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To which animals does animal welfare apply in law and why?

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Introduction

Over the past 15 years or so, in animal protection legislation nearly everywhere in the world, the notion of animal welfare has been gradually superseding the concept of prevention of acts of cruelty. But it may come as a surprise that the term "animal welfare" has never been defined in the legislation. There is a great risk of creating confusion between "animal welfare" and "good treatment" or the absence of bad treatment. Semantic traps left by presuppositions nearly always lead to misunderstandings.

Welfare is above all an emotional state. It is a state of ease produced by a combination of pleasant feelings for the animal. It not only requires the animal to be in good health and secure but also that its physiological and environmental needs are entirely and unreservedly being met and that the animal is able to express normal behaviour according to its biological rhythms. These needs are specific to each individual's species, gender and age. They can also vary depending on the time of day or year. This is why the general legislation on the protection of animal welfare needs to be broken down into specific regulations.

But can the notion of animal welfare that implies an emotional state be applied to the entire animal kingdom? For a biologist, animals are multicellular living organisms that can move by themselves at least at one stage in their development and feed off other organisms¹. Therefore, mussels and oysters, which feed off microorganisms suspended in water and have swimming larvae, are animals. Snails and earthworms, which are also farmed, are also animals, as are the millions of other invertebrates. However, can we legitimately have concern for the welfare of these animals with a nervous system that creates motor responses that are purely reflexes? Without an organ with cerebral functions able to store and process sensory information, these invertebrates are probably unable to feel sensations or emotions in the same way as animals such as vertebrates or even some invertebrates (cephalopod molluscs and some arthropods such as crabs, bees or spiders) that also have cognitive abilities².

This question led us to examine how animals are defined in the legal texts governing their protection. These general definitions fall into three main categories.

- The **utilitarian** categories are those first used in law.

There are a great many of these definitions, such as "goods" (property, in opposition to "persons"), domesticated animals, companion animals, farm animals, laboratory animals, captive wild animals, etc., to name but a few. It is important to note that all legislation on animal welfare or the prevention of acts of cruelty relates to animals held by man during all or part of their life cycle. It excludes wild animals living freely in nature. Laws governing wild animals do not protect individuals but aim to preserve or control some species' population numbers for ecological, health or food purposes. Only a few countries ban certain hunting, trapping or fishing techniques that produce particularly painful agony.

- A smaller number of **philosophical** categories were introduced into law at a later stage, including "creatures", "beings" and "non-things".
- Finally, **scientific** categories are the most recently introduced into law. These cover:

a) zoological classifications such as vertebrates, meaning animals that have a backbone and a skull containing their central nervous system (namely, mammals, birds, reptiles, amphibians and fish) or invertebrates (e.g. octopuses, crabs);

b) embryological development stages: such as free-living larval forms (able to feed themselves) and foetal forms;

c) forms of neurological sensitivity.

A quick overview of animal legislation around the world reveals the most significant definitions of animals, based on a few examples taken from various legislative texts from some thirty countries³.

I. Europe

1. European Union

The EU texts first defined animals by their zoological category of non-human vertebrates. Then, after drawing attention to their sentience, this definition was broadened to cover certain development stages: free-living larval forms (e.g. tadpoles) or foetal forms in the last third of their development, while certain texts also include a class of invertebrates, cephalopods (e.g. octopuses and cuttlefish).

- Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations

(Art. 2. a): "Animals' means live vertebrate animals"

- Council Regulation (EC) No 2009/1099 of 24 September 2009 on the protection of animals at the time of killing

(Art. 2.c): "Animal' means any vertebrate animal, excluding reptiles and amphibians"

- Treaty on the Functioning of the European Union (TFEU, 2007), consolidated version which entered into force on 1 December 2009

(Art. 13): "the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals"...

- Directive 2010/63/EU of 22 September 2010 of the European Parliament and the Council on the protection of animals used for scientific purposes

(Art. 1-3): "shall apply to the following animals: (a) live non-human vertebrate animals, including: (i) independently feeding larval forms; and (ii) foetal forms of mammals as from the last third of their normal development; (b) live cephalopods."

(Art. 1-4): "apply to **animals** used in procedures, which are at an **earlier stage of development** than that referred to in point (a) of paragraph 3, if the animal is to be allowed to live beyond that stage of development and, as a result of the procedures performed, is likely to **experience pain, suffering, distress or lasting harm** after it has reached that stage of development."

2. European states

The general definition of an animal is either philosophical or scientific, depending on the text or European country. This definition, limited to vertebrates or sometimes extended to invertebrates such as decapod crustaceans (e.g. shrimp), sometimes also refers to their sensitivity, whether it is specified or not as the ability to feel emotions.

Germany

- [Animal Protection Act of 24 July 1972 \(English\)](#)

(Art. 1): "shall serve to **protect the life and well-being of animals** based on the responsibility of human beings towards **creatures like themselves.**"

- [Civil Code \(amended by Art. 1.2 of the Act of 20 August 1990, pertaining to the improvement of the legal status of animals in civil law\) \(English\)](#)

(Division 2, section 90 a): "**Animals are not things.**"

- Decree of 1 August **2013** of the Federal Ministry of Food and Agriculture on the **protection of animals used for scientific purposes** transposing Directive 2010/63/EU of the European Parliament and of the Council⁴

(Art. 14-1):

1) [...] "vertebrates, the larval forms of vertebrate animals, as long as they are able to independently feed, the foetuses of mammals as from the last third of their normal development before birth, cephalopods;

2) "vertebrate animals at a stage of development before birth or hatching other than those mentioned in point 1, if these animals are able to live beyond that stage of development and can predictably experience pain, suffering or harm after they are born or hatched."

(Art. 39) [...] "*decapods*" [...]

Germany is the only country in the European Union to go beyond the guidelines of the 2010 European directive on the protection of animals used for testing. Indeed, it also includes the embryonic forms of birds and reptiles in the last third of their development before hatching, as well as decapod crustaceans, on the list of animals that must not be subjected to painful sensations.

Since 1990, Germany has also been one of the half-dozen European countries whose civil code makes a distinction between animals and things, as France has done since 1999.

France

- Civil Code

([Art. 515-14](#), created by Art. 2.1 of the Law of 16 February **2015** relating to the modernisation and simplification of law and procedures in the fields of justice and internal affairs)

"**Animals are sentient, living beings.** Subject to the laws that protect them, animals are subjected to the regime of goods."

- Rural and Maritime Fisheries Code

([Art. L.214-1](#), integrating Article 9 of the Law of 10 July **1976** relating to **the protection of nature**, by Ordinance of 21 September **2000**)

"**Every animal, as a sentient being,** must be placed by its owner in conditions compatible with the biological imperatives of its species."

([Art. R.214-87](#), transposing by Decree of 1 February **2013** Articles 1-3 and 1-4 of the European Directive of 22 September 2010 on the **protection of animals used for scientific purposes**)

"Living animal vertebrates, including free-living larval forms and foetal forms of mammals as from their last third of their normal development;

- free-living larval forms and foetal forms of mammals at an early stage of development than the last third of their normal development, if the animal is to be allowed to live beyond that stage of

development and, as a result of the procedures performed, is likely to experience pain, suffering, distress or lasting harm after it has reached that stage of development;

- live cephalopods."

Indeed, contrary to what has often been stated in the media due to a misinterpretation of the words "*biens meubles*" ("moveable property") where in French the term "*meuble*" should be taken as a synonym for "*mobile*" ("able to move") and not to mean "a piece of furniture", the French Civil Code, following its 1999 revision, already made a distinction between animals and things. It made a distinction between animals and "*corps*" ("bodies") as well as "*objets*" ("objects") such as tables or chairs, which it qualified in this case as "*de meubles meublants*" ("furniture").

By declaring since its 2015 revision in Article 515-14 that "animals are sentient, living beings", the new French Civil Code has the merit of removing this semantic ambiguity by highlighting a biological characteristic that separates animals from things.

Today in France, after the recent amendment to the Civil Code and the earlier one to the Rural Code, the definitions of animals are now based on their general sensitivity or individual sensitivity. Indeed, the two Codes are not entirely consistent with one another⁵.

Article 514-4 of the Civil Code means that all animals are sentient beings, while L.214-1 of the Rural Code implicitly means that certain animals are sentient beings while others are not. Is this an implicit reference to a degree or particular form of sensitivity that not all animals share? The ability to experience pain, distress and suffering, is one form among others⁶. It is made explicit in the Rural Code Article (R.214-87), regulating testing, introduced in 2013.

While it is not wrong to say that all animals are sensitive beings, it seems necessary to explicitly clarify the specifically animal form or forms of sentience concerned. Indeed, from a scientific point of view, plants are also considered to be sensitive living beings. While their form of sensitivity is not nerve-based as with animals, they have one nevertheless: plants detect light and react to it by directional growth, and some even have leaves that are sensitive to touch and react with rapid movement⁷.

Others would say that the form of sensitivity concerned by the law is implied, or obvious, and does not need to be qualified or defined. However, given the large variations in the meaning of the word "sensitivity" and readers' own sensitivities⁶, the law leaves the door open to an interpretation based on assumptions that are not necessarily rational, and not always favourable to the welfare of some animals. For instance, because an animal, a fish for example, is not as close to humans as a mammal, especially a pet mammal, we could justify a denial of its capacity to experience feelings, the form of emotional sensitivity that exists in addition to the simple sensory sensitivity common to all animals including invertebrates like oysters.

In 2013, the experts from the European Enforcement Network of Animal Welfare Lawyers and Commissioners showed that the vagueness of the term "*êtres sensibles*" in French, which does not fully translate the English term "*sentient beings*", qualifies them more as "beings able to experience sensations". Inversely, the French word "*sensibilité*", which is particularly ambiguous, is closer to the English word "sensitivity" than "sentience". These same experts also regretted the absence of a definition of animal welfare.

It also regrettable that in Article L.214-1 of the French Rural Code, which has remained the same for the past 40 years, the expression "**conditions compatible with its biological imperatives**" has not been replaced by a stricter and more suitable one: "conditions that **imperatively ensure its welfare**". Indeed, biological imperatives are not specifically animal any more than sentience. Plants also have biological imperatives: minimum vital needs for water, certain mineral nutrients and light.

Like plants, invertebrate animals reputed to have no emotional feelings, such as shellfish and bees, must not be treated with disrespect or negligence because of that, when all or part of their life cycle is dependent on humans. Even if only for the farmer: out of respect for himself and his work, these animals should be carefully kept in conditions "compatible with their vital needs".

It is important to note that three European countries - the Czech Republic, Greece and Poland - were the first to specify, more or less, the form of sensitivity concerned in their broader legal definition of an animal.

Czech Republic

- Act No. 246/1992 on the Protection of Animals against Acts of Cruelty.

(Preamble): "Animals, like humans, are living beings and are therefore capable of experiencing various degrees of pain and suffering."

(Art. 3 a): "Animal: means a live vertebrate, other than man, excluding foetal or embryonic forms."

Poland

- Act of 21 August 1997 on the Protection of Animals

(Art. 1): "The animal as a live creature, capable of suffering, is not a thing."

Greece

- Law No.4039 of **2012 concerning domestic and stray companion animals** and the **protection of animals** from any exploitation or use for economic profit.

(Art. 1.a): "Animal means any organism that can feel emotions and lives on land, in the air or the sea, or any other aquatic ecosystem or wetland."

In other European states, the legal definition given to animals depends on their zoological classification and depending on the case, extends either to the entire animal kingdom of vertebrates and invertebrates, or only to vertebrates. Here are seven examples of definitions ranked from the most restrictive to the broadest.

Switzerland

- Federal Law on the **protection of animals** of 16 December 2005

(Art. 2.1): "applies to **vertebrates**. The Federal Council decides to which invertebrates it applies and to what extent. In doing so, it is guided by scientific knowledge on the sensitivity of invertebrate animals."

United Kingdom

- Animal Welfare Act 2006

(Art. 1. 1, 2 and 3): "“animal” means a vertebrate other than man except its foetal, larval or embryonic form. This definition can be extended by decree to include invertebrates."

Finland

- Animal Welfare Act 247/1996 amended 2006

(Art. 2.1): "applies to **all animals**."

Estonia

- Animal Protection Act of 13 December 2000

(Art. 2.1): "Animal: all mammals, birds, reptiles, amphibians, fish or invertebrates."

Malta

- **Animal Welfare Act of 8 February 2002**

(Art. 2): "'Animal' means all living members of the animal kingdom, other than human beings, and includes free-living larval and reproducing larval forms, but does not include foetal or embryonic forms."

Norway

- **Animal Welfare Act of 10 July 2009, applied on 1 January 2010**

(Art. 2): "The Act applies to conditions which affect the welfare of or respect for mammals, birds, reptiles, amphibians, fish, decapods, squid, octopuses and bees. The Act applies equally to the development stages of the animals referred to in cases where the sensory apparatus is equivalent to the developmental level in living animals."

Ireland

- Animal Health and Welfare Act No. 15 of 29 May 2013

(Art. 2-1): "'animal" means a member of the kingdom *animalae* other than a human being."

North America

1. Canada

It should be noted that on the American continent, the laws of the Quebec province of Canada are modelled on those of France. Indeed, the National Assembly of Quebec recently passed a bill that changes the Civil Code's definition of animals from "things" to "sentient beings with biological needs". This change is directly inspired by Article L.214-1 of the French Rural Code and the new Article 515-14 of the French Civil Code.

An animal welfare and safety act was also passed. In this act, the definition of an animal is utilitarian and restricted to certain mammals, birds and fish. It does specify their biological needs.

Province of Quebec

- Act of 4 December 2015 to improve the legal status of animals and pass a law on animal welfare and safety

(Art. 1): adds to the Civil Code Article 898.1 (2): "**Animals** are not things. They are **sentient beings that have biological needs**. In addition to the provisions of special Acts, which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals.

(Art. 7)

(1) [...] "'animal', used alone, means: (a) a domestic animal, being an animal of a species or a breed that has been chosen by man to meet certain needs, such as cats, dogs, rabbits, cattle, horses, pigs, sheep, goats and chickens, and their hybrids;

(b) red foxes and American mink kept in captivity for breeding purposes with a view to dealing in fur, as well as any other animals or fish that are kept in captivity for breeding purposes with a view to dealing in fur or in meat or in other food products, and that are designated by regulation."

(5) "**biological needs**: are related to such factors as the animal's species, breed, age, stage of growth, size, level of physical or physiological activity, and state of health and those related to the animal's capacity to adapt to the cold or heat."

2. United States of America

Federal law

The American federal rural law's definition covers a very limited list of mammal and bird species kept as pets or used for experiments or entertainment.

- Code (1998) USA. Title VII, Chapter 54 A "**Animal Welfare Act**"

(section 2132, g): "The term 'animal' means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, or exhibition purposes, or as a pet.

But such term excludes (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes."

As a result, in its chapter on animal welfare, the American federal law explicitly excludes any measure of protection for both birds and mammals used for food and textile production, reptiles, amphibians, fish and invertebrates. It also excludes rats and mice used for research purposes.

We could almost include, on a humorous note, American director Woody Allen's definition of a mouse: "A mouse is an animal that, when killed in sufficient quantities, under controlled conditions, produces a doctoral thesis."

The US federal definition of animals, one of the most restrictive in the world, shows how poorly the protection of animals is presented in American law. The EU should pay particular attention to this when negotiating the Transatlantic Free Trade Agreement⁸.

States of the United States of America

However, the criminal laws of the federal capital (Washington DC) provide a very broad definition of animals, and several other states, such as Arizona and Alaska, include vertebrates in this definition except for fish. Oregon's state law is remarkable in that it is the first to refer to a specific form of sensitivity, the capacity to experience unpleasant emotions, as directly inspired by the European directive on the protection of animals used for scientific purposes.

Alaska

- Criminal law (Art. 11.81 900) (December 2007)

b) 3) "Animal: means a vertebrate living creature not a human being, but does not include fish."

Arizona

- Act 2012 (HB 2870) relating to cruelty to animals

(13-290. Art. H.1): "Animal: means a mammal, bird, reptile or amphibian."

District of Columbia

- Criminal law (2013)

(Art. 22-1013): "The words animals or animal shall be held to include all living and sentient creatures."

Oregon

- Senate Bill 6 (2013) related to animals

(Art. 1. 1): "Animals are sentient beings capable of experiencing pain, stress and fear."

Asia

The definitions of the term "animal" are mostly utilitarian and can cover any domestic or captive wild animal. In certain countries, such as India, they can be philosophical and include the entire living world.

1. Bangladesh

- [The Cruelty to Animals Act, 1920](#)

Preliminary (Art 3.1): "Animal means any domestic or captured animal."

2. Myanmar

- [Animal Health and Development Law No. 17/93 of 25 November, 1993](#)

(Art. 2. a): "Animal means domestic animal bred by man or captured for a certain purpose. This expression also includes the semen, ovum or embryo of the animal."

3. India

- [The Prevention of Cruelty to Animals Act, 26 December 1960](#)

(Art. 2 a): "'animal' means any living creature other than a human being."

4. China (Provinces)

Hong Kong

- [Prevention of Cruelty to Animals Act No. 331 of 30 June 1997](#)

(Art. 2): "'Animal' includes any mammal, bird, reptile, amphibian, fish or any other vertebrate or invertebrate whether wild or domesticated."

Africa

While most definitions of an animal used on the African continent are utilitarian and restricted to vertebrates only, Tanzanian law stands apart. It gives a broad scientific definition that includes invertebrates and is one of the only laws in the world to specifically define not only sensitivity but also the five freedoms of animal welfare, taking inspiration from the definition given by the World Organisation for Animal Health.

1. South Africa

- [Animal Protection Act of 1 December 1962](#)

(Art. 1): "'Animal' means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person."

2. Zimbabwe

- [Prevention of Cruelty to Animals Act 1969](#)

(Art. 2): "'animal' means — (a) any kind of domestic vertebrate animal; (b) any kind of wild vertebrate animal in captivity; (c) the young of any animal referred to in paragraph (a) or (b)."

3. Tanzania

- [The Animal Welfare Act No. 19 of 6 December 2008](#)

(Art. 3): "'Animal' means any vertebrate or invertebrate other than a human being."

"sensitivity' means capability of an animal to be aware of sensations, emotions, feeling pain, suffering and enjoying its species-specific needs."

(Art. 4) ...every person exercising powers under, applying or interpreting this Act shall have regard to: a) ensuring that animals are cared for according to their universally-adopted five **freedoms that include - (i) freedom from hunger, thirst, and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical discomfort; (iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behaviour;** b) recognising that (i) an animal is a sentient being and **(ii) animal welfare is an important aspect of any developed society**, which reflects the degree of moral and cultural maturity of that society;

Oceania

Oceania uses some of the most advanced general definitions, which are based on science. In some Australian states, the definition is limited to vertebrates other than humans and fish. However, in others, in Victoria for example and in New Zealand, which also recognises animals as "sentient beings", this definition is extended to all vertebrates, including their free-living larval forms and antenatal forms during the second half of their embryonic development. These include two categories of invertebrates: cephalopod molluscs and decapod crustaceans.

1. Australia (States)

Northern Territory

- Animal Welfare Act of 1 May 2014

(Art. 4) "'animal' means: (a) a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile; (b) a live fish in captivity or dependent on a person for food; or (c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption."

Victoria

- Prevention of Cruelty to Animals Act 1986, as amended in 2013

(Art. 3): "Animal means (a) a live member of a vertebrate species including any (i) fish or amphibian that is capable of self-feeding; or (ii) reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or (b) a live adult decapod crustacean, that is (i) a lobster; or (ii) a crab; or (iii) a crayfish; or (c) a live adult cephalopod including (i) an octopus; or (ii) a squid; or (iii) a cuttlefish; or (iv) a nautilus."

2. New Zealand

- Act No. 142 of 1999 and Amendment of No. 2 of May 2015 relating to the welfare of animals in order to recognise that animals are sentient

(Art. 2.) (a) Animal : means any live member of the animal kingdom that is—(i) a mammal; or (ii) a bird; or (iii) a reptile; or (iv) an amphibian; or (v) a fish (bony or cartilaginous); or (vi) any octopus, squid, crab, lobster, or crayfish (including freshwater crayfish); or (vii) any other member of the animal kingdom which is declared from time to time by the Governor-General, by Order in Council, to be an animal for the purposes of this Act; and (b) includes any mammalian foetus, or any avian or reptilian pre-hatched young, that is in the last half of its period of gestation or development; and (c) includes any marsupial pouch young; but (d) does not include (i) a human being; or (ii) except

as provided in paragraph (b) or paragraph (c), any animal in the pre-natal, pre-hatched, larval, or other such developmental stage."

Conclusion

As this overview of international law shows, some countries may still have narrow animal protection laws that only cover the prevention of acts of cruelty or are limited to warm-blooded vertebrates, or even a small portion of these. But thanks to a new and favourable worldwide trend that has developed over the past decade⁹, legislation relating to animals living under human care is moving towards protection of their welfare. This legal shift comes as a result of both new ethical demands from society and accelerated progress in scientific understanding of animal behaviour.

Utilitarian definitions have lost ground. They no longer see animals as things and state that they are living, **sentient** beings. Today, the definitions provided by law in a number of countries (of which some of the best models come from Victoria in Australia, Norway, New Zealand and Tanzania) scientifically describe which living creatures they cover: vertebrates and several stages of their embryonic or larval development as well as cephalopod and decapod invertebrates. These are animals whose capacity to experience emotions has been proven or is possible, according to current scientific data. Which in this case, comes down to adopting the ethical principle that Pr. Jean-Claude Nouët rightfully qualifies as the principle of presumption (Nouët, 2013).

Is it possible to ensure the welfare of animals, sensitive beings or capable of sensitivity, globally if these three terms are not given an accurate, scientific definition in law? Let us consider the question. When we talk about good levels of animal welfare, are we not using the reassuring terms of positive communication? Would it not be best to talk about tolerable levels of "animal suffering"? And if so: tolerable where, for whom and why? Should we not bear in mind, to paraphrase Albert Camus' famous quote, that "*to misname animals, their sensitivity and welfare, is to add to the misery of the world*"?

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