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Origins of Laws Regarding Animals

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Origins of Laws Regarding Animals

By Peter Paul

This is Part 1 of a 3-part series.

The earliest known written codes of laws applying to animals are the Code of Hammurabi, the eminent Babylonian king and lawgiver (2270 BC), The Book of Moses, The Hindu Laws of Manu (200 BC), the Laws of Solon the Athenian, The Twelve Tables of Rome (304 BC or 450 BC), The Institutes of Justinian the Roman Emperor, The Salic Germanic Code, The Code of Howel Da the Welsh King (940 AD) and the Laws of King Alfred the Great of England.

All of these codes are the philosophical foundation for the development of laws that protect animals as property. They limit liability for the owner or for the animal. They set forth rules regarding the theft of animals, the use of animals in the punishment and execution of criminals or traitors, religious sacrifice, and provide for the legal standing of animals.

The predominate rationale in these codes are based on the protection of property, the protection of the owner's investment, and sanctions imposed by society for violating its notions of justice. These factors are not surprising if one considers the importance of animals to the early agricultural societies.

In these codes animals belonging to the temple, church or king had an exalted status because of their "inherent" sacredness. For example, in the Hammurabic Code, if an animal was stolen from the temple or the palace, the thief had to replace the stolen animal "32 fold". In the ancient Hebrew law, the thief had to replace the animal "4 fold". This law remains in force today among the Bedouins.

Throughout history there were varying legal consequences for injurious acts. The fixing of liability depended on the legal code. Under the Hammurabic Code, for example, if the owner of an ox knew his animal had dangerous propensities and if it killed a "freeborn man", the owner of the guilty animal had to pay one half mina of silver as compensation.

By contrast, under the Hebrew law as stated in Exodus 21:29, "the ox shall be stoned and his owner put to death." Furthermore, under Exodus 28, the flesh of the stoned ox was not to be eaten.

The Hittites were a source of some of the laws of Moses. Under Hittite law, retribution played an inconspicuous part in comparison with the principle of restitution. A survey of Hittite law reveals a two tier system of justice. Under law 170, "If a freeman kills a serpent and speaks of another person (a form of sorcery), he shall give up a pound of silver." But if a slave committed the same crime, death was the penalty. Under law 63, if a thief stole a plough ox, he had to repay 10 oxen.

Arson under law 98 was limited to replacement of the structure but not liability for who or what was inside. "If a freeman sets a house on fire, he shall rebuild the house, but whatever perishes inside the house, be it man or beast," the perpetrator didn't have to compensate the owner.

In Hittite society, bestiality was considered a capital offense and a defiance of the state's authority. If the offender was a slave, he also suffered bodily mutilation.

Around 200 BC, in the subcontinent of India, the Laws of Manu or the Hindu Code was enacted. This code not only shared the Hammurabic liability concepts but specified penalties and fines for injuring some animals. There was established a special status for cows which could not be held liable for their acts. Categories existed

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for the theft of animals including an established judicial procedure for Hindu kings. The kings had to first consider the time of the act and the purpose of the theft, in order to assess fines or other punishment.

From The Laws of Manu, Law No. 371, similar to the "ad Bestias" of the ancient Romans, stated, "If a wife be proud of the greatness of her relatives or of her own excellence and violates the duty owed to her husband, the king shall sentence her to be devoured by dogs in a busy place."

Hegel, the great German philosopher, thought that the Egyptians worshipped animals because "the dim and inert spirit of the Egyptians cannot move to a higher idea," and though the Egyptians were the first society to believe in immortality, they still clung to the body in the form of the mummy. The "Sphinx" also according to Hegel, personified the Egyptian spirit. "The human head looking out of an animal body represents the spirit beginning to raise itself from the fetters of nature without, however, liberating itself fully."

In Deuteronomy, law was extended to cover the Hebrew diet: "While the Israelite must not eat the animal corpse, the sojourner may or it may be sold to a foreigner." The rationale for this was that stray dogs ate carrion and corpses, one of the reasons that the ancient Jews had ambivalent feelings about dogs. Later this concept was adopted by the Mohammedens.

Hebrew Law 19/18 forbade cultic prostitution: "Thou shalt not bring the hire of a harlot or the wages of a dog into the House of the Lord." "Kelebh" was also the term "dog" used when referring to male prostitution.

Traditionally, it was thought that many of the ancient Hebrew laws covering animals were formulated for the protection of animals. However, legal scholar, Jacob Rabinoitz, challenges these long-held notions. He theorizes that the primary concern of the ancients was not cruelty but the offense to human sensitivities.

Maimonides, a Spanish Jew who lived 850 years ago, formulated a Code of Law. Here are a few excerpts: "An animal is allowed to eat of the burden on its back, provided one does not take with his hand and feed to it." Law 25:4, "Thou shalt not muzzle an ox when it treads grain."

Domestic pets were also covered under ancient Hebrew law. The Hebrews used dogs for guarding their flocks as well as watch dogs according to Job 30:1.

There was no animal control in ancient times. Dogs wandered at large in packs, devouring bodies and other offal. Reference to them and their activity is found in

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Kings 14:11. Dogs were so disliked that the fierce and cruel enemies of the ancient Hebrews were dubbed "dog", "dead dog", and "dog's head". These terms were used also as epithets of reproach just as they are today.

In rabbinical literature two types of dogs are recognized, domestic and wild. To cross the two was forbidden. The ancient Hebrews domesticated a dog similar to the Maltese. Later the Arabs domesticated the ancestors of the modern Saluki. The Arabs and other eastern groups distinguish between animals that they have captured and domesticated for their needs and those which are wild.

The next civilization to formulate laws regarding animals were the Greeks. Aristotle, the great philosopher, postulated that if plants, etc., could serve man's needs, why shouldn't animals? Besides the usual services provided by dogs in early agricultural societies, the Greeks, according to the historian, Xenophon, used a contingent of fierce, armor-clad dogs with vicious fighting capabilities which were used like the modern tank to disrupt enemy formations during a battle.

Medicine was another area in which dogs served man. At the temple of Askleipos, sacred dogs were kept and trained to lick the limbs and wounds of patients who came there seeking a cure. The patient was given a sleeping potion to drink. After the patient was "under" the dogs would come and perform their duty. Of those who were cured, payment was often made with a gold copy of the limb that was cured.

Ancient Athens under Solon, the lawgiver, had the concept of noxal surrender, that is, the offending object whether animate or inanimate had to be delivered up for judgment if it injured or killed someone. An extreme example of this legal theory was that if a column fell on someone or if an animal injured someone, "the thing" could be tried in court, executed, destroyed or banished from the city. There was a separate court for homicide for the alleged crime of murder if it were committed by an unknown person, animal or inanimate object.

Theft of animals was also covered in ancient Greece. Plato, the philosopher, wrote that "if anyone by decoying bees gets possession of another's swarms, and draws them to himself by making noises, he shall pay damages." The thief's position in society determined the punishment. If a freeman, he had to pay damages, but "if a slave takes of any sort, without the consent of the owner of the land, he shall be beaten with as many blows as there are grapes on the branch or figs on the tree."

"Cynic" in Greek means "dog". Essentially, the "pith" of the cynic philosophy is that each man, whether free or slave, is his own master. Freedom is secured by following nature. The way to achieve this desired state was through self-discipline or "autarkeia", a denial of worldly pleasures.

Like the dog, the Cynic saw himself as "the scout and herald of God, the watchdog of humankind, to bark at illusion," and as a surgeon whose knife sliced the cancer from the minds of others. In the later Roman Empire, the Cynics behaved similarly to many modern sects today, blatantly promoting through hype and media messengers a kaleidoscope of kinky and bizarre lifestyles. The Cynics were considered by the Romans to be radicals and troublemakers. Several were exiled from Rome.

Depending on the historian, around 304 BC or 450 BC, the first Roman legal code, 12 Tables of Law, came into existence. Of the surviving legal tables, Book 8:5-11 is the section generally thought to pertain to the damage caused by animals. Book 10 states that "he who obtains a prize whether in person or by his property such as by slaves or horses, these may be buried with him."

The twelve tables provided a procedure for the

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resolution of disputed contracts which involved animals. In its practicality, the Code stipulated that the litigants only had to bring to court a handful of hair or one member of a flock or herd. Roman law also gave the owner exclusive control over property with all of the privileges and benefits that flowed from possession such as an animal which had a litter.

A Roman law, Lex Acquilia, applied to property depreciation. If an animal or a slave was unlawfully wounded or killed, Lex Acquilia provided a remedy. If one member of a team of chariot horses was damaged or killed, the extent to which the remaining horses were depreciated was taken into account.

Roman law was further developed by the Institutes of Justinian, who as one of the more capable Roman emperors, established "possession". "An animal thus caught by you is deemed your property so long as it is completely under your control. But as soon as it has escaped from your control and recovered its natural liberty, it ceases to be yours and belongs to the first person who subsequently catches it. It is deemed to have recovered its natural liberty when you have lost sight of it or whether it is still in your sight but would be difficult for you to pursue it."

Insurance of a primitive form was also provided for under Title 9 in the 12 Tables. "If the owner of an animal is ready to surrender it as compensation for damage that it caused, the owner is thereby released from all liability." For this provision to apply, "the animal must act contrary to its natural disposition." This remedy was not available "if the animal's nature was or is by nature savage." This is also a form of noxal surrender.

Roman jurisprudence had sanctions against parricide, treason or crop theft.

Lex Pompeia applied to these offenses. The convicted was first severely flogged with rods, then sewn up inside a cow skin ball, which also contained a dog, a cock, a viper and an ape. The ball would then be thrown into the Tiber River or the sea.

The rationale behind this most unusual punishment was the attitude towards "conscienceless attacks"; nothing was so sacred. The Romans felt so strongly about the inviolability of person, that for this crime they would not even permit the corpse to be thrown to the beasts, "lest even the brute animals which had touched a crime so terrible might become more savage."

The German tribal laws, Lex Salica, were thought to have been written down around 500 AD. Although they were written in Latin, Lex Salica was not influenced by Roman law. Lex Salica was predominantly a body of rules protecting the ownership of cattle, swine, sheep, goats, and even bees. The rationale behind these laws was basically to punish a wrong and to enforce a right. This code is also the source of the idea of female exclusion from royal succession.

Salic law, under Title 10, ordered that if one found cattle, a horse or flocks of any kind among his crops, he could not destroy them. If he did and confessed to the crime, he was then liable for the value of the animal, and he had to keep the animal he mutilated. If he didn't confess and the act was proven, beside the value of the animal, he was also fined for the delay.

As with other primitive societies, treatment under the law depended on the individual's standing. If in Teutonic society the culprit were a "major" person, he was simply fined. However, if he were a peasant, he not only had to pay double compensation, but he was also whipped.

The neighbors of the Teutons were the Visgoths. In their Law of Judges, Law No. 23, this society was the first to legislate protection from hunting traps. "He who sets snares or traps for wild beasts must inform his neighbors of the places where the snares are set." The Visgoths also employed Noxal Surrender, "the giving up of the-offending beast" or had to "make other amends as the judges shall order."

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BY GUY E. CARRIS | INGHAM COUNTY ANIMAL CONTROL OFFICER

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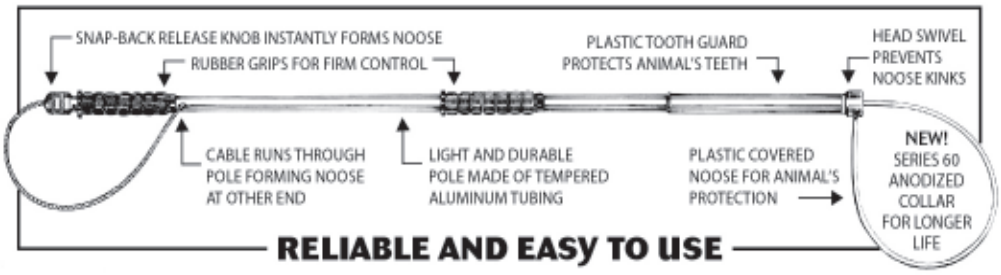

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