

# Defining Animal Law – An Approach

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Animal welfare issues and the corresponding legislation have gained increasing awareness and support, particularly in the past few decades. Today, the juridical approach is no longer solely limited to the ‘simple’ protection of animals from cruelty but encompasses consideration and compassion for the animal as a sentient and autonomous fellow creature with its own inherent worth, its well-being and interests and thus also opens discussions of new concepts and possible options of legally funded and secured positions for the non-human animal, including extending and further developing the existing legislation as well as engaging in forward-looking and progressive new measures of animal focused provisions and reasoning. Therefore, even in the incipient stages of an attempt to define ‘Animal Law’ attention should be paid to a concept offering a complete legal network on all possible tiers of the various legal systems, warranting comprehensive protection, acknowledgement and recognition of the individual animal across the board and on an international, ideally, and ultimately global level.

First modern legislations dealing with the individual animal derive essentially from initial basic anti-cruelty regulations whereby attention was primarily granted to the maintenance of public safety, order and morality, and not the animal itself. A shift to today’s ethically orientated animal protection, meaning the protection of the animal on account of the animal, has only taken place in the last century. The field of animal related law is extensive, covering areas from defining animal welfare or criminal offences of animal cruelty to the debate of possible rights for the individual animal, the ethical question of the use of animals by humans, of an animal’s capability to be a party in legal proceedings, or the various concepts of representation, for instance, an altruistic legal action by an animal welfare organization without being violated in its own rights, and procedural enforcement in case of a legal infringement at the expense of the animal. This short listing already shows the wide spectrum of opportunities as animal law is not just interdisciplinarily established within the field of law, such as administrative, criminal, environmental and constitutional law, but also multidisciplinary as it touches various fields of science, for instance, natural, social, cultural, economic as well as political science.

On a national level, beyond a domestic animal welfare and protection act guaranteeing a direct and comprehensive protection of every single animal’s life comprising its well-being, its dignity as a non-human being and its freedom, also from bodily harm, one would want to see the animal also being recognized at the highest legal level, the constitutional level, for instance as a state objective.

Furthermore, there are regulations in the sphere of Civil Law where animals are now seen as an integral part of the family and emotive bonds have to be balanced with the interest of the various involved parties in mind, including the animal’s concerns, thus highlighting humanity’s specific responsibility for the animal as a social partner and putting emphasis and special value to the emotional relationship between humans and animals. This is especially reflected in tenant, family (companion animal custody disputes) and inheritance law (companion animal trusts) as well as the law of debt enforcement. In addition there are norms specifically affecting the animal’s owner’s rights which still might have an incidental, sometimes even beneficiary, side effect for the individual animal.

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In general the demands on contemporary animal law should aim for a legislation with provisions which are comprehensive, clear, profound, progressive, efficient, powerful, effective and enforceable and are at least reflecting the current, if not in fact concentrating on a future-oriented consensus of society and not just mirroring the mere status quo. Ideally an environment is created that facilitates a common accord on an international basis, particularly in relation to acknowledging the animal's existing own interests and in regard to its legal status to the extent of considering the attribution of certain legal 'rights' to a sensitive and sentient non-human animal.

On an international level the World Organization for Animal Welfare (OIE) has compiled a series of international standards on animal welfare. However, these are not binding and merely act as recommendations to its member states. A Universal Declaration on Animal Welfare entailing a global vision emphasizing the importance of animal welfare as a worldwide concern, as well as in view of achieving the United Nations Sustainable Development Goals and marshalling a number of principles in this respect has also been proposed by a group of NGOs. Additionally, there are several sets of law which inter alia protect endangered species or biological diversity. Nevertheless, consistent and uniform protection of animal welfare is still missing entirely in an international setting, thus creating a legal gap which, bearing in mind that animal welfare is a global issue associated with global problems and challenges, has to be filled.

Yet this is solely a brief outline on the current status and not directed on being conclusive. Therefore, my suggestion would be to add to the draft text following passage:

“Animal Law is a separate, independent discipline of jurisprudence and covers all juridical aspects of law concerning animals, their well-being and their interests, directly and indirectly, as well as all academic dialogue and discourse in this context: theoretical, ethical and practical, on a domestic and also on an international level. The ultimate objective is a legal comparison and alignment within Animal Law on a global, transnational scale, pertaining to its language, content, scope and interpretation as well as its enforcement.”

The draft text on a global definition of Animal Law presented by Birgitta Wahlberg and, inspired by the definition of Animal Law by the Center for Animal Law Studies (CALs) at the Lewis & Clark Law School, reads:

*“Animal law overlaps with many traditional areas of the law and jurisprudence, but the field also explores other areas, such as natural science, political science, and philosophy.*

*Animal law is rooted in the written law and in the practical application of statutes, regulations, and case law.*

*In animal law we ask fundamental questions about the nature of a legal right or interest, how laws create or entrench (power) imbalances, and – most importantly – how those imbalances impact animals.”*

For further details kindly also see Sabine Lennkh, *The Animal: A Subject of Law? A Reflection on Aspects of the Austrian and German Juridical Systems*, in: Springer, International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique, Volume 24, No. 3, Special Issue: Animals' Place in Jurisprudence, September 2011, Springer Dordrecht 2011, S. 307 – 329. © Springer Science+Business Media B.V. 2010.