

# Animal Law and Ethics: A Growing Field

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## Introduction

Humans and animals are inextricably bound in a complex web of relationships. Many such interactions have ethical relevance and also pertain to the legal sphere. Based on this rationale, the discipline of animal law has increasingly become an area of concern in academic discussion and policy implementation. Similarly to environmental law, which covers all aspects of the environment – such as air, water, land and forests – in very different situations, animal law is also a very broad discipline, which deals with various dimensions of human-animal interaction. Issues range from how to make better use of existing laws to protect animals from cruel treatments, to arguing for changes in the law that would grant them a better moral status or even some legal rights of their own.

Even though the «animal question» widely influences our legal, ethical and social systems, the discipline of animal law still remains in a state of infancy in Europe. In order to contribute to the development of this growing field, an international conference was convened in Zurich on July 7<sup>th</sup> and 8<sup>th</sup>, 2012, under the title *Animal Law and Ethics. Reflecting on European, American and Asian Concepts*. The event was organised by four Swiss scholars: Christoph Ammann, Julia Hänni, Daniela Kühne and Margot Michel. This Viewpoint aims to give an overview of the presentations given at this conference and to offer some concluding remarks.

## A Rich Variety of Topics

Christine M. Korsgaard, from Harvard University, gave the first presentation of the Zurich Conference. Starting from Kant's moral philosophy, she developed its implications for the animal rights movement. While Kant's views are usually considered detrimental to the moral claims and the legal rights of non-human animals, Korsgaard argued that they nevertheless capture something about our own existential situation that proclaims our fellowship with other animals. As the laws of reason are always our human laws, we are precluded from knowing whether the world as it is in itself conforms to them or not. Nevertheless, Korsgaard explained, Kant's theories give us grounds to hope that we can make the world a better place which meets our standards, i.e., is rational and good. We share with other creatures the fate of living in this world, which gives to both of us no guarantees, and we all try to make a home here. This is why, Korsgaard concluded, both our fates matter, and we should concede the moral

claims of non-human animals and protect these claims as a matter of legal right.

The second presentation by Beat Sitter-Liver, from the University of Bern, focused on the concepts of dignity of the creature and the principle of justice. Sitter-Liver discussed the differences in the constitutional concepts of human and animal dignity and then turned to the question whether non-human animals could and should be regarded as members of our human community of justice. Against the background of fundamental equality of humans and animals, Sitter-Liver stressed that there is nothing that precludes non-human animals from having natural and moral rights, *and* from being members of our community of justice as long as *we* want it. He argued that it is nothing else than a basic question of justice that we *should* want to include non-human animals into our community of justice because the alternative, their exclusion from this community, would amount to arbitrariness and injustice keeping in mind that we constantly make use of them in order to accomplish our very own objectives.

In a nuanced and novel approach Will Kymlicka from Queen's University in Kingston, Canada, offered a new agenda for the theory and practice of animal rights. Whereas the traditional animal rights theory focuses on the intrinsic capacities or interests of animals, and the moral status and moral rights that these intrinsic characteristics give rise to, Kymlicka shifted the debate from the realm of moral theory and applied ethics to the realm of political theory. In his presentation, he focused on the relational obligations that arise from the varied ways that animals relate to human societies and institutions. Introducing a «political animal», Kymlicka argued that different types of animals stand in different relationships to human political communities. Domesticated animals should be seen not as property but as fully-fledged members of human-animal mixed communities, and thus having a claim to a «package» of rights. Wild animals, by contrast, form their own sovereign communities. According to Kymlicka, they are entitled to protection against human-instigated threats such as, e.g., pollution of water or air, in order to safeguard their on-going self-government. Wild animals that live in the midst of our communities but are not domesticated inhabit an in-between position. Kymlicka emphasised that it makes no difference whether these animals advocate for such respect, because humans routinely extend similar rights to members of their own species who likewise cannot advocate for them (e.g., infants or the mentally infirm).

Turning to the U.S.-American perspective David Favre from the Michigan State University introduced the audience to his concept of «animals as living property». In the U.S. legal doctrine the standard discussion lists three basic categories of property – real property, personal property and intellectual property. However, unlike other property, animals are alive and have interests independent of the humans who own them. In order to integrate these interests in a more comprehensive way into the American legal system, Favre argued in favour of the creation of a fourth category of property, the so-called «living property» that is hoped to trigger a focused scholarly consideration of animal-related issues, and thus resulting in a new list of legal rights for at least some animals. Furthermore, Favre addressed the controversial topic of the «use» of animals. He argued that while it is in his view not ethically forbidden to use animals, he called for a respectful use while at the same time acknowledging the difficulty in determining which uses might be deemed respectful.

With the presentations by Pamela Frasch and Kathy Hessler from the Lewis & Clark Law School's Center for Animal Law Studies in Portland the discussion turned to the practical side of education and legislation in the U.S. Pointing to the impressive 135 American Bar Association-accredited schools that presently offer at least one animal law course – compared to only 15 in the year 2000 – Frasch illustrated the rapid development of the academic discipline animal law in the U.S. Beyond that the desire to become an animal law attorney had been identified as the sole reason to attend law school by a growing number of students. The Center for Animal Law Studies, of which Frasch is Executive Director, hosted the first Animal Rights Law Conference in 1981 and currently offers a total of 35 Animal Law Courses. Hessler for her part stressed the importance of the cross-functional collaboration of academics, policy makers, attorneys, veterinarians and others in order to develop a more comprehensive set of legal rules pertaining to animals.

Raj Panjwani, Senior Counsel at the Supreme Court of India presented case studies from India dealing with some of India's constitutional clauses pertaining to animals. Turning to Article 51A(g) that makes the compassion for living creatures a fundamental duty of all Indian citizens, Panjwani gave a brief overview of a range of practical legal implications of this constitutional clause, such as, e.g., the ban on using animals like bears or tigers as performing animals in circuses. He explained how circus owners challenged this ban arguing that it invaded their fundamental right to carry on trade. The Supreme Court of India had to consider the issue and decided that no person had the right to carry on trade that results in inflicting unnecessary pain or suffering to animals. Moreover, it stated that the definition of «trade» did not include obnoxious

activities like the exhibition of wild animals for entertainment. Concluding, Panjwani identified some issues that might become relevant under the constitutional compassion clause in the future.

Kristen Stilt from the Northwestern University School of Law in Chicago addressed some of the highly topical issues with which Egypt's newly reinvigorated animal rights movement plans to deal: overcrowded zoos, badly managed slaughterhouses, cruel live importation of sheep and cattle, appalling conditions in pet shops, mismanagement and corruption and last but not least, the lack of laws and enforcement of existing legislation. With regard to stray dogs, Stilt also brought a decidedly cultural dimension into the conference by reporting problems with Trap/Neuter/Release (TNR) Programmes that stem from the widespread notion that dogs are «impure» according to certain Islamic traditions.

The last presentation analysed the achievements and deficiencies of Swiss animal law under a comparative perspective. Gieri Bolliger from the Foundation for the Animal in the Law presented an overview of the legal status of animals and their protection under Swiss constitutional and substantive law and compared the outcome to other jurisdictions worldwide. Notwithstanding constitutional guarantees of the dignity of the creature and the protection of the animal's dignity in the Animal Protection Law, Swiss legislation does not, for instance, protect animals' lives *per se* – contrary to neighbouring legislation in Austria and Germany. Bolliger explained further that even though Switzerland has one of the most progressive animal welfare legislations there still is room for improvement both with regard to legal norms, their implementation and enforcement.

Last but not least the following speakers also contributed with excellent presentations to the successful outcome of the conference: Anne Peters (University of Basel); Tanja Domej, (University of Zurich); Eva Maria Maier (University of Vienna), and Jean-Pierre Marguénaud, (University of Limoges).

## Concluding Remarks

The first Animal Law Conference organised in Switzerland was a visible success, not least due to the fact that the invited speakers have both an outstanding expertise in the field and great enthusiasm for promoting discussion on these issues. In addition, the conference provided excellent educational and networking opportunities for all conference participants.

The papers presented at the conference allow for some general conclusions. First, they showed how deeply legal questions pertaining to animals are entrenched in different societies. Moreover, while the speakers represented various legal traditions, the relationship

between humans and nonhuman animals as well as the significance of an overarching community of the two groups appeared as recurring themes of the presentations. Second, it crystallised how vibrant the research field of animal law is and that it allows researchers to deal with more innovative concepts than in other legal domains. Third, it became quite clear that the research area of animal law in Europe is bound to leave its infancy behind soon [1].

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**References**

1. For further information on the field see Michel M, Kühne D, Hänni J (ed.). *Animal Law: Developments in the 21<sup>st</sup> Century*, Zurich/St. Gallen: DIKE; 2012.