

# Two important animal law conferences

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As interest in animal law and ethics grows, the calendar of animal law events gets busier. This September, two important conferences on animal law, policy and ethics took place in the UK, comprising a combined total of over 50 talks and panel sessions on a variety of animal law topics.

Liverpool John Moores University and the UK Centre for Animal Law co-hosted the Second Conference on Animal Law, Ethics and Policy on 10 – 11 September, which focused on a number of practical and student-oriented topics, as well as theoretical perspectives. A few days later the recently launched Cambridge Centre for Animal Rights Law hosted the first European Animal Rights Law Conference on 14-15 September, which had a stronger focus on the legal status of non-human animals.

A number of interlocking themes emerged from both conferences:

## Theme 1 – smart working

A central theme running throughout both events was the furthering animal interests by engaging with public authorities on matters such as planning, regulation and enforcement, accountability mechanisms and highlighting and working on leverage points in the system.

Solicitor Danielle Duffield provided an overview of the law relating to animal abuse in New Zealand, a country which has recently adopted new penalties and regulations. The implementation of immediate fines is a welcome addition to the range of penalties available. However, serious design flaws have been identified, for example, fixed penalty fines are set at the same value regardless of whether natural or corporate persons have committed the abuse. This means that fixed penalty fines are a relatively low risk sanction for

businesses which profit from animal use.

Marco van Duijn, a solicitor at The Hague’s Utopie law firm, and Edie Bowles and David Thomas, co-founders of Advocates for Animals, all shared insights into their efforts to take advantage of pressure points in the system that may offer scope to relieve harm or achieve lasting change for animals. As van Duijn explained, the Dutch Animal Rights Foundation focuses on saving as many lives as possible by identifying strategies within existing laws to fight for animal rights.

Stephanie O’Flynn outlined her research into Irish mink fur farming. Fur farming, which is expected to be banned by the Irish Parliament soon, has been conducted unlawfully, according to O’Flynn, as it is intrinsically incompatible with Ireland’s Animal Health and Welfare Act 2013. This example highlights the importance of ongoing advocacy by the animal protection community. A recent Irish animal cruelty case, *DPP v Kavanagh* [2019] IECA 110, was hailed as a positive milestone due to the handing down of a stricter sentence to the defendant.

Animal welfare regulation and enforcement continue to be major

areas of academic and practical concern. Marie Fox and Sarah Singh identified a ‘growing schism’ between some animal protection laws and public attitudes. Debbie Rook’s study into the dissonance between the lack of regulation around ‘no pet’ covenants in the English private rental sector and the bonds, typically familial in nature, that human guardians share with their companion animals, highlighted a significant and widely damaging, yet often ignored, issue; this is one which could likely be overcome with fairly simple regulation. Rook proposes a shift away from the prevailing freedom of contract approach in favour of a harm assessment test for all parties involved (this would include society at large, based on the positive impact of companion animals on their guardians). This method could be used to determine the fairness – a criterion used in the latest government white paper on housing – and reasonableness of allowing companion animals to live with their tenant family or of denying the family access to a rental property.

Theme 2 - constitutional principles

Birgitta Wahlberg, from Åbo Akademi University, outlined the

Finnish Animal Rights Lawyers Society's proposed constitutional amendment seeks to improve the status of animals by offering a zoocentric perspective on the requirements of Art. 13 of the Treaty of the Functioning of the European Union, which enshrines the principle of animal sentience in EU law. According to the Society, the precautionary principle demands respect for an animal's sentience unless evidence specifically proves it to be irrelevant; public authorities' responsibilities with regards to fundamental rights should apply to both human and non-human animals. Within this proposal, emphasis is placed on concrete and clearly phrased fundamental rights for animals which, whilst distinct from human rights, have the same legal value. Wahlberg stressed the role of unequivocal normative aspirations towards animal rights rather than welfare.

Dr Joe Wills of the University of Leicester identified the zero-sum game mindset that views animal rights presented as a threat, rather than a parallel cause, to human rights. Wills outlined three types of synergisms between animal and human rights – normative, psychological and practical – as possible tools to help both struggles

make joint and solidly grounded progress.

Ariel Bendor and Hadar Dancig-Rosenberg expressed scepticism about the viability of strategies which employ human rights principles to advance constitutional protections for animals. Whilst proportionality analyses have led to major breakthroughs (such as banning the production of foie gras and the mass killing of stray cats), they also limit rights animals may enjoy in other areas where the gain to humans is more fundamental.

Anna Mula Arribas described the ongoing contestation over the lawfulness of Spanish bullfighting on the ground that the Spanish constitution affords protection to cultural heritage. In Catalonia, animals are recognised by the Civil Code as *not things* and bullfighting has been banned in this region (pending an appeal).

Charlotte Blattner of the Harvard Animal Law and Policy Program worked on a Swiss Citizens' Initiative campaign alongside Sentience Politics. Earlier this year, a Constitutional Court ruling confirmed the validity of the Initiative, despite opposition to its progress. The Court found that Swiss Cantons are free to expand

the circle of rights bearers beyond humans and, by virtue of their organisational autonomy, to uphold stricter standards than those required by Swiss animal welfare legislation. A ruling on an appeal against this decision is expected soon

### Theme 3 – an evidence based approach

Gavin Ridley's research highlights how common the use of threats against household pets made by the domestic abuser as a way of controlling their human victims. Ridley argued that the relationship between violence to human and non-human animals remains unacknowledged by policymakers. As a result, of their systemic invisibility both human and non-human victims are exposed to danger. This should be enough, Ridley contends, to trigger serious concern amongst public bodies. More research needs to be undertaken to provide more evidence to influence policy and legislation.

Dr Steve McCulloch's discussed the British animal health and welfare policy process identifying the exclusion of ethical values and normativity from policy as problematic. Further, the intelligent

use of animal welfare science across fields is absent. McCulloch proposes the implementation of a standard Animal Welfare Impact Assessment tool in all relevant policy decisions. This would feature first a description of the species affected and its characteristics, second a harms and benefits list, and third an ethical analysis of the given proposal. In light of the lack of resources and independence amongst some British animal welfare policy advisory bodies (for which animal welfare may also be a secondary concern), McCulloch also recommends the creation of an independent Ethics Council for animals, which may offer a way to advance policy and attitudes towards 'unnecessary' suffering, amongst other things.

### Theme 4 – framing personhood

Advances in animal law, policy and regulation should be founded on an integrated ethical basis. If absent a disconnect may occur and legal protections are less effective than expected. For example, the protection of specific endangered animals may not, as Macarena Montes Franceschini warned, lead to improvements for other non-human species if it is only



endangerment (or any other exclusive characteristic) that leads to the consideration of their species- or individual-specific rights and needs, as the cases of Chucho, the spectacled bear, and Cecilia, the chimpanzee, suggest.

Vincent Chapeaux discussed the outcome of Kiko's case, brought by the Nonhuman Rights Project, in which the judge refused to grant Kiko habeas corpus on the grounds that it was not Kiko's full freedom – which was not a viable option – but suitable semi-captivity conditions that Kiko's advocates were arguing for. In the judge's view, this undermined the purpose of

granting habeas corpus. Chapeaux also recalled Zaffaroni's encouragement, in *La Pachamama y el Humano*, to cultivate an ethos of *bien vivir* – loosely translated as wholesome living – based on the collective non-human rights envisaged by some pre-colonial communities, in contrast with a liberal model of anthropocentric rights.

Alex Pimor's paper advocated an eco-social perspective that goes beyond definitions based on species and favours a legal and ethical framework that focuses on the protection and valuation of life. The inherent anthropocentrism of law,

reveals “a two-pronged paradigm of human entitlement; that nature is both subjugated and a resource to the human race (proprietary entitlement) and that basic dignity, sentient rights are the exclusive prerogative of human beings (rights entitlement).”

Wahlberg, advocated the assignment of universal or collective responsibility for animal welfare, which invites reflection on the idea that harming an animal amounts to harming all members of the eco-social system by bringing suffering into our closely connected sentient community. Kristen Stilt, Director of the Harvard Animal Law and Policy Program pointed out, that committing a wrongful act against an animal may, in Islam for example, be construed as injuring God as the animal’s creator. This suggests mainstream cultural and religious systems have the capacity to accommodate the interests of animals

From a natural law perspective, Joshua Jowitt, citing and aligning himself with Alan Gewirth, called for an ethical-legal outlook rooted in the self as a self-aware agent.

Iyan Offor asked in his presentation on the ethnocentric limitations of the mainstream global animal law

discourse and the role of trade in shaping animal protection norms, why animals have to suffer in order for the need to protect them to be identified when *existence* is enough for a human’s rights to be considered?

Culture, ethnocentrism and the role of practices involving animals in the affirmation of social identity were put under scrutiny by some speakers. Joe Wills explored the politics of halal slaughter and the stigma against it in Western countries where other forms of gruesome abuse are tolerated, which can lead minority communities to insist upon it as a form of resistance against a perceived double standard. However, in many countries where Islam is the dominant religion, halal slaughter is becoming obsolete. This change in attitude comes down to a choice within communities to either follow the letter of Islamic legal and religious precepts, or to modernise. Kristen Stilt pointed out that the holy texts of Islam display an intention for doctrine (legal or religious) to evolve. This gives believers permission of the highest authority to allow their ethics some dynamism, recognising that the teachings of the Hadith and, to a lesser extent the Qu’ran, are products of a particular time.

## Reflections

Attending these conferences provoked further questions in my mind. For instance, is it better to focus on seeking individual progress through judicial milestones in frontier cases and hope to see a gradual extension of courts' willingness to consider the interests of a broader category of animals, or to devote one's work to develop a set of legal protections that may be difficult to secure because of lack of political will/public support. Is it more effective to advocate for

better animal welfare legislation as soon as possible, or to strive to have more meaningful and fundamental animal rights enshrined in law? The animal protection movement has a long road ahead and the most sensible option may be to make use of any valuable leverage points across the board, hoping that social, ecological and political – as well as, arguably, economic and technological – developments will soon bring tail winds to any of these intricate approaches.