

Book Review

The Legal Recognition of Animal Sentience: Principles, Approaches and Applications by Jane Kotzmann and MB Rodriguez Ferrere (eds) (2024) Hart Publishing, 360 pp, ISBN 9781509970452

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‘Judge Rivera would have recognised [the elephant] Happy’s *habeas corpus* rights on the basis that she is “a sentient being, who feels and understands, who has the capacity, if not the opportunity, for self-determination”’.¹

The Legal Recognition of Animal Sentience is an edited book offering an extensive discussion about the state of legal recognition of animal sentience in various international jurisdictions. The book’s subtitle — *Principles, Approaches and Applications* — cleverly delineates the contexts in which those meanings of animal sentience manifest, the implications and consequences of which are worked through. The dissenting judgement of Rivera J in *Breheny*,² referred to above, is one example of developing judicial and common law arguments for future decisions to follow in expanding the rights of sentient animals held in captivity.

The most interesting aspect of the book is that it offers some clarity about the state of animal law for readers who would like a deeper understanding of how the concept of sentience works in the common law. As the book’s co-editor, Rodriguez Ferrere, points out in the last chapter: ‘Often, the recognition of animal sentience in legislative instruments is labelled as symbolic, broadly meaning that such recognition was not intended to have any direct legal consequences’.³

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¹ Joe Wills, ‘Common Sense: Animal Sentience and the Common Law’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 97, 112, quoting Rivera J (dissenting) in *In the Matter of Nonhuman Rights Project Inc v Breheny*, 197 NE 3d 921, 968 (NY, 2022) (*‘Breheny’*).

² *Breheny* (n 1).

³ MB Rodriguez Ferrere, ‘The Utility (or Otherwise) of Symbolic Legislation’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 297, 297.

Most citizens in liberal representative democracies tend to view legislation, in the practice of the law, as being exact, and literal. This is simply not the case with regard to the legal recognition of animal sentience. Drawing on Rodriguez Ferrere's outline of the advantages and disadvantages of such symbolic legislation, I conclude, optimistically, that legislation of this kind has the potential for protracted incremental change; however, pessimistically, it remains ineffectual.

The chapters in this edited book, in large measure, explain why animals are still managed under property law. Sadly, under property law the recognition of sentience makes little difference to the lives of living, breathing, embodied creatures. This is not an introductory book to the legal recognition of sentience; however, for animal studies readers, the varied and nuanced definitions of sentience provided in each of the chapters and how these play out in the law are well worth reading for the valuable insights they afford. What I gained was a deeper understanding of how the law works in a wide range of jurisdictions in relation to animal protection and recognition of sentience. By the end of the book, I was keen to pursue the question of where in the common law it might be possible to change the legal status of non-human animals.

Some contributions expand on how certain non-human animals — mainly companion animals — in some jurisdictions potentially occupy a 'third category' under property law.⁴ The first category deals with 'animals as merely legal things, property of the legal person'.⁵ The second category makes a distinction between "'animals'" on the one hand' and "'legal things'" or "'goods'" on the other.⁶ The third category is considered to be an 'an unusual conceptual space as *property* that possess unique animate qualities',⁷ and that would mean 'of neither persons nor things', but rather "'quasi-things'".⁸ Could such an expanded definition of property, as the editors suggest, unleash a paradigm shift of how sentient animals' interests are spoken about, debated, and ultimately recognised in the community and the courts? It is still a long way from personhood and legal standing,⁹ which many animal advocates are pushing for.

The overall purpose of the collection, as the editors explain, is to explore four aspects:

the theoretical principles that might underpin the legal recognition of animal sentience, the legal implications of sentience recognition, the different experiences of sentience recognition in diverse jurisdictions, and what sentience recognition means for animals that are frequently discriminated against (if anything).¹⁰

In a nutshell, this volume is concerned with 'the effectiveness of the recognition of animal sentience'¹¹ in the law and it does indeed measure this in each of the book's three parts.

⁴ Eva Bernet Kempers, 'Owning Sentient Beings: The Potential of Sentience Recognition in Continental Law' in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 81.

⁵ Ibid.

⁶ Ibid.

⁷ Daniel Goldsworthy and Ian Robertson, 'Drafting and Interpreting Sentience Provisions: Incorporating Modern Science in Animal Welfare Law as a Legislative Requirement' in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 47, 54 (emphasis in original).

⁸ Bernet Kempers (n 4) 81.

⁹ Wills (n 1) 110.

¹⁰ Jane Kotzmann and MB Rodriguez Ferrere, 'Introduction' in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 1, 3.

¹¹ Rodriguez Ferrere, 'The Utility (or Otherwise) of Symbolic Legislation' (n 3) 298.

The book also assesses whether animal sentience recognition in the law is ‘merely a trend’ or is the ‘beginning of a paradigm shift’.¹² Perhaps some readers might consider this an ambitious aim. The authors of each chapter, from my reading, did not directly assess this; they did, however, provide clarifications, definitions, examples, and illustrations from the common law. Some chapters were more difficult in terms of understanding legal concepts, but, crucially, I found several were a very useful starting point or building block in understanding the very limited rights of non-human animals in the law.

The book organises the 17 individual (co-)authored chapters under three parts. To a certain degree, this supports the overall purpose of the book. This approach allows for theoretical ideas, legal cases, and the application of legislation to become apparent. The author contributions from legal scholars and those who work in the courts might not seem to be clearly differentiated to some readers. However, the way the contributors weave across legal resources and concepts is specifically how the book points to an array of legal perspectives about the recognition of animal sentience in the law.

Part One focuses on the first principles that inform the recognition of animal sentience in the law. I saw Part One as setting the scene or providing the context for the other two parts of the book. Broader definitions of animal sentience are provided and the direct or indirect effects of the legal recognition of animal sentience are outlined in Chapter 1. Chapter 2 discusses the connection between sentience and empathy and how legal recognition of sentience can enable humans to foster empathy. The relationship between animal welfare science and animal welfare law is examined in Chapter 3 in the context of drafting legislation. The value of recognising animal sentience in the law is deliberated in Chapter 4. Such a discussion might be beneficial to: (a) animal advocacy organisations wanting to change the legal status of animals; and (b) community and concerned citizens wanting to debate how to advocate for animal interests.

Part Two provides a survey of the legal frameworks of several countries or jurisdictions that have recognised animals as sentient beings in one form or another. I found the case studies in chapters 5–13 engaging because they illustrate several varied approaches in trying to apply the recognition of sentience in different jurisdictions. Each chapter begins with a short history of when and how the relevant Animal Welfare Act and animal sentience legislation were introduced into the country. One of the strong points of the book, for an international audience, is that the main jurisdictions examined encompass a variety of countries: European Union, Brazil, India, Pakistan, New Zealand, Québec (Canada), Spain, United Kingdom, and Oregon State (USA).

Part Three focuses on specific applications, limitations, and advantages of sentience legislation. Chapter 14 investigates how legal recognition of animal sentience in the case of commercial farm animals has the potential to affect the basic legal protection these animals receive. Chapter 15 focuses on the potential effects of applying the ‘legal precautionary principle’ with the aim of protecting sentient animals who are invertebrates.¹³ Chapter 16 delves into how the legal recognition of sentient animals used in various kinds of scientific and medical research may have a bearing on public perceptions. Chapter 17 outlines the advantages and disadvantages of the legal recognition of sentience in the law as mainly symbolic legislation.

¹² Kotzmann and Rodriguez Ferrere (n 10) 7.

¹³ Paulien Christiaenssen, ‘Err on the Side of Sentience: The European Precautionary Principle, Article 13 of the *Treaty on the Functioning of the European Union*, and Invertebrates’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 261, 262.

One of the strengths of the book is that it presents varied definitions of animal sentience as the authors of each chapter give ‘their preferred definition of sentience’.¹⁴ Some readers might see this breadth as a flaw — that the definitions in the book are too diffuse for lawmaking. What becomes apparent after reading several chapters is that legal scholars, judges, and the courts may interpret the concept of sentience ‘in several ways, some broader and others narrower’.¹⁵ Even when limited to biological needs, sentience can be interpreted in different ways; the most limited is ‘pain-focused’.¹⁶ In relation to defining animal sentience, I found much to think about, especially about how such a concept cannot be fully pre-determined.

Readers already familiar with the broader interpretation of sentience and its everyday meaning may come away with a much richer understanding of how the concept could be interpreted in the law — through judges, courts, and legislators — and among scholars, which has the potential to reshape human and non-human animal relations.

Most readers of this kind of book will be well aware that currently, as noted above, animals are still managed under property law. Several chapters examine a number of different countries’ legislative changes which explicitly declare that non-human animals are ‘not things’; however, such changes exist within legal systems that continue to treat animals as property in practice.¹⁷ This goes some way to seeing sentient animals as no longer being classified as part of the category of things. So, in many common law cases, animals have become a special category under property law. Nevertheless, as Kotzmann and Ferdowsian note, ‘[r]ecognising that animals are sentient does not necessarily change their legal status as property’.¹⁸

For the general, educated reader (not legal scholars or those working in the courts) — who is very much interested in how sentience is applied to non-human animals in the law — the language of the law might require some readers to do a lot of work in order to gain an in-depth insight into how animal law works in various jurisdictions. I made a time commitment to understand how the law works in relation to the three categories of animals: domesticated (companion and farmed), wild, and animals used in experiments.¹⁹ Reading the book in this way highlighted for me the valuable and productive insights it affords.

As is often the case with animal welfare, it is companion animals who most benefit from legislation that recognises animal sentience.²⁰ Animals who are farmed,²¹ used in

¹⁴ Kotzmann and Rodriguez Ferrere (n 10) 3.

¹⁵ Michaël Lessard, ‘A Field Trip into Québec Law: Exploring the Theoretical Ramifications of Sentience Recognition’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 173, 185.

¹⁶ Ibid.

¹⁷ Ibid 173.

¹⁸ Jane Kotzmann and Hope Ferdowsian, ‘Animal Sentience Recognition and Theoretical Connotations: Possible Implications for Animals in Research’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 281, 292.

¹⁹ Vanessa Gischkow Garbini, ‘All Roads Lead to Sentience: The Past, Present and Future of Animal Legal Protection in Brazil’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 121, 125.

²⁰ Gischkow Garbini (n 19) 123–4. See also Rachel Dunn and Joshua Jowitt, ‘The Animal Sentience Committee: Evolution or Revolution in the Recognition of Animal Sentience in the UK?’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 207, 207–8.

²¹ Steven White, ‘Sentience, Exceptionalism and Farm Animal Protection’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 245, 248.

sports,²² used for scientific and medical research experiments,²³ and used for religious or cultural purposes²⁴ hardly benefit at all because the legislation has not led to ‘systemic change’.²⁵ In the chapters that analysed and gave specific examples of where the courts upheld animal interests, it is mainly companion and wild animals held in captivity that benefited from the recognition of sentience in the law.

I very much welcome this book for its content on legal recognition of sentience, which is ideal for gaining an overview of current legal and scholarly debates, issues, philosophical ideas, and critiques in animal law. The particular appeal of the book is that it is well-situated within a longer set of conversations across several interdisciplinary fields of study, to name a few: animal studies, critical animal studies, legal studies, environmental studies as well as interpretative communities. As the authors document how the issue of animal sentience works in the law, this is a very important book right now for animal advocates and concerned citizens wanting to expand their knowledge and vocabulary for the purpose of talking about the problems around animal sentience in the law.

It is a book that I recommend to others interested in understanding how animal sentience works in the law; it is also one I will pull off the shelf to re-read specific chapters, cite in my academic articles, and tell my colleagues about.

²² Gisckow Garbini (n 19) 126–30.

²³ MB Rodriguez Ferrere, ‘Legal Recognition of Sentience in New Zealand’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 155, 159.

²⁴ Hira Jaleel, ‘The Judicial Recognition of Animal Sentience: Developments in Pakistan and India’ in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 2024) 135, 149–154.

²⁵ Rodriguez Ferrere, ‘Legal Recognition of Sentience in New Zealand’ (n 23) 171.