Nordic Animal Law

Welfare and Rights

By

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This book first published 2024

Ethics International Press Ltd, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Print Book ISBN: 978-1-80441-581-8

eBook ISBN: 978-1-80441-582-5

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Foreword

By Randall S. Abate

Animal law and environmental law have followed similar yet divergent paths in their respective areas of law. To a certain extent, animal law can benefit from following the path that environmental law has blazed. The more senior and mainstream of the two movements, environmental law has enjoyed major governance successes at the federal level in the U.S. and at the international level, which animal law has yet to realize. For example, U.S. federal environmental statutes proliferated in the 1970s with major regulatory frameworks addressing air, water, and hazardous waste pollution; endangered species protection; and environmental impact assessment. At the international level, multilateral treaties addressing stratospheric ozone depletion, ocean governance, illegal trade in endangered species, and transboundary movement of hazardous waste were negotiated and signed in the 1970s and 1980s.

Despite the tremendous progress in environmental law in the U.S. and around the world in the 1970s and 1980s, its anthropocentric roots became unearthed in the past three decades in its disappointing efforts to govern climate change. With short-term economic interests always at the forefront, efforts to regulate climate change fell far short of expectations, in part because climate change was mischaracterized and misperceived as an intangible future threat that was too costly to regulate aggressively in the present to avert or at least postpone the risk of future catastrophe. This aversion to regulating climate change belied the foundation of the precautionary principle, a regulatory approach that was responsible for the success of important environmental governance regimes under U.S. statutes and international environmental law like the Endangered Species Act and the Montreal Protocol. Despite progress at the international level with the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, the Kyoto Protocol in 1997, and the Paris Agreement in 2015, these efforts failed to meet the ambition that climate science conveyed was necessary to confront this global crisis. The catastrophic impacts of climate change are already occurring, much sooner than climate scientists pre-

dicted, and they will only become more severe in the future.

This failure in international climate governance due to short-term, anthropocentric thinking ultimately harmed marginalized communities of the world the most: youth and generations yet to be born; animals; natural resources; and vulnerable human communities around the world such as Indigenous peoples, racial and ethnic minority communities, and low-lying island nations. What had started in the 1970s as a laudable intention to protect our common environment, modern environmental law has been undergirded by much of the same anthropocentric thinking that caused the environmental pollution crisis in the first instance: treating nature like a commodity and creating "sacrifice zones" of vulnerable human communities in the name of economic progress.

It would be tragic for Nordic animal law to make the same mistake. The regulatory paradigm for animal law needs to shift away from an anthropocentric lens. Advances in animal sentience science will continue to be helpful in this regard by closing the perceived gap between the human and nonhuman worlds. Therefore, in the Nordic context, animals' fundamental rights should be recognized in constitutions in much the same way that the climate justice movement is seeking recognition of basic human rights to a clean and healthy environment to better protect vulnerable human populations from climate change impacts. Constitutionalized protections for animals will enhance animals' legal status in relation to humans in that constitutionalized animal rights would need to be considered when legislatures and courts balance different interests and rights.

The climate justice movement has shown that rights-based reforms are difficult to secure, however. Likewise, political will and judicial decisions are slowly enabling these long-overdue rights-based protections for animals, but progress has been slow. In the meantime, notwithstanding the drawbacks of environmental law's anthropocentric lens, the field still offers valuable lessons for Nordic animal law and opportunities for collaboration between the two fields for mutual gain.

Federal environmental law in the U.S. enshrined many valuable paradigms that have been replicated in countries around the world in their environmental governance regimes. These paradigms include information access and dissemination, government accountability and enforcement, broad

access to the courts to vindicate environmental violations, and standing for humans to protect natural resources and wildlife. Outside the U.S, several countries have also made valuable progress in securing legal personhood protections to enable nonhumans to have access to the courts to protect their intrinsic value.

Some strategic considerations from environmental law's playbook would also be valuable for animal law to embrace. First, environmental law succeeded in connecting environmental problems to threats to human health and safety, which helped galvanize political will to address pressing environmental pollution challenges. Second, environmental law relied on science to support the urgency of the crises it sought to regulate. While science has often been ignored in the climate change domain because of the scope, complexity, and cost of climate change regulation, the role of science greatly enhanced environmental law's ability to respond quickly to virtually all other environmental protection challenges. Third, environmental law embraced the appeal to human health and safety "emergencies" rather than appealing to the conscience of the public to regulate environmental law problems based on the intrinsic value of nature. Animal law has long relied on compassion and morality to motivate its calls for regulation and those appeals have largely failed in a world that routinely places human interests above nonhuman interests. Animal law may have a valuable window of opportunity to embrace the "emergency" mantra by connecting the challenge of preventing the next pandemic to the need to govern humans' exploitation of animals in our food, entertainment, and medical research systems.

Beyond what animal law can learn from environmental law, there are also valuable collaboration opportunities between these two fields. First, climate change governance offers a strategic opportunity for these two fields to work together in seeking to regulate methane, a potent greenhouse gas. The animal law movement has sought to enhance regulation of factory farms from an animal welfare perspective, but these facilities are massive sources of methane emissions that the environmental law movement is starting to target. If these two fields coordinate their strategies against factory farms to help force a transition away from this dominant form of food production, it will yield victories for both movements as well as secure better protection of workers who are commonly exploited at these facilities

and improved public health due to the unsafe and unsanitary conditions at these facilities.

Another opportunity for collaboration between these fields may be found in the rights of nature movement. A recent decision from Ecuador involving Estrellita the monkey confirmed that rights of nature protections ensured not only protect the ecosystem in which Estrellita lived but also the animals within that ecosystem. Some animal rights advocates criticized this indirect protection of animals as part of an ecosystem as insufficient because it does not prohibit animals from being exploited in food systems and ultimately perpetuates the exploitation paradigm of humans over animals. Nevertheless, the legal recognition of protection of animals within the rights of nature framework is a valuable foothold to help expand the protection of animal rights through other mechanisms in the future.

Cooperation across these two movements ultimately benefits humans and nonhumans alike. The threats from climate change underscore the interconnectedness between humans and nonhumans. More robust legal protection of nonhumans is good not only for nonhumans but also for humans in that protection of natural resources and animals and the ecosystems in which they are found ultimately builds resilience to protect all communities from climate change threats. Nordic animal law should seek to chart a new course that embraces the valuable lessons that environmental law can offer and the opportunities for collaboration between the fields, while seeking to move toward rights-based protections for animals that are not tethered to the anthropocentric approach that continues to propel most of environmental law's regulatory frameworks.

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Acknowledgements

The field of animal law as a legal discipline has taken fundamentally important steps forward during the last ten years. Education for legal students and scholars has grown tremendously around the globe and new theoretical thinking about animals' legal status and rights has been proposed, changing the traditional legal thinking in relation to animals. Interpretations in case law have revealed that the legal status of animals, nature, and the common environment are not immutable states in front of the law.

Animal law education is on the rise also in the Nordic countries. In Finland, several animal law classes are taught in several universities some of which are open also for non-lawyers and international students—at one of the universities even as a part of the curriculum for becoming lawyers. In Denmark, there is one intense course that is open for lawyers, non-lawyers, and international students, and in Norway one animal law course for law students is starting this year. In Sweden, there is a clear need amongst law students for education in animal law, but so far there are no courses available. In Iceland, unfortunately, there are no experts of the doctrine meaning that there is no education in animal law. This is also the reason for why Iceland was left outside the content of this book.

Animals are not left totally outside the legal education even though there are no or only a few animal law courses available. Issues relating to animals are taught within the scope of other areas of law. Meaning, however, that the focus, content, and approach to legal questions including or relating to animals differ fundamentally from the courses specifically on animal law. It is the distinction between animal law and other fields of law this book will highlight by clarifying and defining the theoretical frame, characteristics, and terminology of animal law, and furthermore analyse different issues within animal protection in the Nordic countries, both in terms of *de lege lata* and *de lege ferenda*. In other words, not only as the law exists but also how it should exist. The book will also cover EU-law and international law in relation to animal protection because these are binding or ratified by the Nordic countries.

It goes without saying that textbooks are fundamentals in legal education, but also for the development of the legal discipline and education itself. A

broad and deep knowledge develops legal argumentation that is strong and powerful for the one that it is aiming to protect. We believe that for further development of the discipline the field itself needs to be defined, the studies within the field be correctly focused, and the terminology precisely used. This way legal students, scholars, lawyers, advocates, and judges can understand, interpret and apply legislation from a well-grounded theoretical understanding of this specific field of law that includes also other sentient beings than humans. Naturally, the book can be helpful also for others that are generally interested in the topic.

We want to address our great gratitude to Randall S. Abate for his insights in the forewords to this book. Our special thanks are owed to Reagan Sova for helping us with the pre-reading and language, the Finnish Section of the Nordic Federation of Public Administration (NAF) for the financial support, and Sarah Palmer and Ben Williams at Ethics International Press who has believed in this book and supported the editorial process the whole way.

Turku 1 June 2024

Birgitta Wahlberg, Vegard Bø Bahus, Sacha Lucassen, Alice DiConcetto, Tero Kivinen, Tarja Koskela, Visa Kurki, Veera Koponen, Sunniva Bragdø-Ellenes, and Olivia Palenius

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Chapter 1.2 (the parts concerning Finland),
Chapter 7 (the general parts, and the parts concerning Finland)
Chapter 9

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Chapter 1.2 (the general parts, and the parts concerning Norway)
Chapter 2.2 (the parts concerning Norway)
Chapter 5.4
Chapter 6

Chapter 8.3

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Chapter 2.2 (the parts concerning Denmark)
Chapter 5.1
Chapter 7 (the parts concerning Denmark)
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Chapter 8.4

Part I

INTRODUCTION TO ANIMAL LAW

From Legislation Aiming to Protect Animals to a Legal Doctrine of Its Own

Chapter 1

What is Animal Law?

1.1 Background and Developments Towards a Legal Doctrine

Since days back there have been people seeking to protect animals from suffering caused by humans by litigation and advocacy. In the Nordic countries law has protected animals by individual provisions since the late 18th century, and more holistically by animal protection acts since the 1930s. The main objective of such acts was, and partly still is, to protect on the one hand humans from the impact of savagery in the society, and on the other hand animals from unnecessary suffering—at least some species of them. However, since the first written acts, the understanding of animals as sentient beings and as important parts of our common ecosystem has developed remarkably. These days the aim of animal protection legislation in the Nordic countries is mainly to protect animals from unnecessary suffering by considering animals' welfare and intrinsic value.

Moreover, legal scholars have recently approached traditional legal concepts such as 'subjectivity', 'personhood' and 'rights' in new ways, departing from traditional legal thinking. Thus far, however, the current animal protection acts (also called animal welfare acts) are based on a *welfare paradigm*. Under this paradigm that is formed by many legal theories, animals are 'objects/things' and/or 'property' that are legally protected because of their special capacities (sentience) or value (intrinsic) but are still mainly under human dominion. In other words, the legislation aiming to protect animals is based on an anthropocentric view of the use of animals for human interests. Meaning that the human interest is primary in relation to that of animals. Thus, in practice, the level of animal protection—i.e. the stringency and extent of the applicable animal protection legislation and interpretations made within case law—is largely determined by the interpretation of the relevant human interests in relation to the minimum requirements of the protection of animals. For example, a dog used in research has different housing requirements and weaker protection against the infliction of pain, compared to a dog classified as a 'pet' and living as

a 'companion' with humans, even if a dog is a dog, an individual with own interests, a sentient being, however used by humans. Hence, the level of protection may vary considerably between individuals belonging to the same species as pointed out above, as well as between species. In the Nordic context the variation between species means, amongst other issues, that it is not legal to breed, keep and slaughter dogs for human consumption, but it is legal to do so regarding cattle, pigs, chickens, and other animal species used in the food production.

There is currently more legislation in force to protect animals than at any other time in our shared history, and at the same time, humans are raising, keeping, killing, and slaughtering more animals than ever before. Albeit the language used is of the opposite: 'protection', 'welfare' and 'intrinsic value'.

Especially concerning the use of animals in food production, it means additionally that land and water resources are used in an exploitative manner. Consequently, we are facing severe threats of survival on Earth in forms of climate crises, biodiversity losses, pandemics, and negative public health issues, which are all connected with the use of animals. Animal law issues are not only addressing animal protection, but also the future of us all. Considering the extent of the current exploitation and oppression of animals, and the impact on our common environment that it has, there seems to be a clear need for a paradigm shift concerning the fundaments of animal protection. This book takes its inspiration from this need.

The terrible reality many animals are living and dying in, the inefficacy of law to protect animals and the lack of justification for many of the actions involving animals, and the universal threat and normative questions the use of animals give rise to, have partly been the reasons for the development of animal law as a new legal doctrine. Traditionally, a central task of legal doctrine has been to systematize legal sources by critically examining and analysing legislation, theories, concepts, and other legal material. The task of law faculties, law schools and other such institutions is to teach law, to conduct research on legal topics and to develop legal theories. However, it is impossible to systematize 'law' as one whole and therefore different doctrines of law have emerged analysing legal material based on their own doctrines. From this follows questions: how does doctrines of animal law differ from other legal doctrines? What are the characteristics and theories of animal law? What makes animal law to a legal doctrine of its own?

"Animal law" is here meant as an umbrella term under which various theoretical topics and questions, and areas involving or relating to animals are placed—one of which is animal protection (see figure 1 below). Therefore, it is important to clarify and define the theoretical paradigms, characteristics, and terminology of animal law, and furthermore analyse topics within animal protection both in terms of *de lege lata* and *de lege ferenda*.

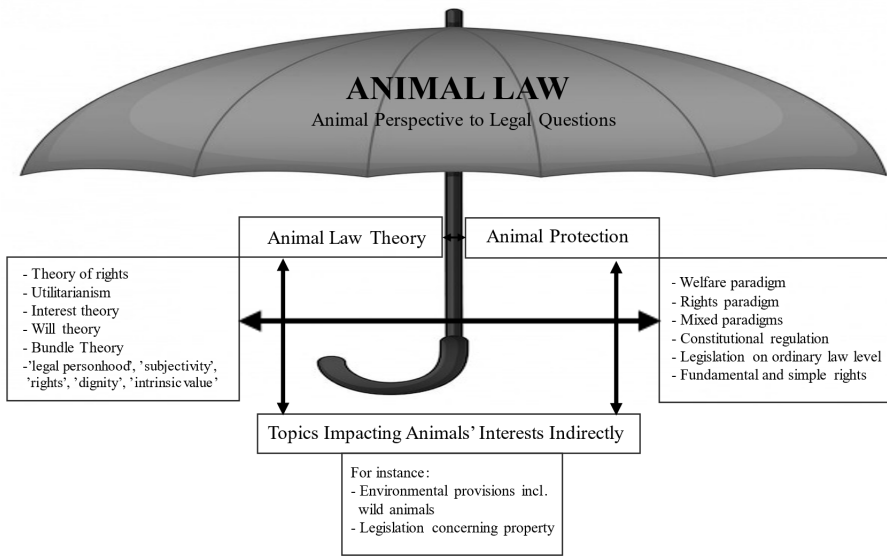

Figure 1 *Animal Law as an umbrella term for different perspectives to study the interest of animals within the context of law.*

Opposite to all other areas of law that are approaching legal issues from an anthropocentric perspective, the essence of animal law is to involve into the legal system and case law the best interests of animals by approaching legal questions from an animal centred perspective. Frasch has expressed this idea in a definition of animal law: *Animal Law is that field of study, scholarship, practice, and advocacy in which serving the best interests of nonhuman animals through the legal system is the primary goal.* The animal perspective is at the very core of animal law and distinguishes it from other legal doctrines, even though most of the legal questions involving or relating to animals can be studied from both an anthropocentric and zoocentric perspectives. However, a different perspective leads to different questions, and allows for new conclusions, results, and solutions. Animal law is breaking away from the traditional legal subject–object dichotomy and the anthropocentric perspective of law. As such, one main task is to examine how legal

theories includes or excludes animals and how the legislation and case law protects animals. Thus, for example, in animal law fundamental questions are raised about animals' legal status, interests, and legal rights, how laws create or entrench (power) imbalances, and, most importantly, how those imbalances affect animals and human-animal relations. A study or topic can be *more or less* animal law meaning that when the study or topic is not any longer addressing animals interests as sentient beings, individuals, it can be said to fall out of the scope of animal law.

One other characteristics of animal law is that it is 'multijurisprudential'. A dialog and knowledge from different areas and doctrines of law is needed for new solutions and developments of understanding. Animal law issues can be studied from the scope of different areas of law, such as for example international or national law, constitutional law, EU-law, administrative law, criminal law, environmental law etc. Thus, any legal question involving or relating to animals can be the target of examination, but not all legal questions relating to animals are 'animal law'. The classification should depend on the lenses through which the issue is examined. A study within any other field of law may relate to animals but take the anthropocentric view and therefore not belong within the context of animal law—or at least not at the core of it. On the other hand, a study within the field of animal law may relate to any other field of law and directly or indirectly to the best interests of animals and thereby be animal law *per se.* The difference in perspectives is crucial in making this distinction.

In addition, animal law is *multidisciplinary* as it explores other areas of research, such as for example natural science, economic, political science, and philosophy. Animal law is in other words an accumulation of knowledge from a variety of doctrines and disciplines. The multidisciplinary aspects of animal law highlights that many of the questions raising within the context is also part of movements in the societies. For example, many of the issues within the environmental movement is intertwined with issues raised within animal law, such as the legal status of (wild) animals in relation to humans. Furthermore, many of the questions are by nature universal and fundamental in terms of legal theory. For instance, the theoretical question about the nature of rights is universal in the sense that it is significant regardless of the legal system it is raised within.

To summarize the above, One can characterized animal law in following

four intertwined points:

1. The key essence of animal law is to incorporate into the legal system the protection of the best interests of animals, which goes beyond the conventional anthropocentric view. By definition the anthropocentrism is excluding all other species than humans, the opposite to zoocentrism that includes also humans. To protect animals from negative human impact are at the core of animal law, including normative responses promoting a respectful coexistence between humans and other animals. Animal law is an umbrella term for different paradigms and theories, legislations, interpretations, and applications that are underlying the protection of animals. Thereby, "animal protection" is under the umbrella of animal law but does not constitute its entirety. For instance, other areas of topics are "animal law theory" and "topics impacting animals' interests indirectly", which are intertwined and drawing information and understanding from each other (see figure 1 above).

2. Animal law is 'multijurisprudential' drawing information from other areas and doctrines of law.

3. Animal law is multidisciplinary drawing information from other disciplines than law.

4. The fundamental questions within animal law are universal in that sense that they are not connected with any specific legal system *per se*.

The presence and effectiveness of these characteristics may vary depending on the subject under scrutiny. Notable, when a topic, method or approach is not focusing or no longer considering the to interest(s) of animals, it has moved away from the animal law doctrine towards some other area of law.

1.1.1 An Overview of Current Animal Law Courses and Research Topics

This chapter is focused on the current state of animal law research and education. As a new field of law, not yet fully recognized by all legal communities and jurisdictions, the current areas of research are mainly: A. the doctrine itself; B. the legal status of animals in terms of legal theory and

philosophy of law; C. examinations and analysis of the existing laws aiming to protect animals; and D. the interpretation and application of the laws both in an international and national contexts and in terms of *de lege lata* and *de lege ferenda*.

Courses named as animal law is taught in several law schools around the globe with different focus and purpose. The first branch of courses, and the most common, is focused on current animal protection in terms of both statutory and case law. Such courses focus on the interpretation and application of the animal protection legislation as understood within the welfare paradigm and traditional areas of law, and as interpreted by the authorities including the courts. If, however, the interests of animals is not addressed and *de lege ferenda* considerations is not part of such a course, I would claim that the course should not be identified as an animal law course because it is not fulfilling the core of animal law as a legal discipline. The second branch of courses presents and raises critical questions concerning the content of different theories and paradigms that underlie and defines legal terminology and protection of animals such as: "subject of law", "legal personhood", "welfare", "suffering", "sentient beings", "dignity", "intrinsic value" and "rights". These courses are challenging the traditional legal doctrines and theories. The third branch of courses is focused on law that regulates human actions that have an indirect impact upon the lives of animals without imposing indirect or enforceable duties upon humans to treat animals in a certain way but that could be examined also from an animal point of view. One example would be courses including the purchase and sale of animals. The fourth branch includes courses that do not directly or as a main point focus on legal issues concerning animals, but instead on e.g. the historical background of animal protection.

The term 'animal law' has been used quite loosely to refer to a wide range of topics related to animal issues. However, distinguishing between the focus helps to structure important differences between what is animal law and what is not, and on what doctrinal, normative, or other issues the argumentation and education is based on. In that way the differences in relation to other legal disciplines and the perspective specific for animal law is clarified. Thereby, opening also for *de lege ferenda* considerations.

1.1.2 The Term "Animal" in the Animal Law Context

In animal law the term "animal" is obviously central. In science, the human species (*homo sapiens*) is one amongst other animal species. In terms of law, there is a differentiation between humans and other animals. In animal protection legislation and case law animals are protected mainly in accordance and depending on the human interest/-s in question. In animal law theory and as subjects of study animals are seen as individuals with own interests and as living (sentient) beings that humans are sharing dependently this Earth with.

In current animal protection legislation, animals are classified differently depending on the context in question. For example, in the Treaty on the Functioning of the European Union (TFEU), Article 13, animals are recognized as "sentient beings" but in Article 38 considered as "agricultural products". In addition, in the Treaty on European Union (TEU) Articles 2–3 it is laid down that the objectives of the Union are based, inter alia, on the respect of 'human rights', 'human dignity' and 'the well-being of its people'; a sphere where animals are obviously not included.

Traditionally animals are considered in terms of law as:

A) **Legal objects** that are protected by laying requirements on humans according to the welfare paradigm. Hence, animals shall be taken care of and protected by humans to the degree stipulated in the statutory and case law.

   In existing animal protection acts in the Nordic countries, this idea is expressed using the language of 'protection against unnecessary suffering', 'promotion of animal welfare' and 'recognition of animals' intrinsic value', as demands to protect and increase respect for animals. For instance, as in the Norwegian Animal Welfare Act, Article 1 and 3, recognizing the intrinsic value of animals in the latter and declaring the promotion of the respect for animals in the former. However, these expressions do not mean that animals' legal status in relation to humans would fundamentally be changed. Neither do they substantially mean an ending of the normatively systematized and institutionalized exploitation and oppression of animals under human dominion.

A) **Property** as in the context of property law, meaning, for instance, that a property owner (natural or legal person) has a right to sell, give away or euthanize an animal (the piece of property).

Generally, one can say that animals are objectified more as 'property' (in some laws referred to as 'things') in private law contexts, whereas in public law contexts considered mainly as 'objects of protection'. Some areas of law may also approach animals from other perspectives. For instance, environmental law may protect certain animals living in and of nature, i.e. 'wild animals', based mainly on an assessment of their value, or amount, as part of nature and biodiversity. In Finland wild animals have a special legal position due to the constitutional protection of the environment. In the Government Bill to the Finnish Constitution Section 20 concerning the responsibility for the environment, nature—including wildlife—is recognized to have intrinsic value. However, the recognition of nature's intrinsic value is only mentioned in the preparatory works, and not in Section 20 in the Finnish Constitution (731/1999). Notwithstanding that, preparatory works are only a weakly binding source of law, this nevertheless, at least theoretically, creates a different legal position for animals in the wild in relation to what animals have under the Animal Welfare Act (FAWA, 693/2023) on ordinary law level. It is also significant to note that in contrast to the perspective in animal law, environmental law does not generally focus on animals as individuals, but rather on the species.

1.2 History of Animal Protection Legislation in the Nordic Countries

Throughout the history of Western civilization, the ability to reason has often been seen as a prerequisite for moral standing. Hence, one reason for why animals have not been regarded as worthy of protection has been their perceived lack of reason. The development of utilitarianism in 18th century England by scholars such as Jeremy Bentham offered a new perspective. According to utilitarianism, morally required are those that cause as little pain as possible and as much satisfaction for as many as possible, regardless of their species. Bentham emphasized that animals could feel pain and suffering regardless of their capacity to reason. One of the very first acts on animal cruelty, not in the Nordic countries but in England was the English Martin's Act that came into force in 1822. Such acts led to a growing under-

standing of the necessity of rules under which animal cruelty could be punished. Thereby, in the Nordic countries, animal protection legislation was started developing in the 19th century.

In Denmark, the first prohibition on animal cruelty, applying both to animals belong to oneself or others came into force in 1857. In Iceland, the first provision on the protection of animals was Section 299 of the Penal Code of 1869: *Whoever commits a crime in the slaying of animals, in particular domestic animals, or other cruel and ruthless treatment of them, shall be subject to fines up to 100 rd. or simple, imprisonment for up to 4 months*. Sweden, like Denmark, got its first anti cruelty regulation in 1857 in the form of a decree stating that it was illegal to abuse animals kept by humans. In 1907 wild animals were included in the prohibition. During the latter half of the 19th century and in the beginning of the 20th century, more and more focus was put on the fact that the provisions in the Criminal Code did not provide sufficient opportunities to adequately protect animals. This led to the enactment of the first acts on animal protection in the Nordic countries.

In Denmark, the first Animal Protection Act came into force in 1916. The act made it punishable for anyone who would abuse animals or excessively burden, neglect or otherwise treat animals recklessly. The Animal Protection Act strengthened the protection by making punishable conditions less severe than only animal cruelty. In Finland, the first Animal Protection Act was legislated in 1934. Yet, there were some other provisions in force before 1934 aiming to protect animals against abuse, especially during slaughter and transport. One example is the animal cruelty provision of the Imperial Majesty's Merciful Decree on the Intentional Abuse of Animals from 1864 (No. 22), which was subsequently transferred to the Penal Code of 1889. Norway enacted the first general Animal Protection Act in 1935. Before that, there was only a single section in the Penal Code of 1842, banning gruesome abuse of cattle and horses. In the subsequent Penal Code of 1902, cruel and vicious abuse of all animals were made punishable offenses. It was not until 1920 that the expression 'cruel and vicious' was deleted so that all kinds of abuse were made criminal. However, the growth and industrialization of the agricultural sector in the 1950's and 60's raised the need for legal reforms. Old issues regarding underfeeding livestock and keeping a varied animal husbandry were replaced by new challenges created by an ever more intensified and specialized form of animal husbandry. The first

Swedish Animal Protection Act entered into force in 1945. In 1988 it was replaced by a new Animal Protection Act.

In Denmark, a new Animal Protection Act was amended in 1950. This amendment was based on a change in society that wished for a higher level of protection for animals. In Norway, a new Animal Protection Act was enacted by the Parliament and approved by his Majesty in December 1974. The same kind of development was seen in Finland, where a new Animal Protection Act was adopted in 1971. The objective of these acts was, to a certain degree, to protect animals from suffering as living beings instead of focusing on human actions. For example, the objective of the Norwegian act was to '[…] take care of animals and take into consideration instincts and natural urges of the animal so that it does not risk unnecessary suffering.' This represented a new approach to protection compared to previous legislation, which was focused on prevention of abuse and cruelty.

In 1979, Denmark acceded to the European Convention for the Protection of Animals kept for Farming Purposes. Accession to the Convention made it obvious that the current Animal Protection Act from 1950 was not only outdated but also did not meet the requirements of the Convention. Therefore, it was decided to make a new animal protection act that had to live up to the Convention while also strengthening the position of animals in society.

After the first animal protection act in Iceland, several have followed adjusting to modern knowledge on animal welfare and accepted ethical opinions on the use and treatment of animals in Iceland, in particular for the protection of livestock. The same applies to pets and wild animals. The protection of fish was ignored until 2013 when the current Animal Welfare Act 55/2013 (IAWA) was put into force.

Partly because of general developments in understanding animal sentience, partly because of the European Union (EU) that Finland, Sweden, and Denmark are part of, Animal Protection Acts in the Nordic countries have been under the loop during this century. In 1991, a new Animal Protection Act came into effect in Denmark. The focus of the new act was to protect animals as best as possible from a range of negative conditions, both of physical and mental character while taking into consideration their physiological, behavioural and health needs. However, the wording *as best as possible* implies that the protection of animals has limitations, and some pain is

inevitable thereby falling out of the scope of animal protection. Since the act from 1991, there has been an extensive development on the awareness of animals as sentient beings, which was reflected in the new amendments. In the early 1990s, the focus was that animals should be protected against unnecessary suffering; while the focus in present times is to promote animal welfare and to ensure that animals also have positive experiences, and that their biological natures are respected, or at least taken into account. The same developments and changes in the language of animal protection has been seen in all the Nordic countries animal protection legislation. Also in Norway, Sweden, and Finland the reforms have ended in adoption of new 'animal welfare acts'. In Finland, the reform was ongoing for over ten years, but in January 2024 the new Finnish Animal Welfare Act (FAWA, 693/2023) came into force. The language of protection is similar in all these acts in Norway, Sweden, and Finland. Namely that animals have an intrinsic value and that the aim is to increase respect for animals.

Even though the notion of *animal protection* is now replaced with that of *animal welfare*, it does not mean that the provisions demand good animal welfare in all areas where humans use animals for human purposes. The legislation on the welfare requirements is not equal with the factual one or with the understanding of animals as sentient beings as provided by the natural science. For example, animals are still kept in intensive production systems with high animal density and reduced possibility for movement. The exploitation of animals for human interests and legislation based on the welfare paradigm is actually not questioned in the latest law reforms. Therefore, there is a growing conflict between the interest of humans and other animals. The Norwegian fish farming industry illustrates this dilemma with an extraordinary increase in the salmon production to be exported to countries as Japan, USA and in the EU, at an increasingly lower price in comparison to traditional Norwegian fisheries on brosme (tusk fish, *brosme brosme*) and saithe (*pollachius virens*) i.a. In Finland there is same kind of developments, but regarding chicken export.

The objective according to the Finnish Animal Protection Act (247/1996) was to protect animals from unnecessary distress, pain, and suffering in the best possible way and to promote the welfare and good treatment of animals. Furthermore, it was required to consider animals' physiological and behavioural needs in the keeping of animals. According to the new FAWA,

Article 6, this is now phrased as *Animals must be treated well and with respect. Animals must not be caused unnecessary pain or suffering, and their well-being must not be endangered unnecessarily.* The main objective of FAWA as written in Article 1 is *to promote the welfare of animals and to protect animals in the best possible way from harm caused to their welfare. The purpose of the law is also to increase respect and good treatment of animals.* According to Section 5 of the FAWA the animal's well-being refers to the animal's experience of its own physical and mental state. What this means in legal terms shifts depending on the human interest in question. That in turn, is in accordance with the understanding of animal protection within the welfare paradigm.

Similarly, in the current Norwegian Animal Welfare Act (NAWA, LOV-2009-06-19-97), the notion in Section 3 that animals have an intrinsic value independent from the value they may have for human beings was seen as a development of animal protection. The effect is however questionable from an animal point of view. It is unclear whether the content goes beyond the mere symbolic meaning of the words or if it entails any legal consequences having fundamental meaning for animals and their lives. So far, there is no reason to consider that the recognition on the intrinsic value of animals in the NAWA would have made such an improvement to animal protection that could not have been achieved without the recognition.

In Sweden, it was suggested in the preparatory works of the current Animal Welfare Act of 2019 (SAWA, 2018:1192) that it should recognize Article 13 of the TFEU stating that full regard should be paid to the welfare requirements of animals, as animals are sentient beings. The initial proposal included a provision stating that animals have intrinsic value regardless of the use of them by humans. However, the government later changed the proposal and replaced the statement on intrinsic value with a provision stating that animals should be respected. The concept of *respect for animals* in the current SAWA is to be understood as an awareness and recognition that animals are living and sentient beings with certain needs that must be taken into account. In theory, this statement could have a positive impact on the enforcement of the legislation since preparatory works hold a high value as a legal source for interpretation of legislation, yet not as a binding source of law. However, this mostly holds true for interpretation being done by courts and legal scholars, not when public authorities exercise supervision and formulate government regulations. Thus, as in Norway, the great ambi-

tion to recognize animal sentience, intrinsic value, and respect for animals in the legislative work seems to have turned out to be merely of symbolic value also in Sweden. It remains to be seen what the outcome is in Finland.

In addition, the new Animal Welfare Act in Denmark from January 2021 (DAWA, LBK nr 20 af 11/01/2018) refers to animals as sentient beings, which was put in due to huge political will. Many animal organizations regarded this as a victory and a milestone for the animals. Section 1 in the DAWA emphasizes that the aim for protecting animals is to promote animal welfare and respect for animals while also considering animal ethics. The fact that *respect for animals* could require improved protection of animals, regardless of the purpose they may have for humans, remains to be seen in Denmark.

Creation and modification of legal provisions seeking to protect animals have constantly become more ambitious in wordings. The animal welfare acts in force in the Nordic countries contain similar standards and statutory objectives. However, they are all legislated mainly from an anthropocentric point of view and based on the welfare paradigm. The legal consequences, or lack of them, of the current legislation concerning animal protection demonstrates well the weaknesses and injustices that are reflected in the legislation. The language of protection is 'welfare', 'respect', 'sentience' and 'intrinsic value', while actions and the reality of many animals could be phrased as systematised 'exploitation', 'abuse' and 'oppression'.

1.3 General Theories and Approaches to Animal Protection

This chapter will present the current theories and approaches to animal protection within the scope of animal law. It will begin with a brief overview of animal ethics, and then move on to discuss legal approaches. It will first present *de lege lata* approaches—approaches that have already been implemented by legal systems—and then *de lege ferenda* approaches, i.e. frameworks intended as models for future legislation.

1.3.1 Moral Philosophy and Animals

One should first note the distinction between moral and legal theories about animal protection. Morality has to do with what is right and wrong, good, and evil. Systematic thinking about morality is often called ethics.

Questions of morality are without a doubt highly relevant for law, and legal theories of animals' status in law are normally influenced by ethics. Therefore, moral theories will be briefly introduced here before the theories focusing specifically on the legal status of animals.

One important question in animal ethics has to do with whether animals have moral status. Beings that have moral status are often seen intrinsically or ultimately valuable, i.e. having value for their own sake. This is often contrasted with instrumental value. For instance, one could argue that an axe is only instrumentally valuable: its value is based on its contribution to the lives of humans. On the other hand, human beings are often seen as having value in their own right, regardless of whether they are useful to others. Many animal ethicists have argued that nonhuman animals have such value as well and thereby moral standing.

Another important distinction here is between being a moral agent and a moral patient. A moral agent is someone who can act morally: who can understand right from wrong, and whom we can hold morally responsible for his or her deeds. Moral patients, on the other hand, have moral status without being moral agents. A typical example of a moral patient would be human infants: even though they cannot yet act morally, they have regardless moral status. Animal ethicists often argue that animals are moral patients. An important reason why animals are understood as moral patients is that animals – or at least some animals – are sentient: they have an experience of the world and can, for instance, feel emotions. In other words, it is 'like something' to be a cow or bat, whereas it is not like anything to be a rock. Furthermore, sentient beings have interests, meaning that things can be good or for them. Typical animal interests include e.g. being nourished and staying alive.

The majority of moral theories can very roughly be divided into two categories: consequentialist theories and deontological theories. Consequentialist theories focus on the consequences of actions. These theories have often allowed for the extension of moral status also to nonhuman animals. Deontological theories, on the other hand, place less weight on the consequences of actions, and have often been more hesitant to accord moral status to animals. After introducing these two groups of theories, also some other alternatives that cannot be classified under either consequentialism or deontology will be presented.

Consequentialist theories hold that we should act in ways that have as good consequences as possible. The most important form of consequentialism is called *utilitarianism.* According to utilitarianism, we should try to maximize the well-being of all sentient beings and/or minimize their suffering. Utilitarian's have thus long denied the relevance of species for moral status, i.e. status as an intrinsically valuable being. The founder of modern utilitarianism was the English jurist and philosopher Jeremy Bentham (1748–1832), who coined the famous slogan 'The question is not, Can they reason?, nor Can they talk? but, Can they suffer?' Why should the law refuse its protection to any sensitive being?'. Bentham was a so-called 'hedonistic utilitarian': he thought that one should specifically try to maximise pleasure and minimize pain. The most famous contemporary utilitarian is arguably the Australian philosopher Peter Singer, who has advocated 'preference utilitarianism': we should try to satisfy sentient beings' preferences to as large a degree as possible. Torbjörn Tännsjö is likely the most famous Nordic utilitarian.

Utilitarianism serves as an example of why it is often advisable to distinguish moral theory from legal theory. Even if one accepted utilitarianism as a theory of good and evil, it is not straightforwardly translatable into legal rules and principles. Simply enacting one statute with the provision 'maximize the well-being of sentient beings' is not workable. Thus, a proponent of utilitarianism will need to think carefully what legal policies and rules will benefit sentient beings the most. However, one central conclusion of utilitarianism is that *animal use is not inherently wrong*. Under utilitarianism, merely the fact that we exploit animals has no significance whatsoever. Instead, one needs to focus on the consequences of animal use: animal use is only wrong if it results in worse consequences than abolishing animal use. For instance, a utilitarian could argue that most farmed animals would never come to exist if we abolished animal use. Would it be better for them not to exist at all than, say, exist in a country with relatively strict welfare requirements? The answer might depend on several factors. Perhaps for the members of certain animal species, such as broilers, it might be better not to exist at all. Broilers have been bred to reach slaughter weight in a matter of weeks and are known to suffer from all sorts of health problems and dysfunctions. On the other hand, co-existence with certain other species could perhaps be ethically sustainable if the legislation protecting them would be stringent enough and would take the animal's point of view sufficiently into account.

The other major family of moral theories are deontological theories. According to deontological theories, the consequences of our actions do not alone, or at all, determine whether they are good or bad, permissible, or impermissible. Rather, there are some other factors that one need to be taken into account. In fact, many deontologists think that the consequences of our actions are completely irrelevant for whether they are good or bad. German philosopher Immanuel Kant (1724–1804) has probably put the most famous deontological theory forward. Kant held that we should never treat humanity merely as a means, but also as an end in itself; this is called the Principle of Humanity. Hence, according to Kant, we should not exploit anyone, regardless of how much this could benefit anyone else. However, Kant did not think that nonhuman animals matter because they lack the rational nature of human beings. He held that animals can be exploited, though he disavowed cruelty toward animals, because he thought that animal cruelty can lead to cruelty toward human beings. Some later thinkers have thought otherwise. Some of the most important contemporary deontological thinkers who have argued for animal rights are the American philosophers Tom Regan and Christine Korsgaard. Regan, for instance, argues that all entities that possess inherent value have one basic right: the right never to be treated merely as means. Given that animal use clearly involves treating animals as means, animal use is difficult to justify from a deontological point of view. Korsgaard, on the other hand, has put forward that the Kantian approach can, in fact, be extended to animals as well.

As noted, Regan talks about the 'basic right' of animals. Deontological views rely, indeed, often on the language of rights. However, talking about rights is not completely alien to consequentialism either. One could think of consequentialism in terms of everyone's having only one right, such as the 'right that one's preferences count as much as everyone else's'. So-called rule utilitarians think that we should live according to rules that result in optimal consequences. If one such rule would be that 'always keep your promises', then we would have the right that others keep promises made to us. Regardless, deontologists place greater weight on the role of rights in moral reasoning; many deontological theories can be said to be *rights-based*. Such a theory takes moral basic rights (or fundamental rights) as the bedrock of morality, or at least give them a central role. These rights play roughly the same role as constitutional rights play in law: such rights must always be taken into account, and they may not at least be completely overridden, even if this would benefit the 'common good'.