



CRITICAL REVIEW

Animals: 'Objects' or 'sentient beings'? A comparative perspective of the South African law

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Abstract. This paper provides a comparison of the law related to the classification of animals as either "legal objects" or "sentient beings" and "non-human persons." In this paper, the definition of "objects" in the South African Law of Persons will be explored. An explanation of the difference between a legal "object" and a legal "subject" in South African law will be provided. Legal research is done with the focus being Interpretative Research. In order to understand the classification of animals in South African law, the relevant provisions of the Animal Protection Act 71 of 1962 and the Performing Animals Protection Act 24 of 1935 (as amended) will be explained. Secondly, the classification of animals in the law of other countries will be explored. Examples will include France, where the legal status of animals has changed from that of "personal property" to "sentient beings"; New Zealand, where the Animal Welfare Amendment Act 2 of 2015 recognizes animals as sentient beings; the legal reforms in Quebec, Canada, stating that animals are not objects and the declaration by India that Cetaceans are "non-human persons." Implications of this research for practice may include a reclassification of animals as persons, which would result in the need for changes to be made in South African law. In conclusion, suggestions are made about whether the classification of animals as "objects" in South African law should be revised.

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INTRODUCTION

In South African law, the Law of Persons is "[t]hat part of private law which determines which entities are legal subjects, when legal personality begins and ends, what legal status includes, and what effect various factors (such as minority, and mental incapacity) have on a person's legal status" (Heaton, 2012, 1). The Law of Persons has also been defined as "that part of the objective law regulating the coming into being, private legal status and the coming to an end of a natural person or legal subject" (Boezaart, 2010, 1). Objective law is also known as "notional law" and it is a system of legal rules (Boezaart, 2010, 1). From these definitions it is clear that the Law of Persons centres on legal subjects and the recognition of a person or an entity as a legal person as well as

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to what extent a legal person can interact with the world around them and have such interactions recognized by the law, resulting in legal consequences. Current research does not concentrate on definitions and development of legal terminology within the Law of Persons. This paper will focus on explaining the term “legal object” in South African law and will explore whether animals are still classified as “objects” in South African law. The research methodology used is legal research and interpretative research is predominantly used. Existing legal concepts are examined and the law and public policy are explored. The theoretical significance of the research is that it explores current definitions of a “legal object” as well as implications of the classification of animals as “legal objects”, compared to the classification of human beings as “legal subjects”. The practicalities of this classification in South African law are also discussed below.

TERMINALOGIES

In South African law a “person” is defined as “someone or something that can have legal rights and duties” (Barratt, 2012, 7; Van Heerden *et al.*, 2009, 6). The Afrikaans term “regsubjek” as well as the Latin term “persona iuris” are also used (Heaton, 2012, 2). In Roman law the concept “persona” did not have the same meaning as it does in current South African law. The term was used to refer to a human being and to distinguish between people and things and actions (Heaton, 2012, 3). In Roman-Dutch law, which forms the basis of South Africa’s common law today, the term “persona” included juristic persons as well as human beings as legal persons (Heaton, 2012, 3). To summarise, “[e]very human being is a person in law, but not every person is a human being” (Van Heerden *et al.*, 2009, 4). Often the term “legal subject” may be used instead of the term “person” or “legal person” but both terms mean the same thing (Barratt, 2012, 8). A “person” is further described as a “being, entity or association which is capable of having legal rights and duties” (Barratt, 2012, 7). In South African law “persons” are classified as either “natural persons”, which are human beings, or as “juristic persons”. Juristic persons include entities such as universities, companies and churches (Barratt, 2012, 7). Juristic persons are associations of people with an independent right of existence (Boezaart, 2010, 3-4). The terms “legal personality” and “legal subjectivity” are also found. Legal subjectivity “concerns the characteristic of being a legal subject in legal intercourse” (Boezaart, 2010, 5). The term “legal subjectivity” “emphasizes the legal aspects of a person’s activities and existence” (Barratt, 2012, 8) whereas the term “legal personality” “describes the quality of being a person” (Barratt, 2012, 8). The two terms are synonymous in South African law (Barratt, 2012, 8).

Human beings were not always all considered “legal subjects”. In Roman and Germanic law, slaves were legal objects. Thus slaves did not have any legal personality and thus no concomitant rights, duties or capacities (Heaton, 2012, 5). A slave was treated as a legal object (Boezaart, 2010, 3). A large part of South African law originated in the Netherlands. Slavery disappeared in about 1300–1400 in the Netherlands but persisted in the Cape colony in the 17th Century and therefore up until then slaves at the Cape were not legal subjects but seen, and treated, as legal objects. Slavery at the Cape ended in 1834 (Heaton, 2012, 5). In Roman law children who were born severely deformed were classified as “monstra” and not as legal subjects. These children were seen as lacking human

form and could be killed; at first, this could be done lawfully by, for example, abandoning or drowning the child, but later, permission had to be given by the magistrate before this could be done. In current South African law all human beings are legal subjects (Heaton, 2012, 5; Van der Westhuizen, 2009). At one stage in Roman law infanticide (the killing of a baby) was even regarded as an acceptable method of birth control (see further Van der Westhuizen, 2009). Prisoners of war were also no longer regarded as legal subjects after they had been captured. Even the marriages of prisoners of war were terminated (Boezaart, 2010, 3). The rules regarding deformed persons and prisoners of war have never essentially been part of South African law (Boezaart, 2010, p. 3; Tjollo Ateljees (Edms) Bpk v Small 1949 (1) SA 856 (A) 865). In South African private law all human beings are now legal subjects (Boezaart, 2010, 3).

Capacity

The term “capacity” refers to what a person is capable of doing in terms of the law. Capacity includes the capacity to have rights and duties; the capacity to perform juristic acts; the capacity to litigate and the capacity to be held accountable for wrongdoing (crimes and delicts) (Barratt, 2012, 11-13).

The Beginning of Legal Personality

In current South African law legal personality begins at birth. Until the foetus is born it is seen as being a part of its mother without any legal personality (legal subjectivity). In order to acquire legal personality certain requirements have to be met. These requirements are that firstly, the birth must be completed. There has to be complete separation between the body of the baby and that of the mother. However, the umbilical cord does not have to be stuck. Secondly, the baby has to live after the separation. This can be for only a short time. Any medical evidence can be used to prove that the child lived, for example that the child moved or that the child breathed (Heaton, 2012, 7). Some authors (for example, Boberg and Van Zyl and Van den Vyver) have suggested that a child must also be viable in order to acquire legal personality but this is not a requirement in South African law (Heaton, 2012, 7). It can be important, for example for the law of succession, to prove that a child has lived and has thus obtained legal personality. A newborn child “is capable of acting as a ‘conduit’ for the transmission of rights to third parties”, even if the child only lives for a short while (Van Heerden *et al.*, 2009, 29).

Legal Object

The main types of legal objects in South African law include physical things, such as animals. The Afrikaans term “regsobjek” is also found. A “legal object” is defined as “any object which has economic value [not just monetary value, anything that is scarce or useful, even if only for a specific person, has economic value] and upon which the law has not conferred the capacity to have rights, duties and capacities and which can therefore not participate in legal and commercial traffic” (own emphasis) (Heaton, 2012, 2). The legal person would have a real right over a physical thing. In Roman law only physical things (*res*) were considered to be legal objects. Later recognition occurred of other legal things, such as a right to performance or delivery of something (Heaton, 2012, 3). Other legal objects include performance, for example payment of money. In

this instance the right is a personal right. Another legal object would be an aspect of one's personality, such as one's reputation. Here the right would be a personality right (Barratt, 2012, 8). Since this paper deals with the classification of animals as objects, only the aspect of "real rights" will be further explained here (see further Boezaart, 2010, 2) for a table explaining the different subjective rights). A real right can be enforced against the whole world. An example of a real right is having the ownership of a physical thing. If a person owns a thing then everybody else has a duty not to interfere with that person's real right of ownership. Everybody must respect the owner's right and may not interfere with it (Barratt, 2012, 8). In other words, the person who is the bearer of these rights has certain entitlements. An example of this would be where the owner of property is "entitled to claim the use, enjoyment and alienation of the property that he or she owns" (Boezaart, 2010, 2).

The Importance of Being Classified as a "Person" in the Eyes of The Law

The recognition of someone, or a company, or any other body, as a "person" means that the "person" is seen as a holder of rights and the fact that they have legal rights and duties is recognized by law (Barratt, 2012, 8). The law confers legal personality on the subject (legal person) (Heaton, 2012, 2). A legal subject is endowed with legal capacity. Legal capacity is "[t]he ability to have rights, duties and capacities" (Heaton, 2012, 2). With regards to rights we are looking at a "dual relationship", namely relationship between the bearer of rights and other legal subjects. This is known as the subject-subject relationship. There is also the relationship between the bearer of the rights and the object of those rights. This is known as the subject-object relationship (Heaton, 2012, 1). Heaton (2012, 1) states emphatically that "[o]ne can speak of a right only if the right relates to an object". The law "determines the content and limit of every right" (Heaton, 2012, 2). Only "persons" can have legal rights and duties in South African law (Barratt, 2012, 8). According to Barratt (2012, 8) "this is the essential characteristic that distinguishes a person from a 'thing' or from 'legal objects' specifically". Thus persons can have ownership of animals. However, owners of animals cannot do whatever they want as there is legislation that prohibits or regulates certain conduct.

South African Legislation

The Animals Protection Act 71 of 1962 aims to "consolidate and amend the laws related to the prevention of cruelty to animals" (preamble). An "animal" is defined in the Act as "any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person" (Section 1). It is important to note that the word "control" is used in the definition. It is clear from the definition that the animal is under the "control" of a "person". The term "owner" is also defined and "includes any person having the possession, charge, custody or control of that animal". From these definitions it is clear that an animal is classified as a legal object, as a person can be the "owner" of the animal and can have possession, custody or control over the animal. This definition aligns with the rights that persons have over objects according to South African law. The Animals Protection Act further lists offences in respect of animals. These offences include overloading animals; ill-treating; torturing or neglecting

animals (Section 2(1)(a)). Animals may also not be chained or secured unnecessarily or in such a way that it causes the animal unnecessary suffering or in any place that does not afford enough space, light or shelter (Section 2(1)(b)). Additionally an animal may not be starved or underfed or denied food or water (Section 2(1)(c)). Other offences include poisoning animals; deliberately or negligently keeping animals in a dirty condition or failing to procure veterinary care; attaching any equipment to an animal that will cause the animal to become diseased or to suffer unnecessarily (Section 2(1)(d)–(f)). The Act also lists additional offences, such as laying a trap for capturing an animal when it is not necessary for the protection of property or the spread of disease (Section 2(1)(j)). A person may also not convey, carry or confine any animal under conditions that cause the animal unnecessary suffering or expose the animal excessively to the elements or not make adequate food and water available for the animal (Section 2(1)(m)). A person may also not, without reasonable cause, administer poison to an animal or abandon an animal in circumstances that cause that animal unnecessary suffering or want only or negligently by act or omission causes unnecessary suffering to any animal (Section 2(1)(n), (p), (r)). The Act also prohibits animal fights and anyone found guilty of such an offence can be fined or can be imprisoned for not longer than two years (Section 2A).

According to the Animals Protection Act “the owner of any animal shall be deemed to have permitted ... any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act” (Section 2(2)). If a person is convicted of an offence in terms of the Animals Protection Act the court may impose punishment on him and may also order that the animal be destroyed, that the person be deprived of ownership and/or declare the person unfit to own or be in charge of any animal (Section 3). The Society for the Prevention of Cruelty to Animals (“the Society”) is authorized to enter any premises where an animal is kept to examine the conditions under which it is kept and, if the owner or occupier of the premises refuses consent, the Society may obtain an order from a magistrate and may without a warrant arrest any person who is suspected of having committed an offence under the Act. Additionally, the Society may seize any animal in the possession of that person and take it to a police officer (Section 8). Throughout the Animals Protection Act use is made of the term “owner” or “person”, thus clearly distinguishing between “persons” and “objects”. Although the Act does not use the word “object” when referring to an animal the fact that the term “owner” used denotes that the animal is considered a legal object.

The aim of the Performing Animals Protection Act 24 of 1935 is to regulate the exhibition and training of performing animals and the use of dogs for safeguarding. The Act does this by specifying that a person must hold a licence in order to be able to exhibit or train performing animals or to use dogs for safeguarding (Section 1). A licence is obtained by applying to the Magistrate (of the district where the person applying resides or carries on business) (Section 2). The Magistrate must be satisfied that the person who is applying for the licence is a fit and proper person (Section 2(a)). The licence is granted for a calendar year (Section 2(b)). The Magistrate may refuse to grant the licence, if there is good and sufficient reason in the opinion of the Magistrate to do so

(Section 2(c)). The Act further stipulates that any police officer may enter, "at any reasonable time", premises (or a vehicle or place) where such animals are being kept or transported and may inspect such animals or premises or vehicles (Section 4(a)–(b)). The police officer may fully enquire into the methods that are used to train, restrain or control such animals as well as how and what such animals are fed (Section 4(b)). A police officer may also inspect during an exhibition of animals or during the use of dogs for safeguarding (Section 4(c)). If any person obstructs such police officer they may be fined a maximum of R4,000 or imprisoned for no longer than 12 months (Section 5). If any person contravenes a provision of the Act they may also be fined or imprisoned, for a time not exceeding 12 months (Section 8). The Performing Animals Protection Act does not however apply to the confinement or training of animals for military, police or sporting purposes, or for the purposes of an agricultural show, horse show, dog show, caged bird show or any public zoological gardens, or to the exhibition of animals at a military or police exhibit or to dogs used for safeguarding by the South African Defence Force, Police or Prisons Services (Section 9). The Performing Animals Protection Act must "be read as one with the Animals Protection Act, 1962" (Section 10).

It should be noted that there is no legislation in South Africa that protects animals against research or monitors medical research, instead the Animals Protection Act 72 of 1962 governs such situations. There is a code, the South African National Standard – The Care and Use of Animals for Scientific Purposes, which is voluntarily complied with and may form the basis of future legislation. These standards are based on internationally accepted moral values (Mohr, 2013, 51). Institutions that use animals for training and research are also subject to the provisions of the Veterinary and Para-Veterinary Professions Act 19 of 1982. Additionally, the National Health Act 61 of 2003 stipulates that all animal research that can impact on human health must be approved by a registered research ethics committee (see further Mohr, 2013, p. 49). The National Society for the Prevention of Cruelty to animals is also administered by the Societies for the Prevention of Cruelty to Animals Act 169 of 1993 and, as has already been stated, is authorized to undertake inspections according to the Animals Protection Act.

Worldwide, legal systems protect animals from cruelty and constraint is used in their interactions with animals (Meyersfeld, 2012). In South Africa, sections of the Performing Animals Protection Act 24 of 1935 were declared unconstitutional in the case of NSPCA v Minister of Agriculture, Forestry and Fisheries (Department Agriculture, Forestry and Fisheries, 2013). This case dealt with an application for a judgment made in the North Gauteng High Court that declared certain sections of the Animals Protection Act to be invalid, to be confirmed by the Constitutional Court. The Constitutional Court confirmed the decision of the High Court and ordered that sections 2 and 3 of the Animals Protection Act are invalid, as far as they require a Magistrate to decide on applications for licences and to issue licences as this violates the principle of the separation of powers of the judiciary from those of the executive and the Constitutional Court further ordered that Parliament needed to cure the defect within 18 months from the handing down of the judgment. Bilchitz (2014) stipulates that it is seldom that a case of this nature comes before South African courts and here the court ordered that the government revise this legislation.

Bilchitz (2014) argues that the Constitutional Court failed to address the arguments that were before court, such as, that there should be a difference between other administrative powers and the granting of licences in cases dealing with animals that “have deep needs and capacities and may be subject to strong abuse in the entertainment world” (Bilchitz, 2014, 189). Instead, the Constitutional Court saw the matter at hand as simply one of licensing regulations. Bilchitz (2014, 189) contends that this is due to the assumption that animals are “legal objects” and not “legal subjects” or “persons”. Bilchitz (2014, 189) criticizes the decision of the Constitutional Court and states that the court should not have “uncritically accept[ed] this common law tradition” and that the ethos of the Constitution “pushes us in the direction of a more caring society that takes account of the needs of the vulnerable”. Additionally, he states that the “Constitutional Court not only reasoned poorly but did disservice to the new constitutional order it is developing” and that it is clear that this case demonstrates that “animal welfare is really in its infancy in the courts” (Bilchitz, 2014, 189). There has been no real push towards reforming the law dealing with the protection of animals and unless there is a society-wide outcry, for example, as what happened with regards to rhino poaching, reform will not happen (Bilchitz, 2012; see also Karstaedt, 1982). However, from an analysis of public opinion in South Africa, particularly as reflected in opinion on social media, the momentum of such societal outcry seems to be growing.

Comparative Analysis

India

The case of *Nair (NR Nair v Union of India AIR 2000 KERALA 340)* dealt with the question of whether a regulation of the Indian government that banned the training and exhibition of five animals (bears, monkeys, lions, tigers and panthers) was constitutional. The court decided here that the Indian government’s decision was justifiable. It was also argued before the court that the provision was discriminatory as it only dealt with animals that are kept in circuses but not those that are kept in zoos. The court dismissed this argument and stated that zoos and circuses are very different places. Examples given of these differences include that zoos are used for educational purposes whereas circuses are only used for entertainment. Another argument made before the court was that the circus would infringe the circus owner’s right to carry on trade or business (Article 19(1)(g) Indian Constitution). This argument was dismissed by the court and the court stated that no person has a right to carry on a trade or business that “results in infliction of unnecessary pain or suffering” or carry on a business or trade “in an activity that has been declared by law as an offence” (Nair par 8) (see further Bilchitz, 2014, for a discussion and critique of this case).

In a policy statement, the Indian Ministry of Environment and Forests (Circular Sub:- Policy on Establishment of Dolphinarium, 2013), declared that all cetaceans (this includes dolphins, porpoises and whales) are “non-human persons”. The statement stipulates that “cetaceans in general are highly intelligent and sensitive” and that “cetaceans in general do not survive well in captivity” and that confining them “can seriously compromise the welfare and survival of all types of cetaceans, by altering their behaviour and causing extreme distress”. The statement stipulated that any proposal to establish a

dolphinarium should be rejected by the state governments. The statement further stipulated that such “non-human persons” should have their own rights and it is not morally acceptable to keep them captive for purposes of entertainment. This policy only applies to cetaceans and is only aimed at prohibiting their capture and the keeping of cetaceans for amusement purposes. So, despite what might have appeared in social media, dolphins were not given the same status as legal “persons”, the Indian government only abolished the use of dolphins in dolphinariums (Dvorsky, 2013). Although the Indian government referred to cetaceans as “non-human persons”, the statement did not grant cetaceans any legal capacity or confer any rights on them (see also Dvorsky, 2013).

New Zealand

In New Zealand, the recent Animal Welfare Amendment Act (No. 2 of 2015) has come into being. The purpose of the Amendment Act is “to recognize that animals are sentient” and “to require owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals” (Section 4). It should be noted that the term “owners of animals” is used, thus denoting that animals are still objects (at least in the South African understanding of the word). The focus of the amendments seems to be similar to the focus of current South African legislation, in that it makes it a punishable offence to commit certain acts with regards to animals, for example to ill-treat an animal (Section 30A). However, the Act does not make it unlawful to, for example, hunt a wild animal (Section 30B). The amendments also state that the National Animal Welfare Advisory Committee may make recommendations to the Minister that regulations must be made (Section 73).

An important section of the amendments prohibits the use of animals in research, testing and teaching for the production of cosmetics (Section 84A). This is in contrast to South Africa where there are standards that govern testing of animals, that are voluntarily prescribed to, but no legislation prohibiting the testing of cosmetics on animals. It should be noted, however, that the New Zealand legislation only applies to the testing of cosmetics on animals and not the testing of other substances. Persons who do testing of animals may apply to the Director-General for the approval of a code of ethical conduct in relation to the use of animals (Section 87).

There must also be an assessment made “of the suitability of using non-sentient or non-living alternatives in the project” and replacing animals with “non-sentient or non-living alternatives” (Section 41(3)). Section 169 provides that the court may disqualify persons from owning or exercising authority in respect of animals, which is similar to existing South African legislation. Section 183 provides that the Governor-General may make regulations related to the standards of care for animals as well as regulations related to surgical and painful procedures and the exporting of animals. Despite the Animal Welfare Amendment Act recognizing that animals are “sentient beings” it still shows that human beings (“persons”) are “in charge” of animals and/or are “owners” of animals. The legislation is similar to current South African legislation, apart from the ban of the testing of cosmetics on animals.

Quebec, Canada

In Quebec, Canada, An Act to Improve the Legal Situation of Animals (Bill, 2015) has been introduced that stipulates that “animals are not things. They are sentient beings and have biological needs. In addition to the provisions of special Acts which protect animals, the provisions of this Code concerning property nonetheless apply to animals”. The Bill thus recognizes animals as being different from inanimate objects; however, the Bill does not grant animals any rights. Instead, the Bill deals with the psychological welfare of animals and protects a broader range of species than was protected under current legislation in Quebec. The current laws regulating animal cruelty were written in 1892 and Davies (2013) proposes that they contained loopholes that prevented the successful prosecution of animal abusers and thus changes needed to be made. The contents of the Bill are similar to current South African legislation in that the welfare of animals is protected but animals are not granted rights and do not have the same legal status as “persons”.

France

Under French Civil Law animals are classified as “personal property”, the South African equivalent of a “legal object”. The French National Assembly Committee voted to elevate the legal status of animals from “personal property” to “sentient living being”. The aim of this change is “to reconcile the legal characterization and emotional value of animals”. Critics have stated that this is largely a symbolic change and will not really change the way that animals are treated under French law (Messenger, 2014). It appears that this change will not give animals rights or make them “legal subjects”. The European Union in 2009 under the Lisbon treaty indeed already considers animals to be “sentient beings” (for further discussion of the possible impact of the treaty on European environmental law, see Vedder, 2010).

There is also a draft of Universal Declaration of Animal Welfare (UDAW) from the United Nations that governs the Welfare of Animals. The aim of this declaration is to secure international legal recognition for animal welfare (Gibson, 2011, 539). The draft mentions that there are “five freedoms” of animal welfare, that animals should be free from hunger, thirst and malnutrition; free from physical and thermal discomfort; free from pain, injury and disease; free from fear and distress and they must have the freedom to express normal patterns of behaviour (see further Gibson, 2011, 541). Thus the draft recognizes that animals experience pain. Of course, since this is a declaration it would not be a binding document but one to which countries could voluntarily subscribe (Gibson, 2011, 540). The South African government has not pledged support for the UDAW (World Animal Protection, 2013). The South African government does however include in its strategic plan, an overhaul of legislation dealing with animals and aims, over time, to bring in new legislation dealing with the welfare of animals (Department of Agriculture Forestry and Fisheries, 2013).

Can Animals Have Rights in South Africa?

Public Opinion

Hofmeyr (2014) examines what so-called “greenies” think about the rearing and handling of livestock and points out that there is a difference between “animal rights” and “animal welfare”. Wollen however (2012) advocates that animals

should be “off the menu” and states that this is because “they are screaming in terror”. Wollen compares the screams of those animals to the cries of his father, when his father was dying of cancer. Groups on Facebook that support animal “rights” include Animal Rights, that currently has 463 852 members. One of the causes that they, and a number of smaller groups, support is stopping animal breeders (Animal Rights, 2015). A larger, well-known group, is PETA (People for the Ethical Treatment of Animals) that currently has 3 427 940 members (PETA, 2015). A large proportion of advocates for animal rights supports a vegan lifestyle. An example of their message can be summarized in a quote “[i]f slaughterhouses had glass doors everyone would be vegetarian” (Paul McCartney).

A number of animal rescue organizations in South Africa are also advocating a ban on animal breeding and want to make it illegal for persons to breed animals. They are proposing that people who want pets should rather obtain these from an animal rescue organization. Slogans used include “heroes adopt from animal shelters” (Ban Animal Trading, 2015). The Ban Animal Trading SA group currently only has 10 899 members but their numbers are growing and there are a number of smaller groups that hold protests in order to try and get animal trading banned. Local animal rescue organizations, for example Barking Mad and Paws R Us, also lend their support to banning animal trading. Additionally, there is growing public resentment to organizations such as the SPCA (Society for the Prevention of Cruelty to Animals), who is seen as a shelter that kills animals and practices euthanasia of animals. There seems to be increasing public support for animal shelters that do not kill animals, unless the animal is dying and in pain (examples of this are found on posts by various organizations on Facebook, including Barking Mad, Paws R Us and these views have even come to light on the local community forum “I Love Northcliff” (– Northcliff is a suburb in Johannesburg, South Africa).

THE SOUTH AFRICAN LAW AND PRACTICAL IMPLICATIONS

During the Middle Ages animals were put on trial and punished (Boezaart, 2010, 6). In some Eastern countries religious beliefs provide protection to animals, as if such animals are legal subjects (Boezaart, 2010, 6). However, this is not the case in South Africa and animals are still classified as legal objects. Despite the clear difference between a “legal subject” and a “legal object” in South African law and the fact that animals are classified as “legal objects”, some authors are of the view that animals, and even plants, have rights and can be both legal subjects and legal objects (Heaton, 2012, p. 2). Due to the fact that South African legislation prohibits cruelty to animals and thus imposes duties on people to not do certain things to animals, Labuschagne (1990) and Bilchitz state that animals therefore have rights and should be given the status of “legal persons” in South African law. Bilchitz (2009) argues that legal personality should be afforded to all who are capable of bearing rights or duties and that this includes bearers of rights that are not duty-bearers. He further states that animals are “natural persons” rather than “things” and that the concept of dignity includes all who possess the capacity to flourish and the concept should be revised to recognize that animals are “legal persons”. However, other authors (for example, Boezaart, Van der Vyver and Joubert and Robinson) do not agree that legislation which protects animals gives animal rights, instead such legislation is protective

of the sensibilities of the community (Heaton, 2012, 4). In *R v Moato* (1947, 492) it was clearly stated that the purpose of legislation that prohibits cruelty against animals is “to prohibit one legal subject from acting so harshly against animals that he thereby harms the more delicate feeling and perceptions of his fellow human beings” (translation provided in Heaton, 2012, 4). Heaton (2012, 4) points out that in a society that still sometimes treats people, in particular, women and children, as objects it currently seems unlikely that animals will attain the status of “legal subjects”. Additionally, the practical problems that would occur if rights are given to animals will be “too overwhelming for our legal system to resolve” (Heaton, 2012, p. 4). Boezaart (2010, 6) states emphatically that “cruelty to animals is prohibited in the process of weighing up the individual’s rights in order to regulate society in a civilized manner [and] we do not believe that animals can be meaningfully afforded subjective rights” (see also *R v Moato*). Bilchitz (2014, 195) states that new legislation should be promulgated and that “scientific understanding of animal welfare” must be incorporated into the legislation. Additionally, he stated animal welfare includes many dimensions and that “these include the physical, emotional and psychological well-being of the animal and the realization of its natural capabilities” (Bilchitz, 2014, 195). The practical problems that could arise, if animals are granted rights, could include questions such as whether they are then also holders of rights? Since human persons are holders of rights, such as a right of ownership, could animals then have the right of ownership of the land on which they live? Other practical problems could include ascertaining the “will” of an animal, if an animal is said to have legal personality. If granted legal personality, will animals thus need to be compensated for pain and suffering that they experience and, if so, how? Also, would animals then have all the rights contained in the Bill of Rights in the South African Constitution, including the right to life? It appears that South African law is not yet ready to deal with such questions (see for example Heaton, 2012). Future research may include exploring these various aspects.

CONCLUSION

According to these research findings, in South African law animals are still classified as legal “objects” and not legal “subjects”. Since animals are legal objects they are not capable of being the bearers of rights in terms of South African law as they do not have “legal capacity”. Despite being classified “objects”, animals in South African law are treated differently to a table or a car. Animals can still be owned but the law places duties on the owners of animals to treat them in a specified way that takes the welfare of the animal into account. Recent events in the comparative law arena have also demonstrated that although concern is expressed for the welfare of animals and although animals are even considered “sentient” beings, capable of experiencing pain and feelings, animals are generally still regarded as being property and capable of being owned or that legal subjects have power over legal objects, including animals. Despite current public opinion, including the opinion of some academics in the field of law, it is doubtful that animals will cease to be “objects” and become bearers of rights in the near future in South Africa.

LIMITATIONS AND RECOMMENDATIONS

Limitations of this study were that there are not many South African court decisions that deal with the classification of animals as "legal objects". Further research may include the study of Constitutional Law implications that may arise if animals are granted the status of "legal subjects" or are granted limited rights that alter their current legal status from mere "legal objects". Additionally a formal survey may be conducted to ascertain the views of the South African public as to whether animals should continue to be classified as "legal objects".

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— This article does not have any appendix. —