

SYMPOSIUM ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT SEVENTY

RIGHTS OF HUMAN AND NONHUMAN ANIMALS: COMPLEMENTING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

*Anne Peters**

In May 2018, U.S. President Donald Trump spoke about illegal border crossings: “We have people coming into the country, or trying to come in You wouldn’t believe how bad these people are. *These aren’t people. These are animals.*”¹ Such *dehumanization* (in this case of undocumented migrants at the U.S.-Mexico border) has been a standard discursive strategy to prepare, instigate, facilitate, and exculpate violence committed by humans against other humans throughout history.² It is exactly in reaction to excesses of such dehumanizing mass violence committed in the Third Reich and during World War II that the Universal Declaration of Human Rights (UDHR) was adopted in 1948. This essay argues that the objectives of the UDHR itself would be furthered if the United Nations (or another international body such as the Food and Agriculture Organization, the World Health Organization, or the World Organisation for Animal Health (OIE)) engaged in work on a universal animal rights declaration. While animal *welfare* is increasingly protected in domestic jurisdictions, animal *rights* are still hardly recognized, although they would serve animals better. Animal rights would need to be universalized in order to have an effect in a globalized setting. The international legal order is flexible and receptive to nonhuman personhood. The historical experience with international human rights encourages the international animal rights project, because it shows how the equally pertinent objection of cultural imperialism can be overcome. Animal rights would complement human rights not least because the entrenchment of the species-hierarchy, as manifest in the denial of animal rights in many cases, condones disrespect for the rights of humans themselves.

The Trend Towards Animal Rights in Domestic Laws

Since 1948, the rise and entrenchment of *human* rights in state constitutions and in the international system has not been paralleled by widespread and firm recognition of *animal* rights. Rather, in a growing number of states around the world, animals have been protected by objective standards rather than through rights.³

** Professor of Law, Director at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany. I thank Alexandra Huneus, Guillaume Futhazar, Tom Sparks, and Saskia Stucki for valuable comments on a previous version of this essay.*

¹ The White House, [Remarks by President Trump at a California Sanctuary State Roundtable](#) (May 16, 2018) (emphasis added).

² [HUMANNESS AND DEHUMANIZATION](#) (Paul Bain et al. eds., 2014).

³ See two databases: Sabine Brels & Antoine F. Goetschel, [Animal Legislations in the World at National Level](#), GLOBAL ANIMAL LAW (Mar. 1, 2017); [ANIMAL PROTECTION INDEX](#), WORLD ANIMAL PROTECTION (2014).

Only very recently, a few domestic jurisdictions have begun to acknowledge animal *rights*. Courts in Argentina and Colombia have granted habeas corpus to apes⁴ and a bear.⁵ The Indian Supreme Court recognized fundamental animal rights under the Indian constitution.⁶ In U.S. district courts, judges have considered but not endorsed animal rights. Rather, they have denied habeas corpus to chimpanzees and the standing of a macaque in a copyright suit.⁷

The novel judicial acceptance of animal rights in a few states is good for animals themselves, because rights confer on them stronger and more sustainable legal protections than the safeguards offered by “objective” laws.⁸ The benefits of granting (or acknowledging) legal rights to an actor are procedural, legal, social, and symbolic. Rights facilitate standing in court and trigger an obligation to justify their curtailment. The open textuality of rights facilitates the gradual increase of protection, and allows decision-makers to adapt the law to reflect evolving moral attitudes. Not all of these blessings of rights are equally relevant for animals. The main asset for animals is that rights confer a legal position that is elevated above the ordinary balancing of conflicting goods. When animals only benefit from protective rules, their welfare is but one interest among others. Balancing the interests of animals against those of humans typically ends up prioritizing the latter, even when the human rights are trivial ones. Arguably, this type of balancing is structurally biased against animals. In contrast, animal rights would allow a fair balancing in which the proper value of fundamental animal interests (such as the interest in life) could be integrated.

While animals do not need free speech, freedom of religion, or equal access to public office, sentient animals would benefit from acknowledgment of a right to life, a right to be free from torture, and physical liberty. In addition, the right to legal personality—the “right to have rights”—would be the explicit or implied precondition for all other rights. Animal rights would not categorically rule out animals being slaughtered for food, kept as pets, or used in scientific experiments but they would place a higher burden on the justification of such uses. Animal rights would thus preclude the current routine sacrifice of fundamental animal interests in favor of trivial human interests.

The Need for International Animal Rights

Purely domestic rights for animals would not be enough. The principled arguments that have led to the codification of human rights in international agreements are relevant for potential animal rights as well. First, from the perspective of fairness and justice, such rights (once accepted as a matter of principle) belong to animals independent of their place of birth and abode, and they are therefore universal. Second, international rights would serve as a benchmark for domestic law. International instruments would potentially allow for some monitoring or at least facilitate the formulation of criticism against domestic practices that do not satisfy the international standard. Third, while the main mechanism for enforcing rights in domestic law is a court process where standing for animals creates additional problems, international rights are often monitored in nonadversarial reporting procedures in which the rights-holders do not act as parties. The factual difference between human victims and animal victims that cannot speak for themselves does not bear on these proceedings.

⁴ [A.F.A.D.A Respecto del Chimpancé “Cecilia” – Sujeto no Humano](#), Tercer Juzgado de Garantías Mendoza Case No. P-72.254/15 (Nov. 3, 2016) (Arg.).

⁵ [Luis Domingo Gómez Maldonado, quien actúa en favor del oso de anteojos de nombre “chucho”](#), Colombian Supreme Court of Justice Case No. AHC4806-2017, Radicación No. 17001-22-13-000-2017-00468-02 (July 26, 2017) (Colom.). This judgment was reversed and the case is now pending at the Supreme Court.

⁶ [Animal Welfare Board of India v. Nagaraja and Others](#), Supreme Court of India Civil Appeal No. 5387 (May 7, 2014).

⁷ [Naruto v. Slater](#), No. 16-15469, D.C. No. 3:15-cv-04324-WHO (9th Cir.) (April 23, 2018).

⁸ See SASKIA STUCKI, [GRUNDRECHTE FÜR TIERE](#), 2016.

Fourth, nation-state-based rights would not suffice because the problem is a global one. Industrialized meat, dairy, and pet production is now spreading to countries of the Global South and to developing countries in which the demand and purchase power for animal products is steeply rising. Those industries have become globalized through transnational supply chains. The manufacturing and trade conditions are leading to a dramatic increase of “normal” violence against animals in sheer numbers (confinement, mutilation, killing). The transnational dimension of these more or less violent activities has intensified, because animals and the equipment to confine, mutilate, and kill them form part of global production chains.

Against this background, the endorsement of animal rights only on the national level in some states would probably lead to the outsourcing of the relevant industries. This risk is already present when one state has higher protective standards than others, and it could be exacerbated when one but not all states embrace a rights-based approach to animal protection. In order to prevent a competitive disadvantage to industries subject to higher domestic standards, and to forestall a race to the bottom, states must seek harmonized universal standards and a level playing field. Such harmonization is also desirable to accommodate consumers’ concerns about the importation of animal products from low-standard countries, and would obviate import prohibitions based on such public morality concerns.⁹ For all these reasons, an intergovernmental universal declaration on animal rights is warranted.

International Animal Personhood

In law, personhood is a precondition for holding rights. Personhood is best understood as a cluster concept that does not depend on a set of definite properties but has blurry boundaries. The legal ascription of personhood is internal to a given legal order. This means that an actor or an entity can be a person for some purposes (or in some subfields of the law) and a nonperson for others.

Importantly, international law has dynamically recognized the personhood of a host of actors, and international law is particularly open to the personhood of nonhumans—with states being the main persons in this legal order. Humans were in the late nineteenth and early twentieth centuries explicitly and adamantly qualified as “objects” of international law.¹⁰ Accordingly, early international treaties to suppress the trade in women and girls (often referred to as the “white slave trade”) were intended to preserve morality; rights of women and children were unknown.¹¹ With regard to animals, that line of reasoning persists. Until the beginning of the twentieth century, all normative restrictions on animal abuse served to protect public morality, “decency,” or “chastity.” Animal cruelty was a “public misdemeanor” and was prohibited only if it took place in public.

The parallels between the past status of humans in international law and the present status of animals is striking, as a textbook recognizes:

In modern systems of municipal law all individuals have legal personality, but in former times slaves had no legal personality; they were simply items of property. Companies also have legal personality, but animals do not In the nineteenth century . . . international law regarded individuals in much the same way as municipal law regards animals.¹²

⁹ For example, Swiss law prohibits the production of *foie gras* and frog legs as animal cruelty but allows the import of such products.

¹⁰ HEINRICH TRIEPEL, [VÖLKERRECHT UND LANDESRECHT](#) 20–21 (1899).

¹¹ See, e.g., [International Agreement for the Suppression of the “White Slave Traffic”](#) pmbl. and art. 1, opened for signature May 18, 1904, 35 Stat. 1979 (entered into force July 18, 1905).

¹² PETER MALANCZKU, [AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW](#) 91 (7th ed., 1997).

In international regulation against human trafficking, the purely other-regarding “public morals”-rationale has been overcome, and modern domestic animal laws protect animals for their own sake, as sentient beings, mostly without granting them rights. Only for humans has an actual rights revolution taken place in national and international law.

Against the background that corporations can be persons for purposes of domestic commercial law, and that the legal status of humans has changed from objects to subjects of international law, there is no intrinsic conceptual barrier to assigning international legal personality to animals—basically because personhood is a purely technical juridical device, a legal fiction. But in social and cultural terms, this will be a difficult goal to achieve.

Animal Rights and Human Rights: Universality

Skepticism about international animal rights is tempered by recalling that fundamental objections against the internationalization of rights have likewise bedevilled the international *human* rights regime. It has been said that the animal rights movement is “yet another crusade by the West against the practices of the rest of the world,”¹³ and that the propagators of such crusades claim universal validity in order to impose their own, local preferences on other cultures, so as to consolidate cultural and political dominance over the non-Western world, especially the Global South. This charge is not trivial. There is a real risk that the protection of animals targets minority practices (such as Muslim ritual slaughter or indigenous seal and whale hunting), although these practices are in numerical terms insignificant in comparison to the majority’s “normal” massive use and killing of animals. This targeting manifests and fuels majority prejudices against the singled out groups, and can pave the way for intervention and domination. In fact, “dominant groups have long justified their exercise of power over minorities or indigenous peoples by appealing to the ‘backward’ or ‘barbaric’ way they treat ... animals.”¹⁴

However, references to cultural traditions suffer from three flaws. First, historical experience shows their frequently pretextual character. Typically, ruling elites abusively invoke “culture” to secure illegitimate privileges. Second, we should not exaggerate cultural difference. The massive use of animals for human needs and the paucity of reflection on and justification of these practices in ethical terms is a shared feature of all cultures. Third, cultures do not unfold inevitably, as if according to a genetically defined pattern. Eating shark soup made from fins cut off live sharks, fox hunting with hounds, staging bullfights, and stuffing geese for *foie gras* may be traditions just like relegating women to the house and prohibiting them from exercising certain professions or driving a car. But simply because these are traditions they are not immutable and are not worth protecting as such. Instead, morals, traditions, and legal provisions (in short, culture) are made, practiced, and applied by human beings capable of learning, and can change.

Conclusion

The legal correspondence (and arguably mutual enrichment) of rights for human and nonhuman animals was intuitive when the quest for human rights was still exotic. The great English social activist Henry Stephens Salt, who campaigned against the death penalty, cofounded the British Humanitarian League, and propagated vegetarianism, started his trailblazing study entitled *Animals’ Rights* with the opening sentence: “Have the lower animals ‘rights’? Undoubtedly—if men have.”¹⁵ In 1892, Salt noted that human (“men’s”) rights were “looked

¹³ This is how the fictional character Thomas O’Hearn, “professor of philosophy of Appleton,” puts it in [J.M. COETZEE, THE LIVES OF ANIMALS](#) 60 (1999).

¹⁴ Will Kymlicka & Sue Donaldson, *Animal Rights, Multiculturalism, and the Left*, 45 J. Soc. Phil. 116, 127 (2014).

¹⁵ HENRY SALT, *ANIMALS’ RIGHTS: CONSIDERED IN RELATION TO SOCIAL PROGRESS* 1 (1892/1922/2013).

upon with suspicion and disfavour by many social reformers,” and Salt basically used the term in quotation marks only.¹⁶

In the decades to follow, the quotation marks around the “rights of men” disappeared. After 1948, the terms of the UDHR even guided protection for animals. For example, the Preamble of the UDHR proclaims “the advent of a world in which human beings shall enjoy *freedom of speech and belief and freedom from fear and want*.”¹⁷ These famous four freedoms inspired the so-called “five freedoms for farm animals” of the 1965 Brambell report: freedom from hunger and thirst, freedom from discomfort, freedom from injury, pain or disease, freedom to express normal behaviour, and freedom from fear and distress.¹⁸ These “freedoms” could be creatively understood as legal rights, and could be complemented by more fundamental rights such as the rights to life and liberty.

At the occasion of the fiftieth anniversary of the UDHR in 1978, an NGO coalition elaborated a “Universal Declaration on Animal Rights” (UDAR) in deliberate alignment with the UDHR.¹⁹ This Animal Rights Declaration was revised in 1989 and again in 2018.²⁰ The 1978 version of its Article 1 was modelled on Article 1 UDHR and states, “All animals are born with an equal claim on life and the same rights to existence.” The UDAR was formally proclaimed in 1978 at the UNESCO premises in Paris (by civil society actors). Although this ceremony attracted public and media attention, the declaration did not result in palpable practical effects. Neither have the academic (both philosophical and legal) debates on animal rights—ongoing since the 1960s—led to any serious international codification. The seventieth anniversary of the UDHR might be a symbolic moment to tackle international animal rights not only at the NGO-level but also among governments.

The classic argument in favor of moral duties towards animals has been that prohibiting cruelty on animals suppresses callousness in men.²¹ This consideration has traditionally motivated animal welfare laws. It could and should also motivate more ambitious animal rights codifications. Along those lines, the preamble of the UDAR of 1978 stated “that the respect of humans for animals is inseparable from the respect of man for another man.” The intuition that containing violence against animals ultimately contributes to containing violence against fellow-humans has been frequently investigated in sociological and criminological research.²² This research recently found that prejudice against members of an outgroup (such as migrants, minorities, and women) is correlated (and maybe even causally linked) to violence against animals, which is in turn exculpated by ideologies of human supremacy over animals. The belief in a rigid human/animal divide seems to condone the dehumanization of humans.²³ The acknowledged need to combat such dehumanization is an argument in favor of dismantling the legal species hierarchy. President Trump’s statement at the U.S.-Mexican border demonstrates its relevance.

Because the most powerful symbol against such a hierarchy would be the institution of animal rights, states should seriously consider legalizing some relevant rights for some nonhuman animals (notably the right to life,

¹⁶ *Id.*

¹⁷ These “freedoms” draw on U.S. President Franklin D. Roosevelt’s “four freedoms” proclaimed in the State of the Union address on January 6, 1941.

¹⁸ REPORT OF THE TECHNICAL COMMITTEE TO ENQUIRE INTO THE WELFARE OF ANIMALS KEPT UNDER INTENSIVE LIVESTOCK HUSBANDRY SYSTEMS 13 (F. W. Rogers Brambell [Chairman], 1965).

¹⁹ Jean-Marc Neumann, *The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species*, 19 ANIMAL LAW 91 (2012).

²⁰ [Déclaration des droits de l’animal](#), adopted by the Fondation Droit Animal, Éthique et Sciences (2018).

²¹ IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 192–193 (2015) (discussing the “doctrine of virtue”).

²² Sonia Lucia & Martin Killias, *Is Animal Cruelty a Marker of Interpersonal Violence and Delinquency? Results of a Swiss National Self-Report Study*, 1 PSYCH. VIOLENCE 93 (2011). The findings are based on self-reporting of more than 3,600 Swiss pupils in 2006.

²³ Kimberly Costello & Gordon Hodson, *Explaining Dehumanization Among Children: The Interspecies Model of Prejudice*, 53 BRIT. J. SOC. PSYCOL. 175, 197 (2014).

liberty, and freedom from torture), as a complement to the UDHR. This anthropocentric rationale for animal rights would be very traditional and would not call into question what it means to be human. Reliance on it is a tactic, not a moral argument. This is exactly why its invocation might appeal to different audiences than animal-centred arguments do, and could contribute to building a universal overlapping consensus on animal rights. We should not wait until a human, ecological, or health-related catastrophe comparable to the horrors that motivated the adoption of the UDHR occurs. An international animal rights codification would not only mitigate animal suffering but also would create positive synergies with the UDHR towards fulfilling its core mission, which is to prevent the commission of “barbarous acts which [outrage] the conscience of mankind.”²⁴

²⁴ [Universal Declaration of Human Rights](#) pmbl., G.A. Res. 217 (III) A (Dec. 10, 1948).