

ANIMALS AND THE LAW IN ANTIQUITY

SBL Press

Program in Judaic Studies
Brown University
Box 1826
Providence, RI 02912

BROWN JUDAIC STUDIES

Edited by

David C. Jacobson
Saul M. Olyan
Rachel Rojanski
Michael L. Satlow
Adam Teller

Number 368

ANIMALS AND THE LAW IN ANTIQUITY

edited by

Saul M. Olyan and Jordan D. Rosenblum

ANIMALS AND THE LAW IN ANTIQUITY

Edited by
Saul M. Olyan
Jordan D. Rosenblum

SBL Press

Brown Judaic Studies
Providence, Rhode Island

© 2021 Brown University. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by means of any information storage or retrieval system, except as may be expressly permitted by the 1976 Copyright Act or in writing from the publisher. Requests for permission should be addressed in writing to the Rights and Permissions Office, Program in Judaic Studies, Brown University, Box 1826, Providence, RI 02912, USA.

Library of Congress Control Number: 2021941885

SBL Press

Contents

Contributors.	vii
Abbreviations	ix
Introduction	
<i>Saul M. Olyan and Jordan D. Rosenblum.</i>	1
“Mere” Things or Sentient Beings? The Legal Status of Animals in Ancient Egyptian Society	
<i>Rozenn Bailleul-LeSuer</i>	13
Partial Persons, Unsafe Spaces: The Babylonian Production of Class through Laws about Animals	
<i>Seth Richardson</i>	41
Symmetry or Asymmetry according to the Law? The Case of Domesticated Animals and Human Beings	
<i>Saul M. Olyan</i>	69
Animals in Greek and Roman Criminal Law	
<i>F. S. Naiden</i>	83
Animal Acts: Diet and Law in the Acts of the Apostles and Early Christian Practice	
<i>Andrew McGowan.</i>	105
The Role of Laws in Porphyry’s Arguments against Animal Sacrifice	
<i>Miira Tuominen</i>	121
Banning Animal Sacrifice ad Infinitum: Cui Bono?	
<i>Daniel Ullucci</i>	143

Dolphins Are Humans of the Sea (b. Bekhorot 8a): Animals and
Legal Categorization in Rabbinic Literature
Jordan D. Rosenblum 161

Response to Bailleul-LeSuer, Olyan, Richardson, and Tuominen
Andreas Schüle. 177

Response to McGowan, Naiden, Ullucci, and Rosenblum
Beth Berkowitz 187

Indexes 199

SBL Press

Contributors

Rozenn Bailleul-LeSuer, SUNY Brockport

Beth Berkowitz, Barnard College

Andrew McGowan, Yale University

F. S. Naiden, University of North Carolina at Chapel Hill

Saul M. Olyan, Brown University

Seth Richardson, University of Chicago

Jordan D. Rosenblum, University of Wisconsin, Madison

Andreas Schüle, Universität Leipzig

Miira Tuominen, University of Stockholm

Daniel Ullucci, Stonehill College

SBL Press

SBL Press

Abbreviations

Classical Sources

Aelian

Nat. an. *De natura animalium*

Aristotle

Ath. pol. *Athenaion politeia*

Eth. nic. *Ethica nicomachea*

Mir. ausc. *De mirabilibus auscultationibus*

Phys. *Physica*

Pol. *Politica*

Cicero

Tusc. *Tusculanae disputationes*

Demosthenes

Aristocr. *In Aristocratem*

Diodorus Siculus

Bib. hist. *Biblioteca historica*

Herodotus

Hist. *Historiae*

I. Cret. *Inscriptiones Creticae*

Iamblichus

Myst. *De mysteriis*

Pausanias

Descr. *Graeciae descriptio*

Plato

Leg. *Leges*

Pliny the Elder

Nat. *Naturalis historia*

Plotinus

Enn. *Enneads*

Plutarch

De esu *De esu carniū*

Luc. *Lucullus*

Pel. *Pelopidas*

Quaest. conv. *Quaestionum convivialum*

Sol. *Solon*

Soll. an. *De sollertia animalium*

Porphyry

Abst. *De abstinencia ab esu animalium*

Stobaeus

Flor. *Florilegium*

Rabbinic writings

- b. Babylonian Talmud
- m. Mishnah
- t. Tosefta

Secondary Sources

- AbB Klaas R. Veenhof, ed., *Altbabylonische Briefe in Umschrift und Übersetzung*, 14 vols. (Leiden: Brill, 1964–2005).
- AJP *American Journal of Philology*
- ANRW Hildegard Temporini and Wolfgang Haase, eds., *Aufstieg und Niedergang der römischen Welt: Geschichte und Kultur Roms im Spiegel der neueren Forschung* (Berlin: de Gruyter, 1972–).
- AOAT *Alter Orient und Altes Testament*
- AS *Assyriological Studies*
- BibInt *Biblical Interpretation*
- CAD *The Assyrian Dictionary of the Oriental Institute of the University of Chicago*, 21 vols. (Chicago: Oriental Institute of the University of Chicago, 1956–2011).
- CIQ *Classical Quarterly*
- CP *Classical Philology*
- CSEL *Corpus Scriptorum Ecclesiasticorum Latinorum*
- CT *Cuneiform Texts from Babylonian Tablets in the British Museum*
- CurBR *Currents in Biblical Research*
- CUSAS *Cornell University Studies in Assyriology and Sumerology*
- GRBS *Greek, Roman, and Byzantine Studies*
- HTR *Harvard Theological Review*
- IG *Inscriptiones Graecae: Editio Minor* (Berlin: de Gruyter, 1924–).
- IM *Iraq Museum*
- JCS *Journal of Cuneiform Studies*
- JECS *Journal of Early Christian Studies*
- JESHO *Journal of the Economic and Social History of the Orient*
- JRS *Journal of Roman Studies*
- JSQ *Jewish Studies Quarterly*
- JTS *Journal of Theological Studies*
- LSJ Henry Liddell and Robert Scott, eds., *A Greek-English Lexicon*, rev. H. Stuart Jones (Oxford: Clarendon, 1968).
- NovTSup *Supplements to Novum Testamentum*
- NTL *New Testament Library*
- OB *Old Babylonian*

OLA	Orientalia Lovaniensia Analecta
OLD	P. G. W. Glare, ed., <i>The Oxford Latin Dictionary</i> (Oxford: Clarendon, 1982).
PBS	University of Pennsylvania, Publications of the Babylonian Section
RA	<i>Revue d'assyriologie et d'archéologie orientale</i>
RHR	<i>Revue de l'histoire des religions</i>
StPatr	Studia Patristica
VC	<i>Vigiliae Christianae</i>
WAW	Writings from the Ancient World
WGRW	Writings from the Greco-Roman World
TAPA	<i>Transactions of the American Philological Association</i>
TAPS	Transactions of the American Philosophical Society
TCL	Textes cunéiformes. Musée du Louvre
TLOB	Texts from the Late Old Babylonian Period
WUNT	Wissenschaftliche Untersuchungen zum Neuen Testament
YOS	Yale Oriental Series, Texts
ZAW	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>

SBL Press

SBL Press

Introduction

SAUL M. OLYAN

Brown University

JORDAN D. ROSENBLUM

University of Wisconsin

Animal law has become a topic of growing importance internationally, with animal welfare and animal rights often assuming center stage in contemporary debates about the legal status of animals. Not infrequently, nonspecialists marshal ancient texts in a decontextualized and ill-informed way to support or deny rights to animals, while specialists in fields such as Classics, Biblical Studies, Assyriology, Egyptology, Rabbinics, and Late Antique Christianity have only just begun to engage the topic of animals and the law in their respective areas.¹ The purpose of this volume is to bring together original studies by scholars from a range of ancient Mediterranean and West Asian fields on a variety of topics at the intersection of animals and the law in antiquity. These studies not only stake out new ground in their respective areas; they also allow us to begin to develop a comparative perspective on animals and the law in West Asian and Mediterranean antiquity, something that has never been done. Each of the two essays responding to the eight studies in the volume contributes directly to this comparative aim by bringing into relief continuities and discontinuities in the legal status and/or treatment of animals, as well as drawing attention to the most salient points in the essays from a comparative perspective. This introduction, for its part, brings the insights of the essays in this volume to bear on wider, contemporary discussion and debate about

1. For examples of the problematic use of ancient texts in arguments about animal rights, particularly the tendency to blame the Bible and, sometimes, other ancient texts for the history of animal oppression in the West, see "Nonspecialists' Engagement with Ancient Texts: A Critique" in this introduction.

animals and the law, including animal rights and animal welfare. In it, we introduce current international trends in animal law; offer a critique of some of the ways in which ancient Mediterranean and West Asian texts have been employed by contemporary nonspecialists; and suggest how such texts, as well as visual representations and other nonliterary material remains, read in a nuanced way by specialists, might contribute to current discussion and debate about animals and the law.

Current International Trends in Animal Law

Animal Law has come into its own in recent decades. Law schools throughout the world, from Hong Kong to India and from Russia to Mexico, teach courses in animal law and some offer specialization in the area; the annual Animal Law Conference, cosponsored by Lewis & Clark Law School's Center for Animal Studies and the Animal Legal Defense Fund, routinely draws hundreds of participants from around the world; peer reviewed scholarly journals specializing in animal law have been established in Finland, Spain, the United Kingdom, the United States, and Brazil, among other countries; organizations such as the Nonhuman Rights Project (nonhumanrights.org) in the United States, the Global Animal Law Project in Switzerland (globalanimallaw.org), One Voice in France (one-voice.fr) and the Asociación de Funcionarios y Abogados por los Derechos de los Animales in Argentina litigate and/or advocate and educate on behalf of animals. American federal and state law, and the laws of many other countries and subnational units, seek to protect animals from neglect and abuse (globalanimallaw.org/database/national/index.html). Several European countries have gone further than this: the Swiss, German, and Austrian constitutions themselves now enshrine the protection of animals (1992; 2002; 2004), and, since 2014, France's *Code civil* has recognized animals as "living beings endowed with sentience."² Although it remains unclear what kind of practical, quotidian impact recent European constitutional or legislative changes will have on animal lives, they are significant for their innovation, even if they do not unambiguously establish genuine legal rights for animals.³ The fact is that even

2. "Les animaux sont des êtres vivants doués de sensibilité" (515-14 *Code civil*). For the constitutions of Switzerland, Germany, and Austria, and for the *Code civil* in France, see, conveniently, <http://www.globalanimallaw.org/database/national/index.html>.

3. Genuine rights, in the words of animal rights advocate and law professor Gary L. Francione, do "not evaporate in the face of consequential considerations" (*Animals, Property, and the Law*, Ethics and Action [Philadelphia: Temple University Press, 1995], 114). This means that genuine rights are not subject to the competing claims of others. Put another way, human interests do not trump the interests of animals with rights.

in countries that accord some form of legal recognition to animals and impose legal requirements for their care and treatment, animals can still be hunted; they are still slaughtered for food in considerable numbers; they are still displayed in zoos and made to perform in circuses; they are still subjected to scientific experimentation.⁴ In short: Even in countries that have added the protection of animals to their constitutions or legal codes, animals lack genuine rights such as the right to life, the right to bodily integrity, and the right to bodily liberty; from the perspective of the law, full legal personhood continues to elude them.

The most noteworthy trend in contemporary international animal law is the fight to secure fundamental legal rights for animals. Focusing on apes, elephants, dolphins, and whales, the Nonhuman Rights Project, founded and led by Steven M. Wise, seeks to change the legal status of animals from “mere ‘things,’ which lack the capacity to possess any legal right, to ‘legal persons,’ who possess such fundamental rights as bodily liberty and bodily integrity.” Furthermore, the organization aims to secure recognition for animals “as beings worthy of moral and legal consideration ... with their own inherent interests in freedom from captivity, participation in a community of other members of their species, and the protection of their natural habitats” (nonhumanrights.org). Those working on behalf of the Nonhuman Rights Project pursue the organization’s agenda partially through litigation at all levels, primarily by filing *habeas corpus* petitions on behalf of specific animals held in captivity with an eye to establishing legal personhood for these animals—at least with regard to *habeas corpus*—and as a result, their release to sanctuaries.⁵ Although this tactic has yet to succeed in the United States, it found success in Argentina in 2015.⁶

One strategy used by activists to establish the legal personhood of animals, and thus legal rights such as the right to bodily integrity or bodily

4. Regarding the current situation in Germany, a country that has enshrined the protection of animals in its constitution, see, e.g., <https://www.aerzte-gegen-tierversuche.de>. On the Swiss situation, see Gieri Bolliger, who points out that even with protections enshrined in Swiss law and the Swiss constitution, animal interests are still routinely subordinated to those of human beings when the two come into conflict (“Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives,” *Animal Law Review* 22 [2016]: synopsis https://law.lclark.edu/law_reviews/animal_law_review/past_issues/volume_22_2.php).

5. A writ of *habeas corpus* is a court order demanding the delivery of an incarcerated or detained person to the court and justification for that person’s imprisonment or detention (see further law.cornell.edu/wex/habeas_corpus). By utilizing *habeas corpus* petitions to pursue findings of legal personhood for captive animals, advocates implicitly assert that such animals are prisoners and that those who incarcerate them have no legal justification for doing so.

6. See <https://www.animallaw.info/case/asociacion-de-funcionarios-y-abogados-por-los-derechos-de-los-animales-y-otros-contra-gcba>.

liberty, is to draw an analogy between animals and very young children or adult persons who lack the ability to make and express rational choices or fulfill societal duties and responsibilities and who are not held legally accountable for their conduct. Although infants, persons with severe mental retardation or dementia, or persons who are in a coma are, with few exceptions, unable to bear social duties or responsibilities, or to make and express rational choices, they are not considered legally responsible for their actions but nonetheless possess fundamental legal rights such as the right to life and the right to bodily liberty. Given that this is the case, advocates for animal rights argue, why should animals continue to be denied such rights?⁷ In the words of Steven M. Wise, “that very young humans and comatose humans are ‘persons’ with the capacity to possess legal rights, despite their inability to bear duties and responsibilities explodes the claim that the capacity to bear duties and responsibilities has any relevance to personhood and the capacity for legal rights.”⁸ Here, Wise is arguing against a commonplace counterargument undergirding decisions such as the 2014 New York State Appeals Court finding in *Lavery* that animals may be denied legal personhood and concomitant rights on account of their inability to fulfill legal duties and responsibilities.⁹

Another common approach deployed by advocates of animal rights such as the Nonhuman Rights Project is to focus initial efforts on a particular set of species (e.g., whales, elephants, dolphins, or apes) that possess autonomy (evidenced by intentional communication and an understanding of cause and effect, among other characteristics) and might be characterized as “cognitively complex,” in the hope that advocacy for their legal rights might meet with more success than arguing on behalf of the legal personhood of all animals at once. According to Wise, after establishing legal rights for these highly intelligent animals, the effort will broaden to securing the rights of all animals. This approach privileges species that are most like human beings strategically in order eventually to attain rights for all animals; implicit is the assumption that courts will be more easily swayed by arguments in favor of the legal personhood of animals that

7. In fact, evidence suggests that animals with higher cognitive function might be more able to make and express rational choices than some human beings who lack cognitive abilities and, furthermore, that some cognitively complex animals may even be able to bear social duties and responsibilities in their own societies, as well as in human/animal contexts. On the latter point, see, e.g., Steven M. Wise, “A New York Appellate Court Takes A First Swing at Chimpanzee Personhood, and Misses,” *Denver Law Review* 95 (2017): 265–87, here 280 and n. 104, which references affidavits presented to support a 2015 *habeas corpus* petition by the Nonhuman Rights Project to the New York State Supreme Court on behalf of Tommy, a chimpanzee held alone in captivity.

8. Wise, “New York Appellate Court,” 286.

9. *Ibid.*, 265.

most resemble human persons cognitively and otherwise.¹⁰ It is worth noting that this strategy has found some initial success in court.¹¹

A third contemporary strategy that is not infrequently evidenced is to adopt the argument that many human beings were once wholly or partially “legal things” but “attained personhood only after protracted struggles both inside and out of courtrooms,” so why not animals, too?¹² The struggle to end and even criminalize slavery, to achieve full and equal rights for women, people of color, LGBTQ+ persons, and others subject to social and legal marginalization in any number of countries is held up by some contemporary advocates of animal rights as a model for present-day struggles to end “another intolerable wrong, the continuing rightlessness of nonhuman animals.”¹³

These and other strategies to secure legal personhood and concomitant rights for animals are frequently paired with the argument that existing animal welfare laws and anticruelty statutes are deficient because they are often unenforced and even unenforceable and they typically privilege the interests of humans over those of animals in ways that genuine rights accorded to animals would not.¹⁴ In the words of Wise, “these kinds of statutes and regulations are plainly inadequate and their inadequacy can never be remedied, for they were enacted not to protect the well-being of nonhuman animals, but rather to regulate the manner in which we humans exploit them. All history demonstrates that even the most fundamental interests of humans can never be adequately protected without legal rights. It is no different for nonhuman animals.”¹⁵ In contrast, there are those who argue that expanding, strengthening, and enforcing existing animal welfare laws would accord to animals the legal protections they deserve and thereby reduce their suffering; doing so would also be a more realistic goal for animal advocates.¹⁶ In fact, since 1990, many state referenda in the

10. <https://medium.com/@NonhumanRights/letter-1-from-the-front-lines-of-the-non-human-rights-projects-struggle-for-the-rights-of-nonhuman-b053b100af25>.

11. See the 2018 opinion of New York Appeals Court Judge Eugene Fahey discussed by Wise (<https://medium.com/@NonhumanRights/letter-2-from-the-front-lines-of-the-struggle-for-nonhuman-rights-january-2018-to-september-2018-c84f5e581d4f>).

12. <https://medium.com/@NonhumanRights/letter-1-from-the-front-lines-of-the-non-human-rights-projects-struggle-for-the-rights-of-nonhuman-b053b100af25>.

13. *Ibid.*

14. On the characteristics of genuine rights, see the discussion in n. 3.

15. <https://medium.com/@NonhumanRights/letter-1-from-the-front-lines-of-the-non-human-rights-projects-struggle-for-the-rights-of-nonhuman-b053b100af25>. For a succinct and clear description of the animal welfare approach, see Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (New York: Oxford University Press, 2011), 3–4, which also includes a critique.

16. See, e.g., Cass R. Sunstein, “The Rights of Animals: A Very Short Primer,” John M. Olin Program in Law and Economics Working Paper No. 157 (Chicago: University of Chicago Law School, 2002), 1–11.

United States that have sought to enhance animal welfare in some way have been successful, in contrast to previous efforts.¹⁷ It remains to be seen which approach—securing genuine rights for animals or enhancing and enforcing animal welfare laws—ultimately wins the day, and results will likely differ from country to country.

Nonspecialists' Engagement with Ancient Texts: A Critique

Although biblical and, to a lesser degree, other ancient texts are frequently cited by contemporary nonspecialists who are engaged in debate about the status of animals in American law and the law of other countries, these writers—most often law professors or moral philosophers—typically depend on translations—often outdated or inaccurate—of the ancient texts they engage, so that they cannot speak of linguistic nuance or textual complexities. As a group, nonspecialists have demonstrated a tendency to privilege one biblical text in particular—Gen 1:28, in which humanity is told by God at creation to subdue the earth and rule over the animals—in their discussions, as if it were somehow normative or at minimum, representative, of biblical viewpoints on animals. Further, they not infrequently generalize about biblical and other ancient perspectives on the status of animals without any in-depth analysis.¹⁸ An example is Lauren Magnotti, whose article “Pawing Open the Courthouse Door: Why Animals’ Interests Should Matter When Courts Grant Standing” was published by *St. John’s Law Review* in 2006. Regarding the Bible, the author, a law professor and practicing attorney, claims the following: “The theme of animal subjugation permeates the Bible. While there are some passages that teach that animals and humans share many similarities and that animals should be treated humanely, the Bible generally shows very little regard for the humane treatment of animals.” Magnotti supports this generalization with little evidence, mentioning divinely ordained human rule over the animals in Gen 1:28, the practice of animal sacrifice, the story in Mark 5:1–13 about Jesus casting out demons, and Paul’s nonliteral interpretation of Deut 25:4 in 1 Cor 9:9–10.¹⁹ Her main purpose in treating biblical texts such as Gen 1:28 seems to be to demonstrate their direct

17. Donaldson and Kymlicka, *Zoopolis*, 1–2.

18. Genesis 1:28 reads: “Be fruitful, multiply, fill the earth and subdue it; and rule over the fish of the sea and the fowl of the heavens and all creatures that move on the earth” (trans. Saul M. Olyan).

19. Lauren Magnotti, “Pawing Open the Courthouse Door: Why Animals’ Interests Should Matter When Courts Grant Standing,” *St. John’s Law Review* 80 (2006): 455–95, here 459–60. Magnotti’s article was originally brought to our attention by Erin Evans, “Constitutional

influence on the Anglo-American legal tradition, which has viewed and continues to view animals as property, without legal personhood and rights.²⁰ Others, such as the moral philosopher Peter Singer, provide similarly superficial representations of the content of biblical texts that treat animals and, not unlike Magnotti, give pride of place to Gen 1:28. In fact, Singer's chapter title, "Man's Dominion ... a Short History of Speciesism," alludes directly and unmistakably to the verse, allowing it to shape his reading of other biblical texts.²¹

Yet nothing is said by these authors about the various laws in the Hebrew Bible that ascribe genuine rights to animals, rights that are evidently not subject to suspension or modification under any circumstances (e.g., the right to Sabbath rest according to Exod 23:12 and Deut 5:12–15).²² That Deut 25:4—an ox threshing grain cannot be muzzled—read in its original context suggests that oxen have rights when they thresh goes unmentioned. Nor are the various texts that treat sacrifice as normative read by these authors alongside passages such as Isa 66:3, which takes a very different position, comparing the person who sacrifices an ox to one who strikes down and kills a human being. That humans and animals were created as vegetarians according to Gen 1:29–30 and that meat eating is not enshrined until after the flood (Gen 9:3–4) are not noticed by many contemporary nonspecialists; that animals, along with humans, are portrayed as treaty partners with God according to Gen 9:8–17 and are held legally liable for their actions according to texts such as Exod 21:28 is rarely referenced. In short, the reading of biblical law and narrative to be

Inclusion of Animal Rights in Germany and Switzerland: How Did Animal Protection Become an Issue of National Importance?" *Society and Animals* 18 (2010): 231–50, here 232.

20. Magnotti, "Pawing Open the Courthouse Door," 460–61, citing William Blackstone and James Kent. Steven M. Wise, argues that the laws of the Hebrew Bible and other ancient laws, mediated through Justinian, are responsible for the legal status of animals as property in later Anglo-American law ("The Legal Thinghood of Nonhuman Animals," *Boston College Environmental Affairs Law Review* 23 [1996]: 471–546, here 473).

21. Peter Singer, *Animal Liberation: The Definitive Classic of the Animal Movement* (1975; repr., New York: HarperCollins, 2009), 187–88. Another example of lack of engagement with and overgeneralization about the Bible is to be found in Donaldson and Kymlicka, *Zoopolis*, 266 n. 21. Here the authors speak of Gen 1:26–28 as if it represents a single biblical viewpoint on animals; furthermore, they imply that this viewpoint leads naturally to the conclusion that "only humans are entitled to inviolable rights." Yet another manifestation of this approach is Steven M. Wise, "Animal Rights, One Step at A Time," in *Animal Rights: Current Debates and New Directions*, ed. Cass R. Sunstein and Martha C. Nussbaum (New York: Oxford University Press, 2004), 22–23, where Gen 1:28 is quoted and 1:26–27 and 9:2–3 are alluded to. The content of these verses shapes the entire Judeo-Christian tradition, according to Wise, allowing "religion" "to obstruct animals' rights." See, similarly, Wise, "How Non-human Animals Were Trapped in a Nonexistent Universe," *Animal Law* 1 (1995): 15–45, here 31–32.

22. See Saul M. Olyan, "Are There Legal Texts in the Hebrew Bible That Evince a Concern for Animal Rights?," *BibInt* 27 (2019): 321–39.

found in the works of many contemporary nonspecialists ignores the complexity and nuance of biblical views of animals, including the views articulated in legal texts. Although Gen 1:28 has been foregrounded in the history of biblical interpretation on account of its presence in the first creation narrative, it is but one of many biblical texts that address the status of animals and is hardly representative of the Hebrew Bible as a whole. In fact, to privilege Gen 1:28 and ignore or play down the explicit or implicit meanings of other relevant biblical texts results in the effective suppression of the many distinct voices that may be found in the biblical anthology, voices that address the status of animals. Put differently, those who give Gen 1:28 pride of place read the biblical text as if it were speaking in one voice instead of many, embracing a conservative interpretive tradition that flattens the text and renders it far less interesting than it actually is.²³

Such interpretive narratives involve acts of selective reading. For nonspecialists, this might not seem so obvious, as one text—which proves their desired point—might loom larger than all others. And unlike the specialist, nonspecialists likely have read only a handful of texts and have not gained, to use an animal metaphor, the eagle eye’s view of the specialist. For example, nonspecialists will often point to the talmudic dictum “Humans are forbidden to eat before they feed their animals” as if it represents the monolithic rabbinic view of human–nonhuman relationships (b. Bera-khot. 40a).²⁴ But the rabbinics specialist would note that the statement is attributed to Rav, a Babylonian authority who also said other things about animals.²⁵ For example, after a cat bit off the hand of an infant, Rav decreed four severe things regarding cats in general, including, “it is permitted to kill it” (b. Bava Qamma 80b).²⁶ Animals and animality are categories that the ancient rabbis use to think through various legal scenarios and regulations. Selectively choosing one text or another does a disservice to the wide range of attitudes that the rabbis represent.²⁷ We could multiply

23. For a nuanced analysis of the possible meanings of Gen 1:28 in its historical and literary settings, see particularly Jakob Wöhrle, “*Dominium terrae*: Exegetische und religionsgeschichtliche Überlegungen zum Herrschaftsauftrag in Gen. 1,26–28,” *ZAW* 121 (2009): 171–88, with citations.

24. Trans. Jordan D. Rosenblum. This passage continues on to base this interpretation on the order of Deut 11:5, in which cattle are offered grass to eat and then, in regard to humans, it says “you shall eat and be satisfied.” For an example of a nonspecialist who treats this text as if it is broadly representative of ancient rabbinic views on the subject, see Tamra Wright, “‘Now We’re Talking Pedagogy’: Levinas, Animal Ethics, and Jewish Education,” in *Face to Face with Animals: Levinas and the Animal Question*, ed. Peter Atterton and Tamra Wright (Albany: State University of New York Press, 2019), 203–23, here 215.

25. The dictum is introduced with the phrase “Rav Yehudah said that Rav said.”

26. For the full context, see b. Bava Qamma 80a–b. On this passage, see Beth A. Berkowitz, *Animals and Animality in the Babylonian Talmud* (New York: Cambridge University Press, 2018), 138–43.

27. In general, see *ibid.*

examples of how nonspecialists (mis)use ancient texts to advance certain modern viewpoints—polemical or otherwise—about animals and the law. In fact, more than a few essays in this volume—usually in the opening sections—include a brief survey of how certain texts in the area of the author’s specialty have been read, and then seek to offer a more nuanced view. These essays therefore serve to reflect on past and present wrong turns while, at the same time, suggesting possible future paths forward.

How Might Ancient Evidence Contribute to Contemporary Discussion and Debate?

Ancient Mediterranean and West Asian texts and nonliterary artifacts have much to contribute to the contemporary discussion and debate about animals and the law, including animal rights and animal welfare, as the essays in this volume reveal. First, aspects of the legal and social status of animals and their treatment today are evidenced in ancient sources as well, demonstrating that ideas and practices that we might be tempted to think of as distinct to our own societies and times are not ours alone. According to various texts, farm animals are personal property that may be bequeathed or rented out for service, and their care is motivated as often by their owner’s financial interests as by concern for the animals themselves (Richardson), not unlike in various contexts at present. Violence toward and neglect of domesticated animals and captive wild animals are attested in a variety of ancient sources, including remains found in burials, visual depictions, and textual descriptions (Bailleul-LeSuer); sadly, these data parallel all too common contemporary practices. The hunting of lions is depicted in artistic representations and texts from Mesopotamia and Egypt as an elite and even royal activity (Bailleul-LeSuer), bringing to mind big game hunting for sport by the wealthy in contemporary African, Asian, and North American contexts. The use of wild animals in public games during the Roman imperial period (Naiden) is not unlike aspects of their display in circuses today. In ancient Egypt, rich and variegated evidence attests to the deep emotional bonds that some people had with their companion animals, which might be named and buried when they die (Bailleul-LeSuer), not altogether different from the treatment of some pets today. Mistreatment of animals under human care is sometimes condemned vociferously in ancient texts, just as it is by many today, as the angry reaction of the eighth-century BCE Nubian ruler Piye to his enemy the Pharaoh’s neglect of his own horses demonstrates (Bailleul-LeSuer). Factory farming is evidenced in ancient Egypt, although its goal—to create new divinities to serve as messengers to the gods on behalf of petitioners—was quite different from its purpose

in contemporary contexts (Bailleul-LeSuer). And forced feeding of waterfowl and cattle intended for sacrifice (Bailleul-LeSuer) is not unlike contemporary or recent practices in the Euro-North American food industry. Furthermore, it has been argued that ancient sources provide evidence of the legal personhood of animals, or at least their “partial personhood,” to use Seth Richardson’s term, and even of genuine animal rights. Such rights are extended, for example, by Exod 23:12, which mandates Sabbath rest for ox and donkey that may not be abridged or suspended due to contingencies.²⁸ At the same time, animal trials in ancient Greece suggest that defendants possessed some degree of legal personhood (Naiden). Thus, thinking about animal rights has a long history (Schüle) that includes thinking about “animal agency and intentionality” (Berkowitz).

Second, a number of the arguments commonly made in the present day in favor of legal rights for animals or, at minimum, the enforcement of existing animal welfare laws that seek to guarantee humane treatment of animals are adumbrated in ancient sources. Porphyry’s arguments that those who aspire to genuine piety should not sacrifice harmless, domesticated animals because they feel pain, or that animals have speech of their own and therefore share in reason (Tuominen), are not unlike the claims made by present-day animal rights advocates who oppose the slaughter of animals for food or seek to establish animal autonomy on the basis of characteristics such as intentional communication or language. Similarly, the observation that some domesticated animals can modify their behavior as a result of experience, as exemplified by Egyptian horses that learn to avoid a beating according to P. Lansing 2.6–8 (Bailleul-LeSuer), is not unlike the claim often made in contemporary animal rights litigation that at least some animals understand cause and effect and are capable of learning new behaviors.²⁹

But ancient West Asian and Mediterranean materials offer present-day readers more than simply the observation that characteristics of the treatment or the legal and social status of animals in contemporary contexts are paralleled in ancient materials, or the insight that many arguments made today on behalf of animals have a longer history than we might have assumed. They also provide evidence that might be used to construct novel legal arguments on behalf of animals, just as they have been used in the past to formulate justifications for denying animals legal personhood and rights (as in William Blackstone’s use of Gen 1:28 in his influential *Commentaries on the Laws of England* [1765–69]).³⁰ For example, contemporary advocates for the legal personhood of animals could point to Greek animal trials, which implicitly ascribe some degree of legal personhood,

28. See n. 22.

29. See, e.g., Wise, “New York Appellate Court,” 267.

30. See Magnotti, “Pawing Open the Courthouse Door,” 460, for Blackstone.

holding animals responsible for their actions in a legal setting (Naiden). One might also mention the place of domesticated animals in—as opposed to outside of—the household along with slaves and free human household members according to some cuneiform texts (Richardson), or the implicit classification of farm animals with slaves and foreign residents in a law such as Exod 23:12, which ascribes to these distinct groups genuine rights.³¹ In the latter two examples, the texts are telling us implicitly that animals and the human beings closely associated with them share important characteristics, for example, that their interests count and that they are worthy of legal protection or that they are equally members of the household, with all that that implies. Furthermore, some ancient texts assign to animals a value symmetrical to that of human beings, for example, a sacrificial animal may be used to substitute for a firstborn son according to Exod 13:13, 15; 34:20. Not ten or twenty or a hundred such animals, but one, suggesting a high valuation of the animal substitute, at least in the context of sacrifice (Olyan).

Although there is certainly ancient evidence that lends itself to contemporary use in advocacy for animal personhood and rights, we would be remiss were we to fail to mention the equally important data that have been used—or might be used—to construct arguments counter to those that seek to establish legal personhood and genuine rights for animals. Many ancient texts use animals to stake out the boundaries of what is properly human, implicitly dehumanizing or animalizing human outsiders and, in so doing, suggesting that the animal–human divide is not as ambiguous as other ancient texts might imply. Examples include rabbinic legal discourse, which sometimes dehumanizes gentiles by animalizing them (Rosenblum), or Greek and Roman laws, which pay no heed to neglect for and cruelty toward animals or slaves (Naiden). Furthermore, ancient Christian proscriptions of sacrifice were motivated not by concern for the animal victims themselves, as nonsacrificial slaughter continued to be practiced. Rather, banning sacrifice and stigmatizing it as impious and un-Roman, as in the Theodosian Code, functioned to demarcate Roman identity in a new way (Ullucci), just as the dietary choices envisioned by earlier Christian writers contributed to the establishment of the identities of their communities, at least in theory (McGowan). Thus, proscriptions of sacrifice such as those preserved in the Theodosian Code do not offer present-day animal advocates material of potential utility with which to construct arguments against contemporary practices of mass animal slaughter or meat consumption.

31. See n. 22.

Moving Forward

The essays in this volume tell us something about where the fields of their authors are at present with regard to the relationship of animals and the law and point toward productive ways forward for those particular fields. Taken together, these essays and the responses to them suggest that there is much more work to be done in order to understand how the perceived relationships of humans and nonhumans and the categories introduced to classify them affect ancient (and modern) law.

In *The Animal That Therefore I Am*, a collection of lectures that has become a classic in the field of Animal Studies, Jacques Derrida raises a series of questions with regard to the category “animal.” In his first lecture, Derrida argues:

Animal is a word that men have given themselves the right to give.... They have given themselves the word in order to corral a large number of living beings within a single concept: “The Animal,” they say....

Men would be first and foremost those living creatures who had given themselves the word that enables them to speak of the animal with a single voice and to designate it as the single being that remains without a response, without a word with which to respond.

That wrong was committed long ago and with long-term consequences. It derives from this word, or rather it comes together in this word *animal*, which men have given themselves as at the origin of humanity, and which they have given themselves in order to be identified, in order to be recognized, with a view to being what they say they are, namely, men, capable of replying and responding in the name of men.³²

While Derrida offers several paths forward (most famously is his neologism *animot*), his observations cited above have implications both for ancient legal texts and for those who study them. In fact, Derrida’s mention of humans naming animals calls to mind Adam naming all of the animals in Gen 2:19-20.³³ Humans speak of—and for—animals. And when they do, we have much to learn. As we shall see, however, what we learn is often more about the human animal than about the nonhuman animal.

32. Jacques Derrida, *The Animal That Therefore I Am*, ed. Marie-Louise Mallet, trans. David Wills (New York: Fordham University Press, 2008), 32 (emphasis original).

33. Further, Adam names woman in Gen 2:23, which reminds us of the importance of considering gender when discussing human/nonhuman legal texts.