Animal Law in General and Animal Rights in Particular

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1 Introduction

In the Nordic countries, law has protected animals through individual provisions since the late 18th century and more holistically through animal protection acts since the 1930s.[1] The main objective of these acts was to protect humans from the impact of savagery in society, and animals (at least some species) from unnecessary suffering. Since then, the view of animals as sentient beings and as important parts of our shared ecosystem has developed remarkably. However, the theoretical basis for the legislation aiming to protect animals remains based on an understanding of animals in legal terms as objects. Animals are 'objects of protection' with requirements of a certain legislated level of protection and welfare to be ensured to them by humans.[2] This approach to animal protection is within animal law referred to as *welfarism* or the *welfare paradigm*.[3]

According to the welfare paradigm, in short, humans have duties 'regarding animals' especially when using them for human purposes, but not 'toward animals' for their own, individual sakes. In other words, it is justified – viewed from an anthropocentric perspective – to use and kill animals if they are treated 'humanely', are caused only necessary suffering, and their welfare are protected in accordance with animal protection provisions. Therefore, the level of protection, i.e., the substance in the provisions aiming to protect animals, differs depending on the human interest in question. If there is a strong human interest, animal exploitation including killing and causing of even severe suffering to animals is permissible, especially if it is combined with a conventional way of keeping or killing animals. For instance, a dog living as a pet is protected by law with stronger requirements on welfare and living conditions than a dog used in a laboratory for research. The same goes for a pig as a 'pet' versus as a 'farm animal'. Still, a dog is a dog and a pig is a pig, an individual and a sentient being, wherever the animal may exist.

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1 The first Animal Protection Acts (APAs) in the Nordic countries were adopted as follows: in Iceland in 1915 (Dýraverndun nr. 146), in Denmark in 1916 (Lov nr. 152), in Finland in 1934 (Eläinsuojelulaki 163/1934), in Norway in 1935 (Lov um dyrevern nr. 13) and in Sweden in 1944 (Lag om djurskydd 1944/219).

2 Lately, the animal protection laws have often been called animal welfare laws. An example is the Norwegian Animal Welfare Act, Lov om dyrevelferd, LOV-2009-06-19-97. 'Animal protection' can be seemed as an umbrella term for any kind of legislation aiming to protect animals from negative human impact, regardless of the terminology used.

3 In detail, Gary L. Francione & Robert Garner, *The Animal Rights Debate* (New York: Columbia University Press 2010). Birgitta Wahlberg, 'Re-Evaluation of Animal Protection by the Finnish Animal Rights Lawyers Society' (2019) Society Register 3(3):123–142 <https://pressto.amu.edu.pl/index.php/sr/issue/view/1434> accessed 26 September 2020. Birgitta Wahlberg, *Inledning till djurskyddslagstiftningen i Finland* (Lag och Bok 2014) 2, 4–5, 19–41.

This fundamental distortion, among other issues, has led to the prevailing normative and social conditions. At both the EU and national law levels, more legislation is in force aiming to protect animals and their habitats, while humankind breeds, feeds, waters, keeps, transports, kills and abuses more animals than ever. In other words, humans are – at least quantitatively speaking – causing more suffering than ever before to the animals involved, as well as significant destruction of our shared ecosystem. Ironically, the systematic and legal oppression and exploitation of animals that we are witnessing today is an inevitable outcome of the anthropocentric approach towards animals and nature in law. Animal protection laws, *de lege lata*, do not call into question human activity in relation to animals' interests or force the legislator, authorities, courts and other actors to weigh human and animal interests against each other. Compared with basic human rights, which protect human life itself, the animal protection – which may literally mean death for an animal – is weak, both normatively and socially.

With the relatively long history of animal protection laws in mind, it seems obvious that the traditional laws (doctrines) and the anthropocentric approach to law do not make it possible to effectively solve the problems we are facing as a result of the negative impact that human activity has on both animals and nature. The conflict between the aim and content of the animal protection provisions, the inefficacy of law, the terrible reality that many animals are living and dying in, the climate crisis, the biodiversity loss (partly because of the land and water use for those animals that are used in food production) and the universal threats and legal questions these circumstances entail, are among the reasons for the development of animal law as a new legal discipline. Discipline here refers to the academic study of a certain area.

This study seeks to identify and combine: (i) relevant sets of characteristics of Animal Law as a new legal discipline, as it can be understood at this stage of development; (ii) conceptual and doctrinal elements, navigating relevant theoretical works and the latest understanding of the importance of legal animal rights; and (iii) lastly, in a *de lege ferenda* approach, present what the theoretical elements could mean in a language of concrete fundamental animal rights, as a normative response on the part of society to end the oppression and exploitation of animals under human self-appointed supremacy. The Nordic legal system[4], which is based mainly on the black letter law[5], is the foundation of the study.

2 What is Animal Law as a Legal Discipline?

Traditionally, the central task of legal disciplines is to systematise legal sources by critically examining and analysing laws, theories, concepts and other legal material. The task of law faculties, law schools and other such institutions is to teach law, to conduct legal research on legal topics and to develop legal theories. Because it is impossible to systematise 'law' as a whole, various legal disciplines

[4] The Nordic countries are often classified as a legal family of their own, because of the distinctive features in the legal system.

[5] Including EU law, which is binding for Finland, Denmark and Sweden as Member States of the European Union (EU).

have emerged, analysing legal material based on their own doctrines. In animal law, the term 'animal' is obviously central. Thus, to understand the core of animal law and why it is a discipline of its own – although not yet fully established and recognised within the legal community – one needs to examine how animals are understood *de lege lata*.

In law, animals are considered differently depending on the context. In the Treaty on the Functioning of the European Union (TFEU), Article 13,[6] animals are recognised on the one hand as 'sentient beings' and on the other hand as 'agricultural products' (Article 38). 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';[7] thus non-human animals (hereafter 'animals') are not included. Based on the treaties of the European Union (EU), one can surmise that the term 'animals' refers to all sentient species other than humans (*Homo sapiens*).[8] As such, animals are considered in various doctrines and laws as:

A) **legal objects** that are protected by placing requirements on humans in accordance with the outlines of the welfare paradigm, i.e., animals do not have any fundamental, subjective rights as humans (natural persons) or as legal persons, but have to be taken care of and be protected by humans to the degree stipulated in the black letter law or as interpreted in case law. In existing animal protection laws, this takes the form of demands to protect and increase respect for animals, using words like 'sentient beings', 'unnecessary suffering', 'animal welfare', 'dignity' and 'intrinsic value'. Examples include the TFEU, Article 13, that recognises animals as sentient beings, the Swiss Constitution, Article 120,[9] and the Swiss Animal Welfare Act,

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6 Consolidated version of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, 1–388 (EN). The content of Article 13 in the TFEU demands that since animals are sentient beings, both the Union and the Member States shall in formulating and implementing the Union's agriculture, fisheries, transport, internal market, research, technological development and space policies, take fully into account 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.

7 Consolidated version of the Treaty on European Union. OJ C 202, 7.6.2016, 13–388 (EN).

8 Given this, the notion of 'sentient beings' and the requirement to 'pay full regard to' in relation to the Member States' legislative and administrative provisions and customs, the TFEU Article 13 seems primarily to be a justification for the conventional use of animals for human purposes. Katy Sowery, 'Sentient Beings and Tradable Products: The Curious Constitutional Status of Animals under Union Law' [2018] Common Market Law Review 55(1): 55–100, and Birgitta Wahlberg, 'Re-Evaluation of Animal Protection by the Finnish Animal Rights Society' (2019) Society Register 3(3):123–142 <https://pressto.amu.edu.pl/index.php/sr/issue/view/1434> accessed 26 September 2020.

9 Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999 (Stand am 1. Januar 2018), Art. 120 (2), 'Der Mensch und seine Umwelt sind vor Missbräuchen der Gentechnologie geschützt. 2 Der Bund erlässt Vorschriften über den Umgang mit Keim- und Erbgut von Tieren, Pflanzen und anderen Organismen. Er trägt dabei der Würde der Kreatur sowie der Sicherheit von Mensch, Tier und Umwelt Rechnung und schützt die genetische Vielfalt der Tier- und Pflanzenarten.'

Article 3a,[10] which recognise the dignity of animals, and the Norwegian Animal Welfare Act,[11] Article 3, which recognises the intrinsic value of animals. However, these expressions do not mean that animals' legal status in relation to humans are fundamentally changed[12]; nor do they end the normatively systematic and institutionalised exploitation of animals;

B) **property**, as in the context of property law, meaning, for instance, that a property owner (natural or legal person) has the right to sell, give away or euthanise an animal (the property);

C) **things**, as referred to for instance in the Finnish Trade Code[13], that can be borrowed or rented: 'Who borrows something from another, without breath or living, shall return it, as good as it was.' Concerns such as renting 'horses, wagons and boats' are mentioned in the Code.[14]

Several European countries have, in the last few years, made changes in their civil codes stating that animals are not 'things' (or 'objects'). An example can be seen in the Civil Code of Switzerland, Article 641a, where animals are stated not to be objects.[15] Similar statements are made in the Civil Codes of Austria[16],

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[10] Tierschutzgesetz vom 16. Dezember 2005, Art. 3a §: 'Würde: Eigenwert des Tieres, der im Umgang mit ihm geachtet werden muss. Die Würde des Tieres wird missachtet, wenn eine Belastung des Tieres nicht durch überwiegende Interessen gerechtfertigt werden kann. Eine Belastung liegt vor, wenn dem Tier insbesondere Schmerzen, Leiden oder Schäden zugefügt werden, es in Angst versetzt oder erniedrigt wird, wenn tief greifend in sein Erscheinungsbild oder seine Fähigkeiten eingegriffen oder es übermässig instrumentalisiert wird.'.

[11] Lov om dyrevelferd LOV-2009-06-19-97, Art.3: 'Dyr har egenverdi uavhengig av den nytteverdien de måtte ha for mennesker. [...]' In addition, Art.1 in the Act declares that the aim of the Act is to promote the respect for animals.

[12] However, several legal scholars have highlighted that animals are right holders. This is discussed in greater detail later in this paper. Cass R. Sunstein and Martha C. Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2004). Jonas-Sébastien Beaudry, 'From Autonomy to Habeas Corpus: Animal Rights Activists Take the Parameters of Legal Personhood to Court', (2016) 3 Global Journal of Animal Law < https://ojs.abo.fi/ojs/index.php/gjal/issue/view/150> accessed 16 September 2020. Tomasz Pietrykowski, 'Beyond Personhood: From Two Conceptions of Rights to Two Kinds of Right-Holders' in Tomasz Pietrzykowski & Brunello Stancioli (eds.), *New Approaches to the Personhood in Law (*Frankfurt am Main: Peter Lang Edition 2016). Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019). Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (2020) Oxford Journal of Legal Studies 1–28 <https://academic.oup.com/ojls/article/40/3/533/5862901> accessed 26 September 2020.

[13] The Finnish Trade Code 3/1734/3, Chapter 11, Section 1.

[14] The Finnish Trade Code 3/1734/3, Chapter 13, Section 4.

[15] Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 (Stand am 1. Januar 2018); '1 Les animaux ne sont pas des choses.'

[16] Allgemeines bürgerliches Gesetzbuch für die gesammten deutschen Erbländer der Oesterreichischen Monarchie, 285 a §: 'Tiere sind keine Sachen; sie werden durch besondere

Catalonia[17], Germany[18], France[19], the Netherlands[20] and the Czech Republic[21]. Yet, as long as no exact determination is made of what animals are in terms of private law, or how to interpret the provisions concerning animals, other than 'where no special provisions exist for animals, they are subject to the provisions governing objects'.[22] Thus, the statement that 'animals are not things' settles in the middle of the traditional subject-object dichotomy, meaning that they in the Roman-Germanic legal tradition do not fit into a defined place or category. Therefore, even if the first reading of the provisions mentioned above can raise expectations of a changed legal status of animals in civil law and proceedings, it is questionable if that is the case. The ongoing exploitation of animals does not support that kind of interpretation, especially in contexts where animals are seen as the property of humans. However, the statements in the civil codes can have a positive impact on the contents of civil law in future and thereby also on future interpretations on the part of the civil courts.[23] What impact, if any, this will have on animals remains to be seen.

Gesetze geschützt. Die für Sachen geltenden Vorschriften sind auf Tiere nur insoweit anzuwenden, als keine abweichenden Regelungen bestehen.' StF: JGS nro 946/1811 (1988).

17 Libro V del Código Civil de Cataluña, Título I, Artículo 511-1: '1. Se consideran bienes las cosas y los derechos patrimoniales. 2. Se consideran cosas los objetos corporales susceptibles de apropiación, así como las energías, en la medida en que lo permita su naturaleza. 3. Los animales, que no se consideran cosas, están bajo la protección especial de las leyes. Solo se les aplican las reglas de los bienes en lo que permite su naturaleza.' Ley 5/2006, de 10 de mayo, del Libro Quinto del Código Civil de Cataluña, relativo a los derechos reales. BOE núm. 148, de 22-06-2006, 23543–23595.

18 Bürgerliches Gesetzbuch, 90a §: 'Tiere sind keine Sachen. Sie werden durch besondere Gesetze geschützt. Auf sie sind die für Sachen geltenden Vorschriften entsprechend anzuwenden, soweit nicht etwas anderes bestimmt ist. ' Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002. BGBl. I S. 42, 2909; 2003 I S. 738.

19 Code Civil Français, Article 515-14 : 'Les animaux sont des êtres vivants doués de sensibilité. Sous réserve des lois qui les protègent, les animaux sont soumis au régime des biens.' Créé par LOI n°2015-177 du 16 février 2015 - art. 2 (version consolidée au 3 janvier 2018).

20 Burgerlijk Wetboek, Article 2 a : '1 Dieren zijn geen zaken. 2 Bepalingen met betrekking tot zaken zijn op dieren van toepassing, met in achtneming van de op wettelijke voorschriften en regels van ongeschreven recht gegronde beperkingen, verplichtingen en rechtsbeginselen, alsmede de openbare orde en de goede zeden. ' 1.1.1992. Boek 3. Vermogensrecht. Geldend van 27-08-2015 t/m 25-11-2015.

21 Občanský zákoník, zákon č., Article 494 § 'Živé zvíře má zvláštní význam a hodnotu již jako smysly nadaný živý tvor. Živé zvíře není věcí a ustanovení o věcech se na živé zvíře použijí obdobně jen v rozsahu, ve kterém to neodporuje jeho povaze. ' 89/2012 Sb.

22 Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 (Stand am 1. Januar 2018): '2 Sauf disposition contraire, les dispositions s'appliquant aux choses sont également valables pour les animaux. ' (translation by the author).

23 In Finland, concerning 'wild animals', one can argue that animals living in the wild have a different legal position than other animals, under the constitutional protection of the environment. In the Government Bill to the Finnish Constitution, nature, of which wildlife is a part, is recognised to have intrinsic value. However, the recognition of nature's intrinsic value is not written into the Finnish Constitution (731/1999), Section 20, concerning the responsibility for the environment. Notwithstanding that the Government Bill is only a weakly binding source of law, it nevertheless, at least theoretically, creates a different legal position for animals in the wild than that which animals have under the Animal Protection

Generally, it can be noted that animals in private law contexts are objectified as 'property' and 'things', whereas they in public law contexts are considered mainly as 'objects of protection'. However, all existing legislation that relates to animals is thoroughly anthropocentric, which is the opposite to how animal law approaches legal questions. Animal law takes a zoocentric perspective as its starting point – going beyond the anthropocentric view. This raises a number of questions related to the evolution of animal law into its own discipline. Why and how does animal law differ from the other established disciplines? Cannot all issues related to animals be classified under the already established disciplines? If not, why not? What impact can animal law as a discipline in reality have on law and justice – or, in other words, on the human-animal coexistence? What kind of normative responses do we need to make as a society?

Law based on the perception of animals as 'objects of protection', 'things' or 'property' will not end the oppression of animals or the conventional exploitation of animals, nor will it develop society in a way that allows for a mutually respectful coexistence of humans and animals if animal protection legislation based on an anthropocentric view had such an effect, the changes towards a respectful co-existence would have already taken place. Partly for this reason, animal law is currently in a quite intense process of development. Although the discipline is young, the general doctrines of animal law are already beginning to be outlined.

By general doctrine, I refer to *principles* that express key values and goals in the doctrine and *theories* (and paradigms) that seek, inter alia, to define concepts and legal terminology related directly or indirectly to animals or human-animal relations. Guiding principles, which I will discuss in Section 3, refer to principles that seek to influence the development and application of legislation. Guiding principles differ from the legal principles in that they have less legal weight due to their non-binding nature. A guiding principle is considered to have become a binding legal principle when legislation is amended in line with the guiding principle or when the judiciary interprets content in accordance with the principle.[24] In other words: when the content of a principle is the lens through which an interpretation of black letter law is made, thus having a noticeable impact on the outcome.

The essence of animal law is to include in the legal system the best interests of an animal, assessed from a zoocentric perspective, or, as Frasch defines it: '*Animal Law is that field of study, scholarship, practice, and advocacy in which serving the best interests of nonhuman animal through the legal system is the primary goal.*'[25] The zoocentric perspective is at the very core of animal law and distinguishes it from all other disciplines. Generally, one could say that the aim

Act (247/1996). It is also significant that, unlike animal law, environmental law does not generally focus on animals as individuals, sentient beings, but rather on the species. Regarding the sources of law and their importance in Finland, see Juha Pöyhönen (ed), *An Introduction to Finnish Law* (Finnish Lawyer's Publication, 2nd ed, 2002).

[24] Ari Ekroos, Anne Kumpula, Kari Kuusiniemi, Pekka Vihervuori, *Ympäristöoikeuden pääpiirteet* (Helsinki: Sanoma Pro. 2012).

[25] Pamela D. Frasch, 'The Definition of Animal Law' (2019) Global Journal of Animal Law <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1668> accessed 16 September 2020. Note that in this particular issue of the journal there were several explanations of and attempts to define animal law. Frasch's definitions express the essence of animal law.

of animal law is to break away from the traditional legal subject-object dichotomy and the anthropocentric perspective of law, as well as to examine how animal interests are best protected from negative human impact through law. Thus, in animal law, we ask fundamental questions about the nature of a legal right or interest, how laws create or entrench (power) imbalances, and, most importantly, how those imbalances affect animals in terms of both *de lege lata* and *de lege ferenda*.

In addition, animal law is 'multi-jurisprudential'[26] in the sense that it overlaps with many areas of law, and multidisciplinary, as it extends into other areas of research, such as natural science, political science, and philosophy. Animal law is thus an accumulation of knowledge from a range of disciplines. At best, an animal law study is engaged in dialogue with several fields of law and scientific subjects, aiming to find the answers to the legal questions raised – as not all questions related to animals can be solved with expertise in law alone.

A change in perspective leads to a change in conclusions and outcomes. At the current state of development, the manifestations, contents, methods and aspects of animal law are still taking shape and being discussed. It is necessary for the evolution of animal law that they are regularly reviewed and redefined.

In my current understanding of animal law, the discipline has at least the six (6) following characteristics, which are more or less intertwined:

1. The keystone of animal law is to incorporate into the legal system the protection of the best interests of animals;
2. Animal law approaches legal questions from a zoocentric perspective, going beyond the conventional anthropocentric view;
3. Protecting animals from negative human impact is at the core of animal law;
4. Animal law is 'multi-jurisprudential';
5. Animal law is multidisciplinary;
6. The fundamental questions within animal law are universal[27].

The presence and importance of these characteristics in a study may vary with the subject under scrutiny. The fewer of these characteristics that are present in a study, the farther from the core of animal law that study is located. Thus, not all legal studies relating to animals should be considered as 'animal law' or be referred to as, e.g., 'administrative animal law' or 'criminal animal law'. The classification should depend on the lenses through which the research questions are raised. 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.* Similarly, 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. The difference in perspectives is crucial in making this distinction. Animal law, rather than being set under an established

[26] 'Multi-jurisprudential' is a term defined by Anne Kumpula in *EU:n ympäristöoikeuden perusteet* (2010) University of Turku, 3.

[27] For instance, the question concerning the legal personhood of animals is a universal question in the sense that it is significant and fundamental, regardless of the legal system in which it is raised.

discipline, forms its own interdisciplinary field because of its distinctive zoocentric perspective on legal questions, which goes beyond the conventional anthropocentric perspective.

Currently, the fundamental research topics in animal law are analyses of animal law as a discipline and of the legal status of animals in terms of legal theory and philosophy of law. Other typical research topics are examination and analysis of existing laws aiming to protect animals and their interpretation and application in case law. Especially in regard to the legal status and rights of animals, we are currently experiencing a period of transition in law and jurisprudence.

Animal law is taught at several law schools around the globe.[28] However, there are many branches of courses with differing focus and purpose that fall under the umbrella of 'animal law'. The first branch, and the most common, focuses on existing black letter law and case law. In other words, the focus is on the interpretation and application of animal protection legislation as understood within the welfare paradigm[29] and traditional law[30]. Even in such a course, the essence and characteristics of animal law should be present and the zoocentric perspective kept in mind, if it is identified as an animal law course. The second branch of courses raises critical questions concerning the meaning of legal terms such as 'subject of law', 'personhood', 'welfare', 'suffering', 'sentient beings', 'dignity', 'intrinsic value' and 'rights'. These courses focus strongly on the effectiveness of animal protection under law and on the rights perspective, thereby challenging the traditional doctrines. Courses in the third branch focus on law that regulates human actions with an indirect impact upon the lives of animals, without imposing either indirect or enforceable obligations upon humans to treat animals in a certain way or granting rights to them.[31] Examples could include courses on the purchase and sale of animals. The fourth branch includes courses focusing on animal law as a discipline, such as an 'Introduction to Animal Law' and courses on the historical and philosophical background of animal protection.

The term 'animal law' have been used quite loosely to refer to a wide range of courses related to animal issues. Making a distinction between the focus in the different courses serves to create a structure for important differences between what is 'animal law' and what is not, and what doctrinal, normative or

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[28] Animal law courses globally: https://www.google.com/maps/d/edit?mid=1Hdgt9cZy_JxSsv0QnAmJ_xAKQbU&ll=1.652326697308105%2C0&z=2 accessed 27 September 2020.

[29] Meaning also an orthodox view of legal personhood, which traditionally posits an interdependency between being a legal person and holding legal rights. Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019).

[30] See for instance the following textbooks: Joyce Tischler, Sonia Waisman, Katherine M. Hessler, Pamela D. Hart, *Animal Law: New Perspectives on Teaching Traditional Law: A Context and Practice Casebook* (Caroline Academic Press 2017); David S. Favre and Murray Loring, *Animal Law* (Quorum Books 1983); Birgitta Wahlberg, *Inledning till djurskyddslagstiftningen i Finland* (Lag och Bok 2014).

[31] Steven M. Wise, Nonhuman Rights Project Blog (2017) <https://www.nonhumanrights.org/blog/new-taxonomy-animal-law/> accessed 26 September 2020. Wise has named the three first branches 'Animal Welfare', 'Animal Rights' and 'Animal Regulation' courses.

other issues a course focuses on. However, it is more beneficial – given the multi-jurisprudential and multidisciplinary nature of animal law – that the contents of an animal law course encompass several of the branches, and multiple theories and paradigms at once. Most important is that the teacher has a clear view of the zoocentric perspective and is well-educated within animal law.

3 Outlining of a Theory that Combines Modern Legal Understanding and Principles

Legal scholars and philosophers have for a long time been debating, mainly from the points of view of will theory and interest theory, whether or not animals can hold rights. Likewise, there have been debates on whether an animal welfare approach or an animal rights approach is more effective for the protection of animals. Regrettably, this would suggest that the two concepts contradict one another, which they do not need to do. I will not refer to these debates in greater detail in this paper, but will instead gather the latest, modern theories and understandings about animal subjectivity, personhood, fundamental rights and other rights, to outline a theory within which all these elements are combined. Here, it will be presented conceptually, quite briefly, and normatively, in greater detail, using fundamental animal rights as an example of how to make the elements more concrete.

According to Pietrzykowski, the concepts of 'subjects of law' and 'legal persons' should be separated, mainly because a legal entity can be a subject of law without being a legal person. In his view, animals should be recognised as an own subject category: *non-personal subjects*. This would mean, at the very least, that the interests of animals must be taken into account in all decision-making affecting animals' viability.[32] With inspiration from Pietrzykowski, Kurki gave 'subject of law' a contextual meaning by defining that animals are 'subjects of animal protection law' and thus hold rights by virtue of animal protection legislation.[33] Furthermore, Kurki developed the Bundle Theory of legal personhood; in the animal law context this would mean that animals could become *passive legal persons* – that is, legal persons in certain respects. The main points that Kurki made were that legal personhood could be given on a sliding scale – an entity could be more or less of a legal person – and that an entity can hold legal rights even without being a legal person. This would remove the traditional idea of personhood as a prerequisite for the recognition of animal rights. The contents of a passive legal personhood could be stipulated in accordance with the interest of animals, and most strongly as fundamental

[32] Tomasz Pietrzykowski, *Personhood Beyond Humanism. Animals, Chimeras, Autonomous Agents and the Law* (Springer 2018), Tomasz Pietrzykowski, 'The Idea of Non-Personal Subjects of Law' in Visa AJ Kurki and Tomasz Pietrzykowski (eds) *Legal personhood: Animals, Artificial Intelligence and the Unborn* (Springer 2017) and Tomasz Pietrzykowski and Brunello Stancioli (eds), *New Approaches to the Personhood in Law* (Peter Lang Edition 2016).

[33] Visa AJ Kurki, *A Legal Theory of Legal Personality* (Oxford University Press 2019).

animal rights – although not all animals need necessarily have the same rights.[34] Both Pietrzykowski and Kurki have underlined that there are no doctrinal or conceptual barriers as to why animals could not be subjects of law and have personhood. From this follows consideration of their interests – meaning, at the very least, that animals would be assigned legal standing as a fundamental animal right. In practice, the right to be heard could be exercised by legal representatives under certain conditions laid down by law, as in the case of children and some people with disabilities. This kind of legal arrangements already exist, for example in the Finnish Nature Conservation Act (1096/1996) concerning associations' right to appeal.[35]

Stucki has defined *simple animal rights* and *fundamental animal rights* in order to distinguish between current weak animal rights and potential strong animal rights.[36] Weak animal rights, according to Stucki and in line with Kurki, are those rights that can be extracted from existing laws aiming to protect animals (animal protection laws/animal welfare laws). Stucki has underlined that even though the provisions in these existing laws are not framed as rights, they have all the ingredients to be interpreted as rights in a doctrinal and conceptual sense.[37]

Taking into account that these laws are positioned at the ordinary law level in the norm hierarchy, the simple animal rights become normatively weak *per se*, in relation to humans' legal status as defined by basic human rights. Second, as pointed out earlier in this paper, the content or substance of the provisions in existing animal protection laws, estimated from an animal perspective, can fundamentally vary depending on how humans want to use animals. From this follows, that the simple animal rights remain weak and unjustified in many ways, even from a factual point of view. Thus, even if one can say that a right is a right when it has certain specific doctrinal and conceptual ingredients, one can add that a simple right in itself will have no meaning for an animal if it does not have a positive impact on the animal's viability and welfare – or, in other words, on the animal's life. Otherwise, one could have a right, but not exercise that right in any way and one's life can be taken lawfully, even in contravention of that right. In a human context, that would be inappropriate, unjust and out of the question at any level of the law.

Stucki summarised simple rights as follows: '[…] animal's current legal protections may meet the minimal conceptual criteria for rights, but they do not

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34 Visa AJ Kurki, *A Legal Theory of Legal Personality* (Oxford University Press 2019) and Visa AJ Kurki, 'Ei vain oikeuskelpoisuutta – oikeussubjektikäsityksemme ongelmia ja uudelleenarviointia' [2018] Lakimies 5, 469–492.

35 The right of associations to appeal is also stipulated in the Finnish Environmental Protection Act (527/2014), Water Act (587/2011) and Waste Act (646/2011) and in the Swedish Environmental Code (1998:808).

36 Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' [2020] Oxford Journal of Legal Studies, 1–28 < https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqaa007/5862901> accessed 27 September 2020.

37 Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' [2020] Oxford Journal of Legal Studies, 11–19 < https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqaa007/5862901> accessed 27 September 2020.

perform the characteristic normative function of rights.'[38] That is why simple rights may, at best, serve as theoretical developments within jurisprudence for greater understanding and possibly as arguments in a courtroom, to make the interpretation and application of the current welfare provisions stricter and more in line with the zoocentric point of view.

Fundamental animal rights were defined by Stucki as follows: '[…] strong legal rights along the lines of human rights that are characterised by the cumulative features of substantive fundamentality and normative robustness due to their reduced infringeability.'[39] In contrast to simple animal rights, they are strong legal rights and normative responses serving to safeguard animal interests, protect animals from negative human impact and promote a respectful coexistence between humans and animals. Although fundamental animal rights and the basic rights of humans are not the same, they should, due to reasons of norm hierarchy, be held equivalent when weighed against each other. Thereby through recognition of fundamental animal rights, animals' legal status can be shifted toward legal personhood, in accordance with the Bundle Theory, to achieve a balanced assessment of the interests of humans and animals.[40]

The new ideas presented above can be summarised in following basic conceptual and doctrinal elements:

- Animals are holders of *simple animal rights*;
- Animals can be holders of *fundamental animal rights*;
- Both fundamental and simple rights can be granted to animals without first declaring animals to be 'subjects of law' or creating 'personhood' for them;
- Animals can be categorised as 'subjects of law', for example through *non-human subjectivity*;
- Animals' legal status can be strengthened in relation to humans by normative creation of a *passive legal personhood*.

Each of these elements is helpful for the development of animal protection by using normative responses to end the oppression of animals.

To be oppressed is to be subjected to the unjust or cruel exercise of power or authority.[41] In human rights law, the oppressed are defined by Morton Winston 'as a specially powerless and vulnerable class of persons because they are subject to forces that are beyond their control that deny them the ability to protect their most basic interests.'[42] He has characterised oppression as consisting of three

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[38] Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' [2020] Oxford Journal of Legal Studies, 19 < https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqaa007/5862901> accessed 27 September 2020.

[39] Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' [2020] Oxford Journal of Legal Studies, 20 < https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqaa007/5862901> accessed 27 September 2020.

[40] Visa AJ Kurki, *A Legal Theory of Legal Personality* (Oxford University Press 2019).

[41] Morton Winston, '*Human Rights as Moral Rebellion and Social Construction'* (2007) Journal of Human Rights 6:279–305, 287.

[42] Morton Winston, 'Human Rights as Moral Rebellion and Social Construction' (2007) Journal of Human Rights 6:279–305, 287.

elements:[43] 1) it relies on a range of different practices that together function to create the systematic nature of oppression; 2) the objects of systematic oppression are essentially unable to rescue themselves from their situation; and 3) objects of systematic oppression are oppressed because of a group identity. This means in the animal law context that: 1) the current anthropocentric laws aiming to protect animals (the weak simple animal rights) *de facto* maintain the oppression through the systematic and institutionalised exploitation of animals; 2) animals cannot save themselves from the oppression or the systematic exploitation; and 3) animals are exploited by humans because they are *animals* and as such seen as subordinate by humans.[44] From this follows that the contents of existing laws are a prerequisite for the continued oppression and systematic exploitation of animals, reflected in, for instance, conventional farming, transportation and slaughter of animals. Currently, with the traditional understanding of animals in law (the anthropocentric perspective and human interests), animals cannot be granted fundamental animal rights because 'they' are *animals*. This traditional understanding is also the reason why animal protection laws permit an amount of suffering, pain and killing of animals. Thus, the systematic and institutionalised oppression and exploitation of animals is created. The language used is, however, one of the opposite: protection and welfare. With no legal standing for animals, no one can raise a case. There is an urgent need of change: this is not only about fundamental animal rights, but also about the future for all of us. From this follows the questions of what fundamental rights animals should have and if all animals should have the same fundamental rights.

Animal rights do not appear in the constitutions of any of the Nordic countries. The recognition of animals as sentient beings, as written in the TFEU, Article 13, does not give animals a strong legal status in relation to humans or protection against negative human impact, nor does it safeguard animal interests.

Finnish legal scholars and jurists have proposed three guiding principles for animal law in the context of a proposal for constitutional animal rights. There are guiding principles – informed by the modern understanding of law as also zoocentric and the elements outlined in a new theory of animal legal rights – which underpin the recognition, legislation and interpretation of fundamental animal rights.[45] These guiding principles are the *Principle of Precaution*, the *Principle of Necessity* and the *Principle of Proportionality*.[46]

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[43] Morton Winston, 'Human Rights as Moral Rebellion and Social Construction' (2007) Journal of Human Rights 6:279–305, 287, 288.

[44] Birgitta Wahlberg, 'Re-Evaluation of Animal Protection By The Finnish Animal Rights Lawyers Society' (2019) Society Register 3(3):123–142 <https://pressto.amu.edu.pl/index.php/sr/issue/view/1434> accessed 26 September 2020.

[45] The principles were defined by Birgitta Wahlberg, Dr Soc. Sc. (public law), university teacher at Åbo Akademi University, Visa AJ Kurki, J.D., postdoctoral fellow at the University of Helsinki & Tarja Koskela, J.D., university lecturer at the University of Eastern Finland, Susanna Pirilä, LL.M. and Albert Jäntti, law students at the University of Helsinki and Roope Kanninen, law student at the University of Lapland.

[46] The proposal of a constitutional law amendment by the Finnish Animal Rights Lawyers Society: <https://www.elaintenvuoro.fi/english/> accessed 27 September 2020.

According to the Principle of Precaution, all animals are considered sentient unless there is evidence to the contrary. This provides room for the ever-changing scientific understanding of which animals are sentient.

The Principle of Necessity consists of two dimensions:

1) Fundamental animal rights may be limited only if this is necessary for the safeguarding of fundamental human or animal rights, and in that case, first, the restrictions have to be exact and sufficiently specifically defined, and second, the grounds for restriction have to be acceptable and necessary for a weighty societal reason.
2) Animals have a non-absolute/qualified/*pro tanto* fundamental right to life, meaning that an animal may only be killed if it is unavoidable and if there are no other feasible means to protect A. human beings (incl. self-defence), B. animals or some species, or C. the environment (for further details, see Section 4).

The principle does not limit a respectful coexistence between humans and animals, including keeping animals as companions, as it is considered important for the development of human empathy. However, keeping animals may not damage or negatively limit fulfilment of the animals' physiological, mental or behavioural needs or otherwise negatively affect their welfare or health.

The Principle of Proportionality is linked to the restrictions under the Principle of Necessity: these must be as small as possible in relation to the objective pursued. In addition, the restrictions must respect the core content of each fundamental animal right. When deciding on restrictions of fundamental rights, the fundamental rights of humans and animals must, as a default position, be considered equal.

In the following section, the focus will be on the fundamental animal rights as proposed by the Finnish Animal Rights Lawyers Society, in accordance with the aforementioned, expressed in concrete terms and in a language of rights. The fundamental animal rights is proposed as an amendment to the Finnish Constitution (731/1999) Chapter 2. The rights describe how passive legal personhood could be created in concrete terms and when animals can be understood as subjects of law. The proposal is divided into five sections: Section 1 concerns general terms of animal protection (four subsections); Section 2 deals with safeguarding fundamental animal rights (two subsections); Section 3 focuses on the fundamental rights of wild animals (two subsections); Section 4 examines the fundamental rights of animals dependent on human care (five subsections); and Section 5 is a prohibition on animal breeding. Their main contents are presented below.[47]

[47] The proposal is published as a whole on the society's webpage, to raise awareness. Here, only the main parts are presented.

4 An Example of Fundamental Animal Rights in Concrete Terms

4.1 General Terms on Animal Protection on Constitutional Level

> Sentient animals are individuals whose fundamental rights and welfare requirements must be fully respected by humans. All animals shall be presumed to be sentient unless otherwise can be determined.
>
> The interests and individual needs of animals must be taken into account in all private and public activities that have a significant impact on their living conditions or chances of survival.
>
> Animals have legal standing. Animals' rights to be heard shall be exercised by their legal representative. The legal representation of animals is further specified by law.
>
> Ensuring the rights, welfare and protection of animals is the responsibility of everyone.

Much like in Article 13 in the TFEU, animals are recognised as sentient beings in the proposal. Sentience is defined as a capability for experiencing positive and negative emotions. Sentient beings are seen as individuals and as having intrinsic value. However, it is currently not possible to make a precise distinction between sentient and insentient species, especially among invertebrates. The delimitation of sentient and insentient species is constantly changing and, when determining individual sentience in practice, the Principle of Precaution thus has to be applied for the benefit of the animal. Furthermore, respect for animal sentience entails that humans must protect a sentient being for its own sake as an individual. However, the capacities of an animal affect the intensity and scope of its experiences. This, in turn, is of relevance when assessing the optimal interests of the animal according to the best scientific understanding and knowledge. However, lack of scientific certainty or, for instance, cognitive capacity in an animal or species, cannot be an excuse for neglecting the fundamental animal rights.[48] The resolution of matters concerning an animal must be based on available scientific information on animal welfare, and if possible, available information on the animal's individual needs and habits. As already mentioned, the fulfilment of species-specific needs alone does not generally suffice in terms of animal law.

Based on Pietrzykowski's idea of what nonhuman subjectivity entails, perhaps the single most important basic requirement in the proposal is that animals' interests and individual needs must be taken into account in all public and private activities that have a significant impact on animals' living conditions or possibilities. In other words, to take into account and protect the interests of an animal or animals, in all relevant decision-making, in the best manner possible from an animal point of view and carefully balanced in relation to humans and other animals. The wording 'living conditions' refers to animals dependent on human care and 'living possibilities' to wild animals. An activity

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[48] Regarding the importance or meaninglessness of arguments about animal's cognitive capacities in legal contexts, see Joe Wills, 'Animal rights, legal personhood and cognitive capacity: addressing "levelling-down" concerns' [2020] Journal of Human Rights and the Environment 11(2) 199–223.

will substantially affect the living conditions or possibilities of an animal if it affects the fulfilment of the animal's fundamental rights granted under Sections 3–5 in the proposal.

The most recognisable characteristic of 'subjects of law' and 'legal personhood' is legal standing, which entails a right to be heard. Thus, in accordance with Section 1, animals would also have legal standing before authorities and in court. An animal's legal representative, authorised under an ordinary legal act, would have the right to speak on the animal's behalf. Such a representative must be heard in legal proceedings that concern the animal's rights or interests, and he or she could appeal decisions on the animal's behalf. As already mentioned, similar arrangements are not unusual concerning the rights of registered associations or foundations to appeal for instance as regards protection of nature. An animal's owner or keeper may represent the animal, if the interests of the animal and the owner or keeper are not in conflict.

Legal standing as a fundamental animal right, on the one hand, compels the legislator to legislate concerning the right to be heard and the right to representation, and on the other hand, presents to the authorities and courts, and to society in general, the interests of animals and fundamental animal rights alongside human interests and rights. One might be inclined to ask if, for instance, an ant needs the same legal standing as a cow. However, from an animal law perspective (zoocentric) and in line with modern understanding of animals as sentient beings, it would be odd to allot different kinds of legal standing and to differentiate between animals, giving some legal standing and others not. In accordance with the Principle of Precaution, the right of legal standing can be changed over time in an animal law context, if there is scientific certainty that an animal or a species is not sentient. In the meantime, will we see 'ant cases' in court? It may speak about my views regarding human activity, but I do not expect that inappropriate cases will be raised on behalf of animals (which is not to say that the protection of ants is inappropriate) – especially if requirements on who can represent an animal are clearly stated in a legal act. At very least, the possibility of such developments can be minimised.

According to Subsection 4, ensuring the fundamental rights, welfare and protection of animals is the responsibility of everyone. This means that everyone has an explicit duty to treat animals in accordance with the fundamental animal rights and the animal protection (welfare) regulations. This duty applies in relation to both animals dependent on human care and wild animals and does not depend on who the owner of the animal is or whether the animal is owned by anyone. The aim is a balanced assessment of the interests of humans and other animals. Responsibility for animals includes caring for the shared living environment and respecting all sentient individuals that live there, with due regard for their fundamental rights. This responsibility includes both the promotion of animal welfare and the elimination and prevention of suffering. The contribution of an individual person may take the form of anything from actively pursuing the protection of animals and the assurance of animal rights or passively refraining from actions that infringe upon animal rights. Although fundamental animal rights and the basic rights of humans are not the same, they are to be seen as equivalent when weighed against each other. The same applies when the rights in Sections 3–5 of the proposal are weighed against each other.

4.2 Safeguarding Fundamental Animal Rights

> Public authorities must safeguard the realisation of fundamental animal rights and develop society in a way which guarantees the fundamental rights of animals. Companies must respect fundamental animal rights in their activities.
>
> Fundamental animal rights may only be limited if it is necessary for safeguarding the fundamental rights of human beings or animals. Limitations have to be as minor as possible with regard to the pursued aim. The enactment of a limitation must respect the central content of said rights. The limitations have to be regulated by law.

The aim of Section 2 is to strengthen the status of animals as subjects of law by addressing specific responsibilities and raising awareness.

Public authorities must safeguard fundamental rights for every animal within their jurisdiction. Such safeguarding involves a constitutional mandate to develop legislation concerning animals and other initiatives to bring animal rights and interests to the attention of the public. In other words, society should be developed in a way so that a respectful and less violent coexistence between humans and animals is possible. The duties of the public authorities include actions that create such conditions, whereby the rights are protected against private violation. Naturally, public authorities must also refrain from infringing upon fundamental animal rights.

Furthermore, the fundamental rights of animals can only be restricted if this is necessary (see above regarding the Principle of Necessity and the Principle of Proportionality). When setting restrictions, the essential contents of a right must be respected. However, exceptional circumstances may justify a broader restriction, for example in a general emergency. Even in such a case, the restrictions should be kept to a minimum and be removed as soon as possible. Furthermore, the restrictions to the fundamental rights of animals must be regulated in an act (as opposed to, say, in a governmental decree).

4.3 Fundamental Rights of Wild Animals

> A wild animal has the right to life and the right to live in freedom, in its natural habitat.
>
> A wild animal has the right to receive help if sick, injured or otherwise incapacitated. If an animal is in a condition such that keeping the animal alive is obviously cruel, the animal has the right to be euthanised. Animals must in such cases be killed in the manner laid down by law.

The Sections 3–4 in the proposal stipulate the concrete fundamental rights of ‘wild animals’ and ‘animals dependent on human care’. The rights provided in Section 3 of the proposal apply to wild animals. A ‘wild animal’ means an animal that lives independently of humans, in a natural habitat. The fundamental rights of wild animals apply also to animals that have adapted to life in a human-made environment, e.g., cities, but that are not dependent on human care. Generally, it is forbidden to keep wild animals in a domestic setting. However, temporary capture is allowed to provide medical care to an animal or for other acceptable

reasons. An animal kept for the purpose of providing temporary medical care, or for some other acceptable temporary need, must be released into the wild when the animal's condition allows this, assuming it can re-adjust to life in the wild without any difficulties.[49]

According to Subsection 1, wild animals have the right to live in freedom and in their natural habitat. Three rights are guaranteed in this section:

- the right to life;
- the right to live in freedom; and
- the right to natural habitat.

The right to life is closely connected to the other rights protected under the subsection, since the right to freedom and the right to natural habitat also protect life. The right to life protects the animal from the deprivation of life either by killing or by causing the destruction of the animal's living possibilities. The right to life does not protect the animal from destruction and suffering that occurs in nature. The right to freedom includes the right to freely engage in the animal's natural behaviour, the right to move freely and choose location in the environment, and the right to bodily integrity. Bodily integrity refers to being protected against actions that could cause bodily harm. However, this right does not exclude the resettling of an animal to a more suitable environment, if the coexistence of humans and animals in the same area is impossible in practice. The right to live in the natural habitat protects the animal from such interferences with the habitat that will result in a decrease or elimination of the animal's chances to survive. This right takes precedence in situations where measures aimed at changing the environment would, if implemented, endanger the conditions for the welfare or life of an animal. Because the habitat requirements of animals can vary greatly, the right to live in their natural habitat must be examined in the context of the needs of the species and of the individual animal. Certain species require very specific living conditions, while others will thrive in a variety of habitats.

Everyone is required to make efforts to help a sick, injured or otherwise incapacitated wild animal. However, if the animal is in such a condition that keeping it alive would clearly be cruel, the animal must be euthanised in compliance with the applicable legal requirements, as required also by the Principle of Necessity to protect an animal. In assessing obvious cruelty, the animal's overall condition and its prospects for future life must be taken into account, in addition to any suffering.

4.4 Fundamental Rights of Animals Dependent on Human Care

An animal has the right to life as well as the right to perform natural behaviours and have its basic needs fulfilled.

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[49] If an animal requires permanent care and this can be arranged without infringing upon fundamental animal rights, the animal is considered as belonging to the category of animals listed in Section 4.

> An animal has the right to experience and express positive emotions, and the right to be protected against and free from fear, pain, distress and suffering caused by humans.
>
> An animal has the right to food and drink that is suitable for maintaining its welfare and health. An animal has the right to decide when to eat and drink.
>
> An animal has the right to a suitable living environment, including shelter and a resting area.
>
> An animal has the right to receive appropriate treatment without delay. If an animal is in a condition such that keeping the animal alive is obviously cruel, the animal has the right to be euthanised. Animals must in such cases be killed in the manner laid down by law, respecting the animal as an individual, sentient being.

The rights provided in Section 4 apply to animals that are dependent on human care. The rights in subsection 1 are closely interlinked to the other rights stipulated in Section 4. The right to life has two dimensions. First, an animal has the right not to be deprived of its life, intentionally or negligently. Second, the right to life entails a duty for humans to secure for the animal, by active measures, the conditions for its life. Such measures include preventive animal protection and health care.

Natural behaviour means any behaviour that the animal is strongly motivated to engage in and where such engagement reduces the motivation for said behaviour.[50] Natural behaviours vary between different animal species, but the main behavioural characteristics include movement, physical activity, grooming, exploration, feeding, playing, care and species-specific rest activities. The right to exhibit natural behaviours also entails a right to live alone or in a group, depending on the species.

Care, as a behavioural need, involves both taking care of another and being cared for. In other words, it involves the right of an animal to care for its offspring and the right of the offspring to be cared for. The right to natural behaviour also includes the behaviours that are necessary for the animal only in certain situations or stages of life, such as a calf's need to suckle or a sow's need to nest before farrowing. The right to natural behaviour requires that an evaluation be performed from both the perspective of the species and that of the individual animal.

Fulfilling an animal's basic needs means ensuring the rights stipulated in Section 4, so that the animal may fulfil its needs independently or with the help of human activity. Human activity could mean, for example, walking a dog so that the animal can engage in exercise and relieve itself outside. Fulfilling the rights stipulated in this section also means taking measures designed to prevent disordered behaviour and suffering in animals. According to the proposal, those measures would have to be specified in a legal act.

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[50] This definition is made by the Swedish professor emeritus in veterinary medicine Bo Algers in Bo Algers, 'Naturligt beteende – ett naturligt begrepp?' [1990] Svensk Veterinärtidning 42(12) 517–519. Available only in Swedish. Bo Algers, *Naturligt beteende – lagen och biologin. Djuren är väl också människor – en antologi om hälsa och välbefinnande i djurens och människans värld* (Sveriges lantbruksuniversitet, Institutionen för husdjurens miljö och hälsa, Avdelningen för husdjurshygien. Rapport 20). Available only in Swedish.

An animal has the right to experience and express positive emotions, as well as the right to be protected from fear, pain, distress and suffering caused by humans. These rights create both negative and positive obligations for humans. A person (human) must refrain from measures that cause suffering or other negative emotions to an animal. Furthermore, active attention has to be paid to the fulfilment of the rights.

An animal has the right to suitable food and drink in the amounts that are necessary for welfare and preserving health. The energy and food requirements of individual animals depend on the species, age, premises, air temperature, and physical condition and energy expenditure of the animal at a given time. A sufficient amount of food also means that the animal can experience satiety. The caretaker of the animal is responsible for meeting the animal's nutritional needs and for the suitability of the food provided. The right also encompasses that the food is provided in a manner that enables the animal to eat in a natural posture. The animal has the right to decide when to eat, according to its individual needs. The animal must not be overfed on purpose or due to negligence, so that the animal's welfare or health is adversely affected by excess weight. An animal species must not be bred in such a manner that its need to eat detrimentally affects the animal's welfare or health, leading for instance to obesity or constant hunger. If such a breed has already been produced, the breed may not be sustained by producing new members. Animal breeding and the prohibition on breeding are proposed to be explicitly regulated in Section 5.

Access to water is a fundamental physiological need of an animal. The water provided for an animal must be of good quality, sufficient in quantity and made accessible so that the animal can drink without difficulty. The animal has the right to decide when to drink, according to its individual needs. Therefore, water must be constantly available unless there are veterinary medicine reasons speaking against this.

Furthermore, an animal has the right to an appropriate living environment, including shelter and a rest area. The living environment must be sufficiently spacious, well-lit, clean, safe and appropriate with regard to the needs of the animal and the species. In assessing the appropriateness of the living environment, the other rights guaranteed by Section 4 must be taken into account. For example, when assessing sufficient spaciousness of the living environment, the right to the natural behaviour guaranteed in Subsection 1 must also be taken into account. Furthermore, an animal has the right to shelter, for example, from adverse weather conditions. The temperature of the shelter must be suitable for the animal's welfare. Therefore, access to shade or a cooler area must be granted in a hot environment, and access to appropriate heat in a cold environment. To fulfil the animal's need for rest, there must be a rest area in the living environment. The qualities of the rest area must meet the needs of the animal and be sufficiently large, clean and dry (or wet, depending on the species).

When an animal is dependent on human care, it has the right to receive appropriate medical care without delay. The responsibility for continuing appropriate treatment after veterinary or other medical care is completed falls upon the caretaker. The animal must also be guaranteed rest and a chance to recover after treatment. Like wild animals, animals dependent on human care

have the right to be euthanised if the conditions are such that keeping them alive would be obviously cruel.

The aim of Section 4 is to create a solid and comprehensive legal foundation for the balancing of different interests in human-animal relations.

4.5 The Prohibition on Animal Breeding

> An animal may not be bred in such a manner that the breeding would cause the animal or the animal's offspring physical or psychological harm, or would prevent the natural behaviour of the offspring. The prohibition on animal breeding shall be laid down in law.

The fifth section pertains to animal breeding. Notwithstanding that this Section prohibits breeding, it does not prohibit all breeding of animals. If the breeding is carried out respecting the requirements and rights stipulated in the proposal, it may be helpful for the health and welfare of animals under certain circumstances. It would then be in the best interest of the animal – or at least the offspring – and thereby be justified. Regulating the matter at the constitutional level gives breeding the level of gravity needed. Nevertheless, the main goal to strive for is that humans do not breed animals for human purposes.

When breeding is justified, the starting point should always be the best interests of the animal. Breeding must not cause any harm to the welfare or health of animals. Only physically and psychologically healthy animals may be used for breeding. It is prohibited to use for breeding animals that will suffer or might suffer physical or psychological harm as a result. An animal may not be inseminated or made to inseminate other animals against the will of either animal. This prohibition applies to both male and female animals.

5 Conclusion

The aims of this article were to clarify what Animal Law is, as a new legal discipline, to analyse and collate modern understanding of animals in law by outlining the theoretical elements they represent, and to present what these elements would mean, in legal terms, as fundamental animal rights legislated at a constitutional level.

The article showed that the core of Animal Law, which distinguish it from other legal disciplines, is the legal system serving the best interests of animals. This means that the field approaches legal questions from a zoocentric perspective, beyond the conventional anthropocentric view. By serving the best interests of animals as sentient beings, the discipline aims to protect animals from negative human impact and find solutions to end the systematic and institutionalised oppression and exploitation of animals. The methods used can be both 'multi-jurisprudential' and multidisciplinary in nature, and concern either national or universal questions.

Not all issues related to animals can be classified under the established, traditional legal disciplines, and not all legal questions that relate to animals and the human-animal relations can be solved using the traditional anthropocentric perspective of law. When the perspective is shifted, new results arise.

Notwithstanding that animal law cannot solve all existing problems, animal law can have a positive and fruitful impact on the balancing of human and animal interests. New solutions are urgently needed, especially in this era of animal industry, mass extinction of species, the climate crisis and pandemics. Fundamental animal rights are not just about animals, but also about the future for us all.

Never before in our shared history have so many animals been bred, kept and killed by humans. Never before have the living possibilities of wild animals been destroyed at a higher pace. And never before have we had more legislation in force to protect animals. It is obvious that animal protection laws and the simple rights that can be extracted from them do not effectively protect animals from negative human impact. The negative human impact referenced here leads to destruction of both animals and humans. This is in part because of the inefficiency in law, in part because of the torment and anxiety that animal exploitation causes in both animals and humans. New understandings of the injustice of oppression, subjects of law, legal personhood and fundamental animal rights have grown significantly during the last few years. These elements can be examined separately in terms of legal theory – and can also be brought together and given meaning in the form of strong fundamental animal rights.

Finnish legal scholars, now organised under the name Finnish Animal Rights Lawyers Society, have written a proposal to an amendment to the Finnish Constitution, creating both legal subjectivity and passive personhood for animals through fundamental animal rights. According to the proposal, the guiding principles of animal law – the Principle of Precaution, the Principle of Necessity and the Principle of Proportionality – would create the outer legal limits to the legislation and the interpretation and application of the law. If included in the constitution, they would serve as strongly binding legal principles. In particular, the Principle of Necessity forces both the legislator, authorities and courts to balance interests and to develop society to achieve a less oppressive coexistence of humans and animals.

The definition of the elements of oppression – which this article has shown are also well-suited for oppression of animals – forces society to a normative response. This article has also shown that the most efficient way to respond would be to recognise animals' fundamental rights at a constitutional level, based upon which other animal protection legislation could be created and balanced, for the benefit of us all.

Though the new understandings and developments of animal law have been anchored to the point from which there is no return, there are still mountains to climb. There are no indications that Animal Law is under sufficient development or that the need for normative responses to the oppression and exploitation of animals is decreasing. Unfortunately, given the current condition of our shared planet and coexistence, the situation seems to be the opposite. It is definitely time to use the legal tools we have in our hands.