

Literature Review: the Language of the Juridification Process of Animal Law

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Animals are currently undergoing a process of *juridification*. This is not to suggest that they were never part of the legal landscape; rather, animals have received more protection under the law over time in a number of contexts, including criminal, civil, international, and, more recently, constitutional². What is new about this process is its expansion, intensification and, above all, the last step mentioned: the legal protection of animals at constitutional level³.

Like any process of juridification, the intensification of the legal protection of animals and its expansion into the different areas of law also passes through definitions. New definitions appear, just as others are extended to include new realities, starting with the very definition of animals at the legal level, in addition to the classification of animal rights. In this contribution, a brief review of the literature dealing with this subject will be proposed, focusing on the use of definitions in this field from a comparative perspective.

Some publications will be taken as illustrations of the interaction between the increasing legal protection of animals and the use of definitions in legal literature. Without providing a thorough examination of all the current English-language literature on the topic, only a few examples will be provided, showing the key trend lines.

1. *Animal law in the legal literature, the definitions: looking to the present...*

From a very general point of view, animals are part of everyday language: in particular, they are often the object of metaphors and comparisons. In Italian, for instance, you can be “as cunning as a fox”, “as sharp as an eagle”, “as strong as a bull” or “as short-sighted as a mole”⁴. Even legal literature refers to this intertwining of everyday language and animals, recalling how one can be “bullish”, “snail”, “shark”, or “bird-brained” and not always in a positive sense⁵. Beyond this aspect, the literature on this subject is affected by the process of juridification of animal protection, also in terms of language: in this respect, convergence of terms is not rare. In particular, the scholars’ contributions confirm the adoption of the definition of “sentient beings”, which also appears in legislation, as a consolidated term. In Europe, for example, in 2009 the Lisbon Treaty has amended the Treaty on the Functioning of the European Union, introducing the definition of animals as “sentient beings”⁶.

In this regard, there are many examples, such as the book *Animal Law and Welfare, International Perspectives* edited by Deborah Cao and Steven White (2016, which also provides for an analysis of the legal systems of

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² About the concept of juridification, from a wider perspective, see L. CHR. Blichner, A. Molander, *Mapping Juridification*, in *European Law Journal*, 14, 1, 2008, 36-54; Gunther Teubner (ed.), *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labor, Corporate, Antitrust and Social Welfare Law*, Berlin, 1987.

³ See for example Olivier Le Bot, *Constitutional Animal Law* (December 2023, independently published).

⁴ In Italian: “astuto come una volpe”, “acuto come un'aquila”, “forte come un toro” o “miope come una talpa”.

⁵ These examples are mentioned by I. Offor in *Global Animal Law from the Margins: International Trade in Animals and Their Bodies*, New York, 2024.

⁶ See art. 13 of the *Treaty on the Functioning of the European Union*, in *OJ C 326*, 26.10.2012, 47–390: «In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage».

different countries⁷), or *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* edited by Jane Kotzmann and Rodriguez Ferrere (2024⁸).

If one were to identify the object of legal protection, the most frequent definition in this respect is that of “animal welfare”, even if within this broad concept a balance must be struck between the protection of animals and their possible uses for human purposes: a very controversial subject. Even in this area, however, there are some convergences, for example with regard to the term “cruelty”, which indicates behaviors that are unacceptable and undoubtedly contrary to animal welfare: a sort of common core of animal legal protection. Beyond this strong core of protection, the legal relevance of animals is delineated in the different areas, where the literature presents two other interesting phenomena, on a definitional level.

On the one hand, reference is made to “animal law” (as for example the *Studies in Global Animal Law* edited by Anne Peters, 2020⁹), indicating the existence and autonomy of this disciplinary field. On the other hand, the existence of animal law also innovatively characterizes other areas of law. For instance, there is a recurring reference to animal and global law: a subject of reflection in the legal sphere, which becomes an object of interest with specific reference to the topic of the legal protection of animals. In this sense, the animal rights perspective is linked to legal domains, becoming a cross-cutting key that characterizes them in an innovative sense. For example, the already mentioned *Global Animal Law from the Margins: International Trade in Animals and Their Bodies* by Iyan Offor¹⁰ deals with the relationship between animal law and international and global law, as well as *Animals in International Law* by Anne Peters¹¹. On a similar subject, see *Globalization and Animal Law: Comparative Law, International Law and International Trade* by Thomas G. Kelch, which also confirms the interest in this topic from the perspective of comparative legal studies¹².

It is worth also mentioning the volume *Colonialism and Animality: Anti-Colonial Perspectives in Critical Animal Studies* (2020) edited by Kelly Struthers Montford and Chloë Taylor. It presents an original perspective, concerning more generally the intersection of animal studies with colonial and de-colonial studies¹³.

2. ...and looking to the future.

What has been referred to as the “animal turn” – i.e. the growing interest in animal welfare, as it has been defined by Katie Sykes in *The Appeal to Science and the Formation of Global Animal Law* (2016¹⁴) – has resulted in an intensification of legal protection and thus also of an interest in animals that has had, as already noted, an inevitable reflection in language. The same contribution (Sykes) highlights the complexity of interpreting the terms that give voice to the protection of animal welfare. From this perspective, each area presents specific issues to be addressed. For example, several contributions underline the importance of terminology in the scientific field, with particular reference to the use of animals in scientific research, where the literature has highlighted the need for uniformity (T. Pietrzykowski, K. Smilowska, *Kinds of Harm: Animal Law Language from a Scientific Perspective*, 2022)¹⁵.

The legal doctrine shows an interest in the intersections of animals and law, even with an eye toward the future. In addition to having an impact on existing disciplines, in fact, animal law looks to the future questioning the possible developments in animal rights, especially in areas where law intersects with

⁷ D. CAO, S. WHITE (ed. by), *Animal Law and Welfare, International Perspectives*, Cham, 2016.

⁸ J. KOTZMANN, M. B. RODRIGUEZ FERRERE (ed. by), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications*, UK, 2024 (in press).

⁹ A. PETERS (ed. by), *Studies in Global Animal Law*, Berlin, 2020.

¹⁰ Above at note 5.

¹¹ A. PETERS, *Animals in International Law*, The Hague, 2021.

¹² Thomas G. Kelch, *Globalization and animal law: comparative law, international law and international trade* (2nd ed.), UK, Kluwer Law International, 2017.

¹³ K. STRUTHERS MONTFORD, C. TAYLOR (ed. by), *Colonialism and Animality Anti-Colonial Perspectives in Critical Animal Studies*, New York, 2020. See also S. SINHA, A. BAISHYA (ed. by), *Postcolonial Animalities*, New York, 2020.

¹⁴ K. SYKES, *The Appeal to Science and the Formation of Global Animal Law*, in *The European Journal of International Law*, 27, 2, 2016, 497.

¹⁵ T. PIETRZYKOWSKI, K. SMILOWSKA, *Kinds of Harm: Animal Law Language from a Scientific Perspective*, in *Animals*, 12, 5, 2022, 557.

technology. Hence, there is an intersection between emerging areas of law such as robotics and the animal field, as for example in *Rights for Robots: Artificial Intelligence, Animal and Environmental Law* by Joshua C. Gellers (2021)¹⁶.

From this point of view, besides, artificial intelligence goes right into the realm of language, proposing studies and experiments that seek precisely to decipher animal forms of communication. This is a complex area, which requires specific expertise in order to be understood. However, it can be assumed as of now that it will also pose the need for legal reflection and that it may also have an impact on the definition of terms such as “animal welfare” (for example Y. Yovel, O. Rechavi, *AI and the Doctor Dolittle challenge*, 2023¹⁷).

Looking to the future, however, does not only concern the intertwining with technology, but also the configuration of animal rights themselves, which may change over time, also in relation to human rights as highlighted by Saskia Stucki, *One Rights: Human and Animal Rights in the Anthropocene* (2023¹⁸), or by Davide Favre, *The Future of Animal Law* (2021)¹⁹.

Finally, there is an additional phenomenon that is somewhat symmetrical to the one that was just mentioned: the introduction of some terms that are specific to the human realm and that become relevant when compared to the animal kingdom. For example, it is in the light of the emergence of animals at the legal level that the reference to anthropocentrism can be understood. *The Routledge Handbook of International Law and Anthropocentrism* edited by Vincent Chapaux, Frédéric Mégret, and Usha Natarajan (2023), for instance, deals with the topic of anthropocentrism, intersecting with international law²⁰.

Similarly, one can understand the growing interest in the concept of speciesism in the legal sphere. Both of these terms, have an intersection with various legal disciplinary fields; for example, one may discuss anthropocentrism or speciesism in relation to international law, constitutional law, etc. In this sense, the centrality of the human person and speciesism become parameters for evaluating legal institutions according to new perspectives: once again, the emergence of particular terminology gives voice to a phenomenon to be considered.

The adjective “interspecific” and the noun “interspecificity” are mentioned as well by the legal literature and account for the confrontation between the legal sphere and the animal world. An example is given by *Animal Labour: A New Frontier of Interspecies Justice?* edited by C.E. Blattner, K. Coulter, W. Kymlicka (2020²¹) or, on a wider perspective, *Interspecies Politics: Nature, Borders, States* by Rafi Youatt (2020²²). Even Martha C. Nussbaum accounts for the interactions between humans and animals, mentioning this definition (*Justice for Animals: Our Collective Responsibility*, 2022²³).

The literature allows us to draw attention to an additional element: the juridification of animal rights also entails reflection on what characterizes human rights as “humane”. Indeed, considering what characterizes the animal kingdom inevitably prompts consideration of what it means to be “human”.

In fact, Saskia Stucki in the book “One Rights: Human and Animal Rights in the Anthropocene” wonders: “Who Is the ‘Human’ of Human Rights?”²⁴.

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J. C. GELLERS, *Rights for Robots. Artificial Intelligence, Animal and Environmental Law*, New York, 2021.

¹⁷ Y. YOVEL, O. REHAVI, *AI and the Doctor Dolittle challenge*, in *Curr Biol.*, 7, 33, R783-R787.

¹⁸ S. STUCKI, *One Rights: Human and Animal Rights in the Anthropocene*, Cham, 2023.

¹⁹ D. FAVRE, *The Future of Animal Law*, Cheltenham, 2021.

²⁰ V. CHAUX, F. MÉGRET, U. NATARAJAN (ed. by), *The Routledge Handbook of International Law and Anthropocentrism*, New York, 2023.

²¹ C.E. BLATTNER, K. COULTER, W. KYMLICKA (ed. by), *Animal Labour: A New Frontier of Interspecies Justice?*, Oxford, 2020.

²² R. YOUATT, *Interspecies Politics: Nature, Borders, States*, United States of America, 2020.

²³ M. C. NUSSBAUM, *Justice for Animals: Our Collective Responsibility*, United States of America, 2022.

²⁴ Above at note 18.