Law and Nature
by David Delaney*

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It is my usual practice in reading scholarly books to first study the references cited by the author. This gives me some idea of the author’s scope of research and (perhaps more importantly) whether I am at least familiar with some of the cited works. In the references to David Delaney’s new book, I did encounter some familiar names and works: jurists Benjamin Cardozo and Oliver Wendell Holmes, feminists Donna Haraway, Sandra Harding and Evelyn Fox Keller, psychologist Sigmund Freud, philosophers Michel Foucault and Thomas Kuhn, sociologists Bruno Latour and Claude Levi-Strauss, to name just a few. The references extend to a full 15 pages and many hundreds of works dating from Thomas Hobbes to the present; Delaney’s research is impressive.

The book is divided into three parts: “Situating Nature,” “Rendering Nature,” and “Judging Nature.” The introduction to Part I serves as an introduction to the entire work. Delaney tells us that he is addressing four lines of inquiry, which are (1) what does law say about nature, (2) what does what law says about nature tell us about the “legal construction of figurations of the human,” (3) what does what law says about the relationship between man and nature tell us about law “as a humanistic endeavor,” and finally (4) how do the answers to these questions illuminate our understanding of the elements of the material world.¹

Following this helpful roadmap, the introduction takes a somewhat surprising turn. In a section titled “Picturing Nature in Law,” Delaney delves into a criminal case involving one Louis Guglielmi, who was prosecuted at some unspecified time for sending obscene materials through the mail. Among the materials identified by the Supreme Court was a film with the enticing title of Snake Fuckers. This film apparently involved scenes of a woman having sex with an eel. In the course of his discussion of this memorable case, Delaney explains that what we call something can make a great deal of difference: “zoophilia” is a medicalized version of the more common but harsher “bestiality” which is colloquially rendered “buggery.”² Delaney is fully justified in pointing out that “not long ago . . . it would have been inconceivable for a judge to refer explicitly to and discuss something like Snake Fuckers in the pages of the Federal Reports.”³
Later in this introductory section, Delaney explains in greater detail the plan of the book. This explanation, while well-intended, is heavy going for someone not steeped in the jargon of modern sociology (“contextualizing,” “political-normative framings,” “situated actors,” “constructing reality”). It is clear by this point that Delaney is not writing for lawyers or natural scientists, who would have a hard time fathoming “I situate the situation of law at the intersection of circuits of meaning and circuits of physical force . . . I end by asking what it might mean to consider the physicality of law.”

Summarizing the remainder of this large, dense volume is not easy. Delaney’s writing style is somewhat free-wheeling and he frequently employs one-word quotation marks (“nature,” “humanism”), italics (narrative techniques, autonomy), and short quotes excerpted from books, cases, and articles. Some of the topics covered might be expected in a book with this title (e.g., “Law and Animal Experimentation”) and others will be new territory for most readers (e.g., “The Law of Disgust”). Delaney gives extended coverage to the intersection between law on the one hand and reproductive technologies, genetic screening, biology-based criminal defenses, and the involuntary medication of prisoners on the other. Bestiality is given the most extensive chapter, and it opens with a quotation from a work entitled The Horseman: Obsessions of a Zoophile, written autobiographically by out-of-the-closet (or perhaps out-of-the-barn) zoophile Mark Mathews. Mathews wrote this book, Delaney relates, to “point the way to greater social acceptance” of zoophilia. Mathews analogizes the struggle of zoophiles to those of African-Americans, gays, and lesbians.

Delaney’s use of the “modern” style of footnoting (in-text parentheses) requires that one turn to the back of a 440-page book to look up references in the 15-page reference section. This irritating format must be blamed on Cambridge Press, who no doubt insisted on it. More serious is Delaney’s utter disregard for giving proper legal citations. This may sound like lawyers’ nit-picking, but it is not. Lawyers use standard methods of citations to ensure that the reader is given a certain minimum of required information about a case or a statute. This information includes, among other things, the date of the decision and the identity of the deciding court. It is just not acceptable to offer a citation like “Murray v. State, 143 NE 2d 290 (1957).” What court decided this? The citation “Guglielmi v. U.S., 819 F2d 451” is missing both the date and the identity of the U.S. Court of Appeals deciding the case. Cambridge bears part of the blame for failing to have the book properly edited, but to be honest, those who write about the law have an obligation to learn its conventions.

[3] Ibid.


