

Global Journal of Animal Law

Special Issue: 'Comparative Animal Law'

Vol 12 No 2

2024

Index

Comparative Animal Law!	1
Simone Glanert and Alexandra Mercescu	
A Comparative Analysis of Farmed Animal Protection Laws in the European Union and the United States	28
Joyce Tischler and Suzannah Smith	
The Living Stock of Antiquity: Examining Conceptualizations of Non-human Animals as Tradable Commodities in the Ancient World	36
Jessica C Tselepy	
Uncovering the Legal Vulnerability of Hunting Dogs in France and Spain	52
Laure Gisie	
From Local to Global: A Comparative Study of Animal Law Protections in International Disasters Around the World	65
Altamush Saeed	
The Challenges of Global Animal Law	86
Mo Esan	

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'

– Montaigne¹

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 presumption, 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).

³ See, for instance, René David, *Les Grands systèmes de droit contemporains* (Daloz 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

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 Nonexistent 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 Júnior, ‘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 heinous and unnatural crime of laying an egg”’.²³ Moreover, ‘[i]n 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:

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 Institutionist 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

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

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

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,

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 Macmillan 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 institutes⁷³ 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

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, Frasc 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 Utilitarianism, 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

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 souris 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).

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

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

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,

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

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 incontrovertible fact of nature. As such, the responsible researcher who will be engaging with the

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

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

see Iyan Offer, '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 Offer (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 Offer, '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 Corcodei (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

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

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 Investigações 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, résolument* (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

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/#.UwYUis6S111>> 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

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

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

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

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!'

•

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 Frascch (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

A Comparative Analysis of Farmed Animal Protection Laws in the European Union and the United States

Joyce Tischler* and Suzannah Smith**

Abstract

Industrial animal agriculture is the predominant form of meat, dairy and egg production in the US, Europe and many other parts of the world. This food production system, which the US Environmental Protection Agency calls concentrated animal feeding operations or CAFOs, forces 80 billion farmed animals per year to live crowded together and in intensive confinement during the 99% of their lives in which they are being raised. If left unregulated, the agriculture industry treats these animals as if they are automatons whose basic needs and interests can be ignored. Starting in 1974, the European Union (EU) has passed five directives that set specific and measurable husbandry and housing requirements for farmed animals. The EU directives, while not perfect, offer the highest standards in the world for rearing farmed animals. The US, on the other hand, has no federal law that would establish minimum standards for how farmed animals are housed and treated, leaving such decisions to the industry that owns and raises those animals, and forcing American animal advocates to search for other legal avenues to increase protections for farmed animals. This paper offers a comparative analysis of the US and EU legal standards for raising farmed animals.

Keywords

Farmed animals; industrial; agriculture; EU; US; directives; battery cages; gestation crates

I. Introduction

Eighty billion farmed animals are raised and killed each year across the globe, and the dominant form of production of these animals is what the United States (US) Environmental Protection Agency calls 'concentrated animal feeding operations' or 'CAFOs'.¹ Inside CAFOs, thousands (or tens of thousands) of animals are generally crowded indoors and

* Joyce Tischler is a Professor of Practice at the Center for Animal Law Studies at Lewis & Clark Law School in Portland, Oregon, US, where she teaches Industrial Animal Agriculture Law. In 1979, Professor Tischler co-founded the Animal Legal Defense Fund (ALDF), where she served as the CEO for 25 years and thereafter, the general counsel until 2019, working to build that NGO and the animal law movement.

** Suzannah Smith is a JD candidate entering her third year at Lewis & Clark Law School. She is heavily involved in animal law, including a clerkship in 2023 with Professor Tischler and a litigation clerkship in summer 2024 for the Animal Legal Defense Fund. Suzannah serves on the Board of Directors of the Lewis & Clark ALDF chapter, and she will be the co-director of that student group for 2024–25. She will also serve as the Editor-in-Chief of the Animal Law Review for 2024–25.

¹ US Environmental Protection Agency, 'Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs' <https://www3.epa.gov/npdes/pubs/sector_table.pdf> accessed 15 March 2024. See also Hannah McKay, 'Mega Farms Called CAFOs Dominate Animal Agriculture Industry' (*Sentient Media*, 29 September 2021) <<https://sentientmedia.org/cafo/>> accessed 15 March 2024.

denied the ability to engage in natural activities.² To respond to the frustration and coping responses that the animals exhibit in this highly unnatural production system, the US agricultural industry has devised a variety of mutilations, such as: tail docking; castration; and removal of horns, the tips of birds' beaks, and toes, all performed without anesthesia or analgesics.³ While this system was invented in the US, it now exists or is being introduced into most other countries.⁴

This paper will review the laws that have been developed by the European Union (EU) to provide minimum protections for land animals while they are being raised for food, which is 99% of the time they are alive, and it will compare those laws to the laws of the US.⁵ While still flawed, EU laws offer the highest welfare standards for farmed animals currently seen in the world.⁶ In juxtaposition, there is no federal US law protecting farmed animals while they are being raised for food production.⁷

II. Farmed Animal Welfare Legislation in the European Union

The EU first began legislating to protect farmed animals in 1974.⁸ It has passed five directives⁹ that set standards for farmed animals' housing and treatment: Council Directive 1999/74/EC of 19 July 1999, laying down minimum standards for the protection of egg-laying hens ('Hens Directive');¹⁰ Council Directive 2007/43/EC of 28 June 2007, laying down minimum standards for the protection of chickens kept for meat production ('Chickens Directive');¹¹ Council Directive 2008/120/EC of 18 December 2008, laying down minimum standards for the protection of pigs ('Pigs Directive');¹² Council Directive 2008/119/EC of 18 December 2008, laying down minimum standards for the protection of calves ('Calves

² See McKay (n 1).

³ See *ibid*.

⁴ See Hemi Kim, 'Factory Farming: What the Industry Doesn't Want You to Know' (*Sentient Media*, 4 August 2021) <<https://sentientmedia.org/factory-farming/>> accessed 15 March 2024.

⁵ This paper covers land animals (livestock and poultry) during the time they are being raised for food. It does not cover laws on transport or slaughter, nor does it cover fish and aquatic animals because the laws and methods of raising or catching the latter are quite different.

⁶ See Nicholas K Pedersen, 'Detailed Discussion of European Animal Welfare Laws 2003 to Present: Explaining the Downturn' (*The Animal Legal and Historical Center*, 2009) <<https://www.animallaw.info/article/detailed-discussion-european-animal-welfare-laws-2003-present-explaining-downturn>> accessed 15 March 2024.

⁷ See Animal Welfare Institute, *Legal Protection for Animals on Farms* (May 2022) 1 <<https://awionline.org/sites/default/files/uploads/documents/22-Legal-Protections-Farm.pdf>> accessed 15 March 2024.

⁸ See Denis Simonin and Andrea Gavinelli, 'The European Union Legislation on Animal Welfare: State of Play, Enforcement and Future Activities' in Sophie Hild and Louis Schweitzer (eds) *Animal Welfare: From Science to Law* (La Fondation Droit Animal, Ethique et Sciences 2019) 59 <<https://www.fondation-droit-animal.org/documents/AnimalWelfare2019.v1.pdf>> accessed 15 March 2024).

⁹ EU directives are binding for all Member States of the EU and they dictate the end result that is to be achieved. However, it is left to the Member States to determine the methods for how to achieve the result. By contrast, an EU regulation is binding and automatically becomes part of the national law of each Member State.

¹⁰ Council Directive 1999/74/EC, Laying Down Minimum Standards for the Protection of Laying Hens [1999] OJ L 203, 53.

¹¹ Council Directive 2007/43/EC, Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production [2007] OJ L 128, 19.

¹² Council Directive 2008/120/EC, Laying Down Minimum Standards for the Protection of Pigs [2008] OJ L 47, 5.

Directive’);¹³ and Council Directive 98/58/EC of 20 July 1998, concerning the protection of all other farmed animals (‘General Directive’).¹⁴

For purposes of illustration, a more detailed review of the Hens Directive demonstrates the level of detail common in EU farmed animal legislation. For example, the Hens Directive specifies measurements and requirements for egg-laying hen housing systems.¹⁵ In 1993, six years before the Hens Directive was approved, the European Commission received a report from the Scientific Veterinary Committee (‘Committee’) about the welfare of egg-laying hens in differing housing systems. The Committee advised the Commission that hens kept in battery cages experience very poor welfare.¹⁶ The Hens Directive banned battery cages as of 1 January 2012.¹⁷ From 1 January 2003–1 January 2012, no new battery cages could be built.¹⁸ From 2003–12, battery cages were required to provide at least 550 square centimeters (‘cm’) of space per hen, and to be at least 40 cm high in over 65% of the cage area, among other requirements.¹⁹

While banning battery cages was a positive step, the European Union still allows producers to house egg-laying hens in ‘enriched cages’.²⁰ The Hens Directive requires that an enriched cage provides 750 cm² area per hen, 600 cm² of which must be usable space;²¹ a nest in which to lay their eggs;²² litter that enables behaviors such as pecking and scratching;²³ and perches for resting on, which allow at least 15 cm of space per hen.²⁴ Enriched cages have become the dominant housing system in the EU for egg-laying hens.²⁵

European animal advocacy groups argue that while enriched cages are an improvement over barren battery cages, they are not a major improvement because the additional space requirements are too small, and the equipment for perching and scratching are too meager to enable hens to engage in natural hen behaviors.²⁶

The Hens Directive also sets standards for alternatives to caged housing, to wit, cage free and free range systems.²⁷ It requires all alternative housing systems to provide at least one square meter of usable area for every nine hens and at least one nest for every seven hens, with at least one square meter of nest space for a maximum of 120 hens if group nests are

¹³ Council Directive 2008/119/EC, Laying Down Minimum Standards for the Protection of Calves [2008] OJ L 10, 7.

¹⁴ Council Directive 98/58/EC, Concerning the Protection of Animals Kept for Farming Purposes Which Covers all Other Farmed Animals [1998] OJ L 221, 23.

¹⁵ See Council Directive 1999/74/EC [1999] OJ L 203, 53.

¹⁶ See European Commission Press Release IP/98/235, The European Commission Adopts Measures to Improve the Welfare of Laying Hens (11 March 1998).

¹⁷ See Council Directive 1999/74/EC [1999] OJ L 203, art 5, 53, 55.

¹⁸ See *ibid.*

¹⁹ See *ibid.* 54–55.

²⁰ Council Directive 1999/74/EC [1999] OJ L 203, 53, 55.

²¹ See Council Directive 1999/74/EC [1999] OJ L 203, art 6, 53, 55.

²² See *ibid.*

²³ See *ibid.*

²⁴ See *ibid.*

²⁵ See Hans-Wilhelm Windhorst, ‘EU Egg Production Since the Exit from Conventional Cages’ (2019) 53(1) *Lohmann Information* 4 <<https://lohmann-breeders.com/media/2020/08/VOL53-WINDHORST.pdf>> accessed 15 March 2014.

²⁶ See ‘Better Lives for Laying Hens’ (*Eurogroup for Animals*) <<https://www.eurogroupforanimals.org/what-we-do/areas-of-concern/better-lives-laying-hens>> accessed 15 March 2024.

²⁷ Council Directive 1999/74/EC [1999] OJ L 203, art 4, 53, 54.

used.²⁸ The hens must be provided with adequate perches with at least 15 cm per hen.²⁹ The hens must be given at least 250 square cm of littered area per hen, with the litter occupying at least one third of the ground surface.³⁰ If the housing is an aviary, or multi-level system, there must be no more than four levels; the headroom between the levels must be at least 45 cm; the drinking and feeding facilities must be distributed in such a way as to provide equal access for all hens; and the levels must be arranged to prevent feces droppings from falling on the levels below.³¹ If hens have access to outdoor open runs (fenced areas where the hens can roam), there must be several popholes (doorways large enough for a chicken to move through) giving direct access to the outdoor area.³² The popholes must be at least 35 cm high and 40 cm wide and extend along the entire length of the building with total openings of two meters per 1000 hens.³³

In all housing systems, the Hens Directive mandates that hens must be inspected at least once per day, the sound level within the housing must be minimized, all buildings must have light levels sufficient to allow all hens to show normal levels of activity, feces must be removed as often as necessary, and dead hens must be removed every day.³⁴ All mutilations are prohibited. However, beak trimming (cutting off the end of the hen's beak) may be performed if done to prevent feather pecking and cannibalism, and carried out by qualified staff on chicks who are less than ten days old.³⁵

Enforcement of the EU farmed animal welfare laws poses a significant problem as the actual farming practices vary widely amongst the Member States.³⁶ For example, Austria, Luxembourg, and Sweden have almost completely eradicated the use of cages, whereas Spain, Portugal, and Malta still largely rely on them.³⁷

The other EU directives have a similar level of specificity. Sows cannot be kept in gestation crates except during the first four weeks of pregnancy.³⁸ Tethering calves with chains or ropes to limit their movement is prohibited.³⁹ Chickens raised for meat must be inspected twice daily and have permanent access to dry litter, and the workers who oversee their care must be trained.⁴⁰ Dairy cows must not be given bovine somatotropin as it increases the risk of mastitis and foot and leg problems, both of which cause pain and suffering for the cows.⁴¹

²⁸ See *ibid.*

²⁹ See *ibid.*

³⁰ See *ibid.*

³¹ See *ibid.*

³² See *ibid.*

³³ See *ibid.*

³⁴ See Council Directive 1999/74/EC, annex [1999] OJ L 203, 53, 57.

³⁵ See *ibid.*

³⁶ See European Court of Auditors, *Animal Welfare in the EU: Closing the Gap Between Ambitious Goals and Practical Implementation* (Special Report, no 31, annex II, 2018) <https://www.eca.europa.eu/Lists/ECADocuments/SR18_31/SR_ANIMAL_WELFARE_EN.pdf> accessed 15 March 2024.

³⁷ See Elisa Kollenda and others, *Transitioning to Cage-Free Farming in the EU* (Policy Report, Institute for European Environmental Policy, October 2020) 10 <https://ieep.eu/wp-content/uploads/2022/12/Transitioning-towards-cage-free-farming-in-the-EU_Final-report_October_web.pdf> accessed 15 March 2024.

³⁸ See Council Directive 2008/120/EC [2008] OJ L 47, art 3, 5, 7.

³⁹ See Council Directive 2008/119/EC, annex [2008] OJ L 10, 7, 10.

⁴⁰ See Council Directive 2007/43/EC, annex I [2007] OJ L182, 19, 24.

⁴¹ See Council Decision 1999/879/EC, Concerning the Placing on the Market and Administration of Bovine Somatotrophin (BST) and Repealing Decision 90/218/E [1999] OJ L 331, 71.

In 2020, the European Commission announced that, pursuant to its ‘Farm to Fork Strategy’, it planned to propose revised animal welfare legislation by 2023 to align the laws with the latest scientific evidence, broaden the scope of the laws, make it easier to enforce the laws, and ensure a higher level of animal welfare.⁴² However, the proposals to revise those laws did not meet the 2023 deadline and according to the European Commission, ‘the work is still ongoing’.⁴³

Meanwhile, animal advocates in Europe are conducting a campaign called End the Cage Age to halt the use of all cages for all farmed animals.⁴⁴ They argue that no matter how well a cage system is built and monitored, it still constitutes inferior welfare for the animals who must live in those cages because their movements are extremely restricted, and they are denied the ability to make choices about their surrounding environment, an ability that is central to an animal’s well-being.⁴⁵ The scope and content of future improvements to the EU laws relating to farmed animals, and whether advocates will get farmed animals out of cages, remains to be seen.⁴⁶

III. Farmed Animal Welfare Legislation in the US

Ten billion farmed animals are raised and killed annually in the US.⁴⁷ Yet there is absolutely no federal law covering the welfare of farmed animals while they are being raised in a production facility.⁴⁸ Thus, the animal agriculture industry sets animal welfare standards in the US.⁴⁹ These standards, or lack thereof, maximize industry profit at the expense of the animals’ welfare. Regarding egg-laying hens, the egg industry developed and uses battery cages for hens, extreme crowding is allowed, mutilations, such as beak trimming are standard, and because male chicks cannot produce eggs, they are killed soon after birth.⁵⁰ The World Organization for Animals (OIE) has established standards for raising farmed animals.⁵¹ However, the US is not in compliance with many of those standards.⁵²

The shocking disparity between the EU and US is driven in part by American agricultural exceptionalism and aversion to regulation. The CAFO system started in the US and resulted

⁴² European Commission, *Revision of the Animal Welfare Legislation* <https://food.ec.europa.eu/animals/animal-welfare/evaluations-and-impact-assessment/revision-animal-welfare-legislation_en#:~:text=Since%20it%20was%20the%20most,and%20cats%20and%20their%20traceability> accessed 15 March 2024.

⁴³ *ibid.*

⁴⁴ See Compassion in World Farming, *End the Cage Age – Why the EU Must Stop Caging Farm Animals* (Report, October 2020) 5 <<https://www.europarl.europa.eu/cmsdata/231961/End%20the%20Cage%20Age'%20report,%20October%202020.pdf>> accessed 15 March 2024.

⁴⁵ See *ibid* 6.

⁴⁶ See European Commission (n 42).

⁴⁷ See Hannah Ritchie, *How Many Animals are Factory-Farmed?* (*Our World in Data*, 25 September 2023) <<https://ourworldindata.org/how-many-animals-are-factory-farmed>> accessed 15 March 2024.

⁴⁸ See Animal Welfare Institute (n 7). For the sake of clarity, the US Congress has passed federal laws covering transport of animals, 49 USC § 80502 (Twenty-Eight Hour Law), and slaughter, Humane Methods of Livestock Slaughter Act, 7 USC §§ 1901–7.

⁴⁹ See David Green, ‘The Reality of the U.S. Approach to Animal Welfare’ (*Open Access Government*, 6 January 2023) <<https://www.openaccessgovernment.org/the-reality-of-the-u-s-approach-to-animal-welfare/150671/>> accessed 15 March 2024.

⁵⁰ See McKay (n 1).

⁵¹ See World Animal Protection, *Animal Protection Index (API) 2020 – United States of America: Ranking D* (March 2020) <https://api.worldanimalprotection.org/sites/default/files/api_2020_-_usa.pdf> accessed 15 March 2024.

⁵² See *ibid.*

in extreme corporate consolidation of the animal agriculture industry,⁵³ yet, massive corporations maintain the façade that they are and represent family farms.⁵⁴ Americans tend to view agriculture as inherently different from other industries,⁵⁵ and the myth of the small family farm, in which animals are raised out on pastures or the range, persists.⁵⁶ American culture is defined by hyper individualism; many Americans do not trust big government and dislike being regulated. This combination of societal and cultural factors facilitates the lack of any federal oversight in the US regarding how farmed animals are raised.

In response to the lack of federal law to set standards for how farmed animals are raised, some progress has been made in the US by animal advocacy organizations and voters acting at the state level.⁵⁷ Twenty-six of the fifty US states allow their citizens to pass laws through ballot initiatives, whereby the citizens bypass the state legislative process and vote directly on a proposal to make it into law.⁵⁸ Animal advocacy groups have successfully conducted ballot initiative campaigns in numerous states.⁵⁹ The first state farmed animal protection ballot initiative was passed by the voters of Florida in 2002, and outlawed gestation crates for housing sows (female pigs).⁶⁰ This was followed by an initiative in 2004, in which California voters outlawed the production and sale of foie gras made from force feeding ducks and geese in order to enlarge their livers; that law went into effect in 2012.⁶¹ Since then, the voters of over one dozen American states have banned some forms of intensive confinement or husbandry that causes farmed animal suffering.⁶² The other US states have

⁵³ See Kim (n 4).

⁵⁴ See Jessica Scott-Reid, 'The 'Humanewashing' of America's Meat and Dairy, Explained' (Vox, 21 December 2021, 8:00 AM) <<https://www.vox.com/22838160/animal-welfare-labels-meat-dairy-eggs-humane-humanewashing>> accessed 15 March 2024.

⁵⁵ See Jessica Guarino, 'The Injustices of Agricultural Exceptionalism: A History and Policy of Erasure' (2023) 27 Drake Journal of Agricultural Law 321, 322.

⁵⁶ See Charlotte E Blattner and Odile Ammann, 'Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus' (2020) 15(2) Journal of Food Law and Policy 92, 150.

⁵⁷ See Animal Welfare Institute (n 7) 1–9.

⁵⁸ See 'States with Initiative or Referendum' (Ballotpedia) <https://ballotpedia.org/States_with_initiative_or_referendum> accessed 15 March 2024.

⁵⁹ See American Welfare Institute (n 7) 9–12.

⁶⁰ See *ibid* 11.

⁶¹ See California Health & Safety Code, §§ 25980–25984 (2011).

⁶² Other state voter initiatives include the following measures: Arizona, 2006: banned gestation crates and 'veal' calf crates (Arizona Revised Statutes Annotated, § 13-2910.07); Oregon, 2007: outlawed gestation crates (Oregon Revised Statutes, § 600.150); California, 2008: banned battery cages, gestation crates and calf crates (California Health & Safety Code, § 25990); Colorado, 2008: banned gestation crates and calf crates (Colorado Revised Statutes Annotated, § 35-50.5-102); Maine, 2009: outlawed gestation crates and calf crates (Maine Revised Statutes Annotated, tit 7, § 4020); Michigan, 2009: banned battery cages, gestation crates and calf crates (Michigan Compiled Laws Annotated, § 287.746); California, 2009: banned tail docking of cattle (California Penal Code, § 597n); Ohio, 2011: banned tail docking of dairy cattle (Ohio Administrative Code 901:12-6-02); Washington State, 2011: producers with 3,000+ egg laying hens must give each hen 116.3 sq. inches of space and areas for nesting, scratching and perching (Washington Revised Code, §§ 69.25.065, 69.25.107); Rhode Island, 2012: banned gestation crates and calf crates (4 Rhode Island General Laws Annotated, § 4-1.1-3) and banned tail docking of cattle unless performed by a veterinarian while animal is anesthetized (*ibid* § 4-1-6.1); New Jersey, 2012: banned tail docking of cattle (New Jersey Administrative Code, § 2:8-2.6); Kentucky, 2014: veal calves must be raised in group housing (302 Kentucky Administrative Regulations, 21:030); Massachusetts, 2016: banned battery cages, gestation crates and calf crates (Massachusetts Acts, ch 333) (amended by legislation in 2021, now at 940 Code of Massachusetts Regulations, 36.00); Rhode Island, 2018: banned battery cages (Rhode Island General Laws Annotated, §§ 4-1.1-1 to 1.5); California, 2018: clarified 2008 bans, and prohibited in-state sale of products from egg-laying hens, sows and calves raised in intensive confinement (California Health & Safety Code, ch 13.8 § 25990); Oregon, 2019: banned in-state sale of eggs from battery caged hens (Oregon Revised Statutes, §§ 632.835–632.850); Colorado, 2020:

not prohibited intensive confinement, battery cages, gestation and farrowing crates, calf crates, or standardized husbandry that allows for mutilations such as tail docking, castration without anesthesia or analgesics, debeaking, dehorning, or toe trimming (of turkeys).

In 2018, California passed a ballot initiative referred to as ‘Proposition’ or ‘Prop 12’. Prop 12 bans the in-state sale of pork from CAFOs using gestation crates and sets the highest legal space requirements for pregnant pigs in the US. It also bans the in-state sale of veal (meat from calves) from facilities that use crates, and sets the highest legal space requirements for ‘veal calves’ in the US. An earlier initiative, (Prop 2, passed by the California voters in 2008) mandated that egg-laying hens must be able to turn around and spread their wings. Prop 12 explicitly establishes that eggs produced and sold in California must come from cage-free hens. The hens must be free to walk, dust bathe, perch, spread their wings, and lay their eggs in nest boxes, all vital behaviors they are prevented from doing when confined in cages. While cage-free does not guarantee ‘cruelty-free’, cage-free hens generally have better lives than those confined inside cages, because they have more ability to make choices about their own well-being. Liquid eggs (1/3 of all egg production) were not covered under previous California law. Prop 12 extends coverage to that source, thus protecting millions more birds. Prop 12 also adds enforcement mechanisms to current California law to allow increased ability to bring cases against violators.⁶³

Prop 12 was not passed without significant opposition from industry. Pork producers in states outside California sued the state, claiming that they should not be forced to meet California’s higher standards in order to sell pork in that state. The highly contentious lawsuit resulted in years of litigation and eventually made its way to the US Supreme Court, which upheld Prop 12.⁶⁴ While this victory came as a relief to American animal advocates, the US agricultural industry continues to propose legislation that would limit or reverse the gains made at the state level.⁶⁵

IV. Conclusion

Each year, the massive number of land animals raised for food on a worldwide basis is increasing.⁶⁶ The EU has assumed a position of leadership in passing legislation that mandates specific welfare requirements that are based on scientific review by a veterinary body. Unlike its European counterparts, the US Congress has exhibited an astonishing failure to lead the way for even minimal protection of farmed animals, and has ignored the demands of its own voters, citizens and consumers. The EU has developed directives that offer the

banned battery cages and prohibited in-state sale of eggs from hens raised in violation of this prohibition (Colorado Revised Statutes Annotated, § 35-21-203); Utah, 2021: banned battery cages (Utah Code Annotated, §§ 4-41-101 to 107); Nevada, 2021: banned battery cages and in-state sale of eggs from hens housed in violation of this prohibition (Nevada Statutes 2209) (temp); Arizona, 2022: banned battery cages and in-state sale of eggs from hens housed in violation of this prohibition (Arizona Administrative Code, § 3-2-90). This list is not inclusive of legislation and administrative actions.

⁶³ See California Health & Safety Code, §§ 25990–25994.

⁶⁴ See *National Pork Producers Council v Ross*, 598 US 1142 (2023).

⁶⁵ See, eg, Keith Loria, ‘How the EATS Act Could Impact the Food Industry’ (*Food Quality & Safety*, 16 October 2023) <<https://www.foodqualityandsafety.com/article/how-the-eats-act-could-impact-the-food-industry/>> accessed 15 March 2024.

⁶⁶ See David Stanway, ‘Countries Urged to Curb Factory Farming to Meet Climate Goals’ (*Reuters*, 28 November 2023, 11:07 PM) <<https://www.reuters.com/sustainability/countries-urged-curb-factory-farming-meet-climate-goals-2023-11-29/#:~:text=The%20charity%20said%20around%2070,tons%20of%20CO2%20emissions%20annually>> accessed 15 March 2024.

most robust protections anywhere in the world for farmed animals while they are being raised,⁶⁷ and we estimate that the EU laws protecting farmed animals are approximately two decades ahead of the laws in the US.

While, in both regions, improving farmed animal well-being faces obstacles, there are signs that conditions will continue to improve for farmed animals in Europe. American policy makers, on the other hand, remain under the control of the agriculture industry; thus, similar legislative gains do not appear to be forthcoming in the near future. Improvements in the US will be driven by voters and consumers who want more humane treatment to be accorded to farmed animals, and by animal advocates who are exploring a variety of ways to raise public awareness about the need for change.

⁶⁷ See Pedersen (n 6).

The Living Stock of Antiquity: Examining Conceptualizations of Non-human Animals as Tradable Commodities in the Ancient World

Jessica C Tselepy*

Abstract

The human species is often painted as a perennially productive one. Human animals, through millennia of evolving skills, aptitudes, and awareness, have rendered ourselves, according to our hierarchically pattern seeking minds, at the top of an ostensibly 'natural' tree of life. So the tale, in the unique vernaculars of countless disciplines, is often told. We now live in an age where that tale is starting to be seriously and massively questioned and unravelled. Lenses of care, collaboration, and cooperation are blossoming. This article serves as a small part of that movement: to question and reappraise the once 'perennial' dominance of 'man' and seek a better comprehension of that narrative. It does this by honing in on one of the most dominant assumptions that have pervaded 'man's' relationship with 'animal': that non-human animals have been 'used productively for human gain' (in other words, 'exploited') for so long that there must be something 'natural' about this use. This article serves, then, as less of a challenge to the expansive timeline of human animals' use of non-human animal, and more of a 'awareness expanding tool' of *where* and *how* this use arose in some of the earliest examinable periods of our species' history. By digging deeper into both the zooarchaeological and related written source materials that reveal elements of this 'use relationship' during distinct 'snapshots' of ancient world, we may bolster the seriousness of critiquing the 'naturalness' of this relationship. Only from such 'points of un-revelation' can the consequential harms of this dominant narrative be truly appreciated, and subsequently unwound for the sake of the non-human animals that are continually and massively exploited in our modern world.

Keywords

Non-human animal commodification; Zooarchaeology; Ancient use and conceptualizations of non-human animals; Neolithic Cyprus; Classical Antiquity

1) Introduction

'Humans are exploitative; this is an undeniable truth regarding our attitude to the environment and the animals within it. We envelop our exploitation in a mantle of culture that permits our utilization to continue'.

– Krish Seetah¹

* The University of Melbourne, Melbourne Law School.

¹ Krish Seetah, 'Butchery as a Tool for Understanding the Changing Views of Animals: Cattle in Roman Britain' (2005) 1410 BAR International Series 1, 7.

From where does the phenomenal, expansive exploitation of non-human animals in our modern world spring? Why do human animals use other lives with such frequency and fervor? What circumstances have human animals journeyed from that has allowed this massive institutional landscape of tucked away suffering inflicted on non-human lives for human profit and consumption? There is a myriad of potentially insightful tools through which to answer these questions, most often derived from written accounts of non-human animal conceptualizations and uses. I will spend the space of this article exploring these questions from the starting point of examining less purposefully ‘framed’ materials: zooarchaeological data.² Through an exploration of such materials from a select few snapshots in past time, this article intends to unravel new perspectives on our own species’ ostensibly ‘timeless’ use of other animal species.

The ‘historical’ aspect of the data may be dually interpreted as suggestive shorthand for the *type* of data explored and a frame of *how* it will be explored: that is, within the constraints of its place on the timeline of ‘human history’ and without jumping between these pre-existing places and our place today unduly. There are unavoidable limitations to this approach: the discovery and examination of decaying materials can only suggest so much about what those materials were, what they meant to each other, and what the human animals thought about those materials and meanings. What can be extracted from this kind of inquiry is but a tentative and general impression of meaning. This article is presented with the impression that such tentative and general impressions are still valuable; both for the modicum of awareness this can provide to modern audiences about the realities which existed before us and as a potentially new ‘path of thought’ from which to contemplate modern conceptualizations of non-human entities held by human animals in our present world.

A choice of ‘historical snapshots’ must be made to begin such an examination but requires leaving out other pieces of the puzzle that my introductory questions address. The choices here were made primarily due to the quantity of data which exists for discrete time periods, but additionally due to the extensiveness of contemporary and subsequent written contemplation of the conceptualizations and uses that data points towards. I have attempted to balance the conclusions drawn from the more confined ‘snapshot’ case studies with more geographically widespread evidence of ancient uses of non-human animals to somewhat counterbalance these temporal-geographic foci. The ‘snapshots’ explored in this article, and the reason for their inclusion, are as follows: (1a) the use of the non-human animals as ‘beasts of burden’ and ‘commodities’ in the Early Bronze Age between Southern Levant settlements and Old Kingdom Egypt; (1b) the use of non-human animals as ‘multi-purpose tools’ and ‘goods’ in Early Bronze Age ‘Europe’; and (1c) the ‘domestication of’ to ‘trade in’ non-human animals from pre- to Early Bronze Age in the Fertile Crescent to the Aegean Sea. After exploring this overview of ancient trade in non-human animals, I will then explore two case studies: (2) Cypriot case study, as one of the earliest known ‘snapshots’ of live ‘domestic species’ transport via sea; and (3) a Classical Antiquity case study, with a focus on Roman Period trade, as one of the earliest known ‘snapshots’ of an established trade network of live ‘domestic species’ via sea, and Graeco-Roman conceptualizations.

² This does not preclude the existence of ‘framed use’ of these lives before they were ‘artifacts’, shaped by the human conceptualizations then expressed in written materials. Nonetheless, such materials arguably offer increased potential for less ‘directed viewing’ of their meaning.

The presentation of these snapshots together here, and the associated comparative element to their analysis, is but one framing of the realities that existed at these times in these places. Their combined presentation offers the opportunity to examine previously unseen patterns about how the human species once behaved in relation to non-human animals and how this behavior may have stemmed from early conceptualizations of non-human animals as tradable commodities.

The suggestion (thesis) for interpretation of the data explored here is as follows:

Conceptualizations and uses of non-human animals in the ancient world provide instructive context as to why human animals conceive of non-human animals as tradable commodities in the modern world.

This thesis will be examined through the aforementioned ‘snapshots’ as historical *frameworks* for analysis.³ The scope of this examination is to *review* and *synthesize* relevant data relating to early uses and conceptualizations of non-human animals in order to *highlight* patterns of use and conceptualization. The interpretative approach applied here is grounded in an appreciation of the sentience of the non-human animal species discussed, but is one that makes no moral valuation on the use of these species during these ‘snapshots’: it *seeks an understanding* of repeated representations of non-human animals in human animal thought and action, and *does not proffer* whether such representations were justified at the time or not.⁴ The patterns which thus surface may lend explanatory power to modern day uses and conceptualizations, and those modern day uses and conceptualizations may then (from this author’s perspective) be more readily subject to moral valuation and critique. This valuation and critique is (again, from this author’s perspective) valuable, but beyond the scope of the present piece.⁵

Before we venture into an examination of these snapshots, it should be noted that this piece is in part motivated to expand upon the scores of writings on non-human animal law topics which have frequently been prefaced with a brief and standard historical context. Such prefaces typically centre on quotes from dominant thinkers of prominent historical ‘snapshots’ to draw a broad anthropocentric conceptualization of non-human animals ‘throughout human history’.⁶ This piece aims to dig deeper into these recurrently emphasized historical

³ This characterization is partially inspired by Angela Trentacoste’s understanding of ‘livestock husbandry regimes’. See Angela Trentacoste, ‘Fodder for Change: Animals, Urbanisation, and Socio-Economic Transformation in Protohistoric Italy’ (2020) 3 Theoretical Roman Archaeology Journal 1, 11: ‘As in the transformation of other forms of material culture during this period, livestock husbandry regimes were not simply the deterministic result of wider socio-economic change, but a medium shaped for its expression’.

⁴ The question of moral justification does not preclude an acknowledgement of the reduction in moral status that non-human animals underwent during these times. On this point, see Linda Kalof and Brigitte Pohl-Resl, *A Cultural History of Animals in Antiquity* (Berg 2007) 38: ‘Animals would have to have less spiritual value and more secular value; they would have to stop being gods if they were to serve as money. But the waning of animal sacrifice did not put animals in higher regard. On the contrary, agrarian society’s growing need for them called for another wave of reduction’ (emphasis added).

⁵ For those readers interested in such critique, I recommend the following: Sophie Riley, *The Commodification of Farm Animals* (Springer 2022); Gary Lawrence Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (Columbia University Press 2008); Jason Wyckoff, ‘Analysing Animality: A Critical Approach’ (2015) 65 Philosophical Quarterly 529.

⁶ See, for instance, the following quotes: V Victoria Shroff, *Canadian Animal Law* (LexisNexis 2021) 20: ‘Influential thinkers like Aristotle (384–322 BCE) patronizingly posited that animals actually existed for the sake of humans’; Steven M Wise, *Rattling the Cage* (Da Capo Press 2001) 10: ‘[T]he Greek Stoic Chrysippus claimed

conceptualizations and further question their origins through an extensive variety and form of source material.

Though this article seeks to explore ancient conceptualizations of non-human animals as tradable commodities, readers should be cautioned against interpreting the evidence presented too heavily through a modern 'normative notions of economic rationality' lens. That is, utilitarian frameworks have been so ubiquitously applied to discussions surrounding non-human animals in the modern world that there is some level of danger in trying to make sense of ancient treatments of non-human animals using 'utility-maximizing' frameworks.⁷ As Keswani so aptly summarizes the essence of this caution: '[T]he linkages between these phenomena may have been more complex than "more people mean fewer deer to eat so raise more pigs and goats (or cattle) instead"'.⁸ In other words, the decisions that lay behind changes in the ways in which non-human animals were used, and the kinds of non-human animals used, in the ancient worlds will not always conform to ideas of human animals as maximally rational beings, and this conception of human beings should not be read without caution in the evidence examined.

1) Overview of Ancient Trade in Non-human Animals

The data explored from the following three 'snapshots' span both an expansive chronological period (from as early as the 4th millennium BCE to around 2001 BCE) and a widespread geographic area (from the Fertile Crescent to Egypt). The expansive quality of this presentation has been chosen purposefully to provide an impression of the trade in, use, and conceptualizations of non-human animals in the ancient world.

a. The Use of Non-human Animals as 'Beasts of Burden' and 'Commodities' in the Early Bronze Age Between Southern Levant Settlements and Old Kingdom Egypt

The now stereotypical characterization and use of certain non-human animal species as 'beasts of burden' finds roots in zooarchaeological findings dated to the Early Bronze Age

that horses and oxen existed so they could labor for us and that "as for the pig, that most appetizing of delicacies, it was created for no other purpose than slaughter, and god, in furnishing our cuisine, mixed soul with its flesh like salt"; Richard D Ryder, *Animal Revolution: Changing Attitudes towards Speciesism* (Blackwell 1989) 22: 'Aristotle did not deny that men and women are animals, but placed them (as the most rational animals) at the head of a natural hierarchy, and proposed that the less rational exist to serve the purposes of the more rational'; Deborah Cao, *Animal Law in Australia* (2nd edn, Lawbook Co 2015) 40: 'Prior to the nineteenth century enactment of English laws to protect animals, there were laws related to animals as human property, not animal protection laws. Animals were a part of the ancient Roman law, classified and treated as things and as property'.

⁷ Most obviously in Peter Singer's *Animal Liberation* (HarperCollins 1975).

⁸ Priscilla Schuster Keswani, 'The Social Context of Animal Husbandry in Early Agricultural Societies: Ethnographic Insights and an Archaeological Example' (1994) 13(3) *Journal of Anthropological Archaeology* 272. For further caution against overreliance on this framework, see Adam Allentuck, *Human-Livestock Relations in the Early Bronze Age of the Southern Levant* (Doctoral Dissertation, Department of Anthropology, University of Toronto 2013) 13 <<https://tspace.library.utoronto.ca/handle/1807/68925>> accessed 15 March 2024: 'Some have argued that formalist economic theory, which was devised to model capitalist market economies in terms of price theory, taxation and international trade, has little relevance for non-market societies [...]. Others have criticized applications of human behavioural ecology models in archaeology and anthropology on the grounds that the self-interested "economic man" endowed with complete knowledge and who achieves rational goals by incurring minimal costs has never found an ethnographic reality' (references omitted).

Southern Levant and Egyptian sites.⁹ Ajlouny presents the use of non-human animals as a means of transportation during this period, the use of which also constituted a special topic in artwork. Most of the fragmentary pieces examined in this study were of the donkey, suggesting some level of significance of this species to the settlement in the Southern Levant.¹⁰ The lack of faunal remains of the 'domesticated donkey' at these Early Bronze Age sites illustrates a predominant use of the species for transportation and other agricultural work, rather than as a source of food.¹¹ Separately examined excavations at Arad in Southern Palestine show that the extent of early trade via donkeys is considerable, ranging all the way to Egypt and facilitating a role for human settlements in the Southern Levant as 'commercial mediator' between Syria, Egypt, Mesopotamia, and Anatolia.¹² Grave inscriptions during this period (the 5th Dynasty of the Old Egyptian Kingdom 2480–2320 BCE) likewise record the donkey persistently as a 'beast of burden'.¹³ The use of this species for transporting goods over significant distances is described as 'revolutionary in the world of commerce', where their value was increasingly measured not only in terms of local agricultural use, but as connecting tools of exchange. This newly generated value had the opportunity for mutual reinforcement as trade between human animal settlements prospered.¹⁴

Evidence of long-distance trade of non-human animals via non-human animals has similarly been found from Old Kingdom Egypt (ie, 2649–2130 BCE) and Early Bronze Age II Canaan (ie, 2900–2500 BCE). Arnold has examined isotope data from a 'sacrificial ass' and several ovicaprines from household deposits at Tell es-Safi/Gath (modern day Israel), which provide direct evidence for the movement of domestic 'draft and husbandry animals' between these regions.¹⁵ Arnold's study provides the first concrete signs of early trade in non-human animals from Egypt to Canaan,¹⁶ corroborating other textual and archaeological information that pointed towards the existence of long-distance trade in non-human animals, seemingly via donkey caravans, during this early period.

Not only do these findings point to the simultaneous use of different species for different trading purposes (for instance, trading ovicaprines, such as sheep and goats, as 'commodities' through the use of donkey caravans as 'means of transportation'); they also point to the use of the same species in the same period for significantly different purposes. Donkeys, for instance, served both a trading purpose as a 'means of transportation' and a ritualistic purpose as the 'sacrificial ass'. The implications of this dual-purpose for human conceptualizations cannot be derived from this data alone, but the very existence of the dual-purpose

⁹ The 'Bronze Age', while dates vary between regions, is here used to connote the third phase in the development of material culture among the ancient peoples of Europe, Asia and the Middle East (following the Old Stone Age and New Stone Age respectively). That is, approximately covering between 3000 BCE–1000 BCE. See *Encyclopædia Britannica*, 'Bronze Age' <<https://www.britannica.com/event/Bronze-Age>> accessed 15 March 2024.

¹⁰ See Fardous Al Ajlouny and others, 'Laden Animal and Riding Figurines from irbet ez-Zeraqōn and their Implications of Trade in the Early Bronze Age' (2012) 128(2) *Zeitschrift des Deutschen Palästina-Vereins* 99.

¹¹ *ibid* 7.

¹² Helga Weippert, *Palästina in vorhellenistischer Zeit* (CH Beck 1988) 174–76.

¹³ *ibid* 7.

¹⁴ See *ibid* 6.

¹⁵ Elizabeth R Arnold and others, 'Isotopic Evidence for Early Trade in Animals between Old Kingdom Egypt and Canaan' (2016) 11(6) *PloS One* <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0157650>> accessed 15 March 2024. For convenience's sake, all further references are to Arnold.

¹⁶ Though trade in non-human animals from *Canaan to Egypt* during later eras has been previously acknowledged. See, for instance, Kathryn A Bard, *An Introduction to the Archaeology of Ancient Egypt* (2nd edn, Wiley-Blackwell 2015).

is suggestive of such conceptualizations being less fixed by 'optimal utility' calculations, and more flexible according to the unique priorities of the humans in each cultural context.

This finding is revealing of the power of human framing in shaping new meanings for our non-human animal neighbors. Read in conjunction with the apparent frequency of using particular species for transportation and agricultural purposes, human framing seems a strong causal candidate for the rising association of these lives with 'commodity statuses', which is not necessarily impeded by simultaneously appreciated 'ritualistic statuses'. Either value, though especially the commodity form in its focus on material gain, brings with it a connected consequence of edging out (though not necessarily eradicating) consideration of intrinsic value. The competitive internal struggle of where the human mind should direct its consideration often steers the process of mental categorizations to be as non-taxing as possible. As new categories or 'statuses' arise, they must compete, where dominant use of the 'status-ed being' reinforces the connection between the use and status. It would be difficult to comprehend of a non-human animal 'statuses' within human minds of this period, in other words, that were detached from their increasing use as 'beasts of burden' and 'commodities'.

Were these billowing statuses, then, an inevitable consequence of something intrinsic to their nature, or more a driven consequence of expanding human animal priorities? The studies explored here that demonstrates some of the uses in the Early Bronze Age between Southern Levant settlements and Old Kingdom Egypt presents a directive force for answering this question: non-human animal statuses have, from some of their earliest uses, both shaped and been shaped by the particular (and therefore not necessarily fixed nor qualitatively singular) desires of their human animal users.

b. The Use of Non-human Animals as 'Multi-purpose Tools' and 'Goods' in the Early Bronze Age 'Europe'

Zooarchaeological data from 'European' sites during the Early Bronze Age again focus on the donkey as a leading 'means of transportation'.¹⁷ Dolfini has pointed to the introduction of 'new domesticates', such as the donkey in the eastern Mediterranean, and the horse in most of Europe, being put to such uses. The species of non-human animals are described as integral to the 'secondary products revolution', which included a suite of other technological innovations relating to non-human animals, such as 'the harnessing of animal power for plowing and wheeled transport' in the Bronze Age of Central Italy (5000–2001 BCE).¹⁸ The significance of these species as 'usable and reliable tools' arose in parallel with the escalating frequency of cross-cultural exchange. As cultures increased the use of species, such as donkeys and horses, to connect with other regions, the range of uses seemed to increase likewise. These lives become more pervasively relied upon in a way which suggest an intent to maximize their material utility, such carrying loads over longer ranges and being used to facilitate wheeled transport.

¹⁷ The term 'Europe', ambiguous even now in its geographical expression, is not an apposite term to describe this largely dispersed land mass during this historical 'snapshot'. It is merely employed as a helpful shorthand for readers to signify the land mass encompassing 'modern continental Europe' as commonly conceptualized in the modern world. See *Encyclopædia Britannica*, 'History of Europe' <<https://www.britannica.com/topic/history-of-Europe>> accessed 15 March 2024.

¹⁸ Andrea Dolfini, 'From the Neolithic to the Bronze Age in Central Italy: Settlement, Burial, and Social Change at the Dawn of Metal Production' (2020) 28 *Journal of Archaeological Research* 504.

Fages also points to the use of horses as a means of accelerated travel and trade through an examination of genome-scale data found at an Early Bronze Age trade centre in Hungary during the late 3rd millennium BCE (3rd millennium BCE = 3000–2001 BCE).¹⁹ This author hypothesizes that the long-distance exchange of horses during this period provided human animals with a new opportunity to ‘spread genes, diseases, and culture well above their own speed’.²⁰ Taking the hypothesis a step further, Fages writes that this status as ‘tool’ has persisted: ‘[H]orses today remain essential to the economy of developing countries and to the leisure and racing industries of developed countries’.²¹ That this author highlights the observed connection of the kind of use to broad economic status of these far vaster human collectives of the modern world is notable, if only as further indication of an apparently persistent relationship between human economic status and non-human animal uses.²²

For the human animal collectives in this period which were engaging in systematic exchanges of non-human animals, a mutual understanding of such entities as ‘tradable goods’ must have existed to some degree for the trade to be sustained. This ‘meeting of the minds’ must exist even if the purposes for which these non-human animals were traded and used differed amongst the trading collectives. While such differences seem to persist today, the common understanding of the ‘use value’ that these non-human lives represent likewise persists.²³

c. The ‘Domestication of’ to ‘Trade in’ Non-human Animals from the Fertile Crescent to the Aegean Sea

Early trade in species from the Fertile Crescent to the Aegean Sea, as ‘tradable commodities’ with value as a ‘consumable good’, suggests a degree of earlier domestication (as similarly noted in the commodification of ovicaprines in Southern Levant settlements and Old Kingdom Egypt). Hatziminaoglou contemplates archaeological findings and written evidence which indicate domestication in this region ranging as far back as 10,000 years ago, positing that goats were likely the first ruminant ‘livestock’ to be domesticated around this time in the Fertile Crescent region.²⁴ They discuss the first clear indication of the breeding of goats from tablets found in the city of Umma and Ur in the Third Dynasty of the Sumerians (around 2500 BCE).²⁵ While this study examines the use of goats in a more localized sense than a trading sense, it does lend insight into early commodification of such species as ‘an important part of pastoral wealth’.²⁶

‘Dual-purpose’ representations additionally arise here. Goats were heavily involved in major life events of ancient cultures in these regions, including being pictured with Sumerian god Marduk and being held as sacred to the Babylonian god Nigirsu.²⁷ The prevalence of sacred

¹⁹ Antoine Fages and others, ‘Tracking Five Millennia of Horse Management with Extensive Ancient Genome Time Series’ (2019) 177(6) Cell 1419. For convenience’s sake, all further references are to Fages.

²⁰ *ibid* 1421.

²¹ *ibid*.

²² Demonstrating the ‘feed-back’ element of the ‘use-status’ relationship (ie, the inverse direction of influence to that discussed in the previous section).

²³ See generally Sophie Riley, *The Commodification of Farm Animals* (Springer 2022).

²⁴ Y Hatziminaoglou and J Boyazoglu, ‘The Goat in Ancient Civilisations: From the Fertile Crescent to the Aegean Sea’ (2004) 51(2) *Small Ruminant Research* 123.

²⁵ *ibid* 126.

²⁶ *ibid*.

²⁷ See *ibid* 125.

conceptualizations and uses in sacrificial ceremonies presents the intriguing question once again of how this species' role as tradable commodity may have interacted with this sacred status, especially when the commodity status began to remarkably thrive. For the commodity status did gain a level of prominence as technical innovations that harnessed 'animal power' proliferated in the region. As Allentuck articulates the prominence in his research: '[S]econdary products exploitation established a level of co-dependency between people and livestock that was unprecedented until the Early Bronze Age'.²⁸

With increasing human animal dependency on domesticated non-human animals, the staple 'wealth' of early human animal collectives in this region began to concomitantly shift towards the form of 'bulk agricultural and pastoral produce'; the 'bulk' part of that form rendering '[l]ive herd animals, such as sheep, goats and cattle' as 'ideal trade goods because they could provide the recipients with a wide range of products and they could be transported on the hoof, thereby minimizing risk of spoilage'.²⁹

d. Overview Conclusion

The above explored 'snapshots' help to facilitate a deeper appreciation of (1) the longevity of non-human animals domestication for co-existing purposes (such as consumption, transport, and ritual purposes); (2) the transition from domestication for 'local settlement priorities' to commodification as technological innovation led to 'bulk' that could be traded between economies and new uses of non-human animals which could facilitate this trade; and (3) the accompanying morphing of early non-human animal conceptualizations. That is, not only as a wild other to be hunted, tamed, and consumed, or worshipped as a sacred symbol, but as commodities that certain Early Bronze Age human animals put to increasingly 'productive use'³⁰ and as tools to facilitate trade between both proximal and distant human animals collectives.

The explored uses and conceptualizations of non-human animals indicate a widespread, enduring tendency of human animals to relate to these lives in *instrumental* terms. The examined 'snapshots' arose and fell long before the societies so often pointed to as the key 'historical foundations' of anthropocentric perspectives of non-human animals.³¹ The draw to comment on these dominant past eras is not surprising nor without value given the immense influence of thinkers from these times on later human societies. The earlier 'snapshots' explored here serve as indicative context of the origins of these historical uses and conceptualizations. But just how far back do these uses and conceptualizations reach? Without attempting to infinitely regress,³² let us now examine one of the earliest 'snapshots' of non-human animal use (that is, with adequate examinable data): live non-human animal transport via sea for Neolithic human animal use.

²⁸ Allentuck (n 8) iii.

²⁹ *ibid* 55 (emphasis added).

³⁰ I mean 'economically' productive use.

³¹ See n 6.

³² We are, in any case, restrained from doing so by virtue of the data which (1) exists and (2) we can currently access.

2) Cypriot Case Study

'Neolithic farmers with their Neolithic tools, plants and animals began to spread beyond Southwest Asia into Europe and North Africa, making an agriculture dispersal westward'.

–Yousra Ben Sassi-Zaidy and others³³

Transporting live non-human animals via sea during the so-characterized 'Neolithic' period of human animal history required a significant level of dedicated effort. The studied rise in the migration of Neolithic farmers and 'livestock' species to Cyprus during this era is accordingly a remarkable feature of the 'Neolithic Revolution'.³⁴ Sassi-Zaidy has presented the Mediterranean basin as 'a main thoroughfare for the maritime diffusion of small ruminant species into South Europe and North Africa' during this 'snapshot'.³⁵ These movements to Cyprus represented a 'transported landscape'³⁶ wherein human animals brought with them 'resources – like cattle and donkeys' that were previously unavailable on Cyprus.³⁷ The willingness to dedicate the effort and resources necessary for this novel venture may be related to the benefits these 'resources' offered in new (at least to the human animals coming from the mainland) cross-sea settlements.

The extent of these efforts has been partially brought to light by Vigne, who provides insight into the intensity and capabilities of the early seafarers that travelled between Cyprus and Levantine/Anatolian coasts between 12,500 and 9,000 BP (ie, 10,550–7050 BCE).³⁸ His review of zooarchaeological data from early sites on Cyprus indicates a marked increase in the immigration rate of mammals beginning in the 13th millennium cal. BP, during the time of the Middle Pre-Pottery Neolithic³⁹ B era (Middle PPNB) ie, 8800–6500 BCE. Vigne suggests that specialized human groups were likely controlling voyages between the mainland and Cyprus so capably that they were able to cross the sea several times each year while dealing with the very difficult problem of transporting quite large ruminants.

Part of the problem of transporting these non-human animal species lay in the fact that keeping ruminants without movement for more than four hours (or so) 'would have entailed serious physiological disorders, lowering considerably the chance of the animals reaching the island in good health'.⁴⁰ This led Vigne to posit that '[the ruminants] had to make the

³³ Yousra Ben Sassi-Zaidy and others, 'Historical Westward Migration Phases of Ovis Aries Inferred from the Population Structure and the Phylogeography of Occidental Mediterranean Native Sheep Breeds' (2022) 13(8) *Genes* 1421, 1422, citing Mary MA McDonald, 'The Pattern of Neolithization in Dakhleh Oasis in the Eastern Sahara' (2016) 410 *Quaternary International* 181. For convenience's sake, all further references are to Ben Sassi-Zaidy.

³⁴ Ben Sassi-Zaidy (n 33) 1.

³⁵ *ibid* 2.

³⁶ Jennifer M Webb and David Frankel, 'Hearth and Home as Identifiers of Community in Mid-third Millennium Cyprus' in Vassos Karageorghis and Ourania Kouka (eds), *On Cooking Pots, Drinking Cups, Loomweights and Ethnicity in Bronze Age Cyprus and Neighbouring Regions* (Leventis Foundation 2011) 30.

³⁷ Bernard A Knapp, 'Maritime Narratives of Prehistoric Cyprus: Seafaring as Everyday Practice' (2020) 15 *Journal of Maritime Archaeology* 435 (emphasis added).

³⁸ Jean-Denis Vigne and others, 'The Transportation of Mammals to Cyprus Shed Light on Early Voyaging and Boats in the Mediterranean Sea' (2014) 10 *Eurasian Prehistory* 157. For convenience's sake, all further references are to Vigne.

³⁹ Around ca 11,700–ca 8400 BP (Before Present). See Ian Kuijt and Nigel Goring-Morris, 'Foraging, Farming, and Social Complexity in the Pre-Pottery Neolithic of the Southern Levant: A Review and Synthesis' (2002) 16 *Journal of World Prehistory* 361.

⁴⁰ Vigne (n 38) 169.

voyage standing up'.⁴¹ As these voyages would typically not have been possible in less than 10–12 hours (as calculated from the two nearest points on the south coast of Anatolia and the north coast of Cyprus – approximately 80–90km), one begins to grasp the realities faced by these non-human animal lives: unfamiliar and uncomfortable (at least) transport conditions imposed for the sake of continued use in new territory. What's more, the implicit requirement of extended durations of continual, confined standing in unstable waters signifies that such journeys entailed (1) a comprehension by the voyage designers that there would be some level of health/welfare⁴² costs for the 'living resources' that would be unavoidable; and (2) that the voyages were nonetheless worth pursuing. The parallels (though in rough sketch at this stage in the human history timeline) to modern live export conditions are an eerie portent that such practices may never have been conducted without the awareness of the detrimental impacts they caused to the transported non-human lives.

While Vigne focuses on the implications for larger ruminant species, Martínez proposes that four major 'livestock' species (cattle, sheep, goats and pigs) were brought via boat.⁴³ Applying Vigne's finding that each boat may have supported as much as two-three weaned calves or one adult cow (at least 500kg), as well as five rowers and their food supply (maximum 750kg), the size of the 'moving, living landscape' becomes clearer.⁴⁴ Though gradual, these authors propose a global rate of approximately 1.5–2 species introduced onto Cyprus per 1,000 years during this era.⁴⁵ The activities of the 'moving, living landscape' appear to have not only increased the variety of non-human animal species which were transported as 'resources', but likely affected an increasing total number of these lives as ship technology advanced and Neolithic migration flourished.

While there may have been ensuant benefits to transporting these lives and 'other goods',⁴⁶ such as 'communicating and sharing knowledge across the sea and between different lands, cultures and polities',⁴⁷ the motivation to engage in such activities could derive from these benefits alone. However, the desire to tackle the obviously demanding problem of transporting non-human animals via sea hints at a level of significance beyond resource use. But how should this significance be characterized: as derived from dietary, ritualistic, economic, and/or other relational motivations?⁴⁸ The answer to this question may not lie in clear economic terms. As emphasized by Keswani, 'a variety of socioideological and ritual requirements, rather than utilitarian optimizing principles, structures patterns of animal husbandry in pre-state, pre-market (or extra-state, extra-market) societies'.⁴⁹ The altered faunal assemblages on prehistoric Cyprus, consequent of new settlers who exploited 'a complex of fauna comprising fallow deer, sheep, goat, and pig, all apparently imported from the mainland' do

⁴¹ *ibid.*

⁴² Though perhaps not thought with the same connotations these terms provoke in the modern world.

⁴³ Amparo Martínez and others, 'Detecting the Existence of Gene Flow Between Spanish and North African Goats Through a Coalescent Approach' (2016) 6 *Scientific Reports* 1. For convenience's sake, all further references are to Martínez.

⁴⁴ Vigne (n 38) 169.

⁴⁵ *ibid* 164.

⁴⁶ A Bernard Knapp, 'Maritime Narratives of Prehistoric Cyprus: Seafaring as Everyday Practice' (2020) 15 *Journal of Maritime Archaeology* 415, 417.

⁴⁷ *ibid.*

⁴⁸ It could well be the case that all characterizations are present to varying degrees. The question for the purposes of this article is whether *instrumental* characterizations (as food, tradable goods, etc) were still *significant* motivational factors for such pursuits.

⁴⁹ Priscilla Schuster Keswani, 'The Social Context of Animal Husbandry in Early Agricultural Societies: Ethnographic Insights and an Archaeological Example' (1994) 13(3) *Journal of Anthropological Archaeology* 255.

correlate with transformations in the ritual practices and social organization of early human settlers in this region.⁵⁰

As further indication of a (at least partially) ritualistic status held by these imported species, Croft's examination of caprine remains in third millennium BC sites found a high degree of 'sexual dimorphism in size'.⁵¹ This finding is 'inconsistent with an efficient strategy of either meat or milk exploitation'.⁵² Croft additionally cautions against reading the faunal assemblages from Cyprus as too suggestive of introducing non-human animals via sea for herding alone, as faunal assemblages included the bones not only of *hunted* deer and *herded* pigs and caprines, but also of morphologically indistinguishable *feral* pigs and caprines.⁵³

The limitations of this data pose problems for detailed economic interpretation of early uses of imported non-human animals on Cyprus. Nonetheless, the working assumption of Croft is still that most, if not all, caprines and pigs were domesticates that must have been imported from the mainland.⁵⁴ The (1) morphological limitations of the data and (2) dual-ritual usage should therefore still be read with the understanding that these animals 'of primary economic significance in EP Cyprus were also important in mainland western Asia'.⁵⁵ In particular, caprine herding had become a staple feature of subsistence economies in the Levant from around the mid-eighth millennium BC, suggesting a retention of 'resource' status when imported. The statuses non-human animal lives transported to Cyprus may have been similarly dependent on the context and desires of their human animal transporters, therefore serving both as a sacred symbol and 'resource' in a not necessarily contradictory manner.

What the Cypriot case reveals beyond the 'Overview' above is the use of these lives by Neolithic human animal communities which had a unique attitude to coastal environments which included 'making a living from the sea';⁵⁶ even in the face of natural obstacles against the transport of larger species, and with the ostensible possibility of making a living in alternative ways in these environments (for instance, by fishing or foraging), non-human animal lives conceptualized as 'resources' were still considered worth tackling the difficult problem of sea transport. The range of evidence examined here thus provides one of the earliest examinable insights into not only the *preference* but *pursued prioritization* of using 'commonly commodified'⁵⁷ non-human animal species despite the considerable costs of bringing these 'resources' along as human animals migrated to new lands.

⁵⁰ *ibid* 262.

⁵¹ Paul Croft, 'Man and Beast in Chalcolithic Cyprus' (1991) *Bulletin of the American Schools of Oriental Research*, no 282, 63, 74.

⁵² *ibid*.

⁵³ See *ibid* 67.

⁵⁴ See *ibid* 64.

⁵⁵ *ibid* 66.

⁵⁶ Knapp (n 46) 440.

⁵⁷ I.e, cattle, sheep, goats, and pigs (stereotypically characterised 'farmed' or 'agricultural' non-human animals).

3) Classical Antiquity Case Study – Roman Period Trade and Graeco-Roman Conceptualizations

‘Classical scholarship on the role, function and perception of animals in different areas of ancient Greek and Roman life can provide important insights into one aspect of the heritage – Western conceptions of humanity and the place of the animal within it – which has not yet received the attention it deserves’.

– Julia Kindt⁵⁸

The Cypriot case displays the depths of non-human animal commodity conceptualizations and uses within our own species’ timeline. Questions surrounding the retention of these conceptualizations now arise: were these conceptualizations maintained linearly from Neolithic times to now? What effect did these earlier uses have on subsequent human animal collectives’ uses? Here, we will explore a steppingstone between the time of the Cypriot case study and modern world uses and conceptualizations: the steppingstone of ‘classical antiquity’, with a focus on Roman Period trade and Graeco-Roman conceptualizations, as illustrative examples of the retained commodity status of non-human animals.⁵⁹

a. Roman Period Trade

While written sources confirm the existence of a ‘livestock’ trade during the Roman Period, the characteristics of this trade were previously unclear given the scarcity of details provided in these records.⁶⁰ A recent study conducted by Colominas and Edwards provide some insight into these characteristics, which involved both osteometric and genetic analyses on cattle remains found at the Early Roman trading post of Empúries (Catalonia) (1st century BCE to 3rd century CE) to determine how ‘livestock’ contributed to Roman trade and the economy of the Roman Empire.⁶¹ These authors suggest that the change in cattle morphology during the Roman Period is due to the introduction of non-indigenous cattle into the new territories of the Roman Empire from trade. The non-indigenous cattle would have been acquired at ports along the Mediterranean basin, with written sources confirming the existence of different routes trading these ‘living commodities’.⁶²

Despite the difficulties of housing and feeding the ‘stock’, Colominas and Edwards venture that ‘cattle trade was vital during the early Roman period’.⁶³ The capacity and preference for transporting large ruminants via the Mediterranean Sea seems to have been retained (or, possibly, resurfaced) since the earlier examined Cypriot period. However, in this iteration, there is stronger indication of non-human animals being traded more as commodities of

⁵⁸ Julia Kindt, ‘Capturing the Ancient Animal: Human/Animal Studies and the Classics’ (2017) 137 *Journal of Hellenistic Studies* 213.

⁵⁹ The inequity in timelapse between prehistoric Cyprus and Classical Antiquity (give or take 6,000–10,000 years) compared to between Classical Antiquity to the present day (give or take 2,000 years) should be noted for the possible implications of greater generational/cultural changes in the former than the latter and the more exponential rate of technical growth in the latter than the former. In other words, while there are always limitations in drawing any conceptual connections between vastly different historical ‘snapshots’, the limitations are unique between each steppingstone. The *kind* of limitation should be a salient feature of contemplating the conceptualizations arising within this particular ‘snapshot’.

⁶⁰ Lídia Colominas and Ceiridwen J Edwards, ‘Livestock Trade During the Early Roman Period: First Clues from the Trading Post of Empúries (Catalonia)’ (2017) 27 *International Journal of Osteoarchaeology* 167.

⁶¹ *ibid.*

⁶² See generally Pascal Arnaud, *Les Routes de la navigation antique* (2nd edn, Errance 2020).

⁶³ Colominas and Edwards (n 60) 177.

economic value *between* human animal collectives, rather than as a resource for *internal* use within a collective.

The benefits of genetic diversity that non-indigenous 'breeding stocks' offered was a likely motivation for this more extensive trading practice. Nieto-Espinet has discussed the attempts of human animals during this period to reduce the inbreeding rate of non-human animal populations, which was apparently known to have a negative impact on 'fertility and productivity'.⁶⁴ The motivation to diversify the 'stocks', reliant on the introduction of new breeds from distant lands and ostensibly via an expanding shipping route system, thus appears to be at least partially economic: to avoid the loss of exchangeable stock. The run-on economic benefits for the Roman Empire included not only *control of the means* of transporting these more diverse 'goods', but also in *increasing the value* of the 'good' through organized breeding practices. As Seetah articulates the multiple benefits deriving from this use, cattle were 'perhaps one of the most economically significant species; key to this broad economic value in the multifunctional manner in which this species is exploited'.⁶⁵

The presence of new cattle breeds subsequently spread to a variety of newly conquered territories of the Roman Empire, including Gallia, Britannia, Germania, Pannonia, Dacia, and Hispania.⁶⁶ The widespread diffusion indicates an even greater prevalence during this 'snapshot' of transporting living non-human animals across seas as tradable goods. This *kind* of sea-transport differs from the Cypriot case, in that it appears to have served as a regulated and expansive trade operation, allowing for the more extensive rendering of cattle in particular as 'economic commodities'. This is not to discount the fact that 'livestock' were 'almost certainly exchanged between different productive units within, and perhaps between, villages' in the earlier Neolithic era as well being used and consumed within earlier collectives; indeed, this preceding trade may have informed the conceptualizations that arise in written sources from classical antiquity.⁶⁷ It rather suggests a growth in the size and scope of these activities during the Roman Period.

b. Graeco-Roman Conceptualizations

The growth of live non-human animal transport activities during this period should not be misconstrued as a reflection of a radically more instrumental conceptualization. Perceptions of non-human animals, both those with less 'economic value' and the main domesticates of the period, are still skewed by 'functionality impacting on symbolism'.⁶⁸ Both wild and domestic non-human animals also served 'wide-ranging roles' in the life of the ancient Greeks and Romans, including being used as 'mediums' for human self-definition.⁶⁹ Human animal

⁶⁴ Ariadna Nieto-Espinet and others, 'Livestock Production, Politics and Trade: A glimpse From Iron Age and Roman Languedoc' (2020) 30 *Journal of Archaeological Science: Reports* 1. For convenience's sake, all further references are to Nieto-Espinet.

⁶⁵ Seetah (n 1) 6.

⁶⁶ See generally Peter Murphy and others, 'Production, Imports and Status: Biological Remains from a Late Roman Farm at Great Holts Farm, Boreham, Essex, UK' (2000) 5 *Environmental Archaeology* 35; Lúcia Colominas and others, 'The Impact of the Roman Empire on Animal Husbandry Practices: Study of the Changes in Cattle Morphology in the North-east of the Iberian Peninsula Through Osteometric and Ancient DNA Analyses' (2014) 6 *Archaeological and Anthropological Sciences* 1.

⁶⁷ Paul Halstead, 'Farming and Feasting in the Neolithic of Greece: The Ecological Context of Fighting with Food' (2004) 31 *Documenta Praehistorica* 156.

⁶⁸ Seetah (n 1) 6.

⁶⁹ Liliane Bodson, 'Attitudes Toward Animals in Greco-Roman Antiquity' (1983) 4(4) *International Journal for the Study of Animal Problems* 312.

appropriation of non-human animals for self-definition, is not, then, predominately a 'symptom of modernity', but occurred frequently throughout classical antiquity.⁷⁰

This 'snapshot' serves as a case in point of non-human animals being at the core of what Howe calls 'value economics', where *human status* became increasingly represented in the *kinds* of non-human animals one could afford. Adjectives like 'noble' and 'common' were frequently tied to these *kinds* of non-human animals one owned.⁷¹ The 'lowly trader' was distinguished from the 'rich, horse-owning aristocrat'.⁷² Horses in particular served increasingly as a 'symbol of status and wealth, just as cattle conferred wealth on the people of the earliest civilizations'.⁷³ While consumed species such as cattle seem to be conceptualized as 'conduits of wealth creation' ('economic tools'), non-consumed species⁷⁴ such as horses seem to shift towards being thought of as 'symbols of wealth' ('status symbols') during the Roman Period.

These conceptualizations are neither siloed nor fixed: 'livestock' like cattle, for instance, retained a symbolic status of the wealth of their 'owners'.⁷⁵ What these conceptualizations seem to share is the element of cementing the difference between men and animals.⁷⁶ For instance, Hesiod writes in *Works and Days*⁷⁷ that 'the son of Kronos, Zeus, has ordained this law to men: that fishes and wild beasts and winged birds should devour one another since there is no justice in them; but to mankind he gave justice which proves for the best'.⁷⁸ Means of distinguishing *beyond the ethical* can also be found in other classical Greek texts, such as Xenophon's attempt to raise man's status above other animals through speech and reason.⁷⁹ Leblond characterizes this as a 'topos of Western philosophy' where 'animals' irreducible alienation from the human condition' is tied to their lack of speech.⁸⁰

This has made 'the exclusion of animals from the sphere of logos [...] one of the crucial questions addressed by philosophy and linguistics' in today's world, according to Leblond, as human animals still grapple with understanding our own species' significance (or lack thereof) in this world.⁸¹ These early attempts at differentiation echo the anthropomorphic notes to our modern understanding of the human role in the 'animal kingdom', which were once fuelled by living in a world no longer 'dominated by animals' but 'by the need to hunt and trap them and keep them a bay'.⁸² The select species that threatened the survival of early human collectives may have leaked into a more pervasive fear of 'other animal lives' which not only allowed but encouraged the sophistication of action to control the 'other'. The branch of control that grew in the form of 'use' over 'destruction' during the Roman Period

⁷⁰ Kindt (n 58) 216.

⁷¹ Timothy Howe, 'Value Economics: Animals, Wealth, and the Market' in Gordon Lindsay Campbell (ed), *The Oxford Handbook of Animals in Classical Thought and Life* (OUP 2014) 150.

⁷² Kindt (n 58) 216.

⁷³ Linda Kalof, 'Introduction: Ancient Animals' in Linda Kalof (ed), *A Cultural History of Animals in Antiquity* (Berg 2007) 135, 4.

⁷⁴ At least as popularly.

⁷⁵ Halstead (n 67) 156.

⁷⁶ Steven H Lonsdale, 'Attitudes Towards Animals in Ancient Greece' (1979) 26(2) *Greece & Rome* 146.

⁷⁷ Written around 700 BCE.

⁷⁸ Lines 274–80.

⁷⁹ *Memorabilia* 1.1.3–5, 3.3, 11 f.

⁸⁰ Diane Leblond, 'Ways of Seeing Animals, Documenting and Imag(in)ing the Other in the Digital Turn' (2020) 8 *InMedia* 1.

⁸¹ *ibid.*

⁸² GS Kirk, *The Nature of Greek Myths* (Harmondsworth 1974) 5.

manifested acutely as ‘commodification’.⁸³ That is, to facilitate the extent of ‘live export’ activities during this ‘snapshot’, the autonomies of these ‘other lives’ must have been conceptually stripped to some degree and progressively replaced with controllable concepts, such as ‘tool’, ‘stock’, and ‘wealth status symbol’.

There are prominent authors of this period who adopted milder stances than this. For instance, Lucretius affectionately depicts the anguish of a mother cow deprived of her calf that has been led to slaughter,⁸⁴ and presents an almost unparalleled idea at the time that animals are capable of emotions and take pleasure in their own lives.⁸⁵ Lucretius, though, was far more sympathetic to non-human animals than almost all of his contemporary writers.⁸⁶

Seetah summarizes the more common conceptualization of non-human animals during this period aptly: ‘Humans [...] envelop our exploitation in a mantle of culture that permits our utilization to continue’.⁸⁷ The use of non-human animals, especially domesticated animals in classical antiquity during the Roman Period, reflected the popular attitudes of the exploiting collectives, which increasingly positioned non-human animals according to a ‘commodity status’. These conceptualizations again appear to have (1) been shaped by the benefits that non-human animals could confer and (2) to have shaped that ways in which human animals used these lives. The modes of exploitation of animals in classical antiquity were demonstrably geared towards the value that humans could gain from such exploitation, both in terms of raw value and wealth status, in turn imbuing the statuses of the traded non-human animals with an extensively entrenched ‘commodity’ hue.

4) Conclusion

The explored conceptualizations and uses of non-human animals in the ancient world through these select ‘snapshots’ provides some context as to why human animals conceive of non-human animals as tradable commodities in the modern world. Early transport and trade of non-human animals in, and likely between the periods of, Neolithic Cyprus and classical antiquity appear to have strengthened the spreading manifestation of controlling ‘other lives’ as ‘*usable and tradable commodities* that could be used to both *grow* and *represent* human value’, far more so than acknowledging that non-human animals lives may have ‘different but relatable *intrinsic* value’ that would be worthy less instrumental use.

Human animals’ have clearly had a complex and long-enduring relationship with non-human animals; our species’ internal representations of these ‘others’ are neither isolated from history nor settled at present. What this brief exploration has sought to provide is an understanding of the patterns that arise in human animal conceptualizations and uses of non-human animals throughout history. It may serve as a tool for further contemplation of how modern human societies may shift away from the weight of these ancient conceptualizations

⁸³ Though these two forms may co-exist.

⁸⁴ See *On the Nature of Things* 2.349–366.

⁸⁵ See *ibid* 2.268 and 3.299.

⁸⁶ There are other examples of less anthropomorphic conceptualizations during this period, such as Seneca, who reported his temporary adoption of vegetarianism. However, even Seneca abandoned the practice on the urging of his father to ‘eat better once again’. See *Moral Letters* 108.

⁸⁷ Seetah (n 1) 6.

for the benefit of the non-human animals most affected by the 'commodity classification' in today's world.

Uncovering the Legal Vulnerability of Hunting Dogs in France and Spain

Laure Gisie*

Abstract

Hunting has deep historical roots as a means of subsistence and recreation, evolving over time to encompass various social, cultural, and economic dimensions. A crucial aspect of hunting is the use of dogs, which have been bred and trained for millennia to aid hunters in tracking and capturing prey. This paper delves into the legal safeguards extended to hunting dogs in France and Spain, focusing on their unique role in the hunting tradition. Both France and Spain recognize the sentience of domestic animals, including hunting dogs, which grants them some level of legal protection. Nevertheless, the absence of dedicated provisions for hunting dogs leaves them vulnerable. The legal landscape concerning domestic animals is extensive and fragmented in both countries, with laws spreading across multiple texts. Spain's recent move towards a national animal protection law presented an opportunity for reform. However, a controversial amendment that excludes hunting dogs raises questions about equality before the law, potentially granting preferential treatment to hunters. This argument claims enhanced legal protections for hunting dogs in France and Spain. The contention underscores the role that the European Union (EU) can play in ensuring compliance from Member States with European values and, in particular, with Article 13 of the Treaty on the Functioning of the European Union (TFEU). As the EU has been at the forefront of animal welfare improvements, it holds the potential to influence change in Member States, ultimately fostering greater compassion and fairness in the treatment of hunting dogs.

Keywords

Hunting; hunting dogs; European Union; France; Spain; animal abuse

I. Introduction

With the development of agriculture and the domestication of animals, hunting became a recreational activity shortly after the fall of the Roman Empire and was not a subsistence activity, meaning it was primarily used for leisure rather than to obtain food. At that time, this sport was reserved for the upper classes.¹ It was much later that hunting acquired its current role as leisure in an industrialized urban society. This led to the development of new technologies, notably more effective weapons, which made deadlier hunting techniques

* Autonomous University of Barcelona, Spain.

¹ See Christine Orobítg, 'Chasse et construction identitaire de la noblesse: la place de la chasse dans l'éducation noble' (2023) 44 e-Spania. *Revue interdisciplinaire d'études hispaniques médiévales et modernes* <<https://journals.openedition.org/e-spania/46294>> accessed 15 March 2024.

possible. Despite the use of powerful weapons, hunters continue to use dogs to hunt because they have a great ability to follow scents and track prey.

France and Spain stand out in Europe as hunting giants, with a combined population of nearly 2 million hunters.² However, this activity, although regulated, arouses persistent controversy. Beyond debates about safety and concerns about biodiversity loss, hunting dogs represent an overlooked aspect. These animals are used extensively during hunting, but too often they are neglected and even subjected to mistreatment and cruelty. Often relegated to kennels, out of sight, for long periods, these canine companions are confronted with poor living and working conditions.³ There are also concerns about the training of hunting dogs as sometimes this is carried out using electric collars, a device banned in many countries because of the pain it inflicts. Add to this the risks of injuries during hunting, a lack of adequate veterinary monitoring (sometimes hunters replace animal health professionals by stitching up the dogs themselves) and the lack of effective control over these practices.

Faced with this picture, the following question arises: does the legislation governing hunting dogs in Spain and France offer sufficient protection for these particularly vulnerable animals, or are improvements necessary to guarantee their well-being and safety? In this study on the situation of hunting dogs in France and Spain, I will address the factual situation and legal status of these animals, emphasizing their vulnerability within hunting practices. As such, I will propose a discussion on the potential role of hunting dogs and the role of the European Union in the harmonization and strengthening of the protection of hunting dogs beyond national borders.

II. The Hunting Dog

1. Genetic Modifications

The dog (*canis lupus familiaris*)⁴ is a domestic mammal of the Canidae family, closely related to the wolf.⁵ The domestic animal corresponds to a species which has undergone

² See Ministerio para la Transición Ecológica y el Reto Demográfico, *Estadística Anual de Caza* (2019) <https://www.miteco.gob.es/content/dam/miteco/es/biodiversidad/estadisticas/aef2019_10_caza_tcm30-529162.pdf> accessed 15 March 2024; Ministère de la Transition écologique et de la Cohésion des territoires, *Chasse en France* (2024) <<https://www.ecologie.gouv.fr/chasse-en-france#:~:text=La%20France%20compte%20pr%C3%A8s%20d,multiple%2C%20souvent%20difficile%20%C3%A0%20appr%C3%A9hender>> accessed 15 March 2024; C Sánchez-García, M Delgado and LF Villanueva, *Preguntas y respuestas sobre la caza en España (Questions and Answers of Hunting in Spain)* (Fundación Artemisan 2020) <<https://fundacionartemisan.com/wp-content/uploads/2021/12/50-preguntas-y-respuestas-sobre-la-caza.pdf>> accessed 15 March 2024.

³ See AnimaNaturalis, 'El horror de la caza con perros 'a la española' al descubireto' (23 April 2023) <<https://www.animanaturalis.org/n/46470/el-horror-de-la-caza-con-perros-a-la-espanola-al-descubierto>> accessed 6 March 2024. The images, which were collected between 2021 and 2023, reveal the brutality of hunting with dogs in Spain.

⁴ The *Fédération Cynologique Internationale* (International Canine Federation) recognizes 356 breeds divided into 10 groups, some of which are particularly suited to hunting. See <<https://www.fci.be/en/>> accessed 15 March 2024: Group 1 Sheepdogs and Cattle dogs (except Swiss Cattle dogs); Group 2 Pinscher and Schnauzer – Molossoid and Swiss Mountain and Cattle dogs; Group 3 Terriers; Group 4 Dachshunds; Group 5 Spitz and primitive types; Group 6 Scent hounds and related breeds; Group 7 Pointing Dogs; Group 8 Retrievers – Flushing Dogs – Water Dogs; Group 9 Companion and Toy Dogs; Group 10 Sighthounds.

⁵ See Lindsay R Mehrkam and Clive DL Wynne, 'Behavioral Differences Among Breeds of Domestic Dogs (*Canis Lupus Familiaris*) Current Status of the Science' (2014) 155 *Applied Animal Behaviour Science* 12 <<https://doi.org/10.1016/j.applanim.2014.03.005>> accessed 15 March 2024.

modifications, by human selection and which has been raised from generation to generation under human supervision. Based on the rate of modification of DNA sequences, the separation between the wolf and the dog would have occurred around 135,000 years ago.⁶ Studies carried out by researchers at Harvard show that the modifications have shaped the very structure of the brains of different breeds of dogs. Hecht and others found neuroanatomical characteristics correlated with different behaviors such as hunting, guarding, herding and companionship.⁷

Like all domestic species, hunting dogs have been subjected to ongoing and consistent selection pressures. Genetically shaped and subsequently refined to align with human expectations, they now have adapted morphologies. Therefore, if the so-called 'hunting' dog proves effectively suitable for hunting, it is primarily because humans have sought to foster specific characteristics pertaining to certain breeds of dog. Desired qualities such as speed, endurance, keen eyesight, and a strong sense of smell enable them to efficiently track game.

2. The Status of the Hunting Dog

The question of whether a hunting dog is a dog like any other becomes a challenge when examining its legal status. From a biological standpoint, no significant differences occur between a hunting dog and other dogs. However, the law introduces complexities into their classification.

George Orwell expressed the idea that 'all animals are equal, but some animals are more equal than others',⁸ and while this statement was made in a different context, it can be applied quite literally to the case of hunting dogs. Indeed, dogs acquired for the purpose of assisting in hunting do not enjoy the same benefits as dogs adopted or purchased to be simple companions within a family. Their living conditions are sometimes very different. Hunting dogs are often kept in kennels, whereas purely companion animals more commonly live indoors, sheltered from the vagaries of weather, surrounded by their 'family'.⁹

In France, although there may be a difference in treatment, the law does not make a distinction. Dogs enjoy the status of a domestic animal, a recognition established by ministerial decree.¹⁰

In Spain, the legal framework related to dog welfare is notably intricate. The presence of diverse laws governing animal welfare, combined with the autonomy of each individual region to define its competencies in the realms of animal protection and hunting, presents a formidable obstacle to achieving comprehension and uniformity within this legal domain. The animal protection laws of each autonomous community offer a different definition for all the various categories of animals. In the midst of these complexities, the hunting dog occupies

⁶ See Carles Vil and others, 'Multiple and Ancient Origin of the Domestic Dog' (1997) 276 *Science* 687.

⁷ See Erin E Hecht and others, 'Significant Neuroanatomical Variation Among Domestic Dog Breeds' (2019) 39 *Journal of Neuroscience* 7748 <<https://doi.org/10.1523/JNEUROSCI.0303-19.2019>> accessed 15 March 2024.

⁸ George Orwell, *Animal Farm* (first published 1945, Penguin 2008) 112.

⁹ The family as a nucleus formed by different species is increasingly accepted by law. See Sáez-José Olmos, Carmen Caravaca-Llamas and Jerónimo Molina-Cano, 'La familia multiespecie: cuestión y reto multidisciplinar' (2003) 97 *Aposta, Revista de Ciencias Sociales* 8 <<http://www.apostadigital.com/revistav3/hemeroteca/jsaezol.pdf>> accessed 15 March 2024.

¹⁰ See Arrêté du 11 août 2006 fixant la liste des espèces, races ou variétés d'animaux domestiques [2006].

a unique position, straddling two distinct categories. It is very difficult to know where the hunting dog stands legally.

This analysis will use definitions provided by the animal protection laws of different autonomous communities in Spain. Taking Act 11/2003 on the protection of animals in Andalusia as an example,¹¹ companion animals are defined as those 'hosted by human beings, generally in their homes' (*'albergados por los seres humanos, generalmente en sus hogares'*) and are primarily intended to provide companionship, with profit not being the essential element determining their ownership. Conversely, animals that do not live with humans but are kept by humans for the purpose of producing food or other benefits are classified as livestock. This legal distinction underscores the significance of the relationship between humans and animals in legal classification. However, for hunting dogs, whose purpose encompasses both companionship and the performance of specific functions in hunting, the application of these categories can be ambiguous.

Another example, Act 7/2020, dated August 31, 2020, on the well-being, protection, and defense of animals in Castilla-La Mancha,¹² provides insightful definitions on this matter. 'Livestock' refers to animals intended for production, reproduction, fattening, or slaughter, such as those used in fur farming or hunting activities. As for the definition of a 'companion animal', it is an animal in the possession of a human, provided it is not kept for consumption, for the use of its products, or for commercial or lucrative purposes. This category encompasses all dogs, regardless of their initial purpose or the place they inhabit, helping to clarify the legal classification of these animals.

The animal protection laws of different autonomous communities are not uniform in their definitions, making it challenging to determine the legal status of hunting dogs clearly. The variability in animal protection laws across different autonomous communities has led to uncertainties. This lack of consistency has prompted the creation of a national statute on animal protection, dated 28 March 2023, addressing the need to establish a unified regulatory framework covering the entire national territory.

The very recent Spanish law on animal welfare, aiming to create protection at the national level and not just at the level of autonomous communities, resolves this semantic issue. The statute provides a definition of animals used, particularly in hunting, specifying that they are 'animals used in specific activities'. Hunting dogs are considered 'dedicated companion animals for a specific activity or task, such as birds for falconry, shepherd and livestock guardian dogs, or dogs and ferrets used in hunting activities'. In the legal realm, definitions play a crucial role, but in this case, 'animals used in specific activities' has been defined with the purpose of excluding them from animal protection rights.

¹¹ Ley 11/2003, de 24 de noviembre, de protección de los animales [2003].

¹² Ley 7/2020, de 31 de agosto, de Bienestar, Protección y Defensa de los Animales de Castilla-La Mancha [2020].

III. The Vulnerability of Hunting Dogs: A Call for Strengthened Legal Protection

1. The Exclusion of Hunting Dogs in Spanish Animal Welfare Law

Until now, in Spain, only the autonomous communities have been able to regulate animal protection. However, this approach created different rules depending on the region, which resulted in unequal protection of animals. This is why Spain promulgated a new law aimed at strengthening animal protection. At first glance, this seems like good news, but it does not account for the exclusion of dogs used in specific activities.

To understand this exclusion, we must return to the origins of the law. In 2020, the Directorate of Animal Rights was created in Spain. This institution, which reports to the Ministry of Social Rights, promised to put in place a national animal protection law. In October 2021, the first version of the bill was published. Although imperfect, this text was innovative and promising because it ensured good protection for all dogs no matter their use.

The revised draft submitted to Parliament is a step backward in comparison to the initial version. While the law was still under parliamentary procedure, it was possible for political parties to propose amendments to the initial text. In January 2022, the Ministry of Agriculture discussed possible exclusion of the law on hunting dogs from national law. A few months later, the political group PSOE¹³ introduced an amendment to this effect.¹⁴

The suggested text was formulated as follows:

‘It is proposed to add a new letter e) to paragraph 3 of Article 1, with the following wording:

“e) Animals used in specific activities (sports animals recognized by the Superior Sports Council, falconry birds, shepherd and livestock guardian dogs) as well as those used in professional activities (dedicated to a specific activity or task carried out jointly with their handler in a professional or work environment, such as rescue dogs, pets used in assisted interventions or animals of the Security Forces and Corps or the Armed Forces). [...] Likewise, hunting dogs, rehalas and auxiliary hunting animals will be excluded, which will have their own legislation as established in the National Hunting Management Strategy’.¹⁵

¹³ The Spanish Socialist Workers’ Party is a social-democratic political party in Spain, the party in power at the time of this writing.

¹⁴ See Congreso de los diputados. Boletín oficial de las cortes generales. Proyecto de Ley de protección, derechos y bienestar de los animales <https://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-117-3.PDF> accessed 15 March 2023.

¹⁵ The original Spanish version reads as follows: ‘*Se propone adicionar una nueva letra e) al apartado 3 del artículo 1, con el siguiente tenor: “e) Los animales utilizados en actividades específicas (las deportivas reconocidas por el Consejo Superior de Deportes, las aves de cetrería, los perros pastores y de guarda del ganado) así como los utilizados en actividades profesionales (dedicados a una actividad o cometido concreto realizado conjuntamente con su responsable en un entorno profesional o laboral, como los perros de rescate, animales de compañía utilizados en intervenciones asistidas o los animales de las Fuerzas y Cuerpos de Seguridad o de las Fuerzas Armadas) [...] Igualmente quedarán excluidos los perros de caza, rehalas y*

This amendment was passed and thus it 'gutted' the content of the bill, leaving hunting dogs outside the protection of the animal welfare law.

2. The Lack of Protection for Hunting Dogs in Hunting Laws

In Spain, Article 148.1.11 of the Constitution specifies that the autonomous communities can create their own laws regarding hunting. By virtue of their statutes of autonomy, almost all the autonomous communities have adopted and promulgated their own hunting laws. Act 1/1970, of 4 April 1970, on hunting,¹⁶ initially in force throughout Spain, has become a complementary law in regions that do not have their own law, such as Catalonia and Madrid. In any case, the government cannot regulate these matters, which fall within the exclusive competence of the autonomous regions.¹⁷ This statute makes reference to hunting dogs in Article 28, establishing that the use of dogs for hunting and their free presence in hunting grounds must comply with the rules to be determined by regulations, and that the Ministry of Agriculture undertakes to support the conservation and promotion of hunting dog breeds present in the country through the creation of genealogical registers for Spanish hunting dogs.

In summary, in Spain, the national law in force mentions hunting dogs in Article 28, but it does not overtly guarantee the protection and physical and moral integrity of these animals. It simply encourages the conservation and promotion of hunting dog breeds by establishing for this purpose the books of origin of Spanish hunting dogs and the corresponding genealogical books.

The situation in Spain presents a complex challenge, as evidenced by the need to consult the hunting laws specific to each autonomous community to assess the level of protection afforded to hunting dogs. Some laws, such as Act 8/2022 of 24 June 2022 on hunting and game management in La Rioja,¹⁸ provide a legal definition for a hunting dog, defining a hunting dog as an animal 'which, due to its breed, category or education, is specially qualified and/or trained for hunting.' Other laws regulate the 'use of dogs'¹⁹ in hunting practice, but no hunting law in Spain explicitly provides for the protection of hunting dogs, so no offence will be prosecuted on this basis. Hunting laws merely refer to the basic obligations of dog owners, such as Act 8/2022 on hunting and game management in La Rioja, which in Article 51 states that owners of hunting dogs are required to comply with the general regulations on the keeping and registration of dogs.

In France, the privilege of hunting was among the very first feudal privileges abolished by the French Revolution. From then on, the legislator intervened in favor of hunting for all, while increasingly regulating its practice. It was not until 3 May 1844 with the Hunting Police Act that the legal framework really took shape.²⁰ This law still constitutes today the foundation of the organization of French popular hunting. Unlike its Hispanic neighbor, France

animales auxiliares de caza que contarán con una legislación propia según lo establecido en la Estrategia Nacional de Gestión Cinegética'.

¹⁶ Ley 1/1970, de 4 de abril, de caza [1970].

¹⁷ See Miguel Ángel Garaulet Rodríguez, Government Response, no 184/353576 (2017) <https://www.congreso.es/entradap/l12p/e9/e_0099786_n_000.pdf> accessed 15 March 2024.

¹⁸ Ley 8/2022, de 24 de junio, de caza y gestión cinegética de La Rioja [2022].

¹⁹ For example, art 35. Use of dogs. Ley 4/2021, de 1 de julio, de Caza y de Gestión Sostenible de los Recursos Cinegéticos de Castilla y León.

²⁰ Loi du 3 mai 1844 sur la police de la chasse [1844].

regulates hunting activity at the national level, notably through its provisions of the environmental code, although certain regions or departments may have their own rules and decrees concerning hunting. For example, the prefect can, in the annual order opening hunting, regulate or prohibit the use of dogs.²¹

On the other hand, the protection of dogs used for hunting is not taken into account by the Environmental Code as such. Thus, the incriminations concerning the field of hunting relate to the hunting license, the hunting territories, the modes and means of hunting, the transport, the management and the marketing of game, but in no case to the protection of animals helping to hunt. It should, therefore, be noted that there is no specific incrimination relating to the protection of dogs. Hunting dogs seem to fall under other provisions.

3. The Protection of Hunting Dogs Through the Civil Code and the Penal Code

Given that the legislation specific to hunting in France and Spain does not provide in any way for the protection of hunting dogs, it is necessary to refer to the relevant civil and criminal provisions.

3.1. Animals in the Spanish Civil Code

Act 17/2021, which amends the Civil Code, the mortgage law, and the civil procedure law, brings forth significant changes in the legal treatment of animals.²² Notably, it revises the legal status of animals by establishing a principle that distinguishes them from inanimate things or goods. This groundbreaking shift is rooted in the acknowledgment that animals are sentient beings, described as 'living beings endowed with sensibility' (*'seres vivos dotados de sensibilidad'*). Since then, animals are recognized in the Civil Code as beings capable of feeling emotions, pain, well-being and of subjectively perceiving their environment and their life experiences.

This reform of the Civil Code was introduced after many countries had already passed this reform.²³ As society evolves and scientific understanding of animal cognition advances, more nations have revised their legislation to ensure better protection.

Hunting dogs are therefore also affected by this legal provision. Recognition of their sensitivity means that societies and accordingly their legislation must take into account their well-being and their specific needs. This includes ensuring appropriate living conditions, adequate veterinary care, and ensuring that they do not suffer mistreatment or neglect, whether during or outside the hunting season.

The sentience of hunting dogs should also be taken into account in hunting regulations. Hunting practices must comply with ethical and legal standards to ensure that hunting dogs do not suffer.

²¹ See Code de l'environnement, art R429-4.

²² Ley 17/2021, de 15 de diciembre, de modificación del Código Civil, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil, sobre el régimen jurídico de los animales [2021].

²³ See Marita Giménez-Candela, 'Descosificación de los animales en el Cc. Español' (2018) 9 dA. Derecho Animal (Forum of Animal Law Studies) 7 <<https://raco.cat/index.php/da/article/view/349334>> accessed 15 March 2024.

3.2. Animals in the French Civil Code

The French Civil Code recognized animals as sentient beings on 6 February 2015 through the introduction of Article 515-14, which states that ‘animals are living beings endowed with sensibility’ (*‘être(s) vivant(s) doué(s) de sensibilité’*).²⁴ This article, subject to the laws protecting them, also places animals under the property regime. The scope of this article gave rise to contrasting assessments. Thus, during the parliamentary debates, we witnessed exchanges between those who voted for the ‘Glavany amendment’²⁵ and those who were not in favor of its adoption. Philippe Gosselin, deputy, said during the third session of the National Assembly on 15 April 2014 that the new text would open Pandora’s box and thus pose a great danger to hunting. This points at the complex and passionate debates surrounding regulations aimed at protecting animals from the hunting sector. The concern of the hunting sector is unfounded, because unlike in Spain, the sensitivity of animals, before being recognized in French civil law, had already been recognized in the Rural Code since 1976.²⁶ Hunting dogs are and were already subject to the provisions of Article L. 214. The latter states that ‘[a]ny animal being a sentient being must be placed by its owner in conditions compatible with the biological imperatives of its species’. Until now, however, this specific recognition of animals has not called into question the practice of hunting.

3.3. Animals in the Spanish Penal Code

Animal abuse was integrated into the Penal Code as a fault in 1995 and recognized as a crime in 2003. Since then, this offense has been reformed several times and the latest reform took place recently in March 2023.²⁷ The main objectives of the reform are to strengthen the criminal protection of animals, so as to allow a more effective penal response to various forms of violence against them, while adapting the penal code to the new legal status of animals, recognizing them as ‘living beings endowed with sentience’ (*‘seres vivos dotados de sensibilidad’*), in accordance with Article 333 bis, paragraph 1 of the Civil Code.

Since this reform, the Spanish Penal Code has a new title XVI bis ‘Crimes against animals’. Article 340 bis provides for prison sentences, fines and a ban on practicing in the event of animal mistreatment; the penalties vary depending on whether veterinary treatment is necessary or not. On the other hand, Article 340 ter establishes that the offense of animal abandonment will be punishable by a fine and adds as an option the penalty of work for the benefit of the community.

The most important novelty brought about by this reform lies in the change made to the prison sentence provided for in the existing penal code, thus opening the door to a potential replacement of the prison sentence with a fine, for all forms of animal abuse crimes. The fine could be the punishment favored by prosecutors, a likely worrying trend. It is therefore foreseeable that this alternative penalty of fine will be widely used, including in serious cases of animal mistreatment, which, far from strengthening the protection of animals against

²⁴ Loi no 2015-177 du 16 février 2015 relative à la modernisation et à la simplification du droit et des procédures dans les domaines de la justice et des affaires intérieures [2015] art 2.

²⁵ Amendment no 59 to the ‘Loi de modernisation et de simplification du droit dans les domaines de la justice et des affaires intérieures’ <<http://www.assemblee-nationale.fr>> accessed 15 March 2023.

²⁶ Loi no 76-629 du 10 juillet 1976 relative à la protection de la nature [1976] art 9.

²⁷ Ley Orgánica 3/2023, de 28 de marzo, de modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de maltrato animal [2023].

mistreatment, risks leading to greater impunity, because fines are mainly intended for minor infractions.

3.4. Animals in the French Penal Code

Abuse of hunting dogs and, in other words, animals, constitutes criminal offenses within the meaning of the French Penal Code. Every animal is a sentient being and must be placed by its owner in conditions compatible with the biological requirements of its species; it is therefore prohibited to mistreat a domestic animal. A reform on 30 November 2021 increased the penalties for perpetrators of mistreatment.²⁸ Serious abuse, acts of cruelty and abandonment saw their penalties increase, going from 2 years of imprisonment and a fine of 30,000 Euros to 3 years of imprisonment and a fine of 45,000 Euros.²⁹ In the event of the death of the animal, the penalties can reach 5 years of imprisonment and a fine of 75,000 Euros.³⁰ Aggravating circumstances have been created, such as committing these acts in the presence of a minor or abandoning the animal in the event of immediate or imminent risk of death. They carry penalties of up to 4 years in prison and a fine of 60,000 Euros. In addition, the penal code now punishes the intentional killing of a domestic animal – outside of legal activities – with 6 months in prison and a fine of 7,500 Euros.³¹

3.5. Taking into Account the Sensitivity/Sentience of Animals as Applied to Hunting Dogs

The recognition of the sentience of animals applies ipso facto to hunting dogs whether one relies on the Spanish and French civil code or the penal code. This allows judges to be able to crack down on notorious acts of mistreatment of hunting dogs. Thus, in 2022, Criminal Court 5 in Cordoba convicted two hunters of animal abuse for the so-called ‘farm of horrors’. The judge imposed the maximum penalty provided in the Penal Code for each of them,³² namely, 18 months of imprisonment and a four-year special disqualification for keeping and exercising any profession, trade or business related to animals, and a ban on hunting of 4 years for each of the accused for having mistreated 29 dogs, 2 of which died. The hunting dogs were on a farm without adequate sanitary conditions, tied with chains to olive trees, without water, without food, surrounded by dirt and bones of other deceased dogs and without shelter from the weather, relying only on cans and containers with sharp edges.³³ This case is one case among many others since there are numerous legal actions against hunting dog owners in Spain. According to the latest figures, 40% of dogs which are victims of abuse, abandonment or theft are hunting dogs.³⁴ Another recurring problem is that of cruelty towards *galgos*.³⁵ Very popular in Spain but banned in France for hunting,³⁶ Spanish

²⁸ See Loi No 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes [2021].

²⁹ See Code Penal, art 521-1.

³⁰ See *ibid.*

³¹ See Code Penal, art 522-1.

³² That is the maximum prior to the last reform.

³³ Unpublished court decision. See Ángel Robles, ‘Sentencia pionera en Córdoba: Condenados a 18 meses de cárcel por maltrato animal los dos cazadores de la ‘finca de los horrores’ de Cabra’ *El Día de Córdoba* (Córdoba, 4 October 2022).

³⁴ According to statistics from the last five years of the Nature Protection Service of the Civil Guard (Seprona).

³⁵ See Marita Giménez-Candela, ‘Galgos’ (2014) 5 *dA. Derecho Animal* (Forum of Animal Law Studies) 1 <10.5565/rev/da.278> accessed 15 March 2024.

³⁶ Greyhound dogs, by their instinct and their conformation, are particularly suited to the destruction of game and therefore prohibited in France from hunting since the law of 1844.

greyhounds or *galgos* are used by hunters to chase hares. Traditionally, hunters evaluate whether or not the Spanish greyhound that accompanied them during the season is good for the following season. If the Spanish greyhound is '*sucio*',³⁷ that is to say it is not good enough to chase the hare, they get rid of it by cruel means such as hanging, abandonment or death in a well, acts which are in most cases not punished since the *galgos* found are not identified. Only a few criminal sentences were pronounced on the basis the offenses provided for in the Penal Code.³⁸

In France, cases of mistreatment of hunting dogs are also very worrying and numerous each year. To take just one example, in 2021, a video made the rounds on social networks showing hunting dogs locked in cages placed in a vehicle.³⁹ Ultimately, the court did not accept the confiscation of the 11 dogs requested by the animal protection associations, but the owner of the mistreated hunting dogs was sentenced to a fine of 2,200 Euros by the judicial court of Towers. He had to pay 11 fines of 200 Euros and a symbolic Euro to the various associations defending the animal cause that have filed civil suits.⁴⁰ This sentence shows that the mistreatment of hunting dogs is not taken seriously enough by the French courts. One should note that, like in Spain, French hunting dogs are often not identified.

With this in mind, it is perhaps time to consider harmonization at the European level for the protection of hunting dogs. Thus, it would be possible to create specific directives establishing minimum standards for the protection of hunting dogs in all member countries. This approach would ensure that the rights and welfare of these animals are taken into account in a coherent and uniform manner, regardless of the national legislative specificities. It would also help promote more ethical hunting practices.

IV. The Hypothetical Protection of Hunting Dogs through the European Union

The European Union (EU) only has the powers conferred on it by the treaties. These powers are defined in Articles 2 through 6 of the Treaty on the Functioning of the European Union (TFEU). The powers not conferred on the EU by the treaties therefore remain in the hands of the Member States.⁴¹ Although the EU does not have complete authority to regulate laws relating to animal protection, it plays a central role, particularly because of its competence in the areas of the environment and agriculture.

³⁷ According to tradition, when hunting the hare, greyhounds are supposed to follow exactly the same trajectories as the hare, to follow the same path. When a greyhound realizes that, by cutting diagonally, he gains ground, the grace is lost, he is considered a 'dirty galgo' and must be punished. The same goes for those who are not fast enough. See Santiago M Cruzada, Pablo Palenzuela Chamorro, Helena Pérez Gamuz, *La caza de liebres con galgos en Andalucía. Informe para registro en el Atlas del Patrimonio Inmaterial de Andalucía* (Federación Andaluza de Galgos e Instituto Andaluz de Patrimonio Histórico 2021).

³⁸ See the comment by Sergio García-Valle, 'Caso de los galgos ahorcados en Fuensalida, de nombre Iniestay Bola, de 5 años y 22 meses. Sentencia 389/2013 de 15/10/2013, Juzgado de lo Penal nº 1 de Toledo, Procedimiento abreviado nº 9/2012. Magistrado: Ilmo. D Carmelo Ordoñez Fernández' (2013) 4 dA. *Derecho Animal* (Forum of Animal Law Studies) 6 <<https://doi.org/10.5565/rev/da.162>> accessed 15 March 2024.

³⁹ See Kreezy R Official, '*Animal Abuse: Dogs Locked in Wrecks in Reugny (37) The Investigation*' (YouTube, April 2021) <<https://www.youtube.com/watch?v=i0b2wxct1BY>> accessed 15 March 2024.

⁴⁰ Unpublished court decision. See Yohan Nicolas, 'Indre-et-Loire: le propriétaire de chiens de chasse condamné à 2.200 euros d'amende pour maltraitance' (2021) France Bleu Touraine <<https://www.francebleu.fr/info/faits-divers-justice/indre-et-loire-le-propretaire-de-chiens-de-chasse-condamne-a-2-200-euros-d-amende-pour-maltraitance-1634216809>> accessed 15 March 2024.

⁴¹ Consolidated Version of the Treaty on European Union [2008] OJ C115/13, art 5.

The EU also has one of the most comprehensive sets of rules in the world regarding animal welfare, and its Article 13 TFEU states that the requirements in terms of welfare of animals as sentient beings must be fully taken into account in European policies.⁴² This article does not explicitly mention hunting dogs, although it seems possible to interpret it as covering hunting dogs as well, given that they are sentient beings. Moreover, the Intergroup for Animal Welfare and Conservation denounced the fact that ‘the treatment of Spanish greyhounds is in contradiction with European values’ in March 2021. In a letter sent to the government and the 17 Spanish autonomous communities, they denounce the fact that the treatment of Spanish greyhounds and other hunting dogs is contrary to European values and, in particular, to the condition of ‘sentient beings’, recognized in Article 13 TFEU.⁴³

There have been other interventions throughout the history of the EU, notably the intervention of Michèle Striffler, a former member of Parliament who tried to defend greyhounds during her mandate, but her efforts were in vain. She drafted an initiative asking the European Parliament to adopt the written declaration DC933037 ‘on the immediate cessation of torture and ill-treatment of greyhounds in Europe’ and to implement it as a normative transposition in all Member States of the EU.⁴⁴

To provide another example, Laura Huhtasaari, member of Parliament from Finland, recorded a Priority question for written answer P-000675/2020 to the Commission in 2020⁴⁵ and the answer given by Stella Kyriakides on behalf of the European Commission says that:

The Commission is aware that the welfare situation of dogs — which lies under the responsibility of the Member States — may be problematic in some Member States and reminds that the Article 13 of the Treaty on the Functioning of the European Union states that, in ‘formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals’.⁴⁶

All these examples show that the EU is aware of the problems linked to cruelty towards hunting dogs. The *galgo* is often used as the symbol to advance the cause of hunting dogs and find better protection and a better legal arsenal. Although the EU is not directly competent in matters relating to pets and hunting dogs, it can play an important role in putting pressure on Member States and the Commission to do everything in its power to ensure

⁴² ‘In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage’.

⁴³ See Intergroup on the Welfare and Conservation of Animals, ‘MEPs Call on Spanish Authorities to Better Protect Hunting Dogs’ (12 March 2021) <<https://www.animalwelfareintergroup.eu/news/meps-call-spanish-authorities-better-protect-hunting-dogs>> accessed 15 March 2024.

⁴⁴ See Michèle Striffler and others, ‘Written Declaration, Submitted Under Rule 123 of the Rules of Procedure of the European Parliament, on Putting an Immediate Stop to the Torture and Mistreatment of Greyhounds in Europe’ (15 April 2013) <https://www.europarl.europa.eu/doceo/document/DCL-7-2013-0006_EN.pdf?redirect> accessed 15 March 2024.

⁴⁵ Parliamentary question – P-000675/2020.

⁴⁶ Answer given by Stella Kyriakides on behalf of the European Commission (23 March 2023) <https://www.europarl.europa.eu/doceo/document/P-9-fe2020-000675-ASW_EN.html> accessed 15 March 2024.

that EU animal welfare legislation is properly applied, and to recommend concrete measures so as to ensure that acts of cruelty inflicted on greyhounds in Europe stop immediately.

A recent illustrative example underscores the pivotal role that the European Union (EU) can play in advocating for and shaping animal welfare standards. This example comes to light through the actions of the European Food Safety Authority (EFSA), a prominent agency within the EU. On 14 September 2023, the EFSA released a comprehensive scientific report dedicated to enhancing the welfare of cats and dogs within commercial breeding establishments.⁴⁷ This report, intended to support potential legislative measures for the protection of cats and dogs kept in commercial breeding for sport, hunting, or companionship, which highlights the fact that the living conditions of dogs and in particular hunting dogs must be good and that these dogs should not be kept permanently in boxes, cages, and crates. The EFSA assessed certain cosmetic and convenience surgery practices such as ear cropping, tail docking and vocal cord resection and concluded that they should not be carried out unless absolutely necessary for the health of the animal. Moreover, the EFSA assures that tail docking in hunting dogs is effective in preventing the possible occurrence of future injuries.⁴⁸ Tail dock surgeries are traditionally performed on dogs living in packs and with a tendency to bite their tails, or on dogs living in bushy terrain, where the tail is easily scratched because it is poorly vascularized and this part of the body heals poorly. The European Convention for the protection of companion animals of 13 November 1987, prohibits, in its Article 10, among other things, the removal of the tails of dogs for non-medical reasons.⁴⁹ France and Spain are signatories to this convention. The observation of the EFSA scientific report on tail docking raises questions. Tail docking can be very painful, but it also deprives dogs of an organ of communication with their peers since dogs express fear, joy, stress, and excitement through tail movements.⁵⁰ Once again, it is important to note that hunting dogs make the object of an exemption, which illustrates their lower level of protection compared to other dogs.

V. Conclusion

In the Western world, hunting is a leisure activity which makes obvious the suffering of the hunted animals, but we rarely think about the other victims of hunting, namely the hunting animals.

Hunting law, whether in France or Spain, does not have as its direct object the animal and its protection but the proper functioning of the activity by providing for hunting methods, hunttable species and hunting periods. In the event of mistreatment of hunting dogs, the judge must rely on animal protection laws, the Civil Code which recognizes the animal as sensitive or even the Penal Code. Just as hunting laws provide for the regulation and proper

⁴⁷ See EFSA, 'Scientific and Technical Assistance on Welfare Aspects Related to Housing and Health of Cats and Dogs in Commercial Breeding Establishments' (2023) 21(9) EFSA Journal <<https://doi.org/10.2903/j.efsa.2023.8213>> accessed 15 March 2024.

⁴⁸ See *ibid* 5.2.3.3.

⁴⁹ The European Convention for the Protection of Pet Animals is an international treaty of the Council of Europe, leading signatory states to improve the protection due to companion animals <<https://rm.coe.int/168007a67d>> accessed 15 March 2024.

⁵⁰ See Annika Bruner, 'Question for Written Answer E-003650/2021 to the Commission' (19 July 2021) <https://www.europarl.europa.eu/doceo/document/E-9-2021-003650_FR.html> accessed 15 March 2024.

use of hunting dogs, it is equally important that they include specific provisions to guarantee the protection of these animals. Hunting dogs play a crucial role in this activity, and their welfare should be a priority. This means not only regulating their use more strictly to avoid mistreatment and cruelty, but also establishing clear standards for their housing, health care, and general treatment. Including provisions for the protection of hunting dogs in hunting laws would help ensure that these animals, which often work in demanding conditions, receive adequate legal protection and that their rights as sentient animals are respected. It would also strengthen the ethics of hunting by ensuring that all participants, including dogs, are treated with dignity and compassion.

This implies the need to develop stricter regulations and ensure that the rights and welfare of these animals are protected. In this perspective, the EU can play a crucial role in encouraging Member States to adopt higher standards for the protection of hunting dogs.

From Local to Global: A Comparative Study of Animal Law Protections in International Disasters Around the World

Altamush Saeed*

Abstract

The ever-increasing global animal death rate in disasters is a product of our anthropocentric bias. The disasters, unfortunately, do not discriminate and devastate both human and animal life, further exacerbating climate change. Institutions such as factory farming are major drivers of such disasters and as a result, we need an immediate inclusion of an animal disaster protection framework in International and national disaster laws as a mechanism to prevent disasters and ensure human and animal safety.

Keywords

Animal Disaster Protection Framework; Disaster Risk Reduction; UNDRR Sendai Framework; One Health; Anthropocentric bias

'WHAT was our share in the sinning,
That we must share the doom? [...]
What had we done, our Masters,
That you sold us onto Hell'

– Katherine Lee Bates¹

* Altamush Saeed is a BIPOC, award-winning Pakistani Interspecies Justice lawyer, activist, philanthropist, and teacher. He is an Animal Law Professor at the University of Central Punjab Law School in Lahore, where he teaches Pakistan's 1st Animal Law Advocacy Course. He is a Founding Managing Partner at Environmental and Animal Rights Consultants, Pakistan's 1st dedicated Animal and Environmental law and policy firm. He also co-founded Charity Doings Foundation, which works on Interspecies Justice (<charitydoings.org>) (501c3 Tax Exempt US/Non-profit in Pakistan) and runs Pakistan's 1st Disaster Zone Farm Animal Shelter and a plant-based school. He serves as the Animal Welfare Ambassador to Comprehensive Disaster Response Services (CDRSWorld.org) and as the Deputy Director & Regional Director North America at the World Moot on International Law and Animal Rights. He holds 4 advanced postgraduate degrees in law, including 3 Masters in-laws (LLM), respectively in Animal Law, Environmental law, Human Rights and International Law from Lewis & Clark Law School and the University of Michigan Law School, and a BA-LLB from Lahore University of Management Sciences Pakistan. He is extremely grateful to Dr Raj Reddy, Professor Joyce Tischler, and Dr Hope Ferdowsian for their mentorship in International Animal Law, the Industrial Agriculture System and a Just One Health framework without which this paper would not have been possible.

¹ Katherine Lee Bates, *The Horses* <<https://www.poetry.com/poem/24904/the-horses>> accessed 20 October 2023.

1. Animals in Disasters: An Introduction

With over 69% of biodiversity loss reported from 1968–2018, followed by over 25 water-related disasters in the US alone post-2018, the combined number of animal deaths in Hurricane Michael and Florence (both occurring in 2018) was 5.5 million, out of which 3.4 million were chickens and 5500 pigs, many of which drowned and caused the CAFO manure pits to overflow and pollute waterways.² However, the animal death toll is a global phenomenon. For example, the ongoing Kenyan drought since 2016 has led to the deaths of several animals.³ Kenya wildlife officials found the drought has killed 512 wildebeest, 381 zebras, 205 elephants, 49 Grevy's zebras, 51 buffalo, 12 giraffes, eight reticulated animals, and four Massai animals. Similarly, in Pakistan, the 2022 floods, which had drowned 1/3rd of the country at one point, led to the deaths of over 1.164 million animals. Pakistan, like Kenya, also faces yearly droughts, and countless animals die annually.⁴ 2021 Following British Columbia's flooding and mudslides caused by excessive rain, about 700,000 animals perished in Canada (BC). According to the BC Ministry of Agriculture, 420 dairy cows, 12,000 piglets, and 628,000 birds have died. A further 110 beehives were destroyed, resulting in three million bee deaths.⁵ On the legal end, we need an international animal protection instrument that may act as an adaptation measure to advocate for local and global animal protection during disasters. What that measure looks like can be informed by comparative legal analysis of animal protection laws in Natural Disasters across the globe.⁶

The United Nations Office for Disaster Risk Reduction (UNDRR) estimates that by 2030, with current climate projections, the world will face around 560 disasters per year and an additional 37.6 million people living in conditions of extreme poverty as a result.⁷ No numbers on the loss of animal life have been predicted, but extrapolating from the 3 billion loss

² See Rosamunde Almond and others (eds), *Living Planet Report 2022 – Building a Nature-positive Society* (WWF, 2022) <https://wwfint.awsassets.panda.org/downloads/embargo_13_10_2022_lpr_2022_full_report_single_page_1.pdf> accessed 15 March 2024; Animal Welfare Institute, 'In Natural Disasters, Farm Animals Forsaken' (2018) <<https://awionline.org/awi-quarterly/winter-2018/natural-disasters-farm-animals-forsaken>> accessed 15 March 2024; Water Resources Mission Area, 'Historical Flooding' (28 February 2019) <<https://www.usgs.gov/mission-areas/water-resources/science/historical-flooding>> accessed 15 March 2024.

³ See ABC NEWS, *Kenyan Drought Leads to Mass Animal Deaths as Compensation for Climate-related Losses Becomes a COP27 Topic* (4 November 2022) <<https://www.abc.net.au/news/2022-11-05/hundreds-of-elephants-animals-die-in-kenya-drought/101619978>> accessed 15 March 2024.

⁴ See Khalid Rahim, 'Brief History of Disasters and Its Management in Pakistan' (*Hilal*, October 2019) <<https://learn.realty360view.com/view-article.php?i=3940>> accessed 15 March 2024; CDP, '2022 Pakistan Floods' (*Disaster Philanthropy*, 6 September 2023) <<https://disasterphilanthropy.org/disasters/2022-pakistan-floods/>> accessed 15 March 2024.

⁵ See Jemima Webber, '700,000 Farm Animals Die in British Columbia Floods, Death Toll Expected to Rise' (*Plant Based News*, 6 December 2021) <<https://plantbasednews.org/news/environment/farm-animals-die-british-columbia-floods/>> accessed 15 March 2024.

⁶ See *Text – S.4205 – 117th Congress (2021–2022): Paw Act* <<https://www.congress.gov/bill/117th-congress/senate-bill/4205/text>> accessed 15 March 2024; *H.R.1442 – Prepared Act 117th Congress (2021–2022)* <<https://www.congress.gov/bill/117th-congress/house-bill/1442?r=108>> accessed 15 March 2024; *S.5138 – 117th Congress (2021–2022): Industrial Agriculture* <<https://www.congress.gov/bill/117th-congress/senate-bill/5138?s=1&r=22>> accessed 15 March 2024.

⁷ The United Nations Office for Disaster Risk Reduction, (LinkedIn, 14 October 2023) <https://www.linkedin.com/posts/undrr_breakthecycle-drrday-activity-7118581838100484097-pFiK?utm_source=share&utm_medium=member_desktop> accessed 15 March 2024.

in the 2019 Australian Bushfires, 17 million in the 2020 Amazon fires, and 1 million in the 2022 Pakistan Floods, the deaths will be in the billions.⁸

UNDRR is chiefly responsible for increasing disaster resilience and decreasing vulnerability, thereby employing a disaster prevention approach to reduce disaster occurrence versus disaster response during disasters.⁹ A linguistic analysis of these terms posits a grim picture of non-human animals. Similarly, the policy goal of the UNDRR under the UN Sendai Framework on Disaster Risk Reduction¹⁰ seeks '[t]he substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries'.¹¹

Disasters or Hazards in UN Terminology is defined as 'a potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation. Hazards can include latent conditions that may represent future threats and can have different origins: natural (geological, hydrometeorological and biological) or induced by human processes (environmental degradation and technological hazards)'.¹² Resilience is defined as follows: '[t]he ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions'. Lastly, vulnerability is defined as: '[t]he conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards'.¹³

On a closer look, we see that non-human animals are not mentioned in any of these definitions. Instead, we see that non-human animals are mentioned as livelihoods and assets of persons in the policy goal and as property in the definition of hazards. Designating animals as livelihood or property pillages them into a hierarchal association, thereby enforcing anthropocentrism. Similarly, resilience doesn't mention animals as property but as a community. The term community, however, is also highly anthropocentric, as a society of humans is usually defined as a community.¹⁴

Creating a hierarchal relationship with non-human animals has a blinding effect while we develop policies for disaster prevention. For example, as the world moves toward designating fish as sentient, thereby slightly elevating their status in this human-animal relationship, the anthropocentric bias makes disaster prevention impossible. Humans do not live underwater and have no connection to underwater life, so the harm between water-related tourism and aquaculture is not studied from a disaster prevention perspective. Reports suggest sea

⁸ See Altamush Saeed, 'From the United States to Pakistan: Can Climate Change Pave the Way for an International Right to Animal Rescue in Disasters?' (2023) 29(2) *Animal Law Review* 193.

⁹ See the UNDRR's website: <<https://www.undrr.org/>> accessed 15 March 2024.

¹⁰ See UNDRR, 'Implementing the Sendai Framework' (5 April 2023) <<https://www.undrr.org/implementing-sendai-framework>> accessed 15 March 2024.

¹¹ UNDRR, 'What is the Sendai Framework for Disaster Risk Reduction' (4 April 2023) <<https://www.undrr.org/implementing-sendai-framework/what-sendai-framework>> accessed 15 March 2024.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *Dictionary*, 'Community Definition & Meaning' <<https://www.dictionary.com/browse/community>> accessed 15 March 2024.

corals are bleaching and dying out, and we are losing much biodiversity, many of which may go extinct.

With over 69% of biodiversity loss reported from 1968–2018, followed by over 25 water-related disasters in the US alone post-2018, resulting in the death of at least 9 million farmed animals, any more biodiversity loss can exponentially increase the risk of disasters. Therefore, the skewing of biodiversity loss and the failure to acknowledge the vulnerability risk has risen exponentially.¹⁵

The goal of the UN Sendai Framework is disaster prevention, and an anthropocentric approach instead increases the risk of more disasters. Therefore, anthropocentrism can be very much incompatible with disaster prevention. Anthropocentrism is deeply entrenched in the currently existing disaster protection matrix. This paper aims to offer a complete picture of the existing matrix. Based on such findings, one can make recommendations for local (domestic) and global (international) solutions with a view to creating an animal-specific disaster protection matrix.

1.1. The Global Framework for Animal Protection in Disasters

Disaster Risk Reduction has existed globally for the last forty years. It began in 1980 when the United Nations General Assembly declared the 1990s the 'International Decade for Natural Disaster Reduction'. There have been three global World Conferences on Natural Disaster Reduction to date. The first global conference, which took place in 1994, adopted the World's 1st non-binding framework on Disaster Reduction, titled 'The Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness, and Mitigation'. In 1999, UNDRR also adopted the International Strategy for Disaster Reduction.¹⁶

The Yokohama framework was followed by the Hyogo Framework for Action 2005–15: Building the Resilience of Nations and Communities to Disasters ('HFA'), another non-binding global guiding document from 2005–15. The Hyogo framework was superseded by the currently in-force non-binding global framework called the Sendai Framework for Disaster Risk Reduction 2015–30 ('SFDRR'). The Sendai framework was developed based on key learnings from the 30-year history of disaster risk reduction. In terms of quantitative effect, scope, inclusiveness, and recognition of an all-state responsibility for disaster risk reduction, the Sendai framework goes a giant leap from the Hyogo framework. In addition to an all-state international approach, four priorities have been drafted as a guideline for domestic implementation.¹⁷

To attain the goal of disaster risk reduction and anthropocentric protection of animals as property or livelihood, the Sendai Framework posits the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political, and institutional measures that prevent and reduce hazard exposure

¹⁵ See Almond and others (n 1).

¹⁶ See UNDRR (n 11).

¹⁷ See *ibid.*

and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience.

The Sendai Framework is also highly prescriptive and lays out provisions for conduct and outcome-oriented seven global targets. These include substantially reducing global disaster mortality by 2030, aiming to lower the average per 100,000 global mortality rate; reducing direct disaster economic loss about global gross domestic product (GDP); reducing disaster damage to critical infrastructure and disruption of essential services, among them health and educational facilities, including through developing their resilience; increase the number of countries with national and local disaster risk reduction strategies by 2020; enhance international cooperation to developing countries through adequate and sustainable support to complement their federal actions for implementation of the present Framework by 2030 and increase the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to people by 2030 compared to the period 2005–15 under the Hyogo framework.¹⁸

Subsumed alongside these targets, the Sendai Framework has created four priorities for states at the local, national, regional, and global levels. In chronological order, these priorities are understanding disaster risk, strengthening disaster risk governance to manage disaster risk, investing in disaster risk reduction for resilience and enhancing disaster preparedness for effective response, and ‘Build Back Better’ in recovery, rehabilitation, and reconstruction.¹⁹

The chronological order of priorities logically highlights more emphasis on reducing disaster risk versus mainly focusing on post-disaster recovery, rehabilitation, and reconstruction. However, the exclusion of animals firstly decreases resilience, increases vulnerability, and the impact of disasters. Factory Farming or Concentrated Animal Feeding Operations (CAFOs) are disaster factories. Meat consumption alone is responsible for 47 percent of the global Carbon Dioxide emissions, and factory farms are responsible for 7% of Global Warming. Methane represents just 3 percent of anthropogenic Greenhouse gas emissions but contributes 23 percent to the rise in temperatures due to its higher global warming potential. Thirty percent of such methane emissions come from livestock farming. The food production system, such as farming machinery, fertilizer spraying, and product transportation, causes 17.3 billion metric tons of greenhouse gases annually, representing 35 percent of all global emissions.²⁰ Regarding resources, factory farming from 1990–2020 has resulted in a net loss of 178 million hectares of international forest area and has used 1/4th of global water for feeding animals. Researchers predict a net loss of 17000 non-human animal species by 2050 due to habitat loss and the development of anti-microbial resistance, further fueling biodiversity loss and increasing disaster risk.²¹

¹⁸ See *ibid.* See also Ashleigh Best, ‘The Legal Status of Animals: A Source of Their Disaster Vulnerability’ (2021) 36(3) *Australian Journal of Emergency Management* 63.

¹⁹ UNDRR (n 11).

²⁰ See Oliver Milman, ‘Meat Accounts for Nearly 60% of All Greenhouse Gases From Food Production, Study Finds’ (*The Guardian*, 13 September 2021) <<https://www.theguardian.com/environment/2021/sep/13/meat-greenhouses-gases-food-production-study>> accessed 15 March 2024.

²¹ See New Roots Institute, ‘Factory Farming and the Environment: 11 Facts and Statistics’ (18 January 2022) <<https://www.newrootsinstitute.org/articles/factory-farming-and-the-environment-11-facts-and-statistics>> accessed 15 March 2024.

Manure runoff from such farms contains nitrates and phosphates, which can cause development deficiencies amongst children and lead to algae blooms, ocean acidification, and eutrophication, thereby increasing disaster risk underwater and above the land. The exponential rise of aquaculture puts tremendous pressure on the aquatic environment, causing nutrient accumulation.²² Studies have been conducted on the volume of organic matter, nitrogen, and phosphorus released into the atmosphere by shrimp farms. The estimated amounts of organic matter were 5.5 million tons, 360,000 tons of nitrogen, and 125,000 tons of phosphorus.²³ Underwater deforestation or destruction of Mangrove forests, which are nature's flood and tsunami prevention mechanisms, are lost.²⁴ In Thailand, where the area covered by mangrove forests has more than halved between 1961 and 1996, this is primarily due to conversion to shrimp farms.²⁵ The Mangroves are also habitats to many species, increasing the risk of biodiversity loss and thereby increasing disaster risk.

1.2. Painting the Complete Disaster Risk Reduction Framework: Other International Frameworks Linked to Disasters

The recent UN Resolutions on the Right to a Healthy Environment and the UN Resolution on One Health are critical examples of instruments intended to reduce disaster risk. They are, therefore, part of the international disaster risk reduction framework.²⁶ As the right to a healthy environment is inconceivable without a right to an environment for non-human animals to prevent zoonosis and other issues of concern, it can be indirectly stated that this resolution also extends to non-human animals.²⁷

The United Nations Environment Assembly resolution adopted on 2 March 2022 in Kenya over the philosophical collision of non-human animal, human, and environmental welfare can be a crucial component in the reduction of disaster risk.²⁸ This resolution states:

'Acknowledging that animal welfare can contribute to addressing environmental challenges, promoting the "One Health" approach, and achieving the Sustainable Development Goals [...] Requests the Executive Director of the United Nations Environment Programme, [...] to produce a report, in close collaboration with the Food and Agriculture Organization of the United Nations, the World Health Organization and the World Organization for Animal Health, as well as with the One Health High-Level Expert Panel, on the nexus between animal welfare, the environment, and sustainable development by analyzing the nexus between animal welfare, the environment, and sustainable development'.²⁹

²² See *ibid.*

²³ See Aleksandra Drizo and Muhammad Omar Shaikh, 'An Assessment of Approaches and Techniques for Estimating Water Pollution Releases from Aquaculture Production Facilities' (2023) 196 *Marine Pollution Bulletin* <<https://www.sciencedirect.com/journal/marine-pollution-bulletin/vol/196/suppl/C>> accessed 15 March 2024.

²⁴ See 'NASA Study Maps the Roots of Global Mangrove Loss – Climate Change: Vital Signs of the Planet' (NASA, 18 August 2020) <<https://climate.nasa.gov/news/3009/nasa-study-maps-the-roots-of-global-mangrove-loss/>> accessed 15 March 2024.

²⁵ See 'Thailand Celebrates Its First National Mangrove Forest Day' (*IUCN*, 27 June 2022) <<https://www.iucn.org/thailand/202005/thailand-celebrates-its-first-national-mangrove-forest-day>> accessed 15 March 2024.

²⁶ See UNHCR Res 48/13 (8 October 2021).

²⁷ See *ibid.*

²⁸ See UNEA Res 5/2, UN Doc EA5/L10/Rev 1 (2 March 2022).

²⁹ *ibid.*

While it is too soon to comment on what the UNEA report will produce, we can safely say that given the ongoing climate crisis, which does not discriminate on impact, One Health is as significant as the Big Bang for disaster risk reduction.³⁰

The final moving piece of the disaster framework often not connected with disaster risk prevention is the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and the Sustainable Development Goals.³¹

All three of these frameworks intend to reduce the effects of climate change and, therefore, effectively reduce disaster risk. The Sixth assessment report of the Intergovernmental Panel on Climate Change (IPCC) affirmatively declared that the warming of the climate system is unequivocal.³² Since the 1950s, many observed changes have been unprecedented over decades to millennia. Human influence is the leading cause of such change. The IPCC sheds light on how we are reaching tipping points through the loss of carbon sinks via deforestation and destruction of Mangrove forests, the unprecedented sea level and temperature rise, and reported hot extremes worldwide. These events are unfortunate examples of unprecedented disaster risk in our current anthropocentric policies. Regarding net anthropogenic greenhouse gas emissions, the IPCC reports affirm the average greenhouse gas emissions during 2010-2019 were higher than in any previous decade.³³

The UN SDG Goals 13, 14, and 15 on Climate Action and Life on Land and Water are inextricably linked to SDG Goals 1 and 2 on eradication of poverty and zero hunger because of the extremely high external costs of the failure to include an eco-centric and animal-centric approach to disaster risk reduction planning. The International Energy Agency (IEA) found that reducing Carbon dioxide equivalent emissions by 50 percent by 2050 would translate into energy-spending of \$316 trillion or (\$46 trillion) more than a business-as-usual disaster prevention scenario.³⁴ According to the IEA, these reductions will require investments to reach approximately \$750 billion per year by 2030 and rise to over \$1.6 trillion per year from 2030 to 2050, a cost developing nations suffering from poverty or hunger cannot bear to pay.³⁵ Unfortunately, the costs of doing nothing are important as well.

In 2007, Wayne Hsuing and Cass Sunstein conservatively estimated that the lost value of animal extinctions because of climate change ranged between \$0.5 to \$1.3 trillion worldwide and \$58 to \$144 billion in the United States.³⁶ Similarly, a 2012 Canadian study estimated climate change costs for Canada between \$5 billion per year to \$21 and \$43 billion

³⁰ See Ed King, 'Climate Change: The New Big Bang?' (*Climate Home News*, 1 September 2012) <<https://www.climatechangenews.com/2012/01/09/climate-change-the-new-big-bang/>> accessed 15 March 2024.

³¹ See United Nations Framework Convention on Climate Change (UNFCCC), May 9, 1992, S Treaty Doc no 102-38 (1992), 1771 UNTS 107, 'The 17 Goals | Sustainable Development' (*UN*) <<https://sdgs.un.org/goals>> accessed 15 March 2024.

³² See Core Writing Team, Hoesung Lee and José Romero (eds), *IPCC, 2023: Summary for Policymakers in Climate Change 2023: Synthesis Report* (IPCC 2023) 1-34 <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 15 March 2024.

³³ See IPCC, 'The Evidence Is Clear: The Time for Action Is Now. We Can Halve Emissions by 2030' (4 April 2022) <<https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>> accessed 15 March 2024.

³⁴ See IEA, 'Net Zero by 2050 – Analysis' (May 2021) <<https://www.iea.org/reports/net-zero-by-2050>> accessed 15 March 2024.

³⁵ See *ibid.*

³⁶ See Wayne Hsuing and Cass R Sunstein, 'Climate Change and Animals', (2007) 155 *University of Pennsylvania Law Review* 1695, 1740.

by the 2050s.³⁷ Moreover, a recent 2021 Carbon Disclosure Project report projected a revenue loss of \$1.26 trillion for global supply chains in the next five years due to climate change, deforestation, and water insecurity, all of which are caused by a failure to incorporate animal welfare in planning projects and thereby reduce disaster risk.³⁸

Lastly, the Paris Agreement goal of holding the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change, under the UNFCCC, is impossible to achieve without a recognition of animal rights under the current disaster risk reduction framework.³⁹

Therefore, it can be decidedly said that under the current global/international disaster risk reduction framework, only if we illustrate the complete global disaster risk reduction framework, the protection of Animal Rights is directly linked to the human right of protection in disasters and preventing future disasters effectively. However, given the UNDRR Sendai Framework language is highly anthropocentric, the effective implementation of such a qualified statement is in peril. Practical examples of such a difficult situation are more evident in local/domestic disaster risk reduction frameworks.

2. The Animal Disaster Protection Framework Tool

Our current evaluation of disaster frameworks is inevitably incomplete because we do not have objective matrices or indicators when determining disaster risk. The two fundamental values we may use in developing such a matrix are values that either increase or decrease disaster risk and values that affect the framework's implementation. Values increasing or decreasing disaster risk are similar to the global framework's lack of animal rights presence in developing projects such as factory farming or aquaculture and are much more straightforward to acknowledge.

Values that affect the framework's implementation are not that clear. To keep such values objective, these can be framed as the following questions, which are illustrated through a case study of US and Pakistan.

2.1. USA

2.1.1. The Why Behind Animal Protection Measures?

The US is famous for developing the world's 1st law on Animal Protection in Disasters – the Pets Evacuation and Transport Standards Act 2006 Pub. L. no 109–308, 120 Stat 1725

³⁷ See National Roundtable on the Environment and the Economy, 'Paying the Price: The Economic Impacts of Climate Change for Canada' (2012) <<http://nrt-trn.ca/climate/climate-prosperity/the-economic-impacts-of-climate-change-for-canada/paying-the-price>> accessed 15 March 2024.

³⁸ See Rose Celestin, 'Climate Change Will Cost Companies \$1.3 Trillion by 2026' (*Forbes*, 20 March 2021) <<https://www.forbes.com/sites/rosecelestin/2021/03/05/climate-change-will-cost-companies-13-trillion-by-2026/?sh=1460d6f16cdc>> accessed 15 March 2024.

³⁹ See *ibid*.

(2006) was passed by the US Congress after the impact of Hurricane Katrina in 2006.⁴⁰ When Katrina hit, only humans were allowed on evacuation transport, not companion animals.⁴¹ As many as 600,000 animals were abandoned or stranded, needing rescue.⁴² Unfortunately, help took too long, and over 250,000 of those animals died.⁴³ Amid the chaos, something extraordinary happened. Some people decided not to leave their companion animals behind, choosing to forgo evacuation or rescue efforts that would have separated them.⁴⁴ The government was either ‘unwillin[g] or [u]nab[le]’ to provide aid for companion animals during the emergency.⁴⁵

The PETS Act requires state and local authorities to consider service animals in their emergency plans and then submit these plans for the Federal Emergency Management Agency (FEMA) approval.⁴⁶ FEMA then can give funds to support these approved plans, including funding the construction of emergency rescue shelters and the availability of rescue and care for service animals during and following a disaster. It also grants FEMA the authority to direct funds for constructing emergency rescue shelters and providing rescue, care, and protection to animals during and following a disaster.⁴⁷

This extraordinary happening can be attributed to the human-animal bond, and companion animals can benefit from it in disaster contexts.⁴⁸ Steve Glassey identifies the lack of human-animal bonds as a reason for failing to protect farmed animals in disasters. The CAFO or factory farming system has made it impossible for the human-animal bond to develop. Irvine observes that farm animals, unlike companion animals, occupy the animal side of the human-animal bond. Irvine further observes that the human-animal bond creates such dual dichotomies in the treatment of different species of animals. Therefore, farm animals are mostly excluded from disaster planning.⁴⁹ While wild animals often have a limited connection to humans, they are protected as a mechanism for preserving mega-charismatic fauna or preventing biodiversity loss. However, it must be noted that an intense amount of land is deforested for setting up factory farms, which leads to habitat loss, resulting in biodiversity loss.

Irvine also informs that due to the structural inequality in factory farms, i.e., layered hen systems, the inability for methane to leave the premises effectively leads to severe consequences for farmed animals during disasters. In April 2023, a dairy farm in Dimmit, Texas, caught fire and led to the death of 17500 farmed animals. The cause of the fire was linked to a manure vacuum truck malfunction, and the fire quickly spread in the methane-thick air

⁴⁰ See *Cosponsors – HR3858 – 109th Congress (2005–2006): Pets Evacuation and Transportation Standards Act of 2006* <<https://www.congress.gov/bill/109th-congress/house-bill/3858/cosponsors>> accessed 15 March 2024.

⁴¹ See Cynthia F Hodges, ‘Detailed Discussion of State Emergency Planning Laws for Pets and Service Animals’ (*Animal Legal and Historical Centre*, 2011) <<https://www.animallaw.info/article/detailed-discussion-state-emergency-planning-laws-pets>> accessed 15 March 2024.

⁴² See *ibid.*

⁴³ See *ibid.*

⁴⁴ See *ibid.*

⁴⁵ *ibid.*

⁴⁶ See FEMA, ‘Disasters, Glossary of Terms’, SLG 101: Guide for All-Hazard Emergency Operations Planning <<https://www.fema.gov/pdf/plan/glo.pdf>> accessed 15 March 2024.

⁴⁷ 42 USC § 5196 (2021); 42 USC § 5170b.

⁴⁸ See Steve Glassey, ‘Animal Welfare and Disasters’ in William R Thompson (ed), *Oxford Research Encyclopedia of Politics* (OUP 2020).

⁴⁹ See Leslie Irvine, ‘Filling the Ark: Animal Welfare in Disasters’ (Temple University Press 2009).

of the factory farm. Beef cattle produce about 60 kilograms of methane per year. Dairy cattle have about 200 kg of methane per year. All in all, ruminants are believed to produce roughly one-third of all methane gas. Failure to create a passageway for methane to leave the premises primarily caused this fire. According to the Animal Welfare Institute, nearly 6.5 million farm animals have been killed in barn fires since 2013, of which about 6 million were chickens and about 7,300 were cows. Such wildfires can make the habitat uninhabitable for animals and lead to even more biodiversity losses, further increasing disaster risk.⁵⁰

To summarize, the human-animal bond is undoubtedly significant in protecting companion animals because human lives are put at risk during disasters due to their inability to leave.

2.1.2. Pro-animal Protection Measures

Local states eventually developed companion animal catastrophe protection provisions due to the PETS Act. Over thirty states have passed laws or administrative plans addressing animal care in catastrophe situations. These rules address companion animal care, animal response teams, sheltering and identifying rescued animals, and have differing procedural and substantive protections. State laws are further categorized, and some states mandate specific actions in addition to taking animal welfare into account when developing disaster relief plans.⁵¹

In 2022, the US Congress passed the Congress passed the Planning for Animal Wellness (PAW) Act, which acknowledged the deficiencies in the PETS Act and mandated FEMA to create expert working groups to develop animal emergency plans. The act aimed to foster collaborations addressing the needs of household pets and service or captive animals in the event of a disaster and to review best practices and federal guidance for disaster response.⁵²

Another act currently in the US Congress is the Accountability (IAA) Act. The Act was introduced in 2022, during the 117th Congress term, and reintroduced this year in the 118th term. The Act acknowledges a factory farm's structural inequalities and asks for a factory farm moratorium, thereby decreasing exponential disaster risk.

Under the Livestock Indemnification program, farmers and ranchers have received more than \$500 million in compensation since 2008. During natural calamities, farmers are paid to produce limp, dead bodies of cattle, and horrific methods of killing are encouraged. The IAA seeks to undo this benefit and force the losses on the commercial livestock sector. Concentrated animal feeding operations (CAFOs) are large, high-density farms that increase disaster risk by threatening the environment, emit large amounts of methane, and are ideal breeding grounds for zoonotic illnesses. The IAA also intends to end cruel means of death, like sodium nitrate poisoning and ventilation shutdowns, by establishing a new office under the USDA to collect yearly fees from large meat producers to finance humane methods of culling.⁵³

⁵⁰ See Bernd Debusmann Jr, 'Texas Dairy Farm Explosion Kills 18,000 Cows' (*BBC*, 13 April 2023) <<https://www.bbc.com/news/world-us-canada-65258108>> accessed 15 March 2024.

⁵¹ See Saeed (n 8) 204–08.

⁵² See *ibid.*

⁵³ See *ibid.*

Since many animal deaths during disasters occur within CAFOs, the IAA would also mandate factory farms to create emergency plans for natural disasters. A total of 5.5 million animals perished during Hurricanes Michael and Florence, including 5,500 pigs and 3.4 million chickens, which overflowed CAFO dung pits and contaminated rivers. The IAA would establish a connection between workers' and animal rights by requiring the Department of Labor to impose new safeguards for farm workers participating in emergency response and outlawing prison labor in disaster relief efforts. Although a significant step forward, these interventions are local in nature. Therefore, international animal protection action is now more important than ever to avert catastrophes in the future and the spread of zoonotic illnesses like COVID-19.⁵⁴

In October 2023, two remarkable animal disaster risk prevention laws were passed in California, US.⁵⁵ These include laws to expand access to critical veterinary telehealth services (AB 1399) and secure pet-friendly sheltering sites during natural disasters and extreme weather events (AB 781). Many may not know this, but even if we create animal rights to veterinary care during disasters, depending on the kind of disaster, roads may be blocked to veterinary care facilities, resulting in animal suffering. Access to telehealth veterinary care is a remarkable disaster risk reduction initiative for those situations. AB 781 is self-explanatory as it mandates the development of animal shelters alongside human shelters to reduce the risk of humans not being willing to evacuate without their companion animals, again bringing the human-animal bond into play which is significant if employed appropriately in policy development.

2.1.3. Risk-increasing Measures

Risk-increasing measures include the massive livestock subsidies offered to farm animals in case of disasters. These subsidies are essentially an incentive to let the farmed animals die and get later reimbursed from the federal government. Since 2008, over \$500 million has been provided as compensation to farmers and ranchers under the Livestock Indemnification Program.⁵⁶

While these subsidies are contingent on presenting a disaster evacuation plan, such plans only highlight the procedural aspects of evacuation. Their plans do not acknowledge structural design inequalities, such as the one in the factory farm in Dimmit, Texas. As the federal government does not ask factory farm operators to change their actual structures and go from, for example, a layered hen system to a cage-free system to reduce animal disaster risk from earthquakes, such evacuation plans will not appropriately decrease disaster risk.

2.1.4. Status of Animals in the Legal System

Understanding the status of animals in the domestic legal system is significant information in understanding a nation's animal disaster protection framework. Such understanding can

⁵⁴ See *ibid.*

⁵⁵ See Matt Bershader, 'Matt's Blog: California Demonstrates Legislative Leadership on Animal Protection' (ASPCA, 20 October 2023) <<https://www.aspc.org/blog/matts-blog-california-demonstrates-legislative-leadership-animal-protection>> accessed 15 March 2024.

⁵⁶ See Animal Welfare Institute, 'Emergency and Disaster Preparedness for Farm Animals Act' <<https://awionline.org/legislation/emergency-and-disaster-preparedness-farm-animals-act>> accessed 15 March 2024.

later inform effective policies or legislation. While the US acknowledges humans as legal persons, animals are mere property.⁵⁷ Categorizing animals as property has massive ramifications in animal protection in disasters as this status allows them to be kept in ways that maximize their economic value. This status is also a significant cause of structural inequity in factory farms and eventually leads to more animal and biodiversity loss, increasing disaster risk.⁵⁸

Similarly, designating animals as non-sentient furthers the anthropocentric hierarchy in animal disaster risk reduction. Since property and non-sentient status make animals legally inferior, they are afforded a much lower priority in disaster contexts. In Hurricane Katrina, evacuation transport was only available for humans, who could not onboard companion animals. Baum argues that this creates a value disparity, and Potts & Gadenne observe this status can lead to animals being treated as inanimate object-like things.⁵⁹

Even if we create excellent animal disaster protection legislation, its implementation will eventually falter due to the designation of animals as property or non-sentient.

2.1.5. Sentience Status

As of today, no federal legislation exists designating animals as sentient beings. Certain states, including Oregon, have codified animal-sentient provisions.⁶⁰

2.1.6. Property Status

Animals are classified as property.⁶¹

2.1.7. Welfare Protection Status

Very Limited welfare protections, primarily cruelty-based, are triggered in the case of actual animal cruelty. Such laws do not delegate positive legal duties to humans for their non-human animals. The Animal Welfare Act (AWA) delegates only minimum animal protection standards.⁶² A recent development at the Federal level came in the shape of Proposition 12, which was held constitutional by the US Supreme Court in May 2023.⁶³ Proposition 12 aims to decrease the structural inequalities at factory farms by marginally increasing space for farm animals. However, the recently introduced Ending Agricultural Trade Suppression Act (EATS Act) in the US Congress aims to reverse this and exponentially increase disaster

⁵⁷ See Steven M Wise, 'The Legal Thinghood of Nonhuman Animals' (1996) 23 Boston College Environmental Affairs Law Review 471.

⁵⁸ See Best (n 18).

⁵⁹ See Annie Potts and Donelle Gadenne, *Animals in Emergencies* (Canterbury University Press 2014).

⁶⁰ See Grace Hussain, 'What Is a Sentient Being? Definition and Examples of Sentient Beings' (*Sentient Media*, 25 October 2022) <<https://sentientmedia.org/sentient-being/>> accessed 15 March 2024.

⁶¹ See Animal Legal Defense Fund, 'How Animals Differ from Other Types of "Property" Under the Law' (20 November 2020) <<https://aldf.org/article/how-animals-are-treated-differently-from-other-types-of-property-under-the-law/>> accessed 15 March 2024.

⁶² See <<https://www.govinfo.gov/content/pkg/COMPS-10262/pdf/COMPS-10262.pdf>> accessed 15 March 2024.

⁶³ See *National Pork Producers Council et al v Ross, Secretary of the California Department of Food and Agriculture et al*, 598 US 1 (2023) <https://www.supremecourt.gov/opinions/22pdf/21-468_5if6.pdf> accessed 15 March 2024.

risk.⁶⁴ The 28-Hour Law of 1906 mandates animal resting, feeding, and watering every 28 hours during transport. Unhealthy animals are prone to diseases and may increase disaster risk for a zoonotic disaster. However, these are only minimum protections, and the animals are susceptible to death and spreading disease.⁶⁵ Additionally, a group of Animal Rights Experts in the US have formulated a draft for the International Treaty called the Convention on Animal Protection (CAP). CAP acknowledges the public health intersection between humans, animals, and the environment based on the One-Health principle. CAP calls for animal protection to reduce zoonotic disaster risk substantially.⁶⁶

2.1.8. Environmental Protection Status

The Endangered Species Act (ESA) protects endangered or threatened animals.⁶⁷ The ESA mimics the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in terms of its functioning and prohibits animal take.⁶⁸ However, in the recent decision by the US Supreme Court in the Sackett case in May 2023, the application of ESA has been minimal, excluding several wetlands under the US Clean Water Act. Before Sackett, for any federal project completed on wetlands, ESA personnel had to be consulted as a part of the Environmental Impact Assessment and ensure no animal take of ESA-listed animals was happening.⁶⁹

2.1.9. Animal-specific Protections in Domestic Law

Animals in Zoos: Zoos, aquariums, circuses, and animal dealers are subject to the AWA, which governs the housing of mammals on public display. According to the AWA, dealers, and exhibitors of wild animals must obtain a license from a USDA representative and adhere to minimum requirements for nutrition, water, veterinary care, movement, and shelter from severe weather and temperature changes. Additionally, facilities with marine mammals must do weekly water checks, provide species-specific environments to animals, and adhere to minimum requirements like zoos.⁷⁰

⁶⁴ See *HR3183 - EATS Act of 2023 118th Congress (2023–2024)* <<https://www.congress.gov/bill/118th-congress/house-bill/3183/related-bills>> accessed 15 March 2024.

⁶⁵ See Legal Information Institute, 'TOPN: Twenty-Eight Hour Law (Transportation of Animals)' (*Cornell Law School*) <https://www.law.cornell.edu/topn/twenty-eight_hour_law_transportation_of_animals> accessed 15 March 2024.

⁶⁶ See <<https://www.conventiononanimalprotection.org/>> accessed 15 March 2024.

⁶⁷ See US Fish & Wildlife Service, 'Endangered Species Act 50th Anniversary' <<https://fws.gov/esa50>> accessed 15 March 2024.

⁶⁸ See Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 14537 UNTS 993.

⁶⁹ See *Sackett et Ux v Environmental Protection Agency et al*, 598 US 1 (2023) <https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf> accessed 15 March 2024.

⁷⁰ See World Animal Protection, 'Animal Welfare Matters: See How the US Treats Animals' (10 March 2020) <<https://www.worldanimalprotection.us/news/animal-welfare-matters-animal-protection-index>> accessed 15 March 2024.

2.1.9.1. Farmed Animals⁷¹

For fur farms, the only protection available is under the Truth in Fur Farming Act of 2010, which requires products made by fur to be labeled as such.

AWA exempts farmed animals. Only minimum protections are available under the 28-hour law and the Humane Slaughter Act. Many states have right-to-farm laws, making nuisance laws inapplicable at factory farms, increasing zoonotic disaster risk in less affluent communities near such facilities.⁷²

2.1.9.2. Companion Animals⁷³

AWA also provides similar minimal protections for companion animals, especially dog breeders to zoos.

2.1.9.3. Laboratory Animals

AWA excludes rats and mice bred for research. Animal welfare regulations within the AWA require each institution to establish an Institutional Animal Care and Use Committee (IACUC) to review and approve all uses of animals in research. IACUC is required to investigate complaints and report any noncompliance. Each IACUC must include at least three people – an experienced scientist, a veterinarian, and an individual not affiliated with the institution. IACUC are internal committees at research institutions, making them susceptible to institutional capture.⁷⁴ In early 2023, the Federal Drug Administration Modernization finally made animal experimentation non-mandatory if other alternatives are available.⁷⁵

2.1.9.4. Wild Animals

The Bald and Golden Eagle Protection Act of 1940 makes it illegal to take or possess bald eagles or golden eagles, their eggs or nests, without a permit issued by the Secretary of the Interior.⁷⁶ The Fur Seal Act of 1966 prohibits the taking, including transportation, import, or possession of fur seals and sea otters, except under specified conditions. Exceptions are authorized for 'Indians, Aleuts, and Eskimos' living on the North Pacific Ocean coasts, who can take fur seals and dispose of their skins.⁷⁷ The Wild and Free-Roaming Horses and Burros Act of 1971 protects wild horses living on federally owned public land from cruelty. The Bureau of Land Management manages its regulations.⁷⁸ The Airborne Hunting Act 1971

⁷¹ See Animal Welfare Institute, *Legal Protections for Animals on Farms* (January 2021) <<https://www.awionline.org/sites/default/files/uploads/documents/21LegalProtectionsFarmReport.pdf>> accessed 15 March 2024.

⁷² See Edgar Barrios PA, 'Right-to-Farm in America: Overview and Case Studies' (*State Government Leadership Foundation*, 6 August 2021) <<https://www.sglf.org/blog/right-to-farm-in-america-overview-amp-case-studies>> accessed 15 March 2024.

⁷³ Mentioned extensively under the PETS Act previously.

⁷⁴ See World Animal Protection (n 70).

⁷⁵ See Joe Hernandez, 'The FDA No Longer Requires All Drugs to Be Tested on Animals before Human Trials' (*NPR*, 12 January 2023) <<https://www.npr.org/2023/01/12/1148529799/fda-animal-testing-pharmaceuticals-drug-development>> accessed 15 March 2024.

⁷⁶ See World Animal Protection (n 70).

⁷⁷ *ibid.*

⁷⁸ See *ibid.*

prohibits shooting or attempting to shoot or harassing any bird, fish, or other animals from aircraft except for specific specified reasons, including protection of wildlife, livestock, and human life under a permit or license provided at the federal or state level.⁷⁹ The Marine Mammal Protection Act 1972 (MMPA) establishes a moratorium on the taking and importing marine mammals and products taken from them.⁸⁰

2.1.9.5. Liminal Animals

Liminal animals are mostly excluded from all legislative protections. As liminal animals are mostly considered pests, they are often subject to extermination via poison. This poison eventually, through the food chain, enters humans, increasing zoonotic disaster risk across the food chain.⁸¹

2.1.9.6. Aquatic Animals

No protection exists. However, they should be protected, and more research should be directed towards underwater disaster risk.⁸²

2.1.9.7. Stakeholder Accountability

Under AWA, the Federal United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the act. Inspections under the Animal Welfare APHIS Animal Care inspectors conduct routine, unannounced inspections of all entities licensed and registered under the AWA.⁸³ There are three types of reviews: *pre-licensing assessments* to make sure applicants meet federal standards before being licensed/registered; *routine, unannounced compliance inspections* of all entities to make sure they are adhering to national standards and regulations and *focused inspections* based on public complaints or allegations of unlicensed activities. Such reviews are infrequent. In the breeder inspection reports, APHIS documented close to 5,000 infractions between the fiscal years 2014 and 2016. But starting in 2017, there were fewer and fewer recorded breaches; this trend has continued. It is still possible that there is a considerable undercount of actual noncompliance in the number of documented violations. In fiscal year 2022, the USDA recorded over 3,000 breaches at over 13,000 licensed and regulated firms; nevertheless, only five official complaints were made, and just 17 settlements were obtained by the agency during that same year.⁸⁴

Similarly, in February 2017, the USDA removed public access to thousands of reports documenting how many animals are kept by research laboratories, companies, zoos, circuses,

⁷⁹ See *ibid.*

⁸⁰ See *ibid.*

⁸¹ See *Picturing Animals in National Geographic*, 'Liminal Animals' (Michigan State University) <<http://picturing-animals.msu.edu/teaching-modules/liminal-animals/>> accessed 15 March 2024; Lisa Owens Viani, 'Why California's Ban on Retail Sale of Toxic Rat Poisons Isn't Enough' (*Earth Island Journal*, 27 March 2014) <https://earthisland.org/journal/index.php/articles/entry/why_californias_ban_on_retail_sale_of_toxic_rat_poisons_isnt_enough> accessed 15 March 2024.

⁸² See NOAA Fisheries, 'Endangered Species Conservation' <<https://www.fisheries.noaa.gov/topic/endangered-species-conservation>> accessed 15 March 2024.

⁸³ See World Animal Protection (n 70).

⁸⁴ See ASPCA, 'USDA Enforcement: Fiscal Year 2022' <<https://www.aspc.org/improving-laws-animals/public-policy/usda-enforcement-fiscal-year-2022>> accessed 15 March 2024.

and animal transporters and whether those animals are being treated humanely by the AWA.⁸⁵ Objectively speaking, the US is suffering from agricultural exceptionalism, and this has dramatically affected its efficiency in implementing its already weak animal disaster protection laws, thereby further increasing disaster risk.

2.2. Pakistan

The Ministry for National Food Security and Research regulates animal welfare on the federal level. On the Provincial level, each province has its own Livestock & Diaries Department for regulating agricultural animals. Per the Eighteenth (18) Amendment of 2010 of the Constitution of the Islamic Republic of Pakistan, like the tenth amendment of the US Constitution, the Pakistan Constitution (Article 70(4)) contains enumerated subjects in relation to which powers are solely reserved to the provinces.⁸⁶ Therefore, the Federal Republic cannot legislate on matters expressly reserved to the states. Animal Welfare is a state function, and thus, a federal law on animal welfare would be unconstitutional in Pakistan. Therefore, animal welfare laws need to be introduced at the provincial level. However, before the adoption of the Eighteenth Amendment in 2010, the Pakistan Prevention of Animal Cruelty Act 1890 (PCA Act)⁸⁷ was still in force and it did apply across the country. The PCA Act will apply to a particular province until that province drafts its animal cruelty law. Similarly, the Pakistan Halal Authority Act of 2016 (PHA Act)⁸⁸, even though created after the passage of the Eighteenth Amendment, applies across Pakistan as its primary function is the control of trade, foreign commerce, and inter-provincial trade rather than explicitly animal welfare.

2.2.1. The Why Behind Animal Protection Measures

Pakistan, unlike the US, has a weak economic system and is a victim of disasters. However, its massive agricultural footprint makes it more susceptible to disasters. Pakistan is the fourth-highest milk producer globally and the 11th-highest livestock producer worldwide. Pakistan, in FY-2022, produced 65.745 million tonnes of milk, 2.2512 million eggs, 92 million domestic poultry, and 5.219.000 tonnes of meat and exported roughly 116.514 Megaton of seafood.⁸⁹ In 2022, Pakistan suffered a major catastrophe where a flood drowned 1/3rd of the country and killed over 1700 humans and 1.16 million livestock animals. The floods also led to the displacement of over 33 million humans. However, only humans are covered under the National Disaster Management Act of 2010 (NDMA).

Like the Sendai Framework, it defines disasters as ‘a catastrophe or a calamity in an affected area, arising from natural or man-made causes or by accident or fire, bomb blast, terrorist activities, militancy, annoyed or provoked mob1 which results in a substantial loss of life or human suffering or damage to, and destruction of, property both movable and immovable’. As a consequence, Pakistan’s legal system has excluded animals and fatally suffers from

⁸⁵ See *ibid*.

⁸⁶ See Constitution of the Islamic Republic of Pakistan (*CommonLII*) <<http://www.commonlii.org/pk/legis/const/1973/4.html>> accessed 15 March 2024.

⁸⁷ See the Prevention of Cruelty of Animals Act, 1890 (xi of 1890) - Punjab <<https://livestock.punjab.gov.pk/system/files/THE%20PREVENTION%20OF%20CRUELTY%20OF%20ANIMALS%20ACT%2C%201890.pdf>> accessed 15 March 2024.

⁸⁸ See the Pakistan Halal Authority Act 2016 (Act no VIII of 2016) <<http://www.na-sirlawsite.com/laws/phaa2016.htm>> accessed 15 March 2024.

⁸⁹ See Ministry of Finance, Government of Pakistan, ‘Pakistan Economic Survey: 2020–2021’ <https://www.finance.gov.pk/survey_2021.html> accessed 15 March 2024.

anthropocentrism when it comes to the reduction of disaster risk for both humans and animals.

2.2.2. Pro-animal Protection Measures

Pakistan, unfortunately, lacks appropriate animal protection legislation. Among the existing acts nonetheless, one should note the Prevention to Animal Cruelty Act 1890 (PCA Act) and the Provincial Wildlife Protection Acts. There has been a recent change in Pakistan on animal protection due to the 2020 case *Islamabad Wildlife Management Board Through Its Chairman v Metropolitan Corporation Islamabad Through Its Mayor & 4 Others* before the Honorable Islamabad High Court, which declared that non-human animals are rights holders.⁹⁰ A few other lawsuits have followed, furthering the principle that animals are rights holders.⁹¹

Lastly, as animal welfare is a provincial subject, the province of Punjab has recently passed the Humane Dog Birth Control Policy, which aims to end dog culling and strengthen the human-animal bond for companion animals. While the human-animal bond has anthropocentric roots, it can pave the way for disaster protection for companion animals, which can later extend to other animals.

2.2.3. Risk-increasing Measures

Discussing risk-increasing measures is premature until Pakistan decides to include animals in its disaster risk reduction framework.

2.2.4. Status of Animals in the Legal System

Animals are considered non-sentient. However, the PCA act acknowledges animals can feel pain and suffering. Animals are considered property.⁹² Mostly cruelty-based under the PCA Act, provincial wildlife protection acts, and the Pakistan Penal Code.⁹³

2.2.5. Environmental Protection Status

Protections exist under international treaties, including the Convention on Migratory Species of Wild Animals (CMS) and CITES and its implementing legislation, the Pakistan Trade Control of Wild Fauna and Flora Act 2012.

⁹⁰ See *Islamabad Wildlife Management Board Through Its Chairman v Metropolitan Corporation Islamabad Through Its Mayor & 4 Others*, Islamabad High Court, WP No.1155/2019 (Pak.) (*The Nonhuman Rights Project – Judgment Sheet*) <<https://www.nonhumanrights.org/wp-content/uploads/Islamabad-High-Court-decision-in-Kaavan-case.pdf>> accessed 15 March 2024.

⁹¹ See Hira Jaleel, 'After the Kaavan Decision: A New Wave of Animal Law Litigation in Pakistan' (*International Law News, American Bar Association*, 6 March 2023) <https://www.americanbar.org/groups/international_law/publications/international_law_news/2023/winter/after-kavaan-new-wave-of-animal-law-legislation-in-pakistan/> accessed 15 March 2024.

⁹² See Pakistan Penal Code <<https://pakistancode.gov.pk/pdf/files/administratord5622ea3f15bfa00b17d2cf7770a8434.pdf>> accessed 15 March 2024.

⁹³ See World Animal Protection, 'Animal Protection Index: Pakistan' (10 March 2020) <<https://api.worldanimal-protection.org/country/pakistan>> accessed 15 March 2024.

2.2.6. Animal-specific Protections in Domestic Law

No federal legislative policy for zoos exists. Minimal protections are available under the Punjab Provincial Wildlife Act and its implementation rules on safaris and zoos.

2.2.7. Animals in Captivity

No federal policy for fur animals exists.

2.2.8. Farmed Animals⁹⁴

The Pakistan Prevention of Animal Cruelty Act of 1890 (PCA Act) was initially drafted by the British under colonial rule over the subcontinent.⁹⁵ The PCA Act borrows language from the Royal London Society for Preventing Cruelty to Animals (RSPCA). Interestingly, Henry Bergh of the American Society for Prevention of Cruelty to Animals also borrowed language from RSPCA for drafting the New York Prevention of Cruelty to Animals Act of 1866. Unfortunately, the PCA Act was only amended once in its 130-year history, namely in 2018.

Section 2 of the PCA Act defines animals as domestic or captured animals.⁹⁶ It also defines Phooka or Doom Dev, a practice from the 19th century where farmers used to blow inside a cow's reproductive organs to increase milk production. The method of blowing was inherently cruel and was permanently banned under the Act. Initially, the British promulgated the PCA Act to provide minimum protections for all animals, including farmed animals, and listed specific violations under Sections 3–5.⁹⁷

2.2.8.1. Rearing

For the rearing of animals, the protections are mentioned as follows:

1	Animal	Protection Available
2	Pigs	No protections as the nation has no pig population. ⁹⁸
3	Broiler Chickens	No national policy exists. Punjab has its Poultry Production rules ⁹⁹ which require poultry production facilities to register with Government annually. The only protection available is egg storage room temperature cannot exceed 36 degrees Celsius.
4	Egg-Laying Hens	Same as above.
5	Dairy Cattle & Calves	No National Policy. Section 2 of the PCA Act bans Phooka or Doom Dev
6	Fish	No Policy exists

⁹⁴ As farmed animals are the most susceptible to harm in disasters and are crucial in limiting biodiversity loss and disaster risk, a significant part of the paper focuses on farmed animals.

⁹⁵ See *Jaleel* (n 91).

⁹⁶ See *Prevention of Cruelty to Animals Act* (n 87).

⁹⁷ See *ibid.*

⁹⁸ Pakistan is a Muslim country with 96 percent of its population being Muslims. Muslims are forbidden to eat pork.

⁹⁹ See *Punjab Poultry Production Act 2016* <https://livestock.punjab.gov.pk/system/files/punjab_poultry_production_act_2016_4zaho_0.pdf> accessed 15 March 2024.

2.2.8.2. Transport

Pakistan has no policy or law for the transportation of animals.

2.2.8.3. Slaughter

The Halal Authority Act 2016 applies across the country. It mandates protection (only Halal Animals¹⁰⁰). These protections are mentioned as follows:¹⁰¹

Sr#	Section of HAA Act Schedule 1 ¹⁰²	Protection
1	5.2.1	a) Issuance of a veterinary health certificate prior to slaughter. b) Animal to be healthy and alive at time of slaughter. Animal torture strictly prohibited. (e) Animal having travelled a long distance prior to slaughter to be allowed time to rest.
2	5.2.2	(b) Only licensed halal slaughter to carry on slaughter.
3	5.2.4	(i) Disinfectant and antiseptic fluids to be in compliance with halal provisions.
4	5.2.5	Humane Stunning to be used for calming down an animal. Stunning should not reduce the amount of blood before slaughtering.
5	5.2.6.1.1	(a) A mandatory checkup of farmed animals with a qualified veterinarian. (b) Animals having completed 1/3 of the pregnancy cycle not to be slaughtered.
6	5.2.6.1.2	Only clean animals to be slaughtered. No animals to be slaughter while they are still wet.
7	5.2.6.1.4	Humane methods to be used while moving the animals to the slaughter area by qualified professionals. No animals to see each other during the slaughter process.
8	5.2.6.1.6	Mandatory post-mortem inspection of slaughtered animals.
9	5.2.6.2.1	Poultry arriving at the slaughterhouse to be slaughtered in the shortest time possible.

2.2.9. Pakistan Penal Code 1860¹⁰³

The Pakistan Penal Code (PPC), another colonial relic, offers protections for farm animals, albeit from a loss of property perspective.¹⁰⁴ In the law's eyes, unfortunately, animals are considered property. Therefore, the PPC, under Section 425, considers it an offense of mischief if a person, with the intent or because of negligence, causes destruction or damage to the property of another.¹⁰⁵ In this case, the property can be an animal.¹⁰⁶ Section 426

¹⁰⁰ See Pakistan Halal Authority Act (n 88).

¹⁰¹ See *ibid.*

¹⁰² See *ibid.*

¹⁰³ See Pakistan Penal Code (n 92).

¹⁰⁴ See Animal Legal Defense Fund (n 61).

¹⁰⁵ See Pakistan Penal Code (n 92).

¹⁰⁶ See *ibid.*

provides the penalty under Section 425 to imprisonment, which may extend to three months, with a fine, or both.¹⁰⁷

Sections 427, 428, and 429 further explain instances where the offense of mischief is triggered concerning an animal. While Section 427 stipulates the elements of mischief, Section 428 defines mischief as killing, poisoning, maiming, or rendering useless an animal, and Section 429 applies mischief to farm animals, including bulls, buffalo, etc.

Interestingly, PPC protects companion and farmed animals, provided they hold a meager value of at least PKR 10 (USD 0.035), as mentioned in the abovementioned sections. While it could be considered problematic that PPC does not assign animals a higher financial value, giving a lower value exponentially increases the likelihood of an animal cruelty charge.

2.2.9.1. Companion Animals

No protections exist besides the recently passed Punjab humane dog birth control policy.¹⁰⁸

2.2.9.2. Laboratory Animals

In 2022, under a collaboration with the People for the Ethical Treatment of Animals (PETA), the Islamabad capital territory finally banned experimentation on live animals.¹⁰⁹

2.2.9.3. Wild Animals

Wildlife provincial acts provide minimal cruelty-focused protections that do not create positive obligations.

2.2.9.4. Liminal Animals

No protections exist.

2.2.9.5. Aquatic Animals

No protections exist.

2.2.9.6. Stakeholder Accountability

Most animal welfare protections are cruelty-based, so the police department is responsible for their enforcement. This usually means a civilian must report a crime to initiate the legal process.¹¹⁰ Unfortunately, there is an immense lack of animal welfare consciousness among the police and civilians, leading to no enforcement. This is also why most animal rights

¹⁰⁷ See *ibid.*

¹⁰⁸ See Livestock Punjab, 'Animal Birth Control Policy 2021' <<https://livestock.punjab.gov.pk/>> accessed 15 March 2024.

¹⁰⁹ See Tasgola Burner, 'Huge Win! Pakistan Prime Minister's Office Enacts Historic Animal Testing Reforms, after Peta Plea' (*PETA*, 30 June 2022) <<https://www.peta.org/media/news-releases/huge-win-pakistan-prime-ministers-office-enacts-historic-animal-testing-reforms-after-peta-plea/>> accessed 15 March 2024.

¹¹⁰ See Prevention of Cruelty to Animals Act (n 87).

advocates approach litigation by filing public interest litigation in the courts, hoping for some remedy.

3. Conclusion

Every nation has different legal structures and offers a hierarchal set of protections to various species of animals. Failing to include animals in the disaster framework puts animal lives at risk and substantially increases disaster risk due to biodiversity loss and climate change aggravation. Therefore, the human right to life is deeply connected to the animal right to disaster protection.

To create effective policies that remedy the above, we need an objective animal disaster protection framework tool to help advocates see the complete picture, locally and globally.

The Challenges of Global Animal Law

Mo Esan*

Abstract

Animals play a formidable role in human affairs across a wide range of areas including, but not limited to, religion, food, governance, commercial activity and culture. Law being a tool to create order, it becomes necessary that the law regulates the many facets of human-animal interaction. The prominence of this role explains various attempts at regulating these activities both at the domestic and the international level.

Zooming in on the international plane, there have been many attempts at regulating animal activity both for economic purposes, disease control and in a limited sense, welfare. As global animal law continues to advance at a faster rate, it is pertinent to smoothen out edges and analyze the possibilities in international law for progressive development. The situation is further worsened by the discrepancies that already exist between the global south and the global north. These discrepancies are not exclusive to animal protection but also arise in other sociolegal headways.

This paper seeks to analyze the challenges of global animal law. The analysis shows that existing structures, like that of the African Union through its agencies, offer pathways of surmounting these challenges by bringing many states under the same normative force concurrently and seamlessly. To make progress on the advancement of animal law internationally, a harmonious approach is needed, and that approach cannot be achieved until the international community retreats and considers diverse perspectives and cultural patterns that might stand in the way of a clear understanding of what is at stake, and what is to be achieved.

Keywords

Global Animal Law; culture; welfare; International Law; Universal Declaration

1. Introduction

Despite emerging global enlightenment, animal protection internationally is so far plagued with hurdles of advancement.¹ At least three major examples highlight the need for a common legal framework. First, one should note the disparity that exists between domestic animal welfare regulation and its non-binding nature.² Second, one must deal with the

* LLB (Hons) and Public International Law LLM (Babcock University, Nigeria 2020 and 2022); Animal Law LLM (Lewis & Clark Law School, USA 2023).

¹ See Thomas Kelch, 'Towards Universal Principles for Global Animal Advocacy' (2016) 5 *Transnational Environmental Law* 60.

² See Michael Bowman, Peter Davies, and Catherine Redgwell, *Lyster's International Wildlife Law* (2nd edn, CUP 2011) 670.

shortcomings of piecemeal law on different aspects of animal protection at the international level.³ Third, the widespread concern for food safety, consumer health concerns and ethical distresses arising from poor facilities housing animals raised for food.⁴ Other issues include possible evasion of the law, the industrialization of dairy and fur production and the unlevelled playing field for multinationals.⁵ Consequently, coming to a consensus is a necessary journey that is required for animal protection to advance properly. It is with these considerations in view that the phenomenal term 'global animal law' was coined.⁶ This paper contributes to the ongoing discussion arising in the current era of globalization with specific reference to animal rights, by looking especially at the following two questions: Is it *desirable* to develop a global animal law? Is it *possible* to develop a global animal law?

Global regulation seems to be indispensable in light of the far-reaching effects of poor animal protection standards arising in the 21st century. For example, intensive livestock farming is a major catalyst of global warming.⁶ The COVID-19 pandemic might have originated from a market in Wuhan where the sale of wild animals – without adherence to minimum standards of food safety and animal welfare – is a major cause of zoonotic contaminations.⁷ What is obvious is that singular activities of some states have far-reaching effects on other states. The unilateral character of animal welfare legislation has rendered the international legal order somewhat paraplegic in addressing these concerns. States with 'robust' animal welfare legislation include Canada,⁸ the United States (US)⁹ and countries in the European Union (EU). Many other states, particularly African states, have little to no regime on legal animal welfare.¹⁰

Three major attempts were made at a universal declaration that codify animal welfare interests. Such initiatives demonstrate, at least, that the international community has a sense of commitment to improve animal welfare standards.¹¹ First, the Universal Declaration on Animal Rights (UDAR) drafted by Georges Heuse, through the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1978.¹² Second, under the auspices of the World Society for the Protection of Animals (WSPA), the 2005

³ What is available are various international instruments on specific issues including protection of habitat and endangered species codified in the Conservation of Migratory Species of Wild Animals and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) respectively.

⁴ See WTO Committee on Agriculture, 'European Communities Proposal: Animal Welfare and Trade in Agriculture', WTO Doc. no G/AG/NG/W/19 28 June 2000.

⁵ See Charlotte E Blattner, *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (OUP 2019).

⁶ See Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5 *Transnational Law* 9.

⁶ See Bruce Myers and Linda Breggin, 'Tackling the Problem of CAFOs and Climate Change: A New Path to Improved Animal Welfare?' in Randall Abate (ed), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 117.

⁷ See Tommy Tsan-Yuk Lam and others, 'Identifying SARS-CoV-2 Related Coronaviruses in Malayan Pangolins' (2020) 583 *Nature* 282 <<https://www.nature.com/articles/s41586-020-2169-0>> accessed 15 March 2024.

⁸ Section 446 of the Criminal Code of Canada prohibits anyone from willfully causing animals to suffer from neglect, pain or injury.

⁹ The Animal Welfare Act is the primary federal animal protection law in the US. In addition, all 50 states in the US have legislation on animal welfare although discrepancies exist in definitions and penalties.

¹⁰ See A Shoyombo and others, 'Animal Rights Policy in Nigeria: The Way Forward' (2019) 14(22) *Journal of Engineering and Applied Sciences* 8439.

¹¹ See Saba Pippia, 'Formation of Animal Law as an Autonomous Branch of International Law' (2019) MPIL Research Paper Series no 2019-07.

¹² See Jean-Marc Neumann, 'The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species' (2012) 19 *Animal Law* 91, 95.

Universal Declaration on Animal Welfare which draws on the foundations of the UDHR and the failed UDAR.¹³ Third, the International Convention for the Protection of Animals drafted and proposed by David Favre in 1988.¹⁴ Although in itself, the ICAP is not a universal declaration, its contents reveal a similar purpose and form. The failure of these three legal instruments, among many, is proof that the international legal order is yet to be fully equipped with the ability to protect animals.¹⁵ In spite of their long-standing presence and legal references, these juridical tools have not achieved a binding status in international law and they remain proposals at this time.¹⁶ In effect, the absence of formal and uniform international instruments has been shown to lead to regulatory ambiguity among domestic animal welfare laws. Together, they bring to the fore the main objective of this paper in an attempt to answer: what are the challenges of global animal law? Therefore, drawing upon the trend of the UDHR and other global laws, this research intends to bypass/remedy the weaknesses of selected international instruments in a proposed uniform law for animal protection of some sort.¹⁷

The United Kingdom (UK) Farm Animal Welfare Council introduced and developed the 'five freedoms' of animal welfare. These comprise animals' freedom from: (1) hunger and thirst; (2) discomfort; (3) pain, injury, or disease; (4) fear and distress; and (5) freedom to express normal behaviour.¹⁸ The five freedoms have been endorsed by the World Organization for Animal Health (WOAH) and now form the basis of a wide range of animal protection instruments.¹⁹ Many arguments have gone in favour of the 'protection of animals from suffering and cruelty as a universal issue', one that should be addressed in international agreements.²⁰ However, in order to move forward, one needs to examine the foundations of the past so as to overcome such impediments in the future. With this in view, the peculiarities of multicultural societies and the formulation of a common standard are paramount points that must be considered in pursuance of a global animal law.

¹³ See World Society for the Protection of Animals (WSPA) Universal Declaration on Animal Welfare (2013) <https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf> accessed 15 March 2024. See Miah Gibson, 'The Universal Declaration of Animal Welfare' (2011) 16 Deakin Law Review 539.

¹⁴ See <<https://www.animallaw.info/treaty/international-convention-protection-animals>> accessed 15 March 2024.

¹⁵ See Steve White, 'Into the Void: International Law and the Protection of Animal Welfare' (2013) 4(4) Global Policy 391.

¹⁶ See Saba Pipia, 'Emergence of Global Animal Law as a Separate Branch of International Law' (2020) 16 Animal and Natural Resource Law Review 171; Guillaume Futhazar, 'Biodiversity, Species Protection, and Animal Welfare under International Law' in Anne Peters (ed), *Studies in Global Animal Law* (Springer 2020) 95.

¹⁷ For an impact assessment in Africa, see Eric Engle, 'Universal Human Rights: A Generational History' (2006) 12 Annual Survey of International and Comparative Law 219; Nsongurua Udombana, 'Mission Accomplished? An Impact Assessment of the UDHR in Africa' (2008) 30 Hamline Journal of Public Law and Policy 335.

¹⁸ See Melissa Elischer, 'The Five Freedoms: A History Lesson in Animal Care and Welfare' (*Michigan State University Extension 4-H Animal Science*, 6 September 2019) <https://www.canr.msu.edu/news/an_animal_welfare_history_lesson_on_the_five_freedoms> accessed 15 March 2024.

¹⁹ See, for example, Canada's Model Animal Welfare Act <<https://worldanimal.net/our-programs/model-lawproject>> accessed 15 March 2024.

²⁰ Amy B Draeger, 'More than Property: An Argument for Adoption of the Universal Declaration on Animal Welfare' (2007) 12 Drake Journal of Agricultural Law 297.

2. The Cultural Embeddedness of Animal Laws

As a matter of course, in a bid to pursue the desirability of a global animal law, cultural differences tower as the germane consideration for any research.²¹ All cultures have interests that might conflict with its desirability. They include religious activity, cultural festivals and economic ties.²² For example, in 2002, the German *Bundesverfassungsgericht* granted Muslim butchers exceptional permission to conduct ritual slaughter for religious reasons.²³ Further, in 2012, the French *Conseil constitutionnel* validated bullfighting in the south of France given its deemed local traditional value.²⁴ Moreover, various translation issues emerge as a pivotal matter of concern in comparative legal scholarship.²⁵ Particularly in relation to animal protection, many domestic legal frameworks already have legislation that reflect a sense of commitment to animal welfare and so, by taking full advantage of the innovations of comparative law, this paper will proffer possible solutions. Global animal law is deeply entrenched in a very wide range of national domestic laws and before we begin to think or consider a consensus, even at the regional level, a solid and trustworthy understanding must be achieved.²⁶

Given the cultural embeddedness of animal laws, it is important to explore the key role of translation and interpretation in the development of common standards.²⁷ In this respect, I would like to refer to the example of the ‘okapi’ recently used in comparative legal scholarship where the author relies on German philosopher Hans-Georg Gadamer’s philosophical hermeneutics in order to highlight important interpretation issues arising in cross-cultural communication in law:

Suppose a German tourist is for the first time making her way to New York’s Bronx Zoo, often described as the world’s largest metropolitan zoo. While strolling around, the German visitor comes across an okapi, an exotic mammal native to the Ituri rainforest located in the northeast of the Democratic Republic of Congo, in Central Africa. Now, the German tourist has never encountered this animal before, and she is immediately struck by its physical characteristics. The body shape is similar to that of a giraffe, except that okapis have much shorter necks. Further, okapis have dark backs, with striking horizontal white stripes on the front and back legs making them look like zebras. How can the German tourist make sense of this unfamiliar creature? Gadamer would emphatically contend that she has no choice but to refer to familiar or pre-existing ideas – giraffe and zebra – in order to gain a certain understanding of the animal. Also, we can expect that an inhabitant of the Ituri rainforest who has been living

²¹ See Naomi Mezey, ‘Mapping a Cultural Studies of Law’ in Austin Sarat and Patricia Ewick (eds), *The Handbook of Law and Society* (Wiley-Blackwell 2015) 39–55.

²² See generally David Fraser, ‘Understanding Animal Welfare: The Science in its Cultural Context’ (2008) 50 *Acta Veterinaria Scandinavica* 5.

²³ BVerfG, Judgment of the First Senate of 15 January 2002, 1 BvR 1783/99, paras 1–61 <https://www.bverfg.de/e/rs20020115_1bvr178399en.html> accessed 15 March 2024.

²⁴ See Decision no 2012-271, QPC of 21 September 2012 <<https://www.conseil-constitutionnel.fr/en/decision/2012/2012271QPC.htm>> accessed 15 March 2024.

²⁵ 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.

²⁶ See Duncan Large and others (eds), *Untranslatability: Interdisciplinary Perspectives* (Routledge 2018) 28.

²⁷ See Caley Otter, Siobhan O’Sullivan, and Sandy Ross, ‘Laying the Foundations for an International Animal Protection Regime’ (2012) 2 *Journal of Animal Ethics* 53.

alongside okapis all her life will approach the animal from a different point of view and will probably not (need to) think of okapis in terms of them being like giraffes or zebras. In other words, her pre-understanding will differ. The point is that the historical tradition to which the interpreter belongs matters to the act of understanding she brings to bear on the entity to which she is purporting to ascribe meaning.²⁸

Clearly, the context in which a person currently stands, the background from which the person previously came from and the literal setting in which the animal is being viewed in an international context, will most likely not be the same. The human nature seeks to build the unknown from what is known.²⁹ However, this task becomes difficult when diverse cultures with different mindsets and values take it on. The diversity in perception offers insight into the cause of the gap that exists among national jurisdictions today.

When applying this same analysis in the context of Yorubaland of Western Nigeria, the gap is all the more obvious. The word 'animal' translated into Yoruba language is '*eran-oko*'. The word '*eran-oko*' translated literally in English would mean 'a beast of the bush'. It is a categorical name for grouping animals that generally do not live with or near humans (such as dogs) but are wild. These animals include monkeys, goats, lions and bears. Notwithstanding the discrimination in the category, one should be aware of the fact that there are certain other animals that, although animals in essence, would not be included in the '*eran-oko*' category. For example, a snake would be directly called '*ejo*' rather than '*eran-oko*' even though, in many contexts, it is a beast of the bush. Another illustration is 'rabbit' which would rather be called '*ehoro*' despite the possibility of wild instincts. Further, it is important to note that '*eran-oko*' is also an insult which in the right context, can be translated to mean a stupid person.

These two evocative examples show the kind of challenges posed by interpretation and the cultural embeddedness of many animal laws that might be discoverable through deep reflection and further analysis. It is easy to imagine that a Yoruba man during a UN meeting on the development of animal welfare standards would have certain animals in mind to the exclusion of others. The danger of this is that this person's thoughts would allow rights to be offered to goats, for instance, which, of course is not in itself undesirable, but it becomes untenable if such a protection had been given to the exclusion of dogs.

Therefore, it is essential to adopt simpler and more specific methods of interpretation in order to overcome some of the challenges that plague the advancement of a common standard for legal animal protection for all nations. Because of how complex these issues can be, recent scholarship has attempted to demystify some of these notions by providing simplified modes of understanding law in a particular area and the possibility of uniformity in another area.³⁰ But because culture is not immutable and therefore, can change, a global animal law

²⁸ Simone Glanert, 'On the Untranslatability of Laws' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2021) 169–70.

²⁹ See Wilhelm von Humboldt, *On Language: On the Diversity of Human Language Construction and its Influence on the Mental Development of the Human Species* (Michael Losonsky ed, Peter Heath tr, first published 1836, CUP 1988) 130.

³⁰ See Susan Bassnett, 'The Translator as Cross-Cultural Mediator' in Kirsten Malmkjær and Kevin Windle (eds), *The Oxford Handbook of Translation Studies* (OUP 2011) 94, 99.

is likely to sponsor change in attitudes no matter how slow, just as was the case with women's rights and slavery.

2.1. The Role of International Institutions

The role of international institutions in animal welfare protection globally towers as a necessity in this comparative analysis. The World Organization for Animal Health (WOAH) is an intergovernmental international organization with 183 member states and its actions clearly point to the commitment of states to animal welfare which might amount to some form of international custom.³¹ The United Nations Convention on Animal Health and Protection is a recent initiative by many organizations under the auspices of the Global Animal Law Association.³² It remains the most recent and strongest attempt at a hard law instrument for animal protection internationally. Developments like these are important because they sponsor stronger domestic laws which can be attributed largely to the activities of international organizations.³³ This institutional factor, combined with the international law principles, will be important considerations in the development of global animal law.

While there is research that goes beyond demonstrating the strengths and weaknesses of existing animal welfare legislation in both international and domestic jurisdictions, it nonetheless highlights one of the main challenges of a global animal law, that is cultural differences. Unfortunately, there is presently no literature supporting a harmonized system that can accommodate such competing interests in the animal rights context. Given the scope of this paper, it is important to evaluate how some African cultures can accommodate animal welfare as a matter of global concern by taking advantage of the structure of the AU and to briefly consider the different perspectives on animal rights generally. This method is interesting and necessary in order to appreciate the different ways that a global law might apply across cultures.

3. Adopting Public International Law Principles for Harmony

The year 2020 was significant for many reasons, one of which was the revival of the idea of the need for a cross border regulation of animal treatment.³⁴ Generally speaking, animal protection has been a private concern for states through diverse forms of Animal Welfare Acts,³⁵ Prevention of Cruelty to Animals Acts³⁶, Humane Methods of Slaughter Acts³⁷ and certain provisions in criminal codes.³⁸ In national jurisdictions, developments have contained

³¹ See <<https://www.woah.org/en/who-we-are/members/>> accessed 15 March 2024.

³² United Nations Convention on Animal Health and Protection (first pre-draft, Global Animal Law Association, 23 August 2018) <<https://www.globalanimallaw.org/database/universal.html>> accessed 15 March 2024.

³³ See Sabine Brels, 'The Evolution of International Animal Law: From Wildlife Conservation to Animal Welfare' in Randall S Abate (ed), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 365.

³⁴ See Daina Bray and others, 'International Animal Law' (2021) 55 American Bar Association Section on International Law – Year in Review 85.

³⁵ See Australia: Animal Welfare Act 1992 A1992-45 Republication no 17, s 7: 'A person commits an offence if the person commits an act of cruelty on an animal'.

³⁶ See s 295, CAP 56, Laws of the Federation of Nigeria.

³⁷ See United States: Humane Methods of Livestock Slaughter Act, 7 USC 1901–1907, s 1902: 'No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane'.

³⁸ See Nigeria: Criminal Code Act, Cap C38 LFN 2004, 1 June 1916, s 495: 'Any person who cruelly [treats] an animal is guilty of an offence of cruelty and is liable to imprisonment for six months or to a fine of fifty naira

a mix of progressive and regressive actions. Whatever the case is, this argument is based on some fundamental notions. First, animals need protection. Second, to achieve this, states must come to a consensus, even if loose, on foundational principles for international cooperation. And third, globalization has created an urgent need for international cooperation on animal protection such that discussions are imminent.³⁹

Currently, there exists no international treaty that regulates the welfare of animals or sets clear standards of procedure on minimum standards of animal treatment. This is not surprising as it is significantly challenging to reach a conclusion on the principles guiding the subject. On the other hand, there has been more progress for animal protection at the regional level. The most notable examples include the Animal Welfare Strategy for Africa⁴⁰ and the Treaty on the Functioning of the European Union.⁴¹ Despite the challenges, the international community needs a regime for the protection of animals through a combined effort without ignoring the significant hurdles. Adopting a comparative legal approach with respect to animal law by selectively analyzing the status of international organizations in international law context, and presenting solutions for the advancement of global animal law is the way forward.

It is not desirable that animal protection remains a local issue.⁴² The international society is not an unchanging entity but is subject to the ebb and flow of political life so much so that in the end, the final appeal of law is to the various peoples,⁴³ and in the context of international law ultimately to states. This is true whether in the local or the international context. Since individuals, societies, and states are attaining a serious level and concern for these issues, the law must respond and cater for these concerns. Until now, evidently, local law has not done too well.

3.1. A Comparative Legal Approach as the Panacea for Solutions

To answer the questions indicated in the previous parts, the adoption of a critical comparative and interdisciplinary approach offers important insights into the challenges. By briefly assessing the literature on animal rights generally, I shall emphasize the theoretical underpinnings of animal rights and welfare in general and specifically, how culture stands in the way of its advancement. This will lead to a better understanding of the available approaches that states and regional institutions alike have taken in order to protect animals. With a view to determining the shortcomings and successes of the available frameworks, significant consideration will be given to legal translation issues and cultural implications.⁴⁴ Comparative

or to both such imprisonment and fine' <<https://www.refworld.org/docid/49997ade1a.html>> accessed 15 March 2024.

³⁹ See generally Thomas G Kelch, *Globalization and Animal Law* (Kluwer 2011).

⁴⁰ See Animal Welfare Strategy for Africa: Executive Summary <<http://repository.au-ibar.org/handle/123456789/543>> accessed 15 March 2024. Mission statement: 'an Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource sector'.

⁴¹ See Consolidated Version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>> accessed 15 March 2024.

⁴² See Tanya Wyatt, *Is CITES Protecting Wildlife? Assessing Implementation and Compliance* (Earthscan 2021).

⁴³ See Janne Elisabeth Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (TMC Asser 2004) 144.

⁴⁴ See Glanert (n 28).

legal research will allow us to look at the states of the African Union as a regional institution and at their agencies' narrowly tailored proposals in contrast with broader approaches like universal declarations.

After having considered different comparative legal methods,⁴⁵ a culturalist approach of different animal rights views seems apt. Speaking from the perspective according to which law is culture,⁴⁶ it becomes obvious that these notions on animal rights are bereft of other useful perspectives. For examples, it is unlikely that the aforementioned Yoruba culture would intend the rights-based approach for 'eran-oko'. This paper aims to reveal the significance of translation studies for the development of a global animal law.⁴⁷ It is necessary to bear in mind the important contribution that philosophical hermeneutics can make for a better understanding of the challenges to a common legal framework on animal law and this can be best achieved through an interdisciplinary approach.⁴⁸

One of the cardinal reflections must be on the challenge brought about by plurilingual societies as they can have a direct impact on comparative approaches to global animal law. While the international community seems to be unsettled as to whether animal welfare is an issue of global concern that requires global solutions, this research predicts that it is only a matter of time until the need for global regulation becomes an urgent necessity. In the following section, I will use as an example the issue of extraterritorial enforcement of habeas corpus rights regarding primates in certain parts of the US.

3.2. Interpretation of General Principles – The AU and the Animal Welfare Strategy

As a foundation, international organizations are best suited to elaborate legislation in the field of animal law. They are the most important players in international law after states.⁴⁹ Their structure has been a design of states; and their personality is limited to as much as states confer on them.⁵⁰ International organizations have a special legal status in international law. They are not states, yet they have the capacity to enter into binding legal relations with states and enforce them against states. They can also have binding legal relations between other international organizations and are subjects of law to which the rules of international law apply. In relation to the first point, the legal structure of international organizations is settled. They are created by an international agreement such as the United Nations Charter and such constituent instrument sets out its powers, functions and membership procedure clearly.⁵¹

⁴⁵ See Uwe Kischel, *Comparative Law* (Andrew Hammel tr, OUP 2019); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019).

⁴⁶ See, for example, Martin Krygier, 'Law as Tradition' (1986) 5 *Law and Philosophy* 237; Pierre Legrand, 'On the Singularity of Law' (2006) 47 *Harvard International Law Journal* 517.

⁴⁷ See Simone Glanert, 'Translation Matters' in Simone Glanert (ed), *Comparative Law – Engaging Translation* (Routledge 2014) 10.

⁴⁸ See Lawrence Schmidt, 'Intercultural Understanding in Philosophical Hermeneutics', in Ming Xie (ed), *The Agon of Interpretations: Towards a Critical Intercultural Hermeneutics* (University of Toronto Press 2014) 210.

⁴⁹ See Stephen McCaffrey, *Understanding International Law* (2nd edn, Lexis Nexis 2015) 156.

⁵⁰ See generally Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (CUP 2022).

⁵¹ See Chittharanjan F Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd edn, CUP 2005) 447.

International organizations and the laws regulating them are important for the proper running of the international system, especially based on the principle of state equality. Some of the most important include the United Nations, the International Labor Organization and the World Health Organization. By focusing on the proposed international organizations for this model, the WOA and the AU, this analysis offers the argument that these organizations can serve as a guardian for the rights of animals. The WOA is the central intergovernmental organization vested with the duty of engaging member states on common standards of animal health and welfare promotion. The African Union has a corresponding agency with comparable responsibilities. In considering its Strategy for 2021–2025,⁵² some provisions are important in providing an analysis of how the law of international organizations can offer a leeway for a normative animal welfare standard among member states. There are five areas of strategic focus, namely, (1) scientific expertise; (2) data governance; (3) responding to members' needs; (4) collaboration with partners; and (5) efficiency and agility. This part of my paper focuses on the fourth area of strategic focus, *collaboration with partners*, as a foundational board upon which the general principle of public international law that govern international institutions may be applied to advance legal protection for animals. The goal under the fourth strategic area is 'optimizing cooperation with partners to better respond to global challenges'.⁵³

There is little discussion on the method with which this goal will be achieved. Nonetheless, it offers valuable insight into animal protection. For example, the document proposes a collaboration with other international organizations including the Food and Agriculture Organization of the United Nations and the World Health Organization. This alludes to the opinion that collaboration brings 'added-value and synergy to addressing One Health challenges' and a proposed extension to include the United Nations Environment Programme (UNEP) in order to 'take better account of the environmental component'.⁵⁴ The fact that this strategy recognizes that the protection of animal health and welfare is better achieved in collaboration with UNEP further stresses the interdependence of these principles in advancing animal protection internationally.

The regional structure of the African Union (AU) offers worthy suggestions in order to surmount these challenges. The structure is set up in a unique way such that when a decision is made in that center, it has an automatic normative force on the member states. In the context of animal protection, this structure provides a solution to the lack of harmony that plagues the advancement of global animal law. For example, where a decision is made by the AU as a whole, all 55 member states are automatically and immediately bound by such decisions. The essence of this analysis is not to embark on a journey in order to analyze the structure of the AU as extensive studies are available on that but rather, to assess how the already existing structure provides avenues to surmount the challenges. First, the presence of a body which in this context is the AU-IBAR is helpful in bridging the gap at a more concise level although not completely, considering the fact that the member states have thousands of communities within. Second, smaller meetings can be held at the grassroots level after fundamental conclusions have been made at the AU level. Third, and most importantly,

⁵² See World Organisation for Animal Health, *OIE Seventh Strategic Plan for the Period 2021–2025* <<https://www.woah.org/en/document/seventh-strategic-plan/>> accessed 15 March 2024.

⁵³ *ibid* 16.

⁵⁴ *ibid* 17.

the camaraderie that already exists among members ensures a smooth sail of animal-centric decision-making.

The activities of the Nonhuman Rights Project in the US have also paved the way for landmark developments in animal rights. Significant is the case of Happy, a 50-year-old Asian elephant held in captivity since 1977 under harsh conditions. Her case became the first where the highest court of any English-speaking jurisdiction heard a habeas corpus case brought on behalf of an entity that is not a human being. An amicus brief filed by philosopher Martha Nussbaum argues that ‘the law requires reformation to protect our modern scientific and philosophical understanding that many animals can live their own meaningful lives and that the court should reform the law in this case’.⁵⁵ Therefore, with cases like this in view, legal animal rights are evolving into a tangible reality in domestic courts.⁵⁶ Comparing the case of Happy in a global south context, it might be safe to assume that the ‘*eran-oko*’ nature of the elephant might preclude this status from actually manifesting as a legal reality in the near future.

4. A Brief Consideration on Other Perspectives in Animal Protection

The literature on animal rights jurisprudence is very rich.⁵⁷ In the beginning, Western thinkers like Bentham contended the need to determine the capacity of animals to suffer when assessing the moral status of animals.⁵⁸ The UK then pioneered the codification of animal welfare standards following some concerns raised about inhumane factory farming conditions.⁵⁹ This led to initiatives like the Brambell Report in 1965 adapted by the UK Farms Advisory Committee,⁶⁰ the 1968 UK Agriculture (Miscellaneous Provisions) Act, and then multilateral treaties pioneered by the European Convention for the Protection of Animals Kept for Farming Purposes.⁶¹ In the 1980’s a shift emerged from ‘welfare’ to a ‘rights based’ approach.

Interestingly, whether animals have rights is still in debate. On one hand, Cupp among others argue that there is no allocation for animals as subjects of any legal system;⁶² and as such, the usage of the term ‘rights’ is faulty and unnecessary.⁶³ On the other hand, Singer pioneered an argument in favor of rights for animals even though they are not able to enforce

⁵⁵ Lauren Choplin, ‘World-Renowned Philosopher Martha Nussbaum Supports New York Elephant Rights Case’ (*Nonhuman Rights Blog*, 24 August 2021) <<https://www.nonhumanrights.org/blog/martha-nussbaum-elfantrights/>> accessed 15 March 2024.

⁵⁶ For a similar amicus brief filed by Professor Christine Korsgaard (Harvard), see <<https://www.nonhumanrights.org/wp-content/uploads/Christine-M.-Korsgaard-Amicus-Brief-Happy-Case.pdf>> accessed 15 March 2024.

⁵⁷ See Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (OUP 2011).

⁵⁸ See Jeremy Bentham, ‘Duty to Minimize Suffering’ in Andrew Linzey and Paul B Clarke (eds), *Animal Rights: A Historical Anthology* (first published 1789, Columbia University Press 2004); Johannes Kniess, ‘Bentham on Animal Welfare’ (2019) 27 *British Journal for the History of Philosophy* 556, 557.

⁵⁹ See Edward Eadie, *Understanding Animal Welfare: An Integrated Approach* (Springer 2012) 26.

⁶⁰ See Brambell Committee, *Report of the Technical Committee to Enquire into the Welfare of Livestock Kept under Intensive Conditions* (Her Majesty’s Stationery Office, Command Paper 2836, London 1965).

⁶¹ See generally European Convention for the Protection of Animals Kept for Farming Purposes, CETS no 87, 3 October 1976; John Callicott, ‘Animal Liberation: A Triangular Affair’ (1980) 2 *Environmental Ethics* 312.

⁶² See Richard L Cupp, ‘Moving Beyond Animal Rights: A Legal/Contractualist Critique’ (2009) 46 *San Diego Law Review* 27.

⁶³ See David R Schmahmann and Lori J Polacheck, ‘The Case Against Animal Rights’ (1995) 22 *Boston College Environmental Affairs Law Review* 747.

them alluding to children and the mentally disabled as possessors of human rights despite their limitations.⁶⁴ Other supporters of this view, like Regan who in *The Case for Animal Rights*⁶⁵ steer away from the utilitarian standpoint and tilt towards a deontological perspective, assert that every form of exploitation of animals by humans must be prohibited.

Robert Garner propounded the *Ethics of Welfarism* and established the notion that exploitation is inevitable but must be strictly regulated.⁶⁶ It does not recognize a minimum standard and it has not received enough critique.⁶⁷ This approach is underpinned by anthropocentric visions that are adversative to animal protection. The *New Welfarist* position coined by Gary Francione is an attempt at reconciling the rights and welfarist approaches.⁶⁸ These reformists seek to put abolition as a long-term goal but at the moment, exhaust resources on improving welfare conditions.⁶⁹ It has actually been embraced by several organizations in the realm of animal protection like PETA and Animal Compassion over Killing.

Some shift away from law entirely and propose regulation of animal labor as a worthy approach of securing rights for animals.⁷⁰ This means that animals are subjected to work for the benefit of humans until death, the only condition being protection from unnecessary suffering.⁷¹ Such animals are killed when they are not able to meet conditions for work although Porcher argues that death is not a bad thing for animals based on the gift theory.⁷² Similarly, Cochrane simply proposes a consideration of animal interests when the common good is in question.⁷³ While these may seem well meaning and innocent, it is not enough to effect real change. Rather, it facilitates an 'animal industrial complex'.⁷⁴

Very recently, an interesting theory of legal personhood emerged describing animals as legal 'beings'.⁷⁵ This rests on the notion that the inability of animals to have duties does not preclude them from being possessors of rights in themselves.⁷⁶ This approach is embraced in the drafting of a proposed universal declaration. The rights standpoint is based on the assumption that animals cannot be used by humans for the satisfaction of wants, while the

⁶⁴ See Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (Harper Collins 1975) 23.

⁶⁵ See Tom Regan, *The Case for Animal Rights* (University of California Press 1983) 243.

⁶⁶ See Robert Garner, *Animals, Politics and Morality* (Manchester University Press 2004).

⁶⁷ See Brian Favre, 'Is There a Need for a New, an Ecological, Understanding of Legal Animal Rights?' (2020) 11 *Journal of Human Rights and the Environment* 297.

⁶⁸ See Gary Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press 1996) 36.

⁶⁹ See Nicola Taylor, 'Whither Rights? Animal Rights and the Rise of New Welfarism' (1999) 3 *Animal Issues* 27.

⁷⁰ See Charlotte E Blattner, Kendra Coulter and Will Kymlicka, 'Introduction: Animal Labour and the Quest for Interspecies Justice' in Charlotte E Blattner, Kendra Coulter, and Will Kymlicka (eds), *Animal Labour: A New Frontier of Interspecies Justice?* (OUP 2020) 4.

⁷¹ See David Wolfson and Mariann Sullivan, 'Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable' in Cass Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (OUP 2004) 205.

⁷² See Jocelyne Porcher, *The Ethics of Animal Labor* (Springer 2017).

⁷³ See Alasdair Cochrane, 'Labour Rights for Animals' in Robert Garner and Siobhan O'Sullivan (eds), *The Political Turn in Animal Ethics* (Rowman and Littlefield 2016) 15.

⁷⁴ Barbara Noske, *Beyond Boundaries: Humans and Animals* (Black Rose Books 1997) 22.

⁷⁵ Angela Fernandez, 'Not Quite Property, Not Quite Persons: A "Quasi" Approach for Nonhuman Animals' (2019) 5 *Canadian Journal of Comparative and Contemporary Law* 1; Visa Kurki, 'Legal Personhood and Animal Rights' (2021) 11 *Journal of Animal Ethics* 47.

⁷⁶ See Matthew Kramer, 'Do Animals and Dead People have Legal Rights?' (2001) 14 *Canadian Journal of Law and Jurisprudence* 29, 42.

animal welfare view advocates a beneficial use for humans while minimizing suffering.⁷⁷ Notwithstanding the divergent views, it matters not what terminology is employed; what is important is that animals have welfare interests that are protected by statute.⁷⁸

4.1. Zooming in on Africa

By contrast, in Nigeria, like in many other countries in Africa, the animal protection regime remains very unstructured.⁷⁹ What is available are vague constitutional provisions and criminal code sections that criminalize bestiality and animal cruelty with laughable penalties below a dollar.⁸⁰ Nonetheless, regional developments in the African Union also reflect a growing commitment by the member states to animal welfare.⁸¹ For example, the recently adopted executive summary of the Animal Welfare Strategy for Africa (AWSA) by the African Union Interafrican Bureau for Animal Resources (AU-IBAR) aimed towards implementing the 2030 Agenda for Sustainable Development in Africa in relation to animal protection.⁸² It is safe to say that a future of animal welfare is emerging for African states, a future which might prove problematic if these states were to disregard law as culture and to simply import the provisions of other regional laws into their domestic regimes. Among many other options, a universal declaration might be able to offer some answers to the apparent challenges. First, because of its non-binding elements. Second, because of the global reach possessed by the United Nations. And, third, its ability to crystallize into hard law over time.

5. Conclusion

The earlier parts of this article have highlighted the discrepancies that exist in the understanding of what an animal is, examined selected literature on animal rights in depth, considered existing challenges and offered possible solutions in international law that might be worthy of consideration when discussing the furtherance of global animal law. Despite the challenges highlighted, it is clear that there is a possibility of a future where animal interests are a major consideration in serious international discussions. This is not without being aware of the fact that 'states have increasingly recognized that protecting the lives of animals helps in an aggregate sense to sustain ecosystems, mitigate climate change, and underpin the conditions for human existence, states have paid almost no attention to safeguarding the interests of animals as individuals'.⁸³

To propose a properly structured universal declaration might be considered ambitious, but so have been other attempts at societal change including human rights, rights for indigenous

⁷⁷ See Bernard Rollin, 'An Ethicist's Commentary on Animal Rights Versus Welfare' (2002) 43 *Canadian Veterinary Journal* 913.

⁷⁸ See generally Clare McCausland, 'The Five Freedoms of Animal Welfare Are Rights' (2014) 27 *Journal of Agricultural and Environmental Ethics* 649.

⁷⁹ Commendable developments include Egypt's 2014 Constitution establishing the duty to perform kind treatment to animals under Article 45.

⁸⁰ See Ayoola Shoyombo and others, 'Animal Rights Policy in Nigeria: The Way Forward' (2019) 14 *Journal of Engineering and Applied Sciences* 8439.

⁸¹ See, for recent trends in international institutional law in the AU, Nsongurua Udombana, *The African Union in International Law Selected Studies* (John Archers 2020).

⁸² See <https://rr-africa.woah.org/wp-content/uploads/2019/05/awsa_executive_summary_layout_eng_2017.pdf> accessed 15 March 2024.

⁸³ Rajesh K Reddy and Joan Schaffner, 'The Convention on Animal Protection: The Missing Link in a One Health Global Strategy for Pandemic Prevention' (2022) 10(2) *Global Journal of Animal Law* 1, 11.

peoples and, specifically in the field of animal rights, the regulation of whaling. Such attempts have nevertheless given rise to credible international instruments including the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention for the Regulation of Whaling (ICRW). When these possibilities become enough of a 'shield', global animal law will be truly effective and efficient.

Finally, it is likely that more discussions and concerns will emerge as new developments continue to surface both domestically and internationally. Global animal law allows for the developments to continue to arise in a progressive manner for the purpose of better advancing and criticizing the legal regimes that govern animals globally. Indeed, animals play an important role in human affairs ranging from economic to spiritual facets. These prominent features assure the international community that the need to surmount these challenges is not just desirable, it is necessary.