

What is Animal Law?

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“Law”, is commonly agreed to be a system of rules organizing activities and relations between members of a group, enforceable by a controlling authority and likely to penalties.

Traditionally, there are numerous fields of law depending on their subject-matter and purpose. For example, “administrative law” deals with the organization of the State and public authorities, “corporate law” concerns the formation and management of businesses, while “environmental law” regulates the impact of human activities on the environment.

As for “animal law”, it doesn’t yet exist as a distinct legal field. However, based on the definition of “law”, it could be described as a system of rules regulating the life of animals and the activities involving them, as well as their interaction among themselves or with others, liable to legal enforcement and penalties.

Formally correct, this definition appears insufficient to utterly depict what animal law is. Otherwise, it could be alleged that “animal law” already exists. In France, for instance, there are rules on activities involving animals (both in private or commercial contexts), animals are protected by criminal law, damage caused by animals is legally dealt with etc. Still, insofar as these rules generally aim at protecting humans rather than animals, the definition of animal law should also (and particularly) delimit its subject-matter and purpose. These could be two main criteria for “animal law”, distinguishing it from rules which, even if they concern animals, pertain to other legal fields (such as criminal law, environmental law etc.).

In this light, the animal law subject-matter criteria should be the “animals”. Biologically speaking, animals are any multicellular living organism other than plants, bacteria or fungi¹. Legally speaking, animals could be any multicellular living organism other than plants, bacteria, fungi or humans. Indeed, in a legal context, the common sense of the word “animal” seems to exclude “humans” and vice-versa. Certainly this is why no one claims the extension to humans of already existing legal texts on animals². Thus, law could set a distinct legal sense to the words “humans” and “animals” without the need to specify “non-human animals”.

As for the purpose criteria, animal law should seek the protection of animals, as protection generally characterizes any legal field. For instance, family law aims at protecting the family bounds and interests of members of a family by organizing their mutual relations as well as their relations with others. Environmental law aims at protecting the environment by imposing specific behavior rules. Criminal law protects the society from misconduct. Torts law protects the interests of one suffering damage etc.

Accordingly, based on these two criteria, animal law could be defined as a system of rules aiming to protect animals by the regulation of animals’ life and of activities involving them, as well as by dealing with their interaction among themselves or with others, liable to legal enforcement and penalties.

In the light of this definition, not all rules concerning animals would be “animal law” rules. In order to distinguish them, a standard of animal protective measures should be set, serving as a framework to animal law. In the lack of specific studies thereon, such a standard may be currently sought in the World’s Organization for Animal Health (OIE) definition of “animal welfare”, centered around the five following freedoms: freedom from hunger,

¹ Cecie Starr, Ralph Taggart, Christine Evers & Lisa Starr: “Biology - The Unit and Diversity of Life”, 15th Edition, Cengage, Boston, 2017

² Such as, for example, Article 13 of the Treaty on the functioning of the European Union, the European Convention for the protection of pet animals, the European Directive n° 2010/63 on the protection of animals used for scientific purposes, the European Regulation n° 1/2005 on the protection of animals during transport and related operations, the European Regulation n° 1099/2009 on the protection of animals at the time of killing etc.

malnutrition and thirst; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; freedom to express normal patterns of behavior³.

Should a rule fail to achieve these freedoms, it wouldn't be "animal law". Although some argue that "animal law" and "animal welfare" are contradictory concepts because the second admits attempts to animals, while the first doesn't, it can be noted that the OIE five freedoms are a malleable concept that could inspire a standard for animal law protective rules. Indeed, it is more likely that, rather than being inappropriate for animal protection, these five freedoms simply don't serve their fullest sense. For example, freedoms from fear, distress and physical discomfort currently coexist with the concept of industrial slaughterhouses, which seems inconsistent with the very sense of these freedoms.

Finally, the definition of "animal law" raises the question of the relation between animals and humans. Would this imply the banishment of any human activities that involve animals? Would this imply incriminating the production of animal origin products? Would this imply killing a mosquito to be a criminal offense? Would this imply granting animals a legal personality? When and why would animal law rules prevail on other rules, or inversely? While the answer to these questions (and so many more) deserves a separate thorough work, at this point it can be noted that a case by case answer wouldn't be a satisfactory solution to the human – animal relation dilemma.

Indeed, it appears necessary to set a general principle, endowing animal law with a sustainable content among other legal fields. Such general principle could be studied in the light of the latest scientific progress on animal consciousness, of the notion of sentience, but also of the concepts of utility and, above all, necessity. This should lead to major changes in the current concept of animal-human relation, while guaranteeing a balanced satisfaction of interests.

³ <http://www.oie.int/en/animal-welfare/animal-welfare-at-a-glance/>