classifications that exclude. Of course, exclusion classifications carry consequences to those so labeled: classification of animals as property has led to their wholesale exploitation by legal persons. Given the inauspicious history of power abuses flowing from labeling living beings in manners that allow their exclusion from communities, why propose an account that includes only some animals rather than all animals? Smith's work is

disappointingly human-centric because it favors animals that humans deem domesticated, while excluding others.

Tony Milligan's "Putting Pluralism First: Cruelty and Animal Rights Discourse" places the issue of cruelty strategically at the forefront of animal rights discourse, though no settled definition of cruelty is offered. While Milligan essentially wants to uncouple cruelty discourse from rights discourse, the failure to settle upon a definition of cruelty is a weakness in his argument, and one that every defense attorney knows.

While it is perhaps true that political theorists have begun to self-identify under the auspices of "political turn" literature, those interested in political processes, consequences, and concepts have in fact been thinking about animal ethics for longer than the emergence of the "political turn" indicates. However, this collection of essays suggests unique directions forward. Recommended.

Notes

1. In writing this piece, the author does not intend to encourage or endorse the violation of any laws.
2. Direct action rescue in this article only refers to acts that rescue or liberate animals without physically harming any human being or his or her property, or the property of any legal person. The author expressly disavows violence.
3. There is simply not enough space in this article to address this issue.
4. "Self-knowledge, the congruence of action and belief, and a concern that these features be maintained by a vigilant critical moral consciousness—all these are necessary for autonomy" (Benn 228–229).
5. "A person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options. A person who has never had any significant choice, or was not aware of it, or never exercised choice in significant matters but simply drifted through life is not an autonomous person" (Raz 204).
6. It is not clear that moral philosophers would ever ascribe moral autonomy to animals.

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