Ancient philosophy, Roman law classification, key points in history

The development of law in the Western hemisphere has its roots in Roman law, which in turn was shaped and influenced by early Greek philosophers such as Plato, Socrates, and Aristotle, for whom all of nature was ordered in a hierarchical manner. This would provide the basis for the concept of the Great Chain of Being, which supposed a hierarchical ladder of beings with God at the top of the pyramid, progressing downwards towards the kings, nobles, commoners, animals, and other life forms. The same sense of organisation was applied to civil society which was organised on a hierarchical basis with Greek men at the top of the social pyramid, extending downwards to women and children. Slaves and animals were considered unable to reason and regarded as “living tools” for the benefit of society, rather than forming part of it (Wise, 2014).

This early world view of animals as a usable commodity found its way into Roman law which categorised animals as ownable property (Kelch, 2012). The Romans were renowned for their sense of order and written codification. Roman law divided the world into categories of persons, things, and actions where the classification of “persons” applied only to certain classes of humans. According to the Romans, legal persons held rights and therefore, on the world view persisting at the time, personhood was reserved to only those beings considered to be capable of exercising free will. On this basis women, children, slaves, mentally incompetent humans, and animals were all excluded from being persons but fell into the category of legal “things”, meaning that, if owned, they would be classified as “property” (Wise, 2014).

A legal “thing” belonged to the rights holder and could not exercise any legal rights because as property, they did not possess legal rights. All inanimate objects were things, but so too were animate objects like women, children, and animals.

The world view propounded by these early philosophers persisted over the generations and became embedded in early Christian doctrine, which also advocated for a hierarchical social order with the authority of the monarch being derived from God, who had dominion over all living things (Wise, 2014). As with the early philosophers, the early Christians also believed that animals were created for the purpose of humans (Kelch, 2012).
Developments in animal law

While there were voices advocating for an approach of stewardship in respect of animals, the
predominant and stronger view advanced the concept that mankind held a position of domin-
ion which entitled people to use animals as they pleased. For example, Saint Thomas Aquinas
(1225–1274) is widely recognised for supporting the view that man being made in the image
of God was above other animals; the natural order was that animals were created for the benefit
of humans (Robertson, 2015).

This world view of animals being distinct and different from humans, continued largely over
the centuries, lending credence from philosophers such as Rene Descartes (1596–1650) who
promoted the concept of animals as autonomous beings, lacking language, thought, and self-
consciousness (Robertson, 2015).

Britain’s 18th and 19th centuries marked a time of considerable attention to social justice
issues including the treatment, protection, and voice of groups including women, children, and
animals. As part of this overall social justice movement the moral status of animals became the
subject of discourse amongst the jurists and free thinkers of the time. The philosopher and
founder of utilitarian theory, Jeremy Bentham (1748–1832) challenged the prevailing orthodoxy,
questioning the underlying reasons for excluding animals from moral consideration, including
the neglect of the interests of animals in legislation. He is widely attributed for questioning the
morally relevant distinction between animals and humans and suggesting that animals should be
assessed on the basis of their capacity for suffering rather than the animal’s ability to reason or
communicate (Bentham, 1789).

In Britain, the writer, John Lawrence (1753–1839) was another early proponent of the ethi-

cal treatment of animals. His book, “A Philosophical and Practical Treatise on Horses, and on
the Moral Duties of Man Towards the Brute Creation” (Lawrence, 1796) argued that “the rights
of beasts [animals] be formally acknowledged by the state, and that a law be framed upon that
principle, to guard and protect them from acts of flagrant and wanton cruelty, whether com-
mitted by their owners or others” (Lawrence, 1796, p. 123). This was a radical position for the
day, not only because it challenged traditional thinking, but also in calling for protection from
cruelty to be extended to animals abused by their owners, whose property rights over those
“owned” animals were at the time unqualified and unassailable on the basis of God given rights
(Robertson, 2015).

Despite this philosophical awakening of interest in the moral consideration of animals, law’s
inherently conservative and retrospective style of development meant that legal protection for
animals was still absent from formalised laws around the world. To the extent that any legal pro-
tections existed, these were for the benefit of the owner’s interest in animals as their property.

The very first legislation (The Cruel Treatment of Cattle Act 1822 (3 Geo. IV c. 71), often
referred to as “Martin’s Act”, after Richard Martin MP, who introduced the bill, made it an
offence to “wantonly and cruelly beat or ill-treat [] [any] horse, mare, gelding, mule, ass, ox,
cow, heifer, steer, sheep or other cattle”. Other domesticated animals and all wild animals were
excluded from scope. Despite the fact that the very first piece of law applied a very narrow focus
and protected only certain species from beating and “ill treatment”, it represented a momentous
legislative animal law reform because it fettered the traditional unlimited entitlements of prop-
erty owners. Furthermore, the law reform protecting sentient animals (“animals that have the
ability to feel or experience”) from experiencing unnecessary suffering set the stage for progres-

sively wider anti-cruelty protections throughout the world.

As a consequence of the breadth of the British Empire, English law spread throughout the
world via its colonies. For example, there was a parallel animal law development in the United
States, which saw the first anti-cruelty legislation passed in 1867 (an Act for the more effectual
prevention of cruelty to animals N.Y. Rev. Stat. ch. 375, §§ 1-10 (1867).
Similar to Martin’s Act, the US animal law reform was the result of tireless campaigning by its champions. In the United States the law reform was largely led by Henry Bergh, who, like Richard Martin, also played an important role in its enforcement after enactment of the first anti-cruelty legislation. Similar to the position in Britain, the purposes behind this law focused on the common cruelty that was inflicted on animals typically seen being driven through streets or pulling carts. Unlike its earlier British counterpart though, it also imposed some limited positive duties of care to prevent an animal from suffering, such as providing water to impounded animals and imposed penalties for abandoning infirm and disabled animals in a public place. It also criminalised practices such as cock fighting and bull and bear baiting on the basis that they were specifically identifiable activities which caused animals to unnecessarily suffer (Kelch, 2013; Freeberg, 2020).

This was also an era of scientific discovery, and the contribution of Charles Darwin (1809–1882) has been widely credited for introducing a scientific element to the previous largely, philosophical, and theological debate (Robertson, 2015; Kelch, 2013), his theory of “natural selection” (Darwin 1871) undermining the Great Chain of Being theory that had propped up the notion of animals being created for human use (Wise, 2014).

National, domestic, and municipal animal welfare and anti-cruelty law

These early legislative reforms constituted the first in a series of laws that would characterise the incremental development of animal protection measures, targeting unnecessary acts of cruelty towards animals.

In Britain, the Protection of Animals Act 1911 consolidated early legislation and broadened the scope of the 1822 Act. The duty of care reflected a continued focus on prohibiting specific identified acts of animal cruelty however that benchmark was set to shift with the advent of the Five Freedoms (Five Freedoms, Farm Animal Welfare Council).

In the modern landscape of animal welfare legislation, there is usually protection through primary legislation (enacted by the legislature) and secondary legislation (using power derived from the legislature) which may be supported by codes of practice or guidance, reflecting scientific advice about animal husbandry or care. Whilst such codes generally do not form part of the law, breach may be used as evidence to support prosecutions under animal welfare legislation, and conversely, compliance with codes may be a defence.

Most jurisdictions throughout the world which have any kind of animal protection law (and some still have none) currently function on a legal model of “anti-cruelty” law which prohibits owners or persons in charge of animals causing them to feel or experience unnecessary suffering. It’s helpful to recognise that this is a two-part test.

From a compliance and enforcement perspective, the first test asks, “did the animal suffer?” If the animal did not experience pain or distress, then the conclusion must be that no breach of a legal obligation has occurred. On the other hand, if the animal is assessed as having suffered, then the second limb of the two-part test is activated and asks, “was the suffering necessary?”

While societal world views regarding necessity vary enormously, the law broadly considers the nature, duration, and severity of any suffering experienced by the animal in context of the relevant species, use, and circumstances of the suffering. In England and Wales, the Animal Welfare Act 2006 provides the court with specific guidance on how to interpret “necessity”, and a plethora of secondary legislation and supporting authoritative evidence provides further guidance as to what constitutes good practice and scientific knowledge to further assist the courts in applying contemporary standards of law.
The Animal Welfare Act 2006 also requires owners and persons in charge of animals to “take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice” (Animal Welfare Act, 2006, Section 9). This duty of care obligates owners and persons in charge of animals to meet the physical and behavioural needs of animals. The “needs” are defined as an animal’s need for a suitable environment, suitable diet, ability to exhibit normal behaviour patterns, to be housed with or apart from, other animals, and to be protected from pain, suffering, injury, and disease. The imposition of this positive duty of care enables intervention by compliance personnel in the event of “likely” suffering. This authorises, for example, appointed officers to remove an animal from a situation where its welfare needs are not being met or are “likely” to be unmet.

Science has always been a key informant to the development of animal law and of particular importance in Britain was the Brambell Report (Brambell, 1965), (the product of a parliamentary committee chaired by Professor Roger Brambell and tasked with examining the welfare of farmed animals) which established the concept of the Five Freedoms (Five Freedoms, Farm Animal Welfare Council) as the basis of good animal welfare, specifically freedom from thirst, hunger, and malnutrition; freedom from discomfort; freedom from pain, injury and disease; freedom to express normal behaviour; and freedom from fear and distress (Robertson, 2015).

The principles of the “Five Freedoms” underpinned law’s extension from prohibiting blatant acts of cruelty by adding obligations to prevent suffering with “positive duties of care” and empowering enforcement to intervene where an animal was deemed “likely” to suffer.

Robertson and Goldsworthy (2021) argue for law reform that further extends law’s duty of care by applying the contemporary scientific authority of the Five Domains (Mellor, 2019) to include within animal welfare legislation, an added responsibility for animals’ positive states (i.e., comfort, interest, and pleasure). This is consistent with the objectives and messaging of organisations and science recognising that in terms of the animal’s welfare and quality of life experience, less pain is not the same as more pleasure.

One of the assumptions made about animal welfare and anti-cruelty legislation is that the word “animal” applies to all animals. That assumption often results in confusion, misunderstanding and frustration for those who are less than familiar with the methodology applied by law in respect of “animals”.

Although biology and other disciplines may collectively refer to all non-humans as animals or even identify humankind as an animal, there are two critical points to understanding the “legal animal”. First, the law universally distinguishes humankind from the rest of the animals, so through the legal lens, a human is not an animal. Secondly, it is not the case that all other creatures that are not humankind fall into the legal category of animal. Indeed, the definition of an animal may differ across legislation, reflecting the uses, purposes and circumstances of the specific animal being referred to.

Additionally, animal welfare legislation primarily protects species scientifically proven to be capable of suffering. Historically, this has meant that invertebrate species have usually been excluded from animal protections. This is shifting, however, with the development of scientific knowledge about the sentience capacities of invertebrate species and in some countries specific measures have been adopted for the protection of crustaceans and cephalopods (Norway, Switzerland, Austria, New Zealand, and some other states and regions across the world have some form of legislative protection for crustaceans (Crustacean Compassion, 2018). This change may be accelerated by a recent independent report from the London School of Economic and Political Science in England, whose findings about the sentience of decapod crustaceans and cephalopods concluded there was “strong scientific evidence” of the sentience of cephalopods and crustaceans (Birch et al., 2021). In consequence, the UK Government has included these
species within the definition of ‘animals’ in the Animal Welfare (Sentience) Act 2022 (Defra, 2021). It is uncertain when or how this acknowledgement will translate into adequate or any practical legal protections.

Consistent with the concept that legal duties could only be applied to animals that were reliant on their human caregiver, early legislative protections were afforded only to domesticated and captive animals and did not extend to their “wild” counterparts. Similarly, today, the degree, nature, and extent of the legal responsibility predominantly reflects the degree, nature, and extent of the animal’s reliance for its well-being on the human caregiver. For example, the responsibilities of a person (where a “person” is either an individual or an organisation) for an animal that totally relies on that person for its food, water, shelter, and medical care, are traditionally different to the responsibilities of persons for wildlife that largely fend for themselves.

Legal responsibilities prescribed under animal protection/welfare legislation largely continue to reflect the principle that protections and responsibilities reflect the use and purpose of the animal concerned rather than the species. The very same rabbit, for example, will be the subject of significantly contrasting legislative protections, policies and procedures dependent upon whether it is kept as a pet rabbit, a rabbit used in research, or classified as a “pest” that exists in the wild.

Reflecting this approach, animal welfare legislation may explicitly make exceptions for certain categories of animal use. For example, in England anything done in the course of recreational fishing is also excluded from the anti-cruelty provisions of the Animal Welfare Act 2006. This is not because fish are not recognised as capable of experiencing pain (as vertebrate species they would ordinarily fall within scope), but the exemption reflects a consensus of support for fishing as a recreational activity. Countries also vary in the extent to which exceptions are made to animal welfare legislation for certain commercial practices and methods of husbandry.

Properly resourced and authorised enforcement is critical to giving practical effect to animal protection laws. Animal “welfare” legislation typically authorises appointed officers to intervene both when an animal has actually suffered and when an animal was deemed “likely” to suffer. England’s legislation authorises judicial transfer of ownership of an animal in certain cases of anti-cruelty or poor welfare, even before conclusion of proceedings. Scotland has gone one step further and provides administrative powers to rehome animals without the need for judicial approval, subject to compliance with prescribed procedural safeguards (Animals and Wildlife (Penalties, Protections, and Powers) (Scotland) Act, 2020).

Compliance standards vary between jurisdictions, and it is common that animal protection advocates campaign for higher penalties to deter offending. For example, commentators in India criticised the level of fines for breaches of the Prevention of Cruelty to Animals Act 1960 (see Chapter 31). In England the maximum penalty for the most serious offences against animals (including torture and killing) was increased in 2001 (The Animal Welfare (Sentencing) Act 2021) from six months’ to five years’ imprisonment.

Not everyone is entitled to provide legal representation in respect of the animal’s legal interests. In public law, that entitlement of standing, or locus standi (the right to appear in court), is traditionally a prerequisite condition whereby the party seeking a legal remedy must demonstrate to the court that they have sufficient connection to the legal issue or that they have suffered harm. In Britain, the courts have taken a comparatively liberal approach to the standing of parties to bring representative actions on behalf of animals (R v Secretary of State for Foreign and Commonwealth Affairs, ex parte World Development Movement Ltd [1995] 1 WLR 386)). In contrast, for example, America’s higher bar has thwarted some NGOs seeking to challenge decisions of state and public authorities (Chapter 33; Sunstein, 1999).
Law reform

Animal law standards and compliance vary significantly between countries. There are still countries that have little to no codified law and operate primarily simply on natural law principles where, if the animal is inadequately looked after, it will fail to thrive and may even die with consequences to the animal’s owners.

Many countries around the world today operate on principles of anti-cruelty law prohibiting acts or omissions resulting in an animal suffering unnecessarily. The anti-cruelty law in some countries operates on a basic standard of animal “protection” law that simply criminalises blatant acts of cruelty.

Countries with more advanced law have moved beyond animal protection law by extending legal responsibilities (“duty of care”) to protect animals not just from blatant acts of cruelty but also from “likely” suffering thereby creating animal “welfare” law.

Schaffner (2010) identifies problems with existing law that warrant updating related to animal’s lack of standing and barriers to legal representation; human-centric classification of animals, and the broad discretion built into interpretation and enforcement of animal laws where animals are one, but not the only, stakeholder. Limitations of the existing legal paradigm, exemptions for exploitative categories of animal use, and giving greater priority to enforcement have also been issues identified as warranting updating (Sunstein and Nussbaum, 2004).

Schaffner (2010, pp. 123–129) also addresses the efficacy of and evidence base behind breed-specific provisions in dog control legislation. Although there is well-established science validating that temperament is a heritable trait and that certain breeding lines are more aggressive than others, breed-specific legislation (“BSL”) has attracted criticism for unfairly resulting in dogs being euthanised or subject to other controls on the basis of breed, rather than individual characteristics. An independent report commissioned by the UK Government suggests there is “a broad consensus within the literature that breed does not, by itself, provide an evidence base for addressing “dog dangerousness”. (Nurse et al., 2021, p. 65). The report makes recommendations for a wider range of strategies for dog bite prevention, reflecting the multi-causality of dog attacks.

Law reform is an established process that has the objective of ensuring law is updated and fit for the needs of a modern society and a number of proposals have been advanced seeking to utilise the law to elevate standards of animal welfare. Thus, attempts have been made to draft model animal welfare legislation as a beacon of good practice. For example, the Model Animal Welfare Act (World Animal Net: http://worldanimal.net/images/stories/documents/Model_AWA/WAN-Model-Animal-Welfare-Act.pdf).

Others propose more radical change. Francione (2006) advocates abolishing the property status of animals completely, ending human exploitation and allowing animals greater autonomy. Francione’s view is that “the property status of animals means that their interests will virtually always be ignored whenever it will benefit humans and despite the many laws that supposedly protect animals” (Francione, 2006, p. 77).

Favre (2009) does not propose abolishing the property status of animals but has alternatively proposed creating a new category of “living property,” which limits the unqualified rights of the owner. A similar approach has recently been adopted in Spain, where the criminal and civil codes now explicitly recognise animals as “sentient beings” as a special form of property, whose interests can be considered by the courts when dealing with issues concerning allocation or disposal of property (Proposición de Ley de modificación del Código Civil, 2021).

There are attempts being made through the courts to secure personhood for certain animals where there is strong scientific evidence that they can exercise “practical autonomy”. For
example, attorney, Steven Wise is arguing before the courts that certain species who can exercise practical autonomy should be recognised as legal persons and entitled to certain basic liberty rights such as freedom from torture and enslavement (Wise, 2010; Knight, 2022).

Robertson and Goldsworthy (2021) demonstrate that extending law’s duty of care by adding an obligation to provide the animal with the opportunity to experience positive states to existing anti-cruelty responsibilities, provides immediate practical benefits to animals.

**International law and bodies**

International law refers to the collective body of rules accepted by nations that are derived from instruments including such as international conventions (for example, international treaties or agreements), customs, general legal principles, and case law. Treaties, which are perhaps the most commonly understood sources of international law, vary in nature, and can represent either bilateral or multilateral agreements between nation states, who enter into such arrangements voluntarily.

However, as a consequence of state sovereignty there is no singular universal equivalent of legislation that applies legal responsibilities, accountabilities, and liabilities to sovereign states. Parallel mechanisms of responsibility exist only when a sovereign state has become a ratified member to an international organisation.

As a point of note and consideration, membership does not infer blanket acceptance of each organisation’s rules. In fact, nations may enter a reservation against certain provisions, enabling them to sign up to some, but not all provisions in a treaty where there is a lack of political will to sign up to the whole.

As a consequence, it is helpful for the reader to view the subject of international “law” as a body of responsibilities that is significantly different to the concept of national legislation.

Foundational to the operation of rules in the international sector, is the concept that “There is no supra-national legislature empowered to create laws binding on the global community, nor any international police force to ensure compliance with such rules as have been established” (Bowman et al., 2010, 25).

International laws are typically concerned with issues that transcend national boundaries, such as environment protection and climate change. In the field of animal law, similarly, international law has traditionally focused on issues such as conservation and biodiversity loss or importantly regulation of trade.

Amongst the diverse world views regarding the role of animals in the national and international human–animal relationship, there are those who take the view that the interests of animals are under-represented on the global stage. However, as the inseparable relationship between animals, people, and their shared planet is increasingly recognised in programmes such as the One Health initiative of the United Nations (an international organisation established by charter in 1945), the issue of standards of animal welfare, and impacts on human society, has resulted in greater attention being given to the issue of animal welfare. However, to date, the welfare of animals as a distinctly separate policy objective does not feature in any of the UN programmes and animal interests in and of themselves are not represented.

**United Nations**

The UN’s 2030 Agenda for Sustainable Development was adopted in 2015 by all 193 Member States of the United Nations and is described as a “plan of action for people, planet and prosperity” (Sustainable Development Goals, 2015, Preamble). Animals are notably absent as a separate
specific stakeholder action in the UN’s Agenda which aspires to “a world in which humanity lives in harmony with nature and in which wildlife and other living species are protected” (Sustainable Development Goals, 2015).

The Agenda identifies 17 Sustainable Development Goals (SDGs) as “a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity” (Sustainable Development Goals, 2015).

The goals include such matters as ending poverty, hunger, and gender inequality, and creating sustainable cities and communities. Those that implicitly involve animals as part of the integrated approach are goals 13 (“Climate Action”), 14 (“Life Below Water”, to “Conserve and sustainably use the oceans, seas and marine resources for sustainable development”), and 15 (“Life on Land”, to “Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss”).

Although the Sustainable Development Goals do not recognise the intrinsic value of animals, this is not to say that they lack the potential to indirectly improve the lives of animals through recognition of the role of animals in the inseparable human–animal–planetary relationship. However, Verniers and Brels (2021) raise an implicit concern that, since the goals are intended to be transformative, the absence of animal welfare from the goals will likely result in a slower pace of positive change at a global level, since whilst the goals are themselves “non-binding and aspirational in nature”, they point to the fact that “these aspirations are the impetus to expedite understanding in hard law” (Vernier and Brels, 2021, p. 49). Further, absent a specific goal to improve animal welfare, there is a risk, given the inseparable relationship between humans and other animals, that benefits to humankind incidental to improving animal welfare will be missed.

As Verniers (2021) points out, the absence of animal welfare as a singular subject from the goals was commented upon in the Global Sustainable Development Report 2019 (Messerli et al., 2019), authored by an independent group of scientists appointed by the Secretary-General of the United Nations. In a section identifying key issues missing when the 2030 Agenda was drawn up, the report states:

Animal welfare: The clear links between human health and well-being and animal welfare is increasingly being recognised in ethics and rights-based frameworks. Strong governance should safeguard the well-being of both wildlife and domesticated animals with rules on animal welfare embedded in transnational trade.

(Messerli et al., 2019, p. 117)

An example of how the link between human and animal health is being recognised is the One Health program (Centers for Disease Control and Prevention (CDC, nd), One Health), which explicitly recognises the interconnectedness of human and animal health. As such, its focus is on issues such as food safety, zoonotic risk, and antibiotic resistance, and recognises a shared susceptibility to disease and environmental contamination. While this program focuses on health issues, it reflects similar social, economic and environmental initiatives that recognise the inseparable relationship between people and animals on their shared planet.

This lacuna in consideration of the intrinsic value of animals and mechanisms to reflect those interests in policy making at the UN has prompted Ambassador Muhamed Sacirbey, Former Bosnian Foreign Minister and Ambassador to the United Nations to call for the appointment of a Special Representative (colloquially termed, an Animal Ambassador) to “seek to represent human perspectives on animal welfare” (Sacirbey, 2014).

There have also been calls, variously, for an 18th Sustainable Development Goal that addresses the welfare of animals (Visseren-Hamaker, 2020) or alternatively modification of the Sustainable
Development Goals to encompass animal health and welfare (Verniers and Brels, 2021), and for a One Welfare approach extending to animal welfare, which would extend and complement the One Health approach (Pinillos, 2018).

**World Organisation for Animal Health**

The World Organisation for Animal Health retains the acronym OIE, from its predecessor the Office International des Epizooties, which was established by International Agreement in 1924. It is an inter-governmental organisation concerned with improving global animal health and welfare, initially being established to combat animal diseases. It has 182 members and maintains relations with others.

The OIE is under the authority of a World Assembly of Delegates designated by the Governments of Member States. Unlike other international bodies, the OIE has formally recognised the importance of animal welfare and is responsible for setting international standards of animal welfare.

In 2017 all Member States adopted the OIE Global Animal Welfare Strategy (OIE, 2017), the four pillars of which are the development of international animal welfare standards, communication and awareness raising about animal welfare, capacity building and training of veterinary services, and implementation of OIE animal welfare standards and policies.

For the purposes of the strategy, the OIE defines animal welfare as “the physical and mental state of an animal in relation to the conditions in which it lives and dies” (OIE Terrestrial Code, 7.1.1) and its guiding principles include the “Five Freedoms”. The Aquatic Code similarly suggests international standards for the welfare of farmed fish, excluding ornamental species (OIE Aquatic Code).

As White (2013) points out, however, the OIE’s focus remains animal disease with only 11 standards for animal welfare incorporated into Terrestrial and Aquatic Codes. Furthermore, the standards are broad and aspirational, rather than precise and they lack mandatory language. Indeed, the OIE relies upon voluntary commitments by Member States to develop and adhere to its principles and there is no mechanism for monitoring compliance, or for enforcement (its dispute resolution mechanism is similarly voluntary).

**World Trade Organization**

The World Trade Organization (WTO) is an inter-governmental organisation that regulates international trade with its goal “to ensure that trade flows as smoothly, predictably and freely as possible” (World Trade Organization, 2021). It was established by the “1994 Marrakesh Agreement Establishing the World Trade Organization” and re-enacted the General Agreement on Tariffs and Trade (GATT) signed in 1947 and containing measures to minimise trade barriers such as quotas, subsidies, and tariffs.

The WTO rules are binding on all Member States, and it has a Dispute Settlement Body that deals with complaints; recommendations are binding.

Trade liberalisation is a fundamental principle, and trade restrictions based upon the manner in which a product is produced (known as “process and production methods” (PPMs) are not permitted, unless they change the character of the product. If the product remains unchanged, a restriction in trade will thereby need to be justified under one of the exceptions to the rules. This has historically inhibited nations from restricting imports on the basis that they have been produced to lower standards of animal welfare standards.

Recent jurisprudence from the WTO is however encouraging. The leading case in this area is EC-Seal Products case 2014 (European Communities, 2014), concerning a decision by the
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European Union to prohibit the import and marketing of seal products in the EU with certain exceptions for Inuit communities, reflecting the concerns of EU citizens about inhumane suffering inherent in seal hunts. The Appellate Body of the WTO upheld a finding of the Panel that the trade restriction was justified in order to protect public morals, as defined under GATT Article XX(a).

**CITES and wildlife trade**

While the 19th century saw anti-cruelty legislation starting to emerge for the protection of some domesticated species, wildlife was left largely unprotected.

The early attempts at regulation of human activities impacting upon wildlife were motivated by conservation, not for the intrinsic benefit of those species but predominately to preserve the species for the protection of the animals as a resource (for example, see the Convention for the Protection of Birds Useful to Agriculture 1902; Bowman et al., 2010).

The Second World War was an impetus for international cooperation. The United Nations was established to maintain international peace and security and a number of specialist agencies were created including UNESCO (UN, Educational, Scientific, and Cultural Organisation) which created the IUPN (International Union for the Protection of Nature) re-named IUCN (International Union for Conservation of Nature and Natural Reserves), which publishes a Red List of species (as a guide to conservation status of plants and animals).

UN wildlife treaties include an International Convention for Regulation of Whaling (1946), an International Convention for Protection of Birds (1950), and the Atlantic Treaty Systems (1959). In 1979 the Bonn Convention was signed by Parties, agreeing on measures to protect the habitats and migration routes of migratory species.

The 1973 Washington Convention on the International Trade in Endangered Species (CITES, 1973) is a multilateral agreement to protect and conserve endangered species. CITES regulates international trade in animals and plants threatened with extinction through the operation of three Appendices onto which at risk species are placed. CITES does not completely prohibit international trade but rather controls trade through the system of import and export restrictions; furthermore, those restrictions only apply to international trade and not domestic trade in protected species.

CITES requires nations to establish national authorities to administer provisions of the Convention. Each state is required to designate a Scientific Authority to provide scientific evidence underpinning decisions about whether trade is sustainable and a Management Authority to issue permits/certificates. The Management Authority is responsible for determining that species subject to Appendix 1 restrictions, will not be used primarily for commercial purposes.

Nations who are Parties to CITES are responsible for implementation and enforcement. However, some still do not have the necessary national laws in place for implementation (a legislative status table is maintained by CITES: National Legislation Project; see CITES Legislative Status Table, 2021). Even in countries with the full implementation measures in place, enforcement remains a problem and the illegal wildlife trade is a significant issue (Nurse and Wyatt, 2020; Wyatt et al., 2021).

**European Union**

The European Union is an economic and political union of 27 Member States, forming a single trading block. Britain was a member until its withdrawal in 2020 after its citizens voted in a referendum in 2016 to leave the EU. The EU legislation through a series of regulations and direc-
tives in key areas concerning animal protection, including wildlife (Birds and Habitats Directive, EU Invasive Alien Species Regulation, and other wildlife laws), research (animal testing regulations), agriculture (regulations around live exports, slaughter regulations, farm subsidies, and on-farm welfare) and the movement of domesticated animals across borders (such as pet passports and ban on import/export of cat and dog fur).

The EU is established by a series of treaties, and it is given legal competence to take make animal welfare measures by Article 13 of the Treaty of the Functioning of the European Union (TFEU) which states that:

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.

Historically, the status of animals was as goods or products only, so animals farmed were classed as “agricultural products” and there was no legal competence to take measures reflecting the fact that they are sentient beings. Animal advocacy groups campaigned for express recognition that animals have an enhanced status as “sentient” so that policy objectives (such as free trade) could be balanced against the objective of having regard to animal welfare.

However, Article 13 did not contain any procedure or mechanism obligating members to show that they had taken animal welfare into consideration in determining domestic policy or place any prominence on animal welfare when weighing it up as a policy consideration against other policy objectives. The instrument’s recognition of animal sentience was significant in promoting discussion about animal “sentience”; however, in order to realise the full potential of the legislative recognition it’s been argued that a clear directive applying responsibilities for the negative and positive states of the animal is necessary to evolve policies and practices beyond continued anti-cruelty responsibilities (Goldsworthy and Robertson, 2021).

Britain did not carry across Article 13 in the European Union (Withdrawal Act) 2018 but the government has enacted the Animal Welfare (Sentience) Act 2022. This legislation explicitly recognises that animals are sentient and seeks to have regard to their welfare needs when formulating and implementing policy by establishing an Animal Welfare Committee of animal welfare experts, to advise Ministers about the animal welfare impacts of prospective policy. This is a similar approach to that of New Zealand which has recognised animal sentience in national legislation that also established a National Animal Welfare Advisory Committee (NAWAC) and the Netherlands, which has established the Dutch Council on Animal Affairs (Council on Animal Affairs) to advise Ministers.

**Council of Europe**

The Council of Europe (CE) is an inter-governmental body established by the Statute of the Council of Europe and signed in London, 5 May 1949. It is not a part of the European Union, but a separate institution with an overlapping, but different membership. The CE has passed a number of important Conventions concerning animals (Council of Europe).

The CE has no legislative power and cooperation is entirely voluntary. There is no sanction available for nations who sign or ratify a Convention and then fail to implement or comply with its provisions. However, the EU and Member States may formally approve Conventions
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as a body or adopt a Convention as a new Community law and this is often a route by which a CE Convention becomes embedded in the laws of the EU or its Member States, and in this way, it has played an important role in raising standards of animal protection throughout Europe.

Conclusions

National law and international agreements governing the human–animal relationship all revolve around the principle of responsibility. The inseparable relationship between animals, people, and our shared environment means that the level of responsibility applied by the law for the life experience of animals also affects us, our children, and our world – today and for generations to come.

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