

## International Paths Forward for Animals: Perspectives on Legal Change

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My long-standing interest in what legal change might accomplish for animals can be bracketed by the publication of my first law review article in 1979<sup>1</sup> and the appearance in 2021 of a book in which I look forward to the future of animal law.<sup>2</sup> Over those four decades important and consequential questions about animal law and policy have attracted increasing attention in the legal community and in society at large. When I argued thirty years ago that animals could benefit from the negotiation and adoption of an international treaty on animal protection and went so far as to draft such a convention,<sup>3</sup> what Sabine Brels now feels comfortable calling the universalization of animal welfare law had barely begun. Now, as she explains in her contribution to this special issue of the *Global Journal of Animal Law*, there is great interest in international legal paths forward for animals, and in their history and politics.

This new-found visibility for animal law at the international level is certainly welcome. Its impact, however, is uncertain for reasons that will continue to merit discussion. This special issue will be part of that discussion and I am pleased to introduce it.

Animals exist in several different contexts: as emotional companions to humans, as sources of information for science, as entertainment, as a reservoir of pathogen's that might cause global pandemics and, most challenging from the perspective of legal change, as sources of protein and therefore of profit for global seed and meat corporations.

Many humans suggest that respect for animals should be motivated by a concern that there is insufficient recognition at law of the dignity of animals as independent beings.

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<sup>1</sup> David Favre, "Wildlife Rights: The Ever-Widening Circle" [1979] 9 ENV L 241.

<sup>2</sup> David Favre, *The Future of Animal Law* (Edward Elgar Publishing, 2021).

<sup>3</sup> David Favre, "An International Treaty for Animal Welfare" [2012] 18 ANIMAL L 237, discussing the text at <https://www.animallaw.info/treaty/international-convention-protection-animals>

For others their concern is limited to what better treatment of animals could mean for dealing with problems that are important to people. Some want legal rights for animals, others are content to promote better welfare for animals. Whatever the source or scope of the various concerns, they have intensified in recent decades to the point where there is now an extensive and multi-faceted scholarship on the present status of animals within the law and on how and why that status might be improved.

These considerations now occur at the international level for several reasons. First, the commercial provision of meat protein is very much an international enterprise. Through processes of merger and acquisition a limited number of large corporations now control seed supplies for grains and the production and distribution of meat in many parts of the world. Those seeking better welfare for agricultural animals within the boundaries of individual states find it politically difficult to obtain good outcomes, because the jurisdiction within which an animal is raised and the one in which the meat is consumed can be in different parts of the globe. Efforts to provide better welfare for animals locally run the risk that their success will reduce profits for local producers and that producers from elsewhere, where the welfare of animals is poorer, will then flood the market with cheaper meat and drive the higher welfare producers out of business.

It is also the case that individuals and organizations concerned about animal welfare have learned how to tackle the problems they would like to solve by pursuing global strategies, a process that has been greatly facilitated by the rapid diffusion of technology for the worldwide creation and distribution of information and for communicating it to a global audience. Meetings on Zoom between people from different countries have become commonplace, with a resulting acceleration in the sharing of information and expertise. Individuals in most parts of the world can take a quality video on the phone in their pocket. And those videos, perhaps of the destruction of the Amazon rainforest for grain or of the inside of mass production facilities where chickens lay eggs, can easily be posted on the internet for the whole world to see.

So, while it is true that the financial success of global food corporations brings with it considerable political power, those seeking better welfare for animals are not without the

means to enhance their own, countervailing political visibility and economic power. The vegan movement, for example, has managed with the creation and promotion of veggie-burgers to become in fairly short order a significant force arguing for the full elimination of meat protein from living animals.

It is not at all clear that the ethical concerns many individuals have about what they eat and how it is produced will be sufficient in and of itself to alter radically corporate practices for raising meat. Only changes in the law will produce fewer animals in the food chain and better welfare for those that are in the food chain. And at the international level finding better paths forward for animals across national jurisdictions will be further complicated by international instruments that seek to promote commerce in animals, such as the provisions of the World Trade Organization treaty that prohibit one country from restricting the methods of food production used in other countries. There are also bi-lateral trade agreements around the world. Some of them exhibit a sensitivity towards animal welfare issues, many do not.

In a world, then, in which different countries and different regions assign different weights to competing and conflicting interests – cheap meat and animal products *versus* high welfare for production animals – there would seem to be a role for an international agreement that sets some common expectations and standards. In their contribution Sophie Riley and Steven White explore what this role might be and how well two proposed treaties might realize its potential.

Most countries already have laws dealing with an assortment of animal welfare issues. But the protections they provide for animals are highly variable. Moreover, there is considerable variation in the administrative resources committed to law enforcement and in the political will to make it a meaningful reality. If a global treaty existed it would arguably create pressure at the state level for more uniform adoption and enforcement of legal welfare protections and for their implementation, because there would be peer pressure from other states as well as from the citizens of any given state.

While there is not at the moment a treaty there is an international concept or principle that tries to advance animal well-being. The principle of One Health holds that to grapple

effectively with the global health and welfare issues we face today three focal points must be considered simultaneously: human health, animal health and environmental impacts. While the first and last categories are well represented in international and national law, animal health is not. One path forward to fill this gap is a draft Convention on Animal Health and Protection (UNCAHP), a framework treaty drafted by the Global Animal Law Association (GAL). Hilâl Nur Şarbak examines this proposal within an ethical context and discusses how well the treaty might be expected to realize both its own goals and the broader goals of the animal welfare movement.

A second path forward in treaty form is the proposed draft Convention on Animal Protection (CAP). Rajesh K Reddy and Joan Schaffner, who are among the drafters of this proposal, delve into its drafting history and its several provisions, showing how the treaty will support the third element of the three-part One Health concept and also provide some measure of protection against the spillover of pathogens from animals to people. The present author is also a drafter of this proposed Convention.

As a third approach, Rachelle Adam first considers the history of the way the law has tried to treat animals at the international level and then proposes a radical shift towards an Earth Justice framework for rethinking the international law of animals. Her principal concern is that the law recognize that animals have legal rights that legal processes can vindicate. This would be a fundamental shift in the legal status of animals. But it's one she argues is needed to ensure that their interests are better recognized and protected at law. She then evaluates both the UNCAHP and CAP proposals against this exacting standard.

The European Union is usually thought to have the most protective animal laws in the world, based in part on treaty provisions that have no counterparts in China, India, Brazil or the United States. This apparent leadership is the focus of two contributions to this special issue. Elie Verniers takes a careful and critical look at the European Union's Animal Health Law, intended to regulate transmissible diseases in animals. She considers the history, the strengths, and the weaknesses of the law, as well as issues related to its implementation.

In a second contribution, Alice DiConcetto also has an EU focus. She examines the animal law conventions adopted by the Council of Europe in relation to commercial animals and asks how the principles they embody have been implemented within the EU. Her focus on the role international trade barriers play in limiting the progressive adoption and implementation of good animal welfare laws is of particular interest, as is her suggestion that the European Green Deal is a more promising context for the enhancement of animal welfare law.

An additional contribution by Ankita Shanker and Eva Bernet-Kempers raises the possibility that significant legal change benefitting animals could occur even in the absence of a treaty, by virtue of the decisions reached in particular cases by courts and judges willing to express great interest in and sympathy for the legal recognition of animal rights. They review a large number of judgments in different jurisdictions around the world and argue that they exhibit promising convergence.

All the contributions raise complex issues, involving many value judgements about how best to organize and motivate that most complicated of animals, the human animal. Although the issues are fairly well before us, the path to take is less clear. The articles in this special issue give full and robust consideration to many of the complex issues involved and provide various hints about what might work in the future. This is, then, a step towards an even broader and deeper discussion.