

The Dawn of European Animal Rights Law

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Abstract: This note reflects on the first ever European Animal Rights Law Conference, which was held in Cambridge, UK, from 14-15 September 2019. It situates the Conference in the broader context of the emerging academic discipline of animal rights law and shows that the Conference was unprecedented in its attempt to forge a new, *European* animal rights law.

Key words: European Animal Rights Law, Cambridge Centre for Animal Rights Law, Welfarism, Abolitionism, Revolution, Pragmatic Approach

Introduction

From 14-15 September 2019, animal rights scholars and practitioners from all over Europe gathered at St Edmund's College, Cambridge, for the first ever European Animal Rights Law Conference. The Conference, which was organized by the Cambridge Centre for Animal Rights Law, brought together experts from Belgium, Finland, Ireland, Israel, Poland, the Netherlands, Spain, Switzerland, the UK, and the US, in an unprecedented attempt to forge a new, European field of animal rights law.¹ In this note, we reflect on the context of the Conference by showing that it is part of an ongoing revolution toward recognizing animals as holders of fundamental legal rights—a revolution that has seen the emergence of animal rights law as an academic discipline in its own right. We then point to the need to overcome old rifts in that discipline and end by proposing a pragmatic way forward.

Taking Animal Rights Law Seriously: A Revolution

There have been numerous animal law and animal ethics conferences before September 2019. In fact, many of the participants of the first European Animal Rights Law Conference had just days before attended the Animal Law, Ethics and Policy Conference organized at Liverpool John Moores University. Animal rights conferences are not a new phenomenon either. In the same year of our Cambridge Conference, for example, the ninth instalment of the International Animal Rights Conference took place in Luxembourg.

What was new and special about the European Animal Rights Law Conference was that it was the first such event in Europe to focus entirely on animal rights *law*. It was the first conference, in other

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¹ For more information about the Conference and for abstracts of all presentations, see Cambridge Centre for Animal Rights Law. (2019). *European Animal Rights Law Conference 2019*. Retrieved from <https://animalrightslaw.org/conferences>.

words, which was dedicated to the study of legal fundamental rights of non-human animals and cognate issues, such as legal personhood, constitutional rights, human rights, and the practical implementation of non-human rights.

By contrast to the Conference itself, however, these issues are not without precedent. Over the past two decades, animal rights law has burgeoned into an academic discipline in its own right. More and more scholars have started to focus entirely on the question of animals' fundamental *legal* rights rather than their *moral* rights (see e.g., Francione, 1996; Wise, 2000; Stucki, 2016a; Peters, 2018). Courses are being developed and taught that concentrate entirely on animals' legal rights (see Animal Legal Defense Fund, 2019; UK Centre for Animal Law, 2019). And practicing lawyers are increasingly pushing for radical, rights-oriented change on the ground (see e.g., Nonhuman Rights Project, 2016; Stucki, 2016b). The cases which these lawyers have brought were at the heart of our discussions at the Conference. Among them was the ground-breaking Cecilia decision, which was the first in history to grant an animal—the chimpanzee Cecilia—a writ of *habeas corpus* and to declare her a legal person (Tercer Juzgado de Garantías, Mendoza, 2016).

Lawyers studying the law pertaining to animals are of course not a new phenomenon. Animal welfare acts and accompanying scholarship and reform proposals go back two-hundred years in at least some European countries (Kelch, 2013). However, what is new is that lawyers are starting to see nonhuman animals as potential holders of legal personhood and of legal rights akin to the personhood and fundamental rights possessed by human animals. To adapt a phrase popularized by the legal philosopher Ronald Dworkin, we can say that lawyers are now *taking animal rights seriously* (see Dworkin, 2013). That is, they see animals as sentient subjects with astonishing capacities deserving of a strong legal status and legal entitlements that far surpass the protection these beings are currently granted in most legal systems.

It is in this sense, we believe, that we are witnessing a revolution. To witness a revolution, or to be part of a revolution, does however not necessarily mean throwing overboard all legal instruments and concepts one has used thus far to protect animals, and to advocate the adoption of entirely new ones. As Aristotle tells us in his *Politics*, revolutions can happen when one system changes to another—for instance, when a democracy becomes an oligarchy—which corresponds to the more dramatic sense of “revolution” that coincides with the common understanding of the term. However, Aristotle also argues that there is a second way in which revolutions can occur: when a great enough change within one and the same system is brought about, for example when there is a change from a weak democracy to a strong one (Aristotle, 2014, Book V, I, 4-5). The same holds in the context of animal rights. These rights can be promoted not only by adopting new legal arguments and instruments, but also by strengthening, refining and repurposing existing ones.

Overcoming Old Rifts

Ignorance of the existence of these two different types of revolution has, we believe, caused a significant rift in animal rights law, which is illustrated in the long-standing debates between the so-called animal welfarists and abolitionists. Abolitionists have usually styled themselves as the true revolutionaries; as the only ones who advocate the abolition of laws and practices that treat animals as mere

commodities. Welfarists, on the other hand, have generally been viewed as the more pragmatic reformers, whose primary aim is to work from within the system to improve the legal protection of animals' wellbeing (see Francione and Garner, 2010).

To be sure, some welfarists have adopted a middle ground position called “new welfarism”. Proponents of this approach agree with the abolitionists' goal to ultimately change animals' status as objects rather than subjects of legal concern. But in contrast to abolitionists, new welfarists believe that “reformist” measures can get us there (Taylor, 1999). Despite the emergence of this new welfarism, however, welfarists have not been able to completely shed their reputation as being more matter-of-fact animal advocates when compared to their alleged opponents in the supposedly more progressive and hot-blooded abolitionist camp.

In unison with other voices (e.g., Chiesa, 2016), we would like to suggest that the common division between welfarists and abolitionists—which we have exaggerated here to drive home our point—is problematic. This is so for at least three reasons.

First, as the emergence of new welfarism has shown, there are significant overlaps not only in the ultimate goal of many welfarists and abolitionists to achieve a drastic change in animals' legal status quo, but also some of the practical proposals which both would support to achieve this goal. Most importantly, new welfarists and abolitionists agree that, if done right, campaigns that focus on the banning of particularly problematic practices, such as cruel types of entertainment involving animals like bull-fighting (a topic that featured prominently in the Cambridge Conference) or circuses, are preferable to taking no action (Francione and Garner, 2010, pp. 78–79; for a critical perspective, see Wrenn and Johnson, 2013).

A second reason for challenging the idea of a chasm between abolitionism and welfarism is that our understanding of many legal concepts and their relationship to animals is still rather deficient. Concepts such as rights, personhood, subjecthood, property, dignity, or equal protection, can mean different things depending on who invokes them. For example, there is considerable disagreement in the literature on key questions such as whether or not animals already have legal rights by virtue of welfare legislation that protects their interests (see e.g., McCausland, 2014; Kurki, 2017; Wise, 1996); whether these rights are absolute or whether they could be balanced against other rights or the public (human) interest (see e.g., Cochrane, 2018, 25; Francione, 2005, p. 168); or whether animals could remain property while possessing rights (see e.g., Wise, 1996, p. 180; Cochrane, 2009). As a result of these disagreements, a concrete practical proposal for legal change, such as for instance a bill requiring the provision of a stimulating environment for farmed pigs to improve their lives, would be viewed as an animal *rights* measure by some, while others would say it is the very opposite, because they take such different interpretations of what it means to have a right. All other things being equal, however, it is indisputable that the pigs would practically benefit from such a law. It seems to us that at least until we have acquired complete clarity as to what exactly it means for animals to possess (fundamental) rights or similar legal entitlements, any kind of pigeonholing that occurs with the use of labels such as welfarism and abolitionism should be avoided.

Lastly, it is arguable that the rift between abolitionists and welfarists has been actively harmful to the cause of improving the wellbeing of nonhuman animals. The hard-nosed opposition between at least some abolitionists and (new) welfarists has meant that opportunities for joint campaigns attempting

to ban problematic practices involving animals were missed, and that resources went into the opposition itself rather than changing animals' lives. To be sure, there are some that argue that factionalism within the animal rights movement has certain benefits. For example, it has been pointed out that factionalism can induce self-reflection on the part of the factions, and that it can motivate other people to become involved (Wrenn, 2018). However, it strikes us as obvious that a movement without infighting is preferable to one with infighting.

A Pragmatic Way Forward

To overcome the old rift between welfarists and abolitionists, a pragmatic approach is necessary which looks at what measures, concretely, promote the legal status quo of animals in a way that takes these animals seriously as having vital interests worthy of a similar kind of protection that we accord to human interests. This, essentially, is the approach that the Cambridge Centre for Animal Rights Law adopts, and which was reflected in the diverse contributions of our Conference participants.²

In addition to reflecting a pragmatist approach to animal rights, these contributions were also an important step in the establishment of animal rights law as a legal discipline in its own right. Let us briefly elaborate on this.

Until now, animal rights law was largely a part-discipline. Its scholars and practitioners were all concentrating their efforts on different issues: some were focused on philosophical questions or questions of animal cognition, others on issues of practical implementation, and yet others on animal rights as a movement. Like the blind men in the parable of the elephant, they appeared to think that the parts of the "elephant" they addressed were all there was to it.

In recent years, these parts have finally started coming together as a single discipline of animal rights law. Our own experiences in the Cambridge Centre for Animal Rights Law have reinforced the view that animal rights law is now a discipline in its own right. In our course on Animal Rights Law given in the Law Faculty of the University of Cambridge, we cover the social and historical context, the development of the (mostly animal welfare) laws and their status quo in the UK and internationally, jurisprudential issues, animal rights case law, and questions about law reform. As we show in the course, all these parts belong together.

This is not to say, of course, that animal rights law is detached from other disciplines. Quite the contrary: animal rights law will remain in important parts an interdisciplinary endeavor, making it necessary for animal rights lawyers to be versed in philosophy, litigation tactics, animal behavior, etc. However—and this is our point—animal rights lawyers are beginning to focus more on the special characteristics of law, and the possibilities that the application of tools that are unique to law offer for the protection of animals' interests. For example, *legal* animal rights are not the same as moral rights; to be a person from the point of view of the philosophy of mind is not the same as to be a *legal* person; for a nonhuman animal be able to speak American Sign Language may be spectacular (see The Gorilla

² *ibid.*

Foundation, 2019), but not necessary for it to be granted a *constitutional* right to bodily integrity, and so on.

Animal rights practitioners, we believe, have been aware of this point for longer than some scholars have. An anecdote from the Talking Animals, Law & Philosophy series, also organized at Cambridge, nicely illustrates this point. In April 2018, Steven Wise, the president of the US-based Nonhuman Rights Project (NhRP), was in Cambridge to talk about the work of the NhRP on nonhuman animal legal personhood. After Wise had finished his talk, Professor Matthew Kramer, Professor in Legal and Political Philosophy at the University of Cambridge, raised his hand and asked Wise what theory of legal personhood he himself endorsed. Wise's answer—after some back and forth—turned out to be surprisingly simple (we are paraphrasing): “whatever the judge's definition of legal personhood is before whom I am arguing my case, *that* is my definition of legal personhood”.

Finally, and connected to this last thought, a few words on why the Cambridge Centre for Animal Rights Law organized the first *European* (rather than international) Animal Rights Law Conference.

Unlike other disciplines, law—despite the existence of inter- and supranational institutions—is still to a significant extent a national matter, with many local idiosyncrasies and a confusing jumble of jurisdiction-specific competences—as, we are sure, any law student would readily confirm. But while there are important dissimilarities between the animal laws of different European states, there are also important similarities—not least thanks to the European Union and the Council of Europe (see e.g., Broom, 2017; Brels, 2017).

To build much-needed capacities not only in animal rights law scholarship, but also in animal rights law practice, it therefore seemed logical to us at the Cambridge Centre for Animal Rights Law to first leverage existing European synergies. The mission of the Centre, however, is not only to draw together what already exists but, more importantly, to help build a European community of animal rights lawyers and thereby to generate new synergies in order to create a *European animal rights law*.

The Centre's hope is that, with the support of our donors, we will be able to run the European Animal Rights Law Conference on an annual basis and, in conjunction with the Centre's other activities,³ to be able to work as a catalyst for animal rights law in Europe and, perhaps at some point, around the world.

Conclusion

Animal rights law is emerging as an academic discipline in its own right. Although it is connected to other disciplines, animal rights law has developed its own specialist scholarship and its own practical attempts at implementing rights for animals. The Cambridge Conference was thus part of a broader

³ Since the Conference in September 2019, the Centre has launched an annual Visitor programme for PhD students and academics and an annual Law Lecturers' Workshop for lecturers wishing to teach animal rights law. See for all activities: Cambridge Centre for Animal Rights Law. (2019). Retrieved from <https://animalrightslaw.org/>.

trend in scholarship and legal practice. Still, in being the first to bring together European experts in that field, it contributed its share to what we might call the dawn of European animal rights law.

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