

A Symposium: "Animal and Law" in Japan

July 4, 2015

Moe Honjo

Ph.D Candidate, Hitotsubashi University

- 1. Introduction: Summary of the Event**
- 2. Legal Principle of Animal Protection**
- 3. Overview of Japanese Legal History regarding Animal**
- 4. Wildlife Law in Japan**
- 5. Animal Protection and the German Constitution**
- 6. Comparison of Animal Protection Law between U.K. and Japan**
- 7. Question and Answer and Overview**

1. Introduction: Summary of the Event

This report summarizes the 9th Symposium of Fundamental Law held in Tokyo on July 4, 2015. Association of Fundamental Law holds a collaborative symposium annually on a variety of topics, such as "Nuclear Hazard and Law" (2012), "Family and Law" (2013) and "Youth and Law" (2014). A symposium talks about law and values on selected topics beyond written laws. This year, the association focused on the topic "Animals and Law - Is it Possible to Overcome Anthropocentrism?" They chose this topic because our relationship with animals is not systematically discussed in the legal field, so there are many fresh and broad visions of the topic. Five legal scholars who have different specializations talked about animal law, and their talks are summarized in the following sections.

2. Legal Principle of Animal Protection

The first speaker, Itaru Shimazu, professor emeritus at Chiba University, talked about the "Legal Principle of Animal Protection" from the perspective of philosophy law.

What is a legal principle of animal protection? Professor Shimazu mainly spoke about

philosophical theories. With a double standard theory, Kantian Principle applies to humans and utilitarianism applies to animals (non-human animal). According to Robert Nozick, meat consumption or animal testing for cosmetic products do not pass the balancing test of utilitarianism because the suffering the animals experience is greater than the benefit humans receive from those activities.

Peter Singer goes further and applies the same ethical standards to both human and animals. Steven Wise has a different standard and has developed an argument that some animals that have some capacity, such as cognitive abilities, are entitled to fundamental rights.

Professor Shimazu argued that we do not "establish" new rights; we "discover" rights that have long existed. For instance, same-sex marriage is not a new right, but it was a right that society was wrong to disapprove of in the first place. In other words, one may refuse to approve rights to animals only because one does not know about the background of the supporting argument. It is just a matter of recognition.

3. Overview of Japanese Legal History regarding Animal

Professor Ichiro Nitta, a professor of Japanese legal history at Tokyo University, compared pre-modern legal approaches towards animals in Western countries and Japan. Professor Shunichi Ikegami explained that criminal prosecution of animals in Western countries in medieval times could not happen in Japan as pre-modern human-nature relationships in Japan were almost opposite from those in European countries. For Japanese, nature (including animals) was not an object that humans could control.¹

On the other hand, Tokugawa Tsunayoshi, fifth Tokugawa shogun of Japan, prohibited the maltreatment of some animals in the 1680s in Japan. Professor Nitta explained that law (a set of proclamations) regarding animals in Japan was the activation of government service (官の作動としての法) and one form of paternalism.

4. Wildlife Law

The third speaker, Professor Mitsuhiro Takahashi at Toyama University, spoke about the need to develop wildlife law as an academic area in Japan and the challenges of the Wildlife Protection and Proper Hunting Act amended in 2014.

There are various legal interests in regulating wildlife law, such as hunting rights, protection of species, animal welfare, recreational aspects, protection of human society from harmful animals, and so on. Therefore, development of wildlife law study is crucial.

¹ Shunichi Ikegami, *Animal Trial*, Kodansha gendai shinsho (1990)
derechoanimal.info

The recent amendment of the Wildlife Protection and Proper Hunting Act raises at least four issues:

- (1) The Act attempts to overcome the decrease in the number of regional hunters by introducing trained professional hunters who can exterminate harmful animals. However, there might be a tension over territory between traditional regional hunters and recruits.
- (2) By introducing the evaluation system of harmful birds and mammals control, a results-oriented approach may result in overkill.
- (3) The amended Act allows some hunters to leave bodies of target animals in woods, but this cannot be acceptable for some traditional regional hunters who find ethical obligation to thank and consume target animals after they hunt.
- (4) The government shifts the purpose of the Act from "protection" of wildlife to "management." However, it is not easy to distinguish protection and management since regional hunters have been harmonized with wildlife by valuing both protection and management of wildlife.

Overall, wildlife law has originality and importance such that it deserves its development as an independent academic field. Further, wildlife law needs to reflect regional interests and reasoning to achieve its sustainable relationship between humans and wildlife.

5. Animal Protection and the German Constitution

The fourth speaker was Professor Chihiro Asakawa at Tenri University, talking about the German constitution protecting animals. The German constitution stipulated animal protection as an argument regarding animal protection for animal experiments has developed. In order to enable the government to promote animal welfare for laboratory animals properly, raising the level of animal protection to a constitutional level was crucial. This level of protection was also important to confront constitutional rights to education and research. This logic may give a good suggestion to Japan, where the struggle to improve legal protections for laboratory animals persists.

6. Comparison of Animal Protection Law between U.K. and Japan

The last speaker, Professor Hitoshi Aoki at Hitotsubashi University, compared prosecutions of animal abuse between the U.K. and Japan. Some animal activists in Japan recently wished for an introduction of animal police like animal abuse inspectors in the U.K. or

the U.S. However, Professor Aoki notes that we have to recognize that there are huge differences in the legal culture and legal system between the U.K. and Japan.

In the U.K., anyone, including the RSPCA (Royal Society for the Prevention of Cruelty to Animals), enjoys the right to prosecute, while it is only a public prosecutor who can prosecute in Japan. Even if we changed the system, Japan does not have an animal protection organization like the RSPCA. Professor Aoki then moved on to talking about the recent criticism towards the RSPCA after the Heythrop Hunt case to show the challenges Japan may experience by introducing an animal police system.

In Japan, between 2000 and 2013, the average number of animal abuse cases prosecuted annually was about 13 cases. On the other hand, in the U.K., 1,371 people who convicted for animal cruelty were prosecuted by RSPCA in 2013. This number stands out even more by considering the fact that population of the U.K. is about a half of Japan's population. However, these numbers do not only reflect the different legal systems the two countries have. If Japan wants to reach the number as in the U.K., Japan must be a litigious society like in the U.K. However, further discussion will be required regarding the suitability or its needs. As Professor Nitta has mentioned, Japanese people tend to expect administration to solve social problems, not the court (including prosecution). It is important not to neglect such differences.

7. Question and Answer and Overview

During the question and answer session, professors pointed out several challenges Japanese animal legislation faces. For instance, Act on Welfare and Management of Animals focuses on companion animals and excludes farm animals and laboratory animals from its enforceable regulations.

There is no right or wrong category of animals to protect as a first step. However, European countries developed animal law starting from the protection of horses and other canines, which enabled European countries to smoothly broaden their protection to farm animals and laboratory animals. In contrast, Japanese animal protection law is currently a law for companion animals. There tends to be a big gap for Japanese people between sympathy towards companion animals and that towards farm or laboratory animals.

Despite the suggested challenges Japan faces, the symposium is a sign that animals have started to appear in legal academia in Japan.