Comparative Animal Law!

Simone Glanert* and Alexandra Mercescu**

Abstract

This contribution argues in favour of the synergy between two fields: animal law and comparative law. Comparative law will allow for the development and improvement of animal law. Animal law, for its part, can move comparative law beyond the narrow confines of its traditional research agenda. The paper highlights a select number of key issues that are particularly relevant for undertaking serious comparative legal research with respect to animals.

Key Words

Animal law; comparative law; history of animal law; global animal law; legal translation; interdisciplinarity

'I abate much of our presumption,
and willingly renounce that imaginary majesty,
one gives us over other creatures'

– Montaigne[1]

Introduction

'Comparative Animal Law!' is a manifesto arguing for the synergy between two fields: animal law, a rapidly evolving discipline with a strong propensity for comparison, on one hand, and comparative law, a well-established study area dealing with the multiple implications arising from interaction with foreign law, on the other.

We firmly believe that comparative legal research must be undertaken in the animals' interest.[2] Comparative law equips students, academics, lawmakers, and judges with the

* Director, Kent Centre for European and Comparative Law, Kent Law School, UK.
** Lecturer, Faculty of Law, West University of Timișoara, Romania, and Affiliated Researcher, Nomos Centre for International Research on Law, Culture and Power, Jagiellonian University, Poland, and CLEST (Centre for Legal Education and Social Theory), Wrocław University, Poland.

[1] Michel de Montaigne, *Les Essais* (first published 1595, Jean Balsamo, Michel Magnien, and Catherine Magnien-Simonin eds, Gallimard 2007) 456 ['*(J)'en rabats beaucoup de nostre presomption, et me demets volontiers de cette royauté imaginaire, qu'on nous donne sur les autres creatures*'] (our translation). See also Thierry Gontier, 'Montaigne on Animals' in Philippe Desan (ed), *The Oxford Handbook of Montaigne* (OUP 2016) 732–49.

[2] Although, in principle, we subscribe to the more recent distinction between 'human animals' and 'non-human animals', we have decided to use the traditional terms 'humans' and 'animals' in this paper.

knowledge and skills necessary to research, interpret, translate, and critically assess any laws related to animals. Over the years, comparative legal scholars have produced a wealth of literature, offering important insights into the theory and practice of comparative law that are of utmost relevance to the development and improvement of animal law.

We are equally convinced that animal law is immensely beneficial for comparative law. For a long time, comparative legal scholarship has been mainly concerned with the study of topics such as possible taxonomies of legal systems and comparisons of the most common institutions traditionally pertaining to private law, such as contracts and torts.[3] Only recently, researchers in the field have also embraced issues conventionally belonging to public law, with comparative constitutional law being the most visible and prolific research area.[4] Nonetheless, it is still the case that very few authors dare to address novel themes. Yet, the existence of such literature, although marginal, stands as proof that new subjects lend themselves well to comparative investigations.[5]

In this contribution we are not seeking to tell readers *the* truth about comparative law or animal law. Rather, the issues raised below are those that, given the significant production of knowledge in these two fields, speak the most to us. As such, we do not wish to avoid or ignore other debates that have taken place in comparative law and animal law over the past decades. We had to make difficult choices. Therefore, we have decided to retain only those comparative legal matters that we think are the most relevant to animal law at this time of writing. Of course, one can always say more about a given subject. And we hope that this text will be a source of inspiration for researchers in both comparative law and animal law.

Our paper is structured as follows: The first part emphasizes the close connections between the animal, the law, and the comparison (I). The second part introduces a select number of key themes that we think must inform comparative legal research undertaken with respect to animals (II).

I. The Animal, the Law, and the Comparison

We will start with a brief overview of the various ways in which humans have treated animals across time and space (1). We will then address the emergence of animal law as a distinct field, attracting the attention of researchers in a great number of countries (2). These preliminary reflections will then allow us to highlight the pressing need for extensive comparative research in animal law (3).

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[3] See, for instance, René David, *Les Grands systèmes de droit contemporains* (Dalloz 1965); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019).

[4] See, for example, Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012); Tom Ginsburg and Rosalind Dixon, *Comparative Constitutional Law* (Edward Elgar 2012); Roger Masterman and Robert Schütze, *The Cambridge Companion to Comparative Constitutional Law* (CUP 2019); Susan Rose-Ackerman, Peter Lindseth, and Blake Emerson, *Comparative Administrative Law* (2nd edn, Edward Elgar 2019).

[5] See, for instance, Rozen Noguellou and David Renders (eds), *Uber &- Taxis: Comparative Law Studies* (Larcier 2018); Kent Roach (ed), *Comparative Counter-Terrorism Law* (CUP 2015); Mathilde Cohen, 'Regulating Milk: Women and Cows in France and the United States' (2017) 65 American Journal of Comparative Law 469.

1. From Ancient Civilizations to Modern Societies, or the Emergence of Care

Since early times, in many places around the world, humans have used animals, albeit in different forms and ways, to satisfy culinary tastes, for entertainment purposes, and as tools and forms of technology.[6] The ancient Greek, Roman, and Hebrew worlds were dominated by 'teleological anthropocentrism', an idea according to which the entire universe has been divinely designed in a '"Great Chain of Being" from the barely alive to the sentient to the intellectual to the wholly spiritual'.[7] Such ancient hierarchical cosmologies, which justified and motivated human domination over animals, rapidly led to the development of a 'legal thinghood' of animals.[8] Historical research shows that 'all Near Eastern law, Mesopotamian and Israelite, recognized that humans could own nonhuman animals'.[9] Indeed, 'the earliest written examples of law in any form, whether secularly or divinely inspired, clearly demonstrate the primitive legal recognition and sanction of human ownership of nonhuman animals'.[10]

It appears that Roman law would have been the first legal system to provide a detailed outline of property rights concerning animals. 'Gaius', a 2nd-century Roman jurist and author of the famous primer we know as the *Institutes*, divided all law into three different categories: persons, things, and actions.[11] Classified as things (*res*), animals were regarded not as legal persons but as property, which means that they had no rights and were not subject to any duties. Animals were 'considered to be corporeal, mobile, undividable, *in commercio*, as well as fungible, simple, and fruitful *res* particularly animals of burden and traction, which are considered by Romans as *res mancipi* (that which can be held by hand) due to their great importance for such an agricultural and pastoral people'.[12] The nature of the animal, which could be either domestic or wild, was an important criterion for the determination of property rights.[13] Domestic animals were normally owned. Wild animals, by contrast, were regarded as *res nullius* (no one's thing). However, a wild animal could be appropriated by anyone capturing it. The owner could then be held responsible for any damage that the wild animal would cause.[14] Roman law has had a decisive and lasting impact on most legal systems in Western Europe.

Even English law was significantly influenced by Roman legal thought in a number of respects.[15] 'Bracton', a leading medieval English cleric and jurist, applied Roman law to animals and slaves. In his *De legibus et consuetudinibus Angliæ*, one of the oldest treatises on the common law, Bracton writes that, as in Roman times, domestic and wild animals as well

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[6] Thomas G Kelch, 'A Short History of (Mostly) Western Animal Law: Part I' (2012) 19 Animal Law 23, 25.
[7] Steven M Wise, 'How Nonhuman Animals Were Trapped in a Nonexistant Universe' (1995) 1 Animal Law 15, 19.
[8] Steven M Wise, 'The Legal Thinghood of Nonhuman Animals' (1996) 23 Boston College Environmental Affairs Law Review 471, 472.
[9] Steven M Wise, *Rattling the Cage: Towards Legal Rights for Animals* (Perseus Books 2000) 26.
[10] Wise (n 8) 476–77.
[11] Dig. 1.5.3 (Gaius, Institutes, Book 1).
[12] Heron José de Santana Gordilho and Cristóvão José dos Santos Júnio, 'The Legal Status of Animals in Roman Tradition' (2020) 6 Revista Jurídica Luso-Brasileira 1411, 1433.
[13] See ibid 1436–37.
[14] See DIC Ashton-Cross, 'Liability in Roman Law for Damage Caused by Animals' (1953) 11 Cambridge Law Journal 395.
[15] See Alan Watson, *Roman Law and Comparative Law* (University of Georgia Press 1991) 3.

as human slaves can be acquired either by capture or by birth.[16] In the 18th century, William Blackstone also distinguished between 'tame and domestic' animals '(as horses, kine [cows], sheep, poultry, and the like)', which 'a man may have as absolute a property as in any inanimate beings'.[17] For Blackstone, '[o]ther animals, that are not of a tame and domestic nature, are either not the object of property at all, or else fall under [an]other division, namely, that of *qualified*, *limited* or *special* property'.[18] Blackstone reminds his readership that '[i]n the beginning of the world, we are informed by holy writ, the all-bountiful Creator gave to man "dominion over all the earth, and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth". This is the only true and solid foundation of man's dominion over external things, whatever airy metaphysical notions may have been started by fanciful writers upon this subject'.[19]

From the 9th to the 19th century, over two hundred reported criminal trials of non-human animals took place either before civil or ecclesiastic courts in Western Europe.[20] Animals placed on trial included asses, beetles, bloodsuckers, bulls, caterpillars, chickens, cocks, cows, dogs, dolphins, eels, field mice, flies, goats, grasshoppers, horses, locusts, mice, moles, ox, pigeons, pigs, rats, serpents, sheep, slugs, snails, sows, termites, weevils, worms, and vermin.[21] For example, '[i]n 1266, at Fontenay-aux-Roses, near Paris, a pig convicted of heaving eaten a child was publicly burned by order of the monks of Sainte Geneviève'.[22] Further, '[i]n 1474, the magistrates of Bâle sentenced a cock to be burned at the stake "for the heineous and unnatural crime of laying an egg"'.[23] Moreover, '[i]In 1516, the official of Troyes pronounced sentence on certain insects […], which laid waste [to] the vines, and threatened them with anathema, unless they should disappear within six days'.[24] Only rarely, the animal escaped punishment. For instance, '[i]n the case of Jacques Ferron, who was taken in the act of coition with a she-ass at Vanvres in 1750, and after due process of law, sentenced to death, the animal was acquitted on the ground that she was the victim of violence and had not participated in the master's crime of her own free-will'.[25]

During the Enlightenment period, philosophers on either side of the English Channel also showed little consideration for animals. French mathematician and philosopher René Descartes compared animals to machines ('automata') because they apparently lacked language and general intelligence.[26] Animals, according to Descartes, 'cannot speak as we do:

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[16] See Henry de Bracton, *On the Laws and Customs of England*, vol 1 (first published circa 1235, George E Woodbine ed, Samuel E Thorne tr, Harvard University Press 1968) 29–44.
[17] Sir William Blackstone, *Commentaries on the Law of England*, Book 2: 'Of the Rights of Things' (first published 1766, Callaghan and Cockcroft 1871) 389 <https://repository.law.umich.edu/books/100/> accessed 15 March 2024. For the strong Roman inspiration that informs Blackstone's work, see John W Cairns, 'Blackstone, an English Institutist Legal Literature and the Rise of the Nation State', (1984) 4 Oxford Journal of Legal Studies 318.
[18] Blackstone (n 17) 389 [emphasis original].
[19] ibid 2. Blackstone refers to Gen. I, 28.
[20] See Edward P Evans, *The Criminal Prosecution and Capital Punishment of Animals* (William Heinemann 1906) 313–34. See also, William Ewald, 'Comparative Jurisprudence (I): What Was It Like to Try a Rat?' (1995) 143 University of Pennsylvania Law Review 1889.
[21] See Evans (n 20) 265–85.
[22] ibid 140.
[23] ibid 162.
[24] ibid 37.
[25] ibid 150.
[26] This view is called 'animal automatism': Evan Thomas, 'Descartes on the Animal Within, and the Animals Without' (2020) 50 Canadian Journal of Philosophy 999.

that is, they cannot show that they are thinking what they are saying'.[27] For him, it is 'not […] that the beasts have less reason than men, but that they have no reason at all'.[28] Rather, 'it is nature which acts in them according to the disposition of their organs'.[29] Not surprisingly, then, Descartes' famous maxim 'I am thinking, therefore I exist' applied exclusively to humans, not to animals.[30] The British liberal social contract theorist John Locke defended a more nuanced approach than Descartes.[31] Perception, Locke writes, 'is in some degree, *in all sorts of animals*'.[32] Even oysters and cockles have 'some small dull perception'.[33] By contrast, Locke distinguished animals from humans, as they do not have the power of abstraction. 'This, I think, I may be positive in, That the power of *Abstracting* is not at all in them; and that the having of general *Ideas*, is that which puts a perfect distinction betwixt Man and Brutes'.[34]

The 19th century has seen an epistemological shift in the way humans perceive and treat animals. In the 1800's, '[t]he British [s]et the [s]tage' for the development of anti-cruelty laws'.[35] In 1781, Jeremy Bentham, in his *Introduction to the Principles of Morals and Legislation*, argued that there was no justification for denying animals legal protection. In a well-known footnote, he wrote: '[T]he question is not, Can they *reason?* nor, Can they *talk?* but, Can they *suffer?*'.[36] In 1822, the Cruel Treatment of Cattle Act – the first Western law of the modern era on the subject – penalized the cruel treatment of cattle, horses, and sheep, as well as the infliction on these animals of unnecessary suffering. Then, in 1875, the Public Health Act aimed to improve practices in slaughterhouses. To these pieces of legislation were soon added, in 1876, the Cruelty to Animals Act and, in 1911, the Protection of Animals Act. Throughout the 20th century, other steps by the British legislator came to strengthen the defence of the animal.[37]

Since then, due to ethical, sociological, ecologic, and scientific changes, we have seen a significant increase in domestic legislation concerning animals all over the world. The various countries offer substantially different levels of protection in a great variety of contexts, ranging from anti-cruelty laws to animal welfare laws.[38] In many places, animals are still regarded as ownable objects.[39] Only in a limited number of societies, animals have a higher status than simple property. A handful of nations provide constitutional norms protecting

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[27] René Descartes, 'Discourse on the Method' in *The Philosophical Writings of Descartes*, vol 1 (John Cottingham, Robert Stoothoff and Dugald Murdoch tr, CUP 1984) 140.
[28] ibid.
[29] ibid 141.
[30] ibid 127.
[31] See Nicholas Jolley, *Locke's Touchy Subjects: Materialism and Immortality* (OUP 2015) 33–49.
[32] John Locke, *An Essay Concerning Human Understanding* (Peter H Nidditch ed, OUP 1975) Book II.ix.12 [emphasis original].
[33] ibid Book II.ix.14.
[34] ibid Book II.xi.10–11 [emphasis original].
[35] See David Favre and Vivian Tsang, 'The Development of Anti-Cruelty Laws During the 1800's' (1993) Detroit College of Law Review 1, 2.
[36] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1781) 310–11 n 1 [emphasis original].
[37] See generally Mike Radford, *Animal Welfare Law in Britain* (OUP 2001).
[38] For a first survey of the ways in which different countries treat animals under the law, see Bruce A Wagman and Mathew Liebman, *A Worldview of Animal Law* (Carolina Academic Press 2011).
[39] For a complex account of the legal status of animals, see Visa AJ Kurki, 'A Bird's-Eye View of Animals in the Law' (2024) 00(0) Modern Law Review 1 <https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12886> accessed 15 April 2024.

animals. In 1992, Switzerland became the first country on the European continent to recognize the inherent worth of animals in its Constitution.[40] However, a survey of constitutions shows that 'the prompt for a country to adopt an animal protection provision seems in many cases to be particular to local conditions, rather than any general sense that protections for animals necessarily should be included in a constitution'.[41]

In addition, there has been a proliferation of European and international legal instruments concerning animals. The Council of Europe, Europe's leading human rights organization, created some of the first international conventions regulating the transport, farming, and slaughtering of animals and their use for experimental purposes and as pets.[42] Further, the European Court of Human Rights offers protection for animals through its interpretation of human rights law.[43] The European Union (EU) requires all Member States to 'pay full regard to the requirements of animal welfare' in various commercial areas, including agriculture, 'since animals are sentient beings'.[44] The EU has enacted complex animal welfare legislation aiming to protect farm animals (on the farm, during transport, and at slaughter), wild animals, laboratory animals, and pets.[45] A multitude of international agreements affect animals, in particular, the Convention on International Trade in Endangered Species, the International Convention for the Regulation of Whaling and the World Trade Organization's General Agreement on Tariffs and Trade (GATT).[46] Although such initiatives purport to protect animals in a wide range of situations, most, if not all, of these legal instruments are economically and politically motivated.

Our 'modern world' is characterized by an 'unprecedented use' of animals coming along with an 'unparalleled profit and unparalleled globalized trade in animals'.[47] Indeed, '[t]he volume of trade in animals and animal products has exploded, foreign direct investment has been spurring the activity of multinational corporations around the globe, and animal protection chains are now dispersed over the territories of many states'.[48] Researchers highlight that '[c]olonialism also participated in the conversion of almost all non-human life into objects for capitalist accumulation, transforming pre-existing human animal relations, and altering food

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[40] See Gieri Bollinger, 'Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives' (2016) 22 Animal Law 311.

[41] Jessica Eisen and Kristen Stilt, 'Protection and Status of Animals' in Rainer Grote, Frauke Lachenmann and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (*Oxford Constitutional Law*, 2016) para 66 <https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e71> accessed 15 March 2024.

[42] European Convention on the Protection of Animals During International Transport (Revised) (ETS No 065); European Convention for the Protection of Animals Kept for Farming Purposes (ETS No 087); European Convention for the Protection of Animals for Slaughter (ETS No 102); European Convention for the Protection of Vertebrate Animals Used for Experimental and other Scientific Purposes (ETS No 123); European Convention for the Protection of Pet Animals (ETS No 125).

[43] See Tom Sparks, 'Protection of Animals Through Human Rights: The Case-Law of the European Court of Human Rights' in Anne Peters (ed), *Studies in Global Animal Law* (Springer 2020) 153–71.

[44] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), Art 13, 30 March 2010, 2010 OJ (C 83) 47. In a number of cases, the Court of Justice of the European Union (CJEU) has relied on this treaty provision to offer a broad interpretation of directives related to animal welfare. See Case C-355/11 *Brouwer* (2012) (EU) and Case C-424/13 *Zuchtvieh-Export* (2015) (EU).

[45] Anne Peters, 'Between Trade and Torture: Animals in EU Law' (2019) 2 Zeitschrift für europarechtliche Studien 173.

[46] See Katie Sykes, *Animal Welfare and International Trade Law* (Edward Elgar 2021).

[47] Thomas G Kelch, *Globalization and Animal Law* (Kluwer 2011) 19.

[48] Charlotte E Blattner, *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (OUP 2019) 2.

production and consumption'.[49] In fact, '[e]arly forms of globalized capitalism, founded on developing supply lines of raw materials and labour between Europe and the colonies, established the beginnings of a global transformation of food production'.[50]

Undoubtedly, 'the volume and intensity of the use of animals has increased exponentially over our history', which means that 'the world for animals is, in fact, much worse now than in the past'.[51] More than ever before, animal law reform is actively sought at the national, European, and international levels. Some scholars advocate for increased protection of animals through extraterritorial jurisdiction, that is, the possibility for a state to exercise its legal powers beyond territorial borders.[52] One expert stresses the need for the development of an 'International Treaty for Animal Welfare'.[53] Other specialists propose a 'Convention on Animal Protection for Public Health, Animal Welfare, and the Environment' as part of a unitary, global approach to health that will 'help prevent future pandemics but also to advance animals' intrinsic interests, which are inextricably interwoven with our own'.[54]

2. Animal Law as a Fast-developing Field

In response to the growing need for animal protection and the significant increase in animal welfare legislation, animal law, defined as 'bring[ing] together statutes and cases from multiple fields of law that consider, at their core, the interests of animals or the interests of humans with respect to animals', rapidly developed into a distinctive legal field.[55]

In the early 1970s in the United States, one could witness the emergence of a large-scale organized movement, involving attorneys and law students aiming for the protection of animals and the formal recognition of the concept of animal rights, irrespective of the species or the ownership interest in the animals.[56] The animal rights movement considered animals as living beings having a right to access the legal system with a view to protecting and furthering their interests as individuals or as groups of individuals.[57] Many of the arguments were grounded in scientific information as well as moral and ethical beliefs. In 1975, renowned Australian moral philosopher Peter Singer published *Animal Liberation*, commonly

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[49] Dinesh Joseph Wadiwel, 'Foreword: Thinking "Critically" About Animals After Colonialism' in Kelly Struthers Montford and Chloë Taylor (eds), *Colonialism and Animality* (Routledge 2020) xvii.
[50] ibid.
[51] Kelch (n 6) 25.
[52] Charlotte E Blattner, *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (OUP 2019) 2.
[53] See David Favre, 'An International Treaty for Animal Welfare' in Deborah Cao and Steven White (eds), *Animal Law and Welfare – International Perspectives* (Springer 2016) 87–106.
[54] Rajesh Reddy and Joan Schaffner, 'The Convention on Animal Protection: The Missing Link in a One Health Global Strategy for Pandemic Prevention' (2022) 10 Global Journal of Animal Law 1. See the Convention on Animal Protection for Public Health, Animal Well-Being, and the Environment (CAP), a proposed treaty drafted by the International Coalition for Animal Protection (ICFAP) and informed by the One Health concept <https://www.icfap.org/cap> accessed 15 March 2024.
[55] Sonia S Waisman, Pamela D Frasch, and Katherine M Hessler, *Animal Law in a Nutshell* (3rd edn, West Academic Publishing 2021) 1.
[56] Joyce Tischler, 'The History of Animal Law, Part I (1972–1987)' (2008) 1 Stanford Journal of Animal Law & Policy 1; Joyce Tischler, 'A Brief History of Animal Law (1985–2011)' (2012) 5 Stanford Journal of Animal Law & Policy 27.
[57] See Stephen I Burr, 'Toward Legal Rights for Animals' (1975) 4 Boston College Environmental Affairs Law Review 205; Joyce S Tischler, 'Rights for Non-human Animals: A Guardianship Model for Dogs and Cats' (1977) 14 San Diego Law Review 484. See, more generally, Bettina Manzo, *The Animal Rights Movement in the United States, 1975–1990: An Annotated Bibliography* (Scarecrow Press 1994).

regarded as the founding philosophical statement of the animal rights movement.[58] Following in the utilitarian tradition of Jeremy Bentham, Singer exposes the realities of life for animals in factory farms and testing laboratories, providing a powerful moral basis for rethinking human relationships with animals.

At that time, cases on behalf of animals were brought before US courts, claiming the recognition of animals as legal persons and the attribution of rights. Henry Mark Holzer, a New York attorney, was the first animal rights lawyer to invoke in American federal and state courts the moral concept of animal rights in the 1970s.[59] In *Jones v Butz*, Holzer challenged sections of the federal *Humane Methods of Livestock Slaughter Act* arguing that its religious exemption of ritual or 'kosher' slaughter was against the religious freedom provisions of the First Amendment of the US Constitution.[60] In *Jones v Beam*, Holzer went before a New York Court to request the closure of three zoos operated by the City of New York on the ground that the way in which they treated animals violated the anti-cruelty statutes of the State of New York.[61] Progressively, animal law appeared on the curriculum in many US law schools. In 1977, Adjunct Professor Theodore Sager Meth taught the first animal rights course, entitled 'The Law and Animals', at Seton Hall Law School. Then followed animal law courses taught by Professors Leslie MacRae and Geoffrey R. Scott at Dickinson School of Law in 1983 and by Jolene Marion at Pace University in 1985.[62]

Animal law is described as 'one of the most vibrant fields in legal scholarship'.[63] It now features all the sociological markers pointing to the emergence of a fully-fledged field in its own rights. There is an ever-growing amount of academic literature on animal law, not only in the US,[64] but also in many other Western countries, such as Australia,[65] Canada,[66] China,[67] France,[68] Germany,[69] and the UK.[70] There are now academic teaching courses,

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[58] Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (2nd edn, New York Review of Books 1990). See, for a fully revised and updated edition, Peter Singer, *Animal Liberation Now: The Definitive Classic Renewed* (Harper Perennial 2023).

[59] See, for a detailed account of the significant contributions made by Holzer to the development of animal rights law, Tischler, 'The History of Animal Law, Part I (1972–1987)' (n 56) 3–9.

[60] *Jones v Butz*, 374 F. Supp. 1284 (SDNY 1974), aff'd, 419 US 806 (1974).

[61] *Jones v Beam*, 380 N.E.2d 277 (NY 1978).

[62] See Tischler, 'The History of Animal Law, Part I (1972–1987)' (n 56) 10 n 57. See also Peter Sankoff, 'Charting the Growth of Animal Law in Education' (2008) 4 Journal of Animal Law 105, 106 n 6.

[63] Steven C Tauber, *Navigating the Jungle: Law, Politics, and the Animal Advocacy Movement* (Routledge 2016) 20.

[64] See David S Favre and Murray Loring, *Animal Law* (Quorum Books 1983); Adam P Karp, *Understanding Animal Law* (Carolina University Press 2016); Bruce A Wagman, Sonia S Waisman and Pamela D Frasch, *Animal Law: Cases and Materials* (6th edn, Carolina Academic Press 2019).

[65] See Elizabeth Ellis, *Australian Animal Law: Context and Critique* (Sydney University Press 2022); Deborah Cao, *Animal Law in Australia* (3rd edn, Thomson Reuters 2023).

[66] See Lesli Bisgould, *Animals and the Law* (Irwin Law 2011); Katie Sykes, Vaughan Black and Peter Sankoff (eds), *Canadian Perspectives on Animals and the Law* (Irwin Law 2015).

[67] Deborah Cao, *Animal in China: Law and Society* (Palgrave Mcmillan 2015).

[68] See Katherine Mercier and Anne-Claire Lomellini-Dereclenne, *Le Droit de l'animal* (LGDJ 2017); Cathy Morales Frénoy, *Le Droit animal* (L'Harmattan 2017); Jean-Claude Nouët and Jean-Marie Coulon, *Les Droits de l'animal* (2nd edn, Dalloz 2018); Olivier Le Bot, *Introduction au droit de l'animal* (2nd edn, Independently Published 2023); Olivier Le Bot, *Droit constitutionnel de l'animal* (2nd edn, Independently Published 2023).

[69] See Günter Hager, *Das Tier in Ethik und Recht* (Mohr Siebeck 2015); Linda Niess, *Die Rechte der Tiere? Das deutsche Tierschutzgesetz vor dem Hintergrund der neueren tierethischen Diskussion* (Books on Demand 2017).

[70] Margaret E Cooper, *An Introduction to Animal Law* (Academic Press 1987); Joan Schaffner, *An Introduction to Animals and the Law* (Palgrave Macmillan 2011).

postgraduate programmes, chairs, conferences,[71] specialized journals,[72] research centres, or institutes[73] specifically devoted to animal law in many parts of the world. One can even wonder whether the field is not reaching the point where it should be broken down into distinct sub-fields, such as animal rights law and animal welfare law.[74] An analogous development occurred in environmental law which has since been divided into various subfields, including climate change, energy law, environmental justice and waste management.

In this day and age, as good a measurement as any to assess the visibility of a particular issue – and perhaps a better benchmark than various others – consists in the number of hits that a sequence of keywords will generate on a search engine such as Google. Type 'animal law', and Google will immediately inform you that there are approximately 1,650,000 results corresponding to your search. For experts in animal law, 'it is clear that Animal Law, as a field worthy of study, scholarship, and practice, is here to stay, and will continue to grow'.[75]

3. The Demand of Comparison

Despite the ever-growing interest in animal law, uncertainties remain regarding its future. One author writes that one of his 'biggest concerns in the scholarship of animal law is the lack of looking into the future and suggesting paths forward'.[76] We firmly believe that animal law can greatly benefit from closer interaction with comparative law. Nowadays, there is, as comparative literary scholars argue, 'an imperative to compare'.[77] Comparisons are necessary for various reasons, such as the increase of knowledge.[78] Crucially, comparisons may 'lead to fundamental epistemological transformations'.[79]

What we find particularly striking about animal law is precisely the high demand for comparisons. The most prominent example is the comparison between what we traditionally call 'animals' and 'humans'. Many animal rights proponents believe that it is artificial to separate animals from humans.[80] Humans are animals – human animals. Humans form part of the biological kingdom *Animalia*, which distinguishes them from plants, fungi, or other organisms such as bacteria. There are also evolutionary connections between the *Homo sapiens*, a

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[71] See the annual 'Animal Law Conference' co-organized by the Animal Legal Defense Fund and the Center for Animal Law Studies at Lewis & Clark, USA.
[72] Some notable examples are, in addition to the *Global Journal of Animal Law*, the *Journal for Critical Animal Studies*; the *UK Journal of Animal Law*; the *Animal Law Review*; the *dA. Derecho Animal (Forum of Animal Law Studies)*; and the *Revue semestrielle de droit animalier*.
[73] See, for example, the Center for Animal Law Studies at Lewis & Clark Law School, USA; the UK Centre for Animal Law or the Cambridge Centre for Animal Rights Law.
[74] See Raffael N Fasel and Sean C Butler, *Animal Rights Law* (Hart 2023) 3.
[75] Waisman, Frasch and Hessler (n 55) 2.
[76] David S Favre, *The Future of Animal Law* (Elgar 2021) vii.
[77] Susan Stanford Friedman, 'Why Not Compare?' (2011) 126(3) PMLA 753, 755.
[78] See, for an interesting demonstration of the usefulness of comparisons in social media studies, Mora Matassi and Pablo J Boczkowski, *To Know Is to Compare: Studying Social Media Across Nations, Media, and Platforms* (MIT Press 2023).
[79] R Radhakrishnan, 'Why Compare?' (2009) 40(3) New Literary History 453, 470.
[80] See Cary Wolfe*, Before the Law: Humans and Other Animals in a Biopolitical France* (University of Chicago Press 2012); Irus Braverman (ed), *Animals, Biopolitics, Law: Lively Legalities* (Routledge 2016).

species of primate, and animal species. This comparison is important because, at this stage, human animals are the only animals with legally recognized and enforceable rights.[81]

Further, the very subjects of animal law give rise to comparisons. What qualifies, from a legal perspective, as an 'animal' is subject to debate. One recent example includes the Animal Welfare (Sentience) Act 2022, a UK statute formally recognizing the sentience of lobsters, octopuses, crabs, and all other decapod crustaceans and cephalopod molluscs.[82] Comparisons allow us to determine whether a specific animal qualifies as companion, domestic, wild, exotic animal, or livestock. Some animals may fall into several categories, such as horses, who can be treated from a legal point of view as companion animals or livestock. Statutory language is often confusing and open to judicial interpretation. 'Whether a being is an "animal" under a given statute often determines what level of protection is afforded'.[83]

Moreover, some scholars highlight the need to compare different approaches to animal rights. Undoubtedly, philosophy – more precisely moral philosophy and ethics – has been a rich source of inspiration for many animal rights lawyers. Several academics have developed influential theories critically assessing the possibility of recognizing certain rights for animals. Some of these theories support animal rights, such as Peter Singer's Utilitarism, Tom Regan's Deontological Approach, Martha Nussbaum's Capabilities Approach, or Sue Donaldson and Will Kymlicka's Political Approach. Others, by contrast, are highly sceptical of animal rights, including the Ecofeminist Critique, the Conservationist Critique, and the Contractualist Critique.[84]

Most importantly, though, animal law lawyers agree that, in our globalizing world, animal welfare and animal rights can no longer be regarded as solely local issues but must be addressed in a wider international context. Not surprisingly, then, a growing number of legal academics have entered, consciously or unconsciously, the field of comparative law. Several studies provide historical comparisons, aiming to trace back the history of animal law, mostly in Western civilizations.[85] It is argued that '[l]aw is an evolving record of the human-animal relationship, and even "outdated" law from existing leaders has benefits for the purposes of comparison and contrast of a nation's progress, or not, in this subject'.[86] In the 1990s, legal scholars started to undertake small-scale comparisons regarding animal welfare legislation

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[81] In 1995, Steven Wise founded the Nonhuman Rights Project, the only civil rights organization in the US, dedicated solely to securing rights for nonhuman animals. See <http://www.nonhumanrights.org/> accessed 15 March 2024. Since 1993, the Grate Ape Project, founded by Paola Cavalieri and Peter Singer, is actively promoting the adoption of a United Nations Declaration of the Rights of Great Apes that would confer basic legal rights – the right to life, the protection of individual liberty, and the prohibition on torture – on nonhuman great apes. See Paola Cavalieri and Peter Singer (eds), *The Great Ape Project: Equality Beyond Humanity* (St. Martin's Press 1994). However, some scholars doubt that animals can have rights. See Carl Cohen, 'Do Animals Have Rights?' (1997) 7(2) Ethics and Behavior 91.

[82] For a critical assessment of this statute, see Simone Glanert, 'La loi britannique sur la sentience animale: quand la montagne législative accouche d'une sourie administrative' (2022) 2 Revue semestrielle de droit animalier 172.

[83] Waisman, Frasch, and Hessler (n 55) 6.

[84] For a detailed overview of these various theories, see Fasel and Butler (n 74) 54–75.

[85] See Kelch (n 6); Thomas G Kelch 'A Short History of (Mostly) Western Animal Law: Part II' (2013) 19 Animal Law Review 347; Ian Robertson and Paula Sparks, 'Animal Law – Historical, Contemporary and International Developments' in Andrew Knight, Clive Phillips and Paula Sparks (eds), *Routledge Handbook of Animal Welfare* (Routledge 2022) 366–78.

[86] Ian A Robertson, *Animals, Welfare and the Law* (Routledge 2015) 4.

in two countries with a view to improving domestic legal standards regarding animal protection.[87]

Today, the vast majority of the available literature related to animal law addresses not only domestic but also foreign and international laws.[88] Some legal scholars are engaging in large-scale comparisons offering surveys of laws related to animals in a great number of countries. In 2011, Bruce A Wagman and Mathew Liebman released *A Worldview of Animal Law* covering the laws of Australasia, North America, South and Central America, Asia, the European Union, and Africa.[89] More recently, Raffael N Fasel and Sean C Buttler co-authored a book on *Animal Rights Law* offering examples of over 30 legal systems from both the civil and the common law traditions.[90] Clearly, the current trend is to bring animal law to the highest possible level, with the introduction of a so-called 'global animal law'.[91] Since 2014, the 'Animal Protection Index', an interactive tool produced by 'World Animal Protection', has been ranking 50 countries around the globe according to their legislation and policy commitments to protecting animals.[92] In a few clicks, users can access the profile of select countries or 'compare' the scores of up to four countries.

Comparative law, as we understand it, is necessary in the interest of animals. Comparing different laws allows us to understand the advantages, the disadvantages, or the lacunae of any given law. However, the 'questions of the what, why, and how of comparison are seldom addressed by those who compare'.[93] Indeed, 'the nature and methods of comparison are typically assumed as givens, left largely uninterrogated as comparison is simply performed (or not) across the disciplines and interdisciplines'.[94] Here is where, we think, comparative law can make significant contributions to animal law.

II. What Comparative Law Can Bring to Animal Law

Anyone aiming to undertake serious research on foreign animal law should familiarize herself with a number of key issues arising in comparative legal studies. In the following sections, we will address a select number of fundamental debates in comparative law which, after many years spent researching, reflecting upon, and teaching comparative law, seem to us to be most susceptible of forging a strong, fruitful, mutually beneficial encounter between comparative law and animal law: how to compare (1); making sense of other laws (2); the commitment to culture (3); the project of a global law (4); the matter of translation (5); the question of better law (6); and the pledge to indiscipline (7).

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[87] See Christiane Meyer, *Animal Welfare Legislation in Canada and Germany: A Comparison* (Peter Lang 1996); Elaine L Hughes and Christiane Meyer, 'Animal Welfare Law in Canada and Europe' (2000) 6 Animal Law 23.
[88] Thomas G Kelch, *Globalization and Animal Law: Comparative Law, International Law and International Trade* (Kluwer 2011).
[89] See Wagman and Liebman (n 38).
[90] See Fasel and Butler (n 74).
[91] See, for example, Anne Peters (ed), *Studies in Global Animal Law* (Springer 2020); Alex Zhang and Katherine Siler (eds), *Global Animal Law Research: Strategies and Resources* (Carolina Academic Press 2022); Anne Peters, Kristen Stilt, and Saskia Stucki (eds), *The Oxford Handbook of Global Animal Law* (OUP forthcoming).
[92] See <https://api.worldanimalprotection.org/> accessed 15 March 2024.
[93] Friedman (n 77) 753.
[94] ibid.

1. How to Compare

Comparative law, as a fully-fledged discipline, features a vast amount of literature specifically devoted to comparative legal methodology. For decades, comparative legal scholars have tried to provide a thoughtful answer to the question: 'How to compare?'.[95] The range of methodological investigations varies greatly from one author to the next. There are those comparatists who continue to reduce comparative law to a method.[96] Others, by contrast, are highly sceptical of a naïve faith in method in comparative law.[97] And, then, there are still several scholars who propose any number of particular methods,[98] predominantly, the functional method.[99] Indeed, the various strands of thought that have emerged in comparative law diverge not only in respect of their preferences for certain topics and their underlying ideologies,[100] but also, and most importantly, in methodological terms.[101] Therefore, researchers in animal law coming to the field of comparative law in order to gain practical and theoretical advice on how to compare should not expect any sort of methodological uniformity. Yet, one can usefully rely on several research strategies.

Indeed, certain comparative legal approaches that are mere adaptations of the doctrinal 'method' to the realm of comparison have proven epistemically problematic, though they continue to be pursued in many parts of the world for various reasons, not least because they are less intellectually demanding than the alternatives (and so are easy to embrace by anyone who wishes to rapidly call themselves a comparatist). Pierre Legrand provides a most compelling critique of the traditional model of comparative law focusing on legal rules and espousing a scientific credo.[102] Drawing on a rich philosophical apparatus, he offers nothing short of a guidebook on how one should *not* compare.[103] Accordingly, specialists in animal law must not embark on a path of simplicity. It is crucial for any researcher who seeks to engage comparatively with animal law to be exposed to and become aware of some of the epistemic challenges to be met along the way, all the more so because animal law, as a

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[95] See, for example, Pier Giuseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012); Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Hart 2014); Pier Giuseppe Monateri, *Advanced Introduction to Comparative Legal Methods* (Edward Elgar 2021); Roberto Scarciglia, *Methods and Legal Comparison* (Edward Elgar 2023); Luca Siliquini-Cinelli, Davide Gianti, and Mauro Balestrieri (eds), *The Grand Strategy of Comparative Law* (Routledge 2024).

[96] See HC Gutteridge, *Comparative Law* (2nd edn, CUP 1949).

[97] See Simone Glanert, 'Method?' in Pier Giuseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012) 61–81; Simone Glanert, 'Method as Deception' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 92–114.

[98] For instance, Geoffrey Samuel invites comparatists to think in terms of six 'programmes of orientation' (or '*grilles de lecture*' rather than methods): the structural, causal, cultural, functional, actionalist, and legal consciousness programme. See Geoffrey Samuel, 'Methodology and Comparative Law: Programme Orientations' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 61–91.

[99] See, in particular, Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998); Uwe Kischel, *Comparative Law* (Andrew Hammel tr, OUP 2019); Ralf Michaels, 'The Functional Method of Comparative Law' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP 2006) 339–82.

[100] See Veronica Corcodel, *Modern Law and Otherness: The Dynamics of Inclusion and Exclusion in Comparative Legal Thought* (Edward Elgar 2019).

[101] See Balázs Fekete, *Paradigms in Modern European Comparative Law* (Hart 2023).

[102] See Pierre Legrand, 'Comparative Law and the Matter of Authenticity' (2006) 1 Journal of Comparative Law 365.

[103] See Pierre Legrand, *Negative Comparative Law* (CUP 2022); Pierre Legrand, *Comparative Law and the Task of Negative Critique* (Routledge 2023).

relatively new field, is still defining its objectives and contours.[104] Researchers in animal law should know that any epistemological and methodological choices that are made now will most likely have a long-lasting impact on the future of animal law.

Right from the outset, it is important to note that 'comparative law by columns',[105] meaning the compilation and juxtaposition of various national, supranational, or international laws concerned with the protection of non-human animals, will inevitably produce very limited knowledge and understanding of animal laws. Instead of undertaking black-letter-law research, experts in animal law should engage in thick comparisons by committing themselves to an in-depth analysis of law that acknowledges law's cultural embeddedness.[106] No law, be it of private or public concern, and no matter how devoid of locality it might appear at first sight, exists as a mere expression of neutral technicity. Laws certainly have a rational basis (in the field of animal law, one can think, for instance, of the influence of ethical values). But this foundation is always enmeshed in ample societal configurations, which, if anything, should prevent us from imagining a 'pure' or 'universal' reason. Indeed, the laws of law are not the laws of nature. As creations of the human mind, laws are part of that mind's identity and therefore inevitably partake in a given time, space, and language. In other words, every law reflects a particular world-view (*Weltanschauung*).

Therefore, experts in animal law who wish to provide a meaningful account of foreign laws need to move beyond the surface of legal materials and explore, through in-depth interdisciplinary research, law's cultural embeddedness.[107] A positive approach to law should only be regarded as a 'springboard towards a more elaborate interpretation'.[108] In paying regard to law-as-culture (by definition always already particular, singular, specific, and idiosyncratic), comparatists will be inextricably brought to deal with *differences* between the various laws.[109] Unfortunately, some scholars still find it 'obvious […] to circumscribe the diversity of legal systems by grouping them on the basis of […] similarities and differences'.[110] We assume that the term 'similarities' is used to mean 'minor differences' and not 'sameness' (in the context of a comparison involving at least two entities, it would be absurd to talk about 'sameness'). Then the task of the comparatist would be, literally, to search for 'minor differences and differences', a formula that does not make much sense. We firmly believe that comparative legal research can *only* be about differences, which can be minor or major. The idea of similarities, which has informed comparative legal research for a long time, is misleading and should therefore be abandoned.[111]

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[104] See Jerrold Tannenbaum, 'What is Animal Law'? (2013) 61(4) Cleveland State Law Review 891.
[105] Janet Halley and Kerry Rittich, 'Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism' (2010) 58 American Journal of Comparative Law 753, 766.
[106] See Lawrence Rosen, *Law as Culture* (Princeton University Press 2006); Werner Gephart, *Recht als Kultur* (Klostermann 2006); Paul W Kahn, *The Cultural Study of Law* (University of Chicago Press 1999).
[107] For a call to interdisciplinarity in comparative law, see Alexandra Mercescu, *Pour une comparaison des droits indisciplinée* (Helbing Lichtenhahn 2019). See also section 7 below.
[108] Legrand, *Negative Comparative Law* (n 103) 280.
[109] See Pierre Legrand, 'The Same and the Different' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (CUP 2003).
[110] Kischel (n 99) 201. See also Mathias Siems, *Comparative Law* (3rd edn, CUP 2022) 7, 108, and 220–35; Sabrina Ragone and Guido Smorto, *Comparative Law: A Very Short Introduction* (OUP 2024) 92–106.
[111] One of the leading textbooks in the fields includes the enunciation of a '*praesumptio similitudinis*' as between laws, the statement that the laws are similar 'even as to detail' and a declaration about the immaterial[ity] of differences' to comparative legal research. Zweigert and Kötz (n 99) 40, 39, and 62, respectively [emphasis original].

As a result, the pledge to the production of thick legal knowledge inevitably requires comparatists to confine their research to no more than a few legal systems.[112] However, there is a long-standing tradition in comparative law of macro-comparisons involving a significant number of legal systems.[113] Experts in animal law should be aware of the fact that such expansive studies have given rise to serious criticism as they may provide misleading, superficial, or outdated data about the laws involved, especially when produced by researchers with limited foreign language skills and a lack of first-hand legal knowledge.[114] The desire to expand comparative law's geographical reach, admittedly much too Westernized,[115] should not be fulfilled at the expense of depth.

The question of 'how to compare' is in large part determined by the fact that comparatists are brought to work with (legal) texts, which must be understood as cultural manifestations. We will discuss these key aspects – interpretation and culture – in the next two sections.

2. Making Sense of Other Laws

In his book *Animals, Welfare and the Law*, Ian A Robertson encourages researchers to be 'objective' because '[t]he whole subject of animal welfare and law is a highly emotive subject'.[116] Therefore, the 'author has used a number of "useful" tools in assisting students of animal law to think objectively about issues associated with animal law'.[117] But can an expert in animal law undertaking comparative legal research ever be objective? To what extent will economic, socio-political, or religious factors inevitably influence her research on foreign animal laws? Do other factors, such as the age or gender of the researcher, play a determining role in the understanding of foreign legal texts related to animals? Can rules of interpretation ever lead the interpreter to an objective understanding of legal issues arising with respect to animals?

Over the past years, a number of comparative legal scholars have increasingly relied on an interpretation theory called 'hermeneutics' to highlight the modalities under which understanding of law takes place.[118] German philosopher Hans-Georg Gadamer's *Truth and Method* is commonly regarded as the cornerstone of modern philosophical hermeneutics.[119] His work, which has been translated into many languages, has influenced a wide range of disciplines, not only literary theory, religious studies, translation studies, and gender studies,

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[112] For a critique of quantification and large-numbers comparative law, see Alexandra Mercescu, 'Quantifying Law? The Case of "Legal Origins"' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 250–76.

[113] See, for example, David (n 3).

[114] For a book-length initiative purporting to introduce the reader to a wide range of the world's laws, see H Patrick Glenn, *Legal Traditions of the World* (5th edn, OUP 2014). See the collective book review critically assessing the merits of Glenn's macro-comparison in Nicholas HD Foster (ed), 'A Fresh Start for Comparative Legal Studies? A Collective Review of HP Glenn's Legal Traditions of the World, 2nd Edition' (2006) 1(1) Journal of Comparative Law 100. See also the review by Bernard S Jackson, 'Internal and External Comparisons of Religious Law: Reflections from Jewish Law' (2006) 1(1) Journal of Comparative Law 177.

[115] See Philipp Dann, 'Southern Turn, Northern Implications: Rethinking the Meaning of Colonial Legacies for Comparative Constitutional Studies' (2023) 1(2) Comparative Constitutional Studies 174.

[116] Robertson (n 86) 34.

[117] ibid 36 n 14.

[118] See, for example, Simone Glanert, 'The Interpretation of Foreign Law: How Germane is Gadamer' in Simone Glanert and Fabien Girard (eds), *Law's Hermeneutics: Other Investigations* (Routledge 2017) 63–80.

[119] Hans-Georg Gadamer, *Truth and Method* (Joel Weinsheimer and Donald G Marshall trs, 2nd Eng. edn, Continuum 2004). This English version relies on the 4th German edn (1986).

but also law.[120] Surprisingly, though, many lawyers still ignore the central features of philosophical hermeneutics and their relevance for the interpretation of law.

To the question 'What has hermeneutics to do with the law?', there is a ready answer: 'Everything'.[121] Gadamer's philosophical hermeneutics has made significant contributions to a better understanding of the matter of interpretation.[122] Indeed, Gadamer, rather than developing a method of interpretation, seeks to shed light on the process of understanding. 'My real concern', he writes, 'was and is philosophic: not what we do or what we ought to do, but what happens to us over and above our wanting and doing'.[123] Gadamer's philosophical hermeneutics, which emphasizes, amongst others, the central role of tradition and language in any understanding, demonstrates that interpretation is not something that individuals can rigorously and systematically master through the recourse to methods or rules.

Every interpreter, a person necessarily situated in time and space, is actively involved in the creation of textual meaning using inscriptions as a beginning only. Instead of adopting an Archimedean outlook or bringing to bear unfettered freedom, the interpreter necessarily approaches the object of interpretation from a given perspective, which is inevitably informed by the historical tradition, including the language, to which she belongs. It follows that different interpreters will offer different interpretations of the 'same' text. Hermeneutics thus emphasizes that words do not have a fixed meaning. Accordingly, one never reaches a point where one is in a position to argue that everything that could possibly be said about a given text has been said. There is always more meaning to be generated; indeed, there will potentially be as many meanings being produced as there will be interpreters. Consequently, no method or rule of interpretation can lead the interpreter to the right or true meaning of a text.

Thus, for animal law experts aiming to undertake comparative legal research, the postulates of contemporary hermeneutics are of the utmost importance. Legal texts, such as judicial decisions, statutes, constitutional provisions, or international agreements, are never self-explanatory. Rather, in every instance, they need to be *interpreted* and *applied* to a given situation. And, as comparatists have shown through the use of Gadamer's philosophical hermeneutics, that interpretation and application are far from being objective.

3. A Commitment to Culture

For a long time neglected or even outrightly contested in mainstream comparative law, the concept of culture has in the last decades made significant inroads into the vocabulary of

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[120] See Bruce Krajewski, *Gadamer's Repercussions* (University of California Press 2004); Jeff Malpas and Santiago Zabala (eds), *Consequences of Hermeneutics: Fifty Years After Gadamer's* Truth and Method (Northwestern University Press 2010); Georgia Warnke, *Inheriting Gadamer*: *New Directions in Philosophical Hermeneutics* (Edinburgh University Press 2016).

[121] Jens Zimmermann, *Hermeneutics* (OUP 2015) 98.

[122] See Richard Palmer, *Hermeneutics: Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer* (Northwestern University Press 1969); Georgia Warnke, *Gadamer: Hermeneutics, Tradition, and Reason* (Stanford University Press 1987); Jean Grondin, *Introduction to Philosophical Hermeneutics* (Joel Weinsheimer tr, Yale University Press 1994); Nicholas Davey, *Unquiet Understanding: Gadamer's Philosophical Hermeneutics* (SUNY Press 2006).

[123] Gadamer (n 119) xxv–vi.

comparative law.[124] Epistemically equipped with culture as a key reference, a number of comparatists have become aware that their discipline 'lends itself to practicing (or arguably presupposes) a modicum of self-reflection and critical thought'.[125] Indeed, culture has been an unavoidable presence in the treatment of such salient topics as legal transplants, comparative legal methodology, foreign law references, or legal uniformization. Today, one could even speak of a 'cultural turn' or a '"revolutionary" process' in comparative legal studies.[126] The concept features most prominently in the works of Pierre Legrand as that which is meant to negate the traditional a-spatial view of law and affirm a new epistemic vision allowing for the identification of law with more than just legally binding sources: 'Rejecting the idea that law would be free from the constraints of place and time as unconvincing – holding that it is, in fact, hard to think of anything more susceptible to place and time than law – I find it convenient to use the word 'culture' to capture in synthetic fashion the traces constitutively informing the law and to which a responsible differential comparison must respond'.[127]

While it would be impossible to pin culture down, it still remains possible to understand at least something useful about culture that will enhance our understanding of the law. And whereas it is impossible to 'prove' culture in the same way one would prove physical reality, anthropology, psychology, and other fields have demonstrated beyond dispute that human beings' socialization in specific communities of thought matters for what they think, how they behave, and how they speak.[128] In fact, recent studies have shown that animals also partake in cultures.[129]

That being said, culture should not be ascribed an overriding but a constitutive role in relation to law. Thus, it is not that culture comes before law or that culture would somehow place itself above law. Rather, law is 'encultured'; 'there is law-as-culture'.[130] Simply put, French law has something to do with French culture, and German law has something to do with German culture, no matter how technical – purely rational in their response to purportedly universal needs – the majority of lawyers claim or would like them to be. Or, to put it otherwise, culture invites us to see that there is much more to French, German, or any other law than meets the eye.

The concept of culture is controversial. It has been accused of connoting ethnocentrism, determinism, domination, fixity, homogeneity, organicism, causality, and essentialism.[131] Still, the association of the notion of culture with these problematic notions is not an inconvertible fact of nature. As such, the responsible researcher who will be engaging with the

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[124] For a sceptical position towards culture, see Ralf Michaels, 'Two Paradigms of Jurisdiction' (2006) 27 Michigan Journal of International Law 1017.
[125] Günter Frankenberg, *Comparative Law as Critique* (Edward Elgar 2016) 17.
[126] Fekete (n 101) 140.
[127] Pierre Legrand, 'Foreign Law: Understanding Understanding' (2011) 6 Journal of Comparative Law 67, 109.
[128] See, for example, Paul Bohannan, *How Culture Works* (The Free Press 1995) 50.
[129] See Andrew Whiten, 'The Psychological Reach of Culture in Animals' Lives' (2021) 30(3) Current Directions in Psychological Science 211; Andrew Whiten, 'The Burgeoning Reach of Animal Culture' *Science* (2 April 2021) 372; Marius Kempe, Stephen Lycett, and Alex Mesoudi, 'From Cultural Traditions to Cumulative Culture: Parameterizing the Differences Between Human and Nonhuman Culture' (2014) 21 Journal of Theoretical Biology 359.
[130] Legrand, *Negative Comparative Law* (n 103) 285 and 423, respectively.
[131] See Lila Abu-Lughod, 'Writing Against Culture' in Richard Fox (ed), *Recapturing Anthropology* (School of American Research 1991) 137.

concept must bear in mind the risks and decide to stay clear of such deleterious understandings of culture (and so culture will have met its explanatory potential).

Now, it is crucial to distinguish the epistemic value of culture (its conceptual capability of accruing our apprehension of law, in other words, *culture as an explanation*) from its substantial value (its practical existence as a set of beliefs and behaviours transmitted from one generation to the next that we generally want to defend and preserve, in other words, *culture as heritage*).[132] Accepting the value of culture as an explanation, as heterodox comparatists have proposed, does not entail adherence to moral nihilism. Not all cultural practices are equally justified. Some cultures may appear in the eyes of all other cultures as questionable, quite often utterly shocking.[133] Others may appear so even from the inside, in the minds of some of their members. Comparative legal research on foreign animal law illustrates this to excellent effect.

If we want to understand (in a cognitive sense), for instance, the French law authorizing the local practice of bullfighting, one can usefully have recourse to the concept of culture (and its multiple dimensions: economic, political, historical, literary, etc.).[134] 'How did this law come into effect?', 'Who are the main stakeholders affected by this law?', 'What is its broader impact on French society?' These are only some of the questions that are likely to illuminate a comparatist's account of the controversial French law on corridas. However, the reliance on culture in order to excavate law's complex layers does not mean that the exception enshrined in the law with a view to preserving the practice as cultural heritage is morally defensible (thus, we are not compelled to understand the practice in a moral sense). In fact, comparatists should be aware that apprehending law culturally paves the way for a more informed, sensible, and therefore legitimate critique of the law (cultures, legal cultures shall not be free from critique, but they need first to be understood on their own terms as far as this is possible – no understanding being total or objective, there will be important limits to this quest for authenticity).

The matter of culture raises important questions about the possibility of a global (animal) law. It is to this matter that we turn our attention in the next section.

4. A Global Law?

In the field of animal law, one can currently witness a strong movement in favour of a 'global animal law'.[135] 'Global animal law' is described by some as 'an umbrella term that allows

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[132] For a study that highlights the importance of distinguishing between the theoretical usefulness of culture for the purpose of studying laws comparatively and culture's use in (legal) practice, see Alexandra Mercescu, 'How Far Culture: A Critical Examination of Cultural Defense' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 206–26.

[133] See Minjoo Oh and Jeffrey Jackson, 'Animal Rights vs. Cultural Rights: Exploring the Dog Meat Debate in South Korea from a World Polity Perspective' (2011) 32 Journal of Intercultural Studies 31.

[134] See Simone Glanert, 'The Corrida, for Example: How Comparative Understanding Fares' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 183–205.

[135] See Peters (n 91); Alex Zhang and Katherine Siler (n 91); Charlotte E Blattner, 'Global Animal Law: Hope Beyond Illusion: The Potential and Potential Limits of International Law in Regulating Animal Matters' (2015) 3 Mid-Atlantic Journal on Law and Public Policy 10; Katie Sykes, 'The Appeal to Science and the Formation of Global Animal Law' (2016) 27 European Journal of International Law 497; Katie Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection (2016) 5(1) Transnational Environmental Law 55. Such initiatives are not immune to critique. For a critical perspective,

researchers to grasp the complex nature and characteristics of […] pertinent legal issues, and thus to better analyze, criticize, and advance the legal regimes governing animals globally'.[136] However, some specialists have critically assessed the limits of uniformizing animal welfare laws while emphasizing 'the potential value of contextual approaches'.[137] Experts in animal law who support projects aiming for the development of common standards must remain realistic about the possibility of a so-called 'global animal law'. Here, again, comparative law teaches animal law important lessons.

Ever since its institutional inception, and especially after World War II, comparative law has been preoccupied with the matter of uniformization of laws, starting with the assumption that such an endeavour would be both possible and desirable.[138] For example, Rudolf Schlesinger, an early US comparatist originally from Germany, was interested in finding the legal common core of civilized nations and consolidating international trade.[139] Further, Roscoe Pound, closely associated with American legal realism, was keen to support 'a universal project for which he argued that only developed legal systems should be considered'.[140] Today, some comparatists continue to entertain much talk of 'global law'. Legal scholars from both the common law and civil law worlds seem prepared to approach law as something that could be displaced, as an object not confined to any particular place. Specifically, according to this *a-topic* conception (etymologically, from the Latin, *a* – without, *topos* – place), there would be, 'out there', a generic or global constitutional law located nowhere in particular yet everywhere at once featuring identically active components across borders.[141] At the level of discourse, one may have the impression that the dream of two acclaimed comparative legal scholars is coming true. In their leading textbook, Konrad Zweigert and Hein Kötz yearned for a law 'freed from the context of its own system', to be debated and 'exchanged internationally', infused with comparative insights which they, and they only, were to make it 'international and consequently a science'.[142]

However, despite comparative and international law's long-standing ambitions to bring about a true global law, law profoundly resists globalization. A genuine global law would require a meta-language and a meta-culture. But law is necessarily formulated in a certain language and gives inevitably rise to local interpretations and applications in a particular culture.[143] As such, law is always in place, exists as place, and will be marked by the locality of place, global discourses notwithstanding. Ideas always pertain to someone's horizon of thought and are expressed and construed according to contingencies of all sorts, not least

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see Iyan Offor, 'Global Animal Law and the Problem of "Globabble": Toward Decoloniality and Diversity in Global Animal Law Studies' (2022) 12 Asian Journal of International Law 10.

[136] Anne Peters, 'Global Animal Law', Research Project, Max-Planck-Institute for Comparative Public Law and International Law <https://www.mpil.de/en/pub/research/areas/public-international-law/global-animal-law.cfm> accessed 15 March 2024.

[137] Offor (n 135) 38. This author urges us 'to question the universalizing ethics produced from a Western standpoint, and to recognize the reality of contextual diversity and multiple forms of knowing': Iyan Offor, 'Second Wave Animal Ethics and (Global) Animal Law: A View from the Margins' (2020) 11 Journal of Human Rights and the Environment 268, 295.

[138] But see Paul Schiff Berman, *Global Legal Pluralism* (CUP 2012) 129.

[139] See Rudolf B Schlesinger, 'The Common Core of Legal Systems: An Emerging Subject of Comparative Study' in Kurt H Nadelmann, Arthur T von Mehren, and John N Hazard (eds), *Twentieth Century Comparative and Conflicts Law: Legal Essays in Honor of Hessel E Yntema* (Sijthoff 1961) 11.

[140] Corcodel (n 100) 139.

[141] See, most notably, David S Law, 'Generic Constitutional Law' (2005) 89 Minnesota Law Review 652.

[142] Zweigert and Kötz (n 99) 44 and 15, respectively.

[143] For a complex account of law's cultural existence, see Legrand (n 127).

ideological. Of course, discourses coming into national law from elsewhere (be it other national jurisdictions or international law) might make national law move sideways either in small or big steps (for example, when a country makes the leap from considering animals to be goods to recognizing their sentience and offering special protection). However, such a dis-location will never amount to a complete uprooting. Rather, the law will be re-emplaced according to a local logic.[144] This interaction between different legal orders or the imposition of norms from above will therefore result in a 'glocalization'.[145]

Both the desirability and the possibility of a global animal law cannot be usefully addressed without also considering the matter of translation. Thus, we will now turn to the central role of translation in comparative legal studies.

5. The Matter of Translation

Every comparative legal study inevitably requires an act of translation. Indeed, the role of the comparatist is to explain, by making use of her language, a foreign law generally formulated in a different language. She is frequently asked to translate all kinds of legal texts, including international treaties, statutes, judicial decisions, private legal agreements and legal scholarship, from one language into another. Consequently, it must be assumed that the task of the comparatist always already includes that of a translator. Given the centrality of translation to comparative legal studies, the comparatist must reflect upon a number of important questions before undertaking any comparative legal research. In particular, she needs to ask whether the translation from one language into another is possible. Further, she has to determine the strategy of translation to be used in the context of her endeavours.

Problematically, though, many scholars writing in the field of animal law seem to overlook translation issues. For example, the authors of a well-known introduction to animal law in the US, provide a brief overview of 'Animal Law in China' exclusively based on sources available in the English language.[146] Further, an edited collection of essays, entitled *Global Animal Law Research*, discussing the current and emerging legal framework on animal rights and welfare in the domestic laws of over 15 countries and on international law, provides guidance on how to conduct comparative legal research principally in the English language. Only one chapter, devoted to 'African law' (in the singular!) briefly mentions that in 'limited circumstances, the services of a translator may be needed to obtain an accurate translation'.[147] Moreover, the authors of a book entitled *A Worldview of Animal Law* covering the laws of Australasia, North America, South and Central America, Asia, the European Union, and Africa, admit right from the start that their 'process was somewhat limited by [their] own handicap of being fluent mainly in English, although [they] did [their] best […] to obtain

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[144] A number of scholars have expressed serious doubts regarding the transferability of law. See, in particular, Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 Maastricht Journal of European and Comparative Law 111; Pierre Legrand, 'What Legal Transplants?' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart 2001) 55–70; Gunther Teubner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences' (1998) 61 Modern Law Review 11; Máximo Langer, 'From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure' (2004) 45 Harvard International Law Journal 1.

[145] Roland Robertson, 'Glocalization: Time-Space and Homogeneity-Heterogeneity' in Mike Featherstone, Scott Lash and Roland Robertson (eds), *Global Modernities* (Sage 1995) 25–44.

[146] See Waisman, Frasch, and Hessler (n 55) 485–90.

[147] Kerry Lohmeyer, 'African Law on Animal Rights: Trophy Hunting' in Alex Zhang and Katherine Siler (eds), *Global Animal Law Research: Strategies and Resources* (Carolina Academic Press 2022) 203.

translations of helpful foreign laws and texts'.[148] Also, the 'World Animal Protection Index', aiming to provide information on animal welfare standards in over 50 countries, does not raise the matter of translation.[149] Within seconds, users can 'compare' animal welfare standards in up to four selected countries in the English language without being made aware of potential translation issues or possible translation strategies.

In recent years, some comparative legal scholars have drawn extensively on fields such as translation studies, linguistics, literary theory, history, sociology, philosophy, or postcolonial studies with a view to highlighting the key issue of translation in comparative law.[150] This is due to the fact that '[a]ll forms of comparison are problems of translation and all problems of translation are ultimately problems for comparison'.[151] The process of legal comparison inevitably implies the activity of translation. The task of the comparatist is to explain, using her language, a foreign law, which moreover is generally formulated in a different language.

Comparatists need 'to measure the gap or the *écart* between laws'.[152] They must be aware of the fact that languages do not signify identically. For example, comparatists should not assume that the English word 'animal' could account for the French legal 'reality' as it is expressed in '*animal*'. They should also be aware of the fact that the German expression '*Tierwohl*' ('animal welfare') cannot adequately reflect the French legal landscape, where the matter is about '*bien-être animal*'. The whole history of translation in fact shows that faithful renderings from one language into another are impossible. Further, comparatists must recognize that every translation involves an act of interpretation. The translator, before translating from one language to another, must first understand the source text. This act of interpretation is neither neutral nor objective. As a result, there is no genuine, true translation possible in comparative legal studies. As a matter of fact, 'truth' has no useful contribution to make to comparative law.[153]

Nevertheless, the comparatist must make the impossible possible.[154] Despite the irreducible differences across languages and cultures, the comparatist cannot refrain from translation. The question, however, arises as to how the comparatist should proceed? What can be regarded as the most appropriate strategy of translation for comparative legal research in animal law? Experts in animal law who wish to undertake comparative legal research should aim 'to develop a theory and practice of translation that resists dominant values in the

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[148] Wagman and Liebman (n 38) 11–12.
[149] See <https://api.worldanimalprotection.org/> accessed 15 March 2024.
[150] See Walter E Weisflog, *Rechtsvergleichung und juristische Übersetzung* (Schulthess 1996); Bernhard Großfeld, 'Comparatists and Languages' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (CUP 2003) 154–94; Sieglinde Pommer, *Rechtsübersetzung und Rechtsvergleichung* (Peter Lang 2006); Oliver Brand, 'Language as a Barrier to Comparative Law' in Frances Olsen, Alexander Lorz, and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Mcmillan 2009) 18–34; Simone Glanert (ed), *Comparative Law – Engaging Translation* (Routledge 2014).
[151] Aram A Yengoyan, 'Comparison and Its Discontents' in Aram A Yengoyan (ed), *Modes of Comparison* (University of Michigan Press 2006) 151.
[152] Pierre Legrand, 'Issues in the Translatability of Law' in Sandra Bermann and Michael Wood (eds), *Nation, Language, and the Ethics of Translation* (Princeton University Press 2005) 41 [emphasis original]. See also Pierre Legrand, 'Mind the Gap! Translation of Foreign Law Is Not What You Think' (2021) 8 Revista de Investigacoes Constitucionais 601.
[153] See Simone Glanert and Pierre Legrand, 'Foreign Law in Translation: If Truth Be Told…' in Michael Freeman and Fiona Smith (eds), *Current Legal Issues: Law and Language* (OUP 2013) 513–32.
[154] See Simone Glanert, 'Comparaison et traduction des droits: à l'impossible tous sont tenus' in Pierre Legrand (ed), *Comparer les droits, résolumment* (Presses Universitaires de France 2009) 279–311.

receiving culture so as to signify the linguistic and cultural differences of the foreign text'.[155] Indeed, Gayatri Spivak, a prominent feminist, literary critic, and translator, emphasizes, in an essay entitled 'The Politics of Translation', the need for an ethics of translation that showcases cultural differences. She observes that '[i]n the act of wholesale translation into English there can be a betrayal of the democratic ideal into the law of the strongest. This happens when all the literature of the Third World gets translated into a sort of with-it translatese, so that the literature by a woman in Palestine begins to resemble, in the feel of its prose, something by a man in Taiwan'.[156]

Undoubtedly, the knowledge and understanding of translation issues provided by comparatists are of utmost relevance to animal law. After all, in the pithy words of a leading contemporary translation studies scholar, 'translation changes everything'.[157] Despite the fact that the laws are necessarily informed by a given language and culture, would it be possible to determine, in an objective way, which of the laws under observation is the best? Can we assume, for example, that English law on animal sentience is objectively better than French law on animal sentience? In the next section, we will address the question of better law, which has given rise to important debates in comparative law, while bearing in mind the specific aims of animal law.

6. The Question of Better Law

Traditional comparative legal scholarship holds the view that '[o]ne of the aims of comparative law is to discover which solution of a problem is the best'.[158] For these authors, this means that 'a textbook of comparative law […] should indicate which is the best solution here and now'.[159] For example, as regards the legal consequences to the issuance of an offer, it is argued that 'the critic is forced to conclude that […] the German system is best'.[160] Another, perhaps more extreme, assertion is the one according to which 'German doctrinal scholarship will always be superior to that of other countries'.[161]

Putting one specific law or legal mentality on a pedestal does not do justice to foreign law. Not only must the researcher, sooner or later, account for the differences between the laws under observation, but she must also refrain from reading these differences as implying a hierarchy, and thus a failure on the side of a given law.[162] Laws are necessarily singular. Every law is the expression of a unique inscription in the world due to the fact that it is anchored in a language, a tradition, a constellation of practices, in short, in a horizon of possibilities that are not those of another law. There is no local language, privileged and objective, allowing the apprehension of law in neutral terms. And there is no metalanguage either that would allow us to evaluate comprehensively and definitively a law in relation to

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[155] Lawrence Venuti, *The Translator's Invisibility: A History of Translation* (2nd edn, Routledge 2008) 18.
[156] Gayatri Chakravorty Spivak, 'The Politics of Translation' in *Outside in the Teaching Machine* (Routledge 2009) 204.
[157] Lawrence Venuti, *Translation Changes Everything: Theory and Practice* (Routledge 2013).
[158] Zweigert and Kötz (n 99) 8.
[159] ibid 23.
[160] ibid 362.
[161] Ralf Michaels, '"Law as the Study of Norms" – Foundational Subjects and Interdisciplinarity in Germany and the United States' (*Verfassungsblog*, 19 February 2014) <https://verfassungsblog.de/law-as-the-study-of-norms-foundational-subjects-and-interdisciplinarity-in-germany-and-the-united-states-2/#.UwYUis6S1I1> accessed 15 March 2024.
[162] See Legrand, *Negative Comparative Law* (n 103) 229–70.

another. For laws to be legitimately ranked, one needs to be able to rely on some objective measurement of a kind that simply does not exist in socially constructed fields like law.[163]

When comparing, it is tempting to try to put forth hierarchies, especially in societies like ours, where we seem to function on the basis of rankings (and ratings) for everything, from restaurants to universities. In fact, comparison as a tool of reasoning has a long history of being associated with quantification and objectivity.[164] Fields like sociology, political sciences, or economics continue to embrace metric comparisons on a large scale.[165] Likewise, comparative law, which has always preferred to emulate the sciences reputed as 'hard', has not steered clear of such quantifying operations.[166]

For instance, the so-called 'Legal Origins Theory', initially developed by US economists, has been seeking to devise objective criteria for assessing the economic performance of laws by assigning numbers to laws, creating indexes, and running regressions, a type of statistical analysis meant to identify correlations between variables.[167] Significantly, the World Bank sponsored many of the initial 'Legal Origins' studies and, inspired by this literature, was motivated to conduct its own studies with a view to proposing policy advice. Thus, every year, from 2004 to 2020, the World Bank published its 'Doing Business' Reports assessing the ease of starting and doing business in not less than 190 economies.[168] Due to a series of irregularities, the 'Doing Business' Reports were discontinued and rebranded as 'Business Ready [B-READY]' in 2024.[169] The World Bank's evaluation is based on a methodology that involves a survey to be administered to domestic business professionals and the subsequent coding of laws.

Animal law seems to follow a similar path of numerical comparative legal reasoning. Since 2014, the World Animal Protection, with input from various partners in NGOs and academia, has been publishing, based on country specific reports, the Animal Protection Index (API) which ranks 50 countries around the globe according to their animal welfare policy legislation.[170] The index considers a series of indicators, such as the formal recognition of sentience in legislation or the presence of specific legislation on companion animals, wild animals, animals used in scientific research, animals in captivity, etc. Driven by an otherwise laudable ethos of improving the lives of animals, such indexes remain nonetheless problematic, epistemically speaking.

First, with their focus on legislation only, they leave aside many layers of information, such as caselaw or practice or the larger societal culture. How does one code such vast and

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[163] On incommensurability, see Ruth Chang (ed), *Incommensurability, Incomparability and Practical Reason* (Harvard University Press 1997). On incommensurability across laws, see Pierre Legrand, 'Withholding Translation' in Simone Glanert (ed), *Comparative Law – Engaging Translation* (Routledge 2014).

[164] See Émile Durkheim, *Les Règles de la méthode sociologique* (first published 1895, Flammarion 2010) 34–39.

[165] Charles Ragin, *The Comparative Method* (University of California Press 2014); Thanh Tran, *Developing Cross-Cultural Measurement* (OUP 2009).

[166] For a discussion of 'numerical comparative law', see Siems (n 110) 207–54.

[167] See Rafael La Porta and others, 'Legal Determinants of External Finance' (1997) 52 Journal of Finance 1131; Rafael La Porta, Florencio López-de-Silanes, and Andrei Shleifer, 'The Economic Consequences of Legal Origins' (2008) 46 Journal of Economic Literature 285.

[168] See <https://archive.doingbusiness.org/en/doingbusiness> accessed 15 March 2024.

[169] See <https://www.worldbank.org/en/businessready> accessed 15 March 2024.

[170] See <https://api.worldanimalprotection.org> accessed 15 March 2024.

unfixed data? Are these dimensions (all of them constitutive of law through and through) truly amenable to numbers without an important loss of meaning? Second, the idea of a better law is deficient since, among other things, it is impossible to stipulate definitive and complete criteria according to which laws could be objectively assessed. While laws are generally passed with a specific purpose in mind (here, animal welfare), they usually have far-reaching consequences, so much so that their success remains relative to the yardstick one decides to choose from the multitude of competing interests (one should not forget that animal rights sometimes come into conflict with environmental law or human rights). Intersectional thinking invites us to reflect more deeply on these connections.[171]

With animal law promoting first and foremost the goal of animal welfare, one would assume that the various standards employed for reaching this purpose are objective and that, as a consequence, all laws in the field will converge towards a single set of best practices. Yet, when studying the literature on animal law, the lack of consensus becomes immediately apparent. Not only do authors sometimes significantly diverge on the question of the level of protection to be given to different species, but, on a more philosophical front, they also fail to agree on what constitutes a good theoretical grounding for defending the wellbeing of animals.[172]

Now, it might be that the reflections arrived at in comparative law concerning the idea of a better law do not apply *mutatis mutandis* to animal law. Arguably, the urgent need 'to recognize our ethical responsibility to the […] animals'[173] might justify a look at animal law in isolation, without paying (too much) regard to economic, historical, political, religious, or other considerations. Notwithstanding this particular context, comparative law can still provide a cautionary tale about what can go wrong when different laws are transformed into numbers and ultimately ranked according to some supposedly objective standards.[174]

The final section concerns the importance of interdisciplinary research in comparative animal law. It should have become clear by now that both comparative law and animal law need to draw on other disciplines in order to gain a more in-depth understanding of their practices.

7. The Pledge to Indiscipline

The acceptance of culture as part of the comparatist's epistemic toolkit calls for approaching law interdisciplinarily. The idea that culture requires interdisciplinary work is not novel. Indeed, the concept of culture is often associated with the idea of interdisciplinarity. For instance, it has been argued that '[c]ultures, in their ever-shifting interactions and complexities, need to be both researched and taught from interdisciplinary perspectives'.[175] Indeed, culture cannot be extracted from legal texts but demands that the comparatist's radar be wide enough to capture insights from other disciplines. For example, transmissibility, one of culture's features, points to the passage of time and thus inevitably orients the researcher towards history. Transversality, a culture's ability to transmit itself from one individual to another despite the differences that otherwise separate them, invites reflections from a vast

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[171] See Offor (n 137) 268.
[172] For instance, Offor argues that the liberal tradition on which animal ethics has been founded is problematic and must be transcended for several reasons: see ibid 283.
[173] Martha C Nussbaum, *Justice for Animals* (Simon & Schuster 2022) xv.
[174] For a critical appraisal of such conversion of laws into numbers, see Mercescu (n 112).
[175] Susan Hegeman, *The Cultural Return* (University of California Press 2012) 18.

array of other disciplines too. Being 'a patterned conduct around a particular thematic identity',[176] culture is ubiquitous; there is almost nothing that sits outside culture. Sociology as well as philosophy, literary studies as well as political science, linguistics as well as anthropology could all provide relevant insights. Animal law also solicits interdisciplinary reflections, as one can easily notice from studying the relevant literature.[177] In particular, life sciences offer unique insights into the world of animals, without which it would be difficult to build persuasive animal ethics.[178] In addition, philosophy and political theory make crucial contributions to animal law, much needed for launching a strong call for animal justice.[179] These are only a few examples demonstrating the important and rich interaction between the various fields of knowledge.

As a matter of fact, leaving aside the specific reasons why comparative law and animal law would require a commitment to interdisciplinary thinking, one can make a case for interdisciplinarity in general. Indeed, students of interdisciplinarity can find at least three recurrent justifications in favour of the cross-fertilization of knowledge: ontological, pragmatic, and epistemological. According to the first vision, knowledge is that which accurately grasps what would be 'out there'. The interdisciplinary observer is credited with the power to definitively document the integrality of a complex phenomenon deemed to have multiple layers. As one author frames it, interdisciplinarity represents 'a response to the nature of the reality being studied'.[180] In contradistinction with the previous approach, the pragmatic justification frames the call to interdisciplinarity as being triggered by the necessity to solve social issues and other unresolved problems. It does not concern itself with the 'nature' of things but, in a typically pragmatist fashion, only with the impact of our knowledge. Last but not least, the epistemological approach to interdisciplinarity focuses on the plurality of discourses. Since discursive practices join other forces in the creation of 'reality', what matters is how the researcher manages to make these interact. As long as more than one discipline talks about a given object of study, it is commendable to generate an encounter between the various perspectives. It is then not reality itself that is being recomposed and thus better explained. It is the languages that are being reimagined: ultimately, then, what counts is the intertextuality put forth by the researcher. Unlike the ontological approach, the epistemological one does not conceive of interdisciplinarity *as an adequatio rei et intellectus*.

None of these justifications equips us, however, with a clear-cut method, and a lot will ultimately depend on the researcher's instincts. Stepping outside one's known territory is no easy task, and the experience can soon amount to nothing less than intellectual vertigo.[181] Not only will the comparatist have to deal with a different disciplinary language, but she will possibly be confronted with competing theories in a context in which there are no definite

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[176] Mary Jane Collier, 'Cultural and Intercultural Communication Competence' (1989) 13 International Journal of Intercultural Relations 287, 289.
[177] See Kim Socha and Les Mitchell, 'Critical Animal Studies as an Interdisciplinary Field: A Holistic Approach to Confronting Oppression' (2014) 448 Counterpoints 110–32.
[178] See Lori Marino, 'The Synergism of Animal Law and Science', The Cambridge Centre for Animal Rights Law <https://www.youtube.com/watch?v=Qgf_L4pO9sY> accessed 15 March 2024.
[179] See, for instance, Jacques Derrida, *L'Animal que donc je suis* (Galilée 2006); Sue Donaldson and Will Kymlicka, *Zoopolis*: *A Political Theory of Animal Rights* (OUP 2013); Irus Braverman (ed), *Animals, Biopolitics, Law: Lively Legalities* (Routledge 2016); Elisabeth de Fontenay, *La Silence des bêtes* (Fayard 1998).
[180] William Newell, 'A Theory of Interdisciplinary Studies' (2001) 19 Issues in Integrative Studies 1, 15.
[181] For a study of interdisciplinarity's challenges and limits, see Alexandra Mercescu, 'The Merits of Interdisciplinarity' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2022) 115–36.

criteria for how one should choose among the various options. What is more, in venturing outside the conventional boundaries of his discipline, the researcher runs the risk of letting the other discipline subvert their own. Ideally, an interdisciplinary exchange should be bilateral, with disciplines respectfully informing (provoking) each other. And while such reciprocity will not always be possible, scholars must at least ensure an epistemic balance so that one discipline does not end up dominating the other. In such a scenario, much of the critical ethos that drove interdisciplinarity in the first place would be lost.

In any case, the comparatist who seeks the contribution of another discipline must be aware that her endeavour faces important limitations. Indeed, instead of hoping for a thorough integration of more than one disciplinary knowledge into her text, the comparatist must be content with an approach that can be optimally called 'indiscipline'. More aptly than interdisciplinarity, the notion of indiscipline accounts for the outcome that comparative legal scholars purport to achieve as they engage in epistemic decentering, as they move away from the *discipline* of law, that is, as they take their critical distance from the received and authoritative ways of thinking 'like a lawyer'. As they subversively mobilize other vocabularies and other disciplinary worldviews in order to improve their legal argument, comparatists do not turn themselves into philosophers or anthropologists or whatever and draw on alternative discourses on a level playing field with law – that would be interdisciplinarity – but it is rather that, more modestly, they collect a range of philosophical or anthropological insights so as to sustain their law claim and indeed to enrich it in order to make it more persuasive. If you will, philosophy or anthropology are appropriated with a view to making the legal contention stronger. Having said this, it remains that the term 'interdisciplinarity' continues to be widely used,[182] which means that the comparatist aiming to do as we suggest will have to explain herself.

Final Remarks

Animal law, a growing field, can learn from comparative law. Experts in animal law will greatly benefit from a number of insights provided by comparative legal scholars, in particular regarding the choice of an appropriate comparative legal approach, the modalities of interpretation, the significance of law-as-culture, the challenges of global law, the key role of language and translation, the limits of better law, and the merits of indiscipline. *Vice versa*, comparative law, a well-established subject, can learn from animal law. The application of comparative legal theories to animal law will provide new avenues of thought for comparatists who rarely wander off the beaten path. We therefore expect this mutual intellectual exchange to contribute to the development of both disciplines and ultimately to their transformation into *critical indisciplines* that will facilitate a novel understanding of what we are studying to the benefit of both human and non-human animals.

We focused on a selection of topics that, in our view, are particularly suitable to change the way we perceive both animal law and comparative law. In doing so, we did not purport to offer concrete paths to be followed, but, rather, sought to provide epistemic guidance. Our chief ambition is to enhance the theory and practice of animal law, on the one hand, and to

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[182] See generally Jerry A Jacobs, *In Defense of Disciplines: Interdisciplinarity and Specialization in the Research University* (University of Chicago Press 2013); Harvey G Graff, *Undisciplining Knowledge: Interdisciplinarity in the Twentieth Century* (Johns Hopkins University Press 2015); Julie Thompson Klein, 'Typologies of Interdisciplinarity: The Boundary Work of Definition' in Robert Frodeman, Julie Thompson Klein, and Carl Mitcham (eds), *The Oxford Handbook of Interdisciplinarity* (2nd edn, OUP 2017) 21–34.

re-orient comparative law towards new intellectual forays, on the other hand. As such, we would like to see this synergy between the two disciplines not as just another confirmation of what we already know (though, of course, that as well could be a legitimate objective, even if more modest), but especially as a site of confrontation where one discipline usefully stands as an introspective mirror to the other. In fact, we must realize that, like any rapprochement, the one we endorse here is likely to lead to various tensions between discourses – the more one knows about the Other, the more differences will show up. But aren't these frictions, tensions, and ruptures precisely what stimulate the advancement of knowledge?

Success is no guarantee, and it is reasonable to expect more or less explicit reluctance, doubts, or even opposition to our attempts at cross-fertilization. For instance, animal lawyers who prefer to embrace a more prescriptive stance towards their research might take the view that comparing legal cultures, understood as repositories of condemnable practices towards animals, is of no use for the greater goal of implementing an international legal instrument truly capable of ensuring the welfare of animals worldwide. Conversely, comparatists could ask themselves: What else is there to be said after more than half a century of intensive theorizing? For our part, we are confident that, armed with the willingness to learn, to pay attention even to fine details, to push boundaries, to ultimately cross bridges, and to go as far as possible in their legal research on animals, both experts in animal law and specialists in comparative law will derive inspiration from each other's work, and so will ultimately reap important theoretical and practical advantages from their encounter.

We trust that the new research to be produced in animal law, informed by comparative law, will feed back into the latter discipline and will thus allow us, comparatists, to refine some of our epistemic assumptions and ways of doing comparative legal research. And while we acknowledge the potential of animal law to rejuvenate comparative law, we feel that this is not something that we could have comprehensively addressed here, in advance of actual comparative animal law studies practiced along the lines of what we are proposing. However, we remain confident that comparative animal law has a promising future. Hence, our call for 'Comparative Animal Law!'

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The following contributions to this 'Special Issue' are the final versions of a selection of papers presented at the '1st Annual Postgraduate Workshop on Comparative Animal Law' on 25th–26th May 2023, a joint initiative by the Kent Centre for European and Comparative Law, Kent Law School, UK; the Center for Animal Law Studies, Lewis & Clark Law School, USA; the Faculty of Law and Political Science, Aix-Marseille University, France; and the Faculty of Law, West University of Timișoara, Romania.

This annual Workshop has been specifically designed for LLM, MSL, PhD candidates, and post-doctoral research fellows from around the world working in the field of comparative animal law broadly understood. The project pursues various aims. In particular, the co-organizers wish to promote innovative research on animal law from a comparative perspective; provide postgraduate students with an opportunity to discuss their current research on comparative animal law with their peers and a team of experts; and allow for the creation of networks between young researchers from a wide range of cultural backgrounds having an interest in comparative animal law.

We are most grateful to our collaborators, Olivier Le Bot (Faculty of Law and Political Science, Aix-Marseille University, France); Raj Reddy (Center for Animal Law Studies, Lewis & Clark Law School, USA); and Megan Senatori (Center for Animal Law Studies, Lewis & Clark Law School, USA) for their unwavering support and dedication to the project. In the name of the co-organizers, we would like to thank our keynote speakers, Joyce Tischler (Center for Animal Law Studies, Lewis & Clark Law School, USA) and Pierre Legrand (Sorbonne, France) for sharing with all participants in the Workshop most valuable insights into the theory and practice of comparative animal law. We are indebted to Pamela Frasch (Center for Animal Law Studies, Lewis & Clark Law School, USA); Hira Jaleel (Center for Animal Law Studies, Lewis & Clark Law School, USA); Visa Kurki (Faculty of Law, University of Helsinki, Finland); and Przemyslaw Tacik (Jagiellonian University, Kraków, Poland) for agreeing to act as discussants. Last but not least, we would like to express our sincere gratitude to Tero Kinvinen for accepting to release the contributions in the *Global Journal of Animal Law* and for his editorial work.

Since the first Workshop took place, we have been most fortunate in securing the further collaboration of the NALSAR University of Law, India. Vivek Mukherjee and Shreya Padukone have very kindly joined forces with us to ensure the enhancement and continuation of the Comparative Animal Law initiative.

SG and AM