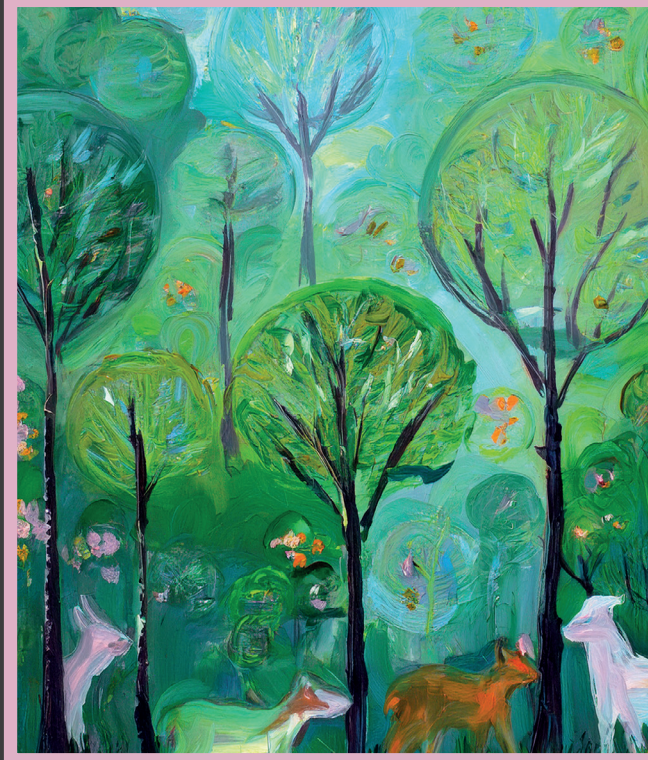
Animal Rights

The Role of the EU Charter



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Ester Herlin-Karnell & Matilda Arvidsson

Animal Rights

The Role of the EU Charter

Verfassungsbooks
ON MATTERS CONSTITUTIONAL

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Animal Law Jurisprudence in the EU and Beyond

The Role of the EU Charter of Fundamental Rights

Animals have largely been left out in EU law scholarship and environmental law studies, with few exceptions (see Eppstein/Bernet Kempers[1], Platvoet[2] and Sowery[3]). The role of the EU Charter of Fundamental Rights has not been discussed to any greater extent. In this edited volume, we discuss the pros and cons of the EU Charter for securing sufficient animal protection in the Member States. More specifically, the contributions in this volume explore a number of questions such as that of the legal standing of animals and animal rights in the context of the EU, and reflecting on the relationship between animal rights and the EU. It grows out of a workshop we held at the University of Gothenburg, Sweden, titled "Animal Law Jurisprudence in the EU and Beyond". The motivation for the workshop was to try to bridge the discussions between law and theory. So, coming from a variety of perspectives, the edited volume brings together EU constitutional law, jurisprudence, and transnational legal theory to reflect on the role of the EU Charter for securing animal rights and protection.

Human-animal relations under EU Law

The EU Charter of Fundamental Rights currently does not explicitly mention animals. The Charter emerges from a rights-based tradition that places the human at its centre, setting it apart from and above non-human animals, as well as the environment, which conditions human existence. While scholars divide on questions of human exceptionalism,[4] the necessity of anthropocentrism in rights based approaches and jurisprudence,[5] and related questions,[6] this edited volume aims to take the Charter at face value, asking about human-animal relations under EU law: Are fundamental values of dignity, freedom,

equality, solidarity and justice for humans only, or are some or several aspects of those values already extended to non-humans? Should the EU Charter include specific and codified rights for animals, too?

Probing this relationship, contributors ask what role there is for the EU – EU law as well as law and jurisprudence more broadly – in mediating relations between human animals and non-human animals. What can and should lawyers claim in the name of animals, and towards what ends? How does the question of the animal sit within an ecology of contemporary jurisprudential thought? As part of "the environment" or as a legal subject in its own right? How do EU law and scholarship address (illegal) trade and hunting, profiteering, and global value chains relying on animal lives as a resource? These are just a few of the specific questions this book takes on to address. Some of these questions have been posed by scholars of animal law and jurisprudence elsewhere, in relation to specific parts of EU law,[7] and in relation to law and jurisprudence more broadly.[8] To bring these questions into conversation with EU law and fundamental rights is both timely and original, as the question of global sustainability for humans and non-humans alike is becoming increasingly pressing.

The contributions address the question of the role of the EU in securing sufficient protection for different animals in a variety of situations and contexts in the Member States and the EU. In doing so, all chapters discuss the potential function, if any, of the EU Charter in this regard. Specifically, some authors argue for the inclusion of animal rights into the EU Charter, while others argue against EU law regulating animals through anthropocentric law rights (in the Charter) and instead suggest duties towards animals without calling them rights.

Rights and obligations

Hans Lindhal begins the edited volume with a contribution on animal rights in the Charter and human obligations. Lindhal argues that the incorporation of animal rights into the Charter risks having a largely ideological function and deflects attention from the urgent task of reconfiguring EU law away from capitalism. Lindahl suggests that such a transformation must coincide with what he refers to as "the adoption of a European Charter of Fundamental Human Obligations" which articulates "non-negotiable, non-commodifiable duties of human agents, both individual and collective, toward other-than-human life". In a similar vein – but with an arguably more hopeful vision of the potentials of the current EU Charter in the future – **Poul F Kjaer** argues in his contribution that animals do not enjoy a particular or special status in the EU Charter and are not given a particular legal form in Global Value Chain Law. More specifically, he contends that this absence is significant, as it opens space for deeper reflection on how law has historically perceived both animals and humans, ultimately suggesting that the divide between the two may be far less pronounced than commonly assumed.

Maneesha Deckha discusses the question of animal law and fundamental values of the EU Charter from a somewhat unexpected angle: the right to education. Invoking Article 14, she argues for a child's right to non-anthropocentric education. Early "pro-animal interventions" are, she holds, particularly important as they help shape climate literacy and pave a road towards the protection of a healthy environment (Article 37).

Next, and uniting animal law and environmental questions, **Sara de Vido** examines the relationship between animals and the EU Charter from an ecofeminist approach to EU biodiversity law, focusing on the case of hunting. She embraces an ecofeminist legal reading of EU biodiversity law in an attempt to eradicate patterns of discrimination and domination present both intra- and inter-species, and to "learn" how to legally consider non-human animals as part of an environment in which we all belong. De Vido argues that ecofeminism can add a valuable dimension to EU biodiversity law.

Also connected to the question of biodiversity and hunting is the contribution by **Bertjan Wolthuis**. Wolthuis suggests that wolves have the right to be on Earth. Specifically, he argues for a duty to restore the habitats and natural infrastructure used by wolves, so that wolves can find natural prey and need not turn to livestock.

In the context of the broader EU constitutional questions and the status of animals, **Ester Herlin-Karnell** argues that the EU has a duty to respect animals and that animal welfare and rights should be included in the EU Charter. Moreover, she argues that the EU is already equipped with the right legal tools to include animal welfare and rights into its *acquis*. In doing so, she discusses the implications of sustainability and solidarity. She concludes that not taking into consideration the rights and interest of animals amounts to domination and could have crucial implications as to how the EU is perceived globally. Subsequently, **Yaffa Epstein** and **Eva Bernet Kempers** examine potential rights for animals and nature in EU law, particularly in light of the EU Charter. Epstein and Kempers employ a Hohfeldian framework to examine animal rights and interests. They argue that similar justifications can support both the rights of

nature and the rights of animals, suggesting that recognising nature as a rights holder could benefit animal rights, and *vice versa*. Epstein, Kempers, and Herlin-Karnell all explore the role of dignity in shaping legal approaches to animal rights and draw parallels with the rights of nature. While they approach the topic from slightly different perspectives, they agree on the potential significance of dignity for the future of animal rights and EU law, including the EU Charter.

Nina Braude in turn, discusses animals in the context of the "best available science" standard, which has become a feature of environmental decision-making, sitting at the interface between science, law, policy and conservation. She discusses two recent high-profile disputes over fishery closures – one in the UK-EU context, the other in South Africa – that have illustrated that the "best" science is not always discernible, that there is no such thing as a "singular science", and that conservation and resource management decisions do not simply apply scientific "facts". As Braude shows, the scientific material accessed and used by decision-makers are entangled with multiple sciences, "truths", power-plays and uncertainties. Braude explores how the EU v UK "Sandeel case" before the Permanent Court of Arbitration (PCA) (previously discussed by Kassoti[9]) and the "Penguin case" before the High Court of South Africa, splintered the scientific black box – and yet reconstructed "science" to maintain the appearance of certainty, uphold deference to decision-making, and reinforce the authority of legal expertise. This dynamic is particularly revealing in the context of ongoing debates around the role of science in the EU Charter framework.

In the final contribution, **Ester Herlin-Karnell** addresses the important issue of high veterinary costs and the lack of price

regulation across several EU Member States. For the rights enshrined in the Charter to have an impact – and for Article 37 on sustainability to function as a dynamic and evolving principle in relation to animal welfare – the current state of largely unregulated veterinary pricing warrants critical examination. It should not be up to large corporations to decide whether we can afford to treat animals or not.

An invitation to reflect

We have invited our contributors to reflect on the significance of the EU Charter. The aim is to explore the extent to which the Charter's rights can be interpreted beyond their traditional anthropocentric focus on human entitlements. While the authors in this volume may differ in their views on the Charter's relevance in this context – and on whether it is within the EU's remit to regulate matters concerning animals and nature – fostering such debates is crucial. These discussions will hopefully help bridge diverse fields of scholarship and encourage interdisciplinary dialogue. We invite our readers to reflect on the question of animal rights and welfare on how to understand and apply the EU Charter in the future.

The workshop was generously supported by the Swedish Network for European Legal Studies (SNELS) to which we are very grateful.

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Hans Lindahl

A European Charter of Fundamental Human Obligations

Animal Rights in the EU

The effort to anchor animal rights in the European Charter of Fundamental Rights has gained relevance in light of the widespread commodification of animals within the EU's market-driven integration process. While commendable in principle, incorporating animal rights into the Charter risks serving a largely symbolic function if it diverts attention from the more pressing task of reconfiguring what I take to be the six foundational institutions of private law in capitalist political economy: property, contract, corporation, tort, labour, and consumption. These institutions reinforce the binary between the human subject and the other-than-human object, a division that enables the commodification of non-human beings. Reconfiguring these institutions must go hand in hand with the adoption of a European Charter of Fundamental Human Obligations – one that articulates non-negotiable, non-commodifiable duties of human agents, both individual and collective, toward other-than-human life.

The commonality of the EU's common market: a human "we"

Whatever else it is and might aspire to become, the point of collective action by the EU is first and foremost the enactment of an internal market. And while the phraseology of EU law has shifted from referring to a "common" to an "internal" market, this should not blind us to the fact that integration into an internal market involves the claim that the market is common to all of us, that it is the expression of our unity – of what renders economic activity the articulation of what we hold in common. Obviously, this claim is not only contestable but

continually contested, and in two ways. Indeed, I take it that politics in the EU turns on two questions. The first: Does the operation of the internal market live up to the claim that it is a common market? The second: Is the enactment of an internal market what we ultimately hold in common? The first of these questions is, as it were, the bread-and-butter politics of the EU, namely, the incessant efforts to regulate the market economy with a view to realising the common values laid out in Article 2 of the TEU. The second points to a more fundamental and critical political question, namely, whether a capitalist market economy is what ultimately – even if not only – joins "us" together as a collective that would call itself European. This question resonates, amongst others, in the slogan "Another Europe is possible".

The question about animal rights brings a new dimension into play with regard to both questions. For the referent of the commonality which straddles both questions is a human collective: The "we" that is invoked when seeking to realise or to contest the realisation of a common market is a human collective situated in a natural environment rendered available for the realisation of human ends. This, roughly, is what we have called "collective self-legislation" as the core of authoritative lawmaking. As François Jullien notes, "the common is what we are a part of or in which we take part, which is shared out and in which we participate".[1] It is an originally political category to the extent that it is what allows us to belong to a community. The commonness of community has a variable extension, both in terms of what is held in common as well as who holds something in common. As a result, commonality is an ambiguous achievement: "if the common is what I share with others, it is also, due to this fact and following this dividing line (which

stands as a line of demarcation), that which excludes all others." In short, the common "is at once inclusive and exclusive". Insofar as it seeks to articulate the commonality implied in the notion of collective agency, politics is a politics of setting and contesting the boundaries of the "we".[2]

A more-than-human "we"

Hitherto, the politics of the EU has focused largely on the process of setting and contesting the boundaries of what counts as the commonality of the internal market. While the contestation of the boundaries of the market involves a more radical questioning of the boundaries of collectivity, such contestation has largely focused on what defines "us", a human collective, as European. The largely unspoken and unthematised presupposition about what counts as the internal/external boundary of Europe is that it joins "us" to and separates "us" from other human collectives.

The question about animal rights shows that an EU politics of boundaries has been largely predicated on a more fundamental one: the boundary between society and nature. One would distort the operation of a European politics of boundaries if one were to suggest that the EU simply included humans and excluded nature; instead, nature is included as the object of legal relations between human subjects. The human subject/other-than-human object (S/O) binary operationalises the concept of law as a human collective located in a natural environment rendered available for the realisation of human ends. Notice that this disjunction also holds when the legal subject is a corporation or another fictive legal person, which, even if distinct from the human subjects who compose them, have

human subjectivity and agency as their basis. Accordingly, the initiative to grant rights to other-than-human animals makes clear that inclusion of the other-than-human in EU law is also, and constitutively, its exclusion from this legal order because it is included as the object of legal relations between human beings who aim to further their purposes.

Attributing rights to animals in, say, the Charter of Fundamental Rights of the European Union, destabilises the S/O disjunction by shifting a class of other-than-humans that have fallen under the category of legal objects to the category of legal subjects. As such, those animals to which rights are granted become part of the collective: they are recognised as members of a European "we", regardless of the differences between their rights and those accruing to human beings. Christopher Stone's famous article, "Should Trees Have Standing?"[3], summarises inclusion of the excluded by way of their recognition qua rights-holders as follows: we "recognize more and more the ways in which nature – like the woman, the Black, the Indian and the Alien – is like us". One would have to ask who is the "us", to which Stone understands himself as belonging, which would welcome women, Blacks, Indians, and Aliens into their midst. I leave that question unanswered. The interesting question is here whether recognising other-than-human animals as the subjects of rights under EU-law overcomes the dynamic of exclusion through inclusion.

Destabilising the human subject/other-than-human object binary

Quod non. Instead of disturbing the S/O binary, assigning rights to other-than-human beings entrenches it. Animal rights enact a just redistribution in accordance with the S/O dichotomy, not a novel criterion of distributive justice. In a particularly lucid critique, Álvarez Nakagawa notes that

> *"while it is not trivial to say that non-humans are subjects of rights, doing so in the current conditions merely implies moving them from one end to the other of the legal binary, therefore keeping intact the subject/object – person/thing underlying scheme. As occurs with corporations and other fictive persons, this indirectly works to assert human beings as the true and original legal subjects. Therefore, extending the scope of rights and legal subjectivity to non-humans does not necessarily remove anthropocentrism from the law; on the contrary, it can be its ultimate realization."*[4]

Accordingly, assuming that the integration of other-than-humans into a legal order marks the emergence of a more-than-human collective, can become the unwitting entrenchment of what their integration was supposed to overcome. Specifically, assigning rights to animals runs the risk of concealing or obfuscating the political economy of globalised capitalism that underpins the commonality claimed for the European internal/common market. I do not dispute that animal rights have a certain role to play in the two central political questions I

flagged hitherto. My concern, rather, is that striving to incorporate animal rights into the Charter of Fundamental Rights deflects attention from the urgent task of reconfiguring what I take to be the six basic institutions of private law operative in the political economy of capitalism: property, contract, corporation, tort, labour, and consumption. These institutions must be submitted to relentless and meticulous examination to expose how the S/O dichotomy continues to govern their operation. And only if these institutions can be drastically transformed, gearing them to realising more-than-human ends, however provisional such claims to commonality might be, will rights of animals be more than a largely ideological veil for capitalism as it plays out in the process of European economic integration.

This cautionary and cautious approach to animal rights has an important implication for the general theoretical question about the concept of authoritative lawmaking that informs our understanding of EU-lawmaking. A wide range of theoretical initiatives seek to undo the anthropocentrism at work in the modern concept of collective self-legislation by a human collective situated in a natural environment rendered available for the realisation of human ends. Against anthropocentrism, they forefront ecocentrism. The caveat I have lodged about the S/O disjunction suggests that other-than-human animal rights, far from contributing to realise ecocentrism, can entrench anthropocentrism in a capitalist mode, not merely reenacting the centrism of implied in collective self-legislation, but also reenacting an anthropocentrism that, to cite Stone again, takes for granted that "nature . . . is like us".

A European Charter of Fundamental Human Obligations

It may well be the case that a more fruitful approach would be to shift the focus from rights of other-than-human animals to obligations of human beings, that is, to imagine a European Charter of Fundamental Human Obligations. Here, an insight by Hans Kelsen is, paradoxically, of help. Paradoxically, because his forceful defense of an anthropocentric concept of law also hints at how it might be countered, even if not necessarily overcome. Kelsen scholars will remember the passage in the second edition of *The Pure Theory of Law*[5] in which he states that "modern legal orders regulate only the behavior of men, not of animals, plants, and things". For, he adds, it is a foundational premise of modern law that animals, plants, and things do not have duties or obligations towards human beings. But, he hastens to note, the opposite may well be the case: "it is not excluded that [legal] orders prescribe the behavior of [human beings] towards animals, plants, and things . . . these legal norms do not regulate the behavior of the protected animals, plants, and things, but of the [human beings] against whom the threat of punishment is directed." On a charitable reading, Kelsen can be read as defending the priority of obligations over rights. He would not stand alone here: Some of the most interesting work being done in this field argues precisely in this direction.[6]

While not seeking to downplay the importance of rights, *a fortiori* of other-than-human rights, Scott Veitch points out that "obligations and practices of obedience structure the operation and effectiveness of rights themselves"[7]. These go far beyond animal rights, calling for "a set of non-negotiable, non-commodifiable binding obligations" on human societies. This

would involve, as concerns the EU, a Fundamental Charter of Obligations and Rights that prioritises human obligations, whether or not these are correlated to animal rights.

Although it enables shifts from the object to the subject position, the main significance of asserting the primacy of human obligations over rights is ontological: it decenters collective self-legislation by acknowledging, paradoxically, that the first-person plural must come second if it is to come first: heteronomous autonomy. We are summoned into existence as a "we" by an appeal that reaches "us" from elsewhere and that binds us because we cannot not respond to it. For even ignoring the appeal is a response. This appeal is the primordial sense of an obligation: We are bound, put under obligation, before we can obligate ourselves by enacting legal relations that bind "us" to the other-than-human with a view to realising, ever tentatively, ever provisionally, more-than-human ends. "Lawmaking in the accusative" (forthcoming in the *Rivista di filosofia del dritto*) is the name I give to this primordial decentration of collective self-legislation.

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Poul F. Kjaer

The Legal Form of Animals in Global Value Chain Law

And What It Says About How Law Constructs the Social Condition

The Charter of Fundamental Rights of the European Union ("The Charter") does not mention animals. The ignoring or downplaying of animals is, however, a general feature of EU law – including in the area what might be called "global value chain law" (GVC Law). This area concerns the chains of contracts and related legal infrastructures structuring central parts of global economic activity, which makes it a significant part of (EU) contemporary economic law, as well.

The argument presented here is twofold. First, animals do not enjoy a particular or special status and are not given a particular legal form in GVC Law. This allows for deeper reflections on how law has observed both animals and humans throughout history, mounting in the observation that the difference in status between animals and humans might be smaller than often assumed. Animals and humans were both domesticated with the help of law and legal techniques. This, in turn, allows us to recast the concept of the social condition produced through law and legal techniques underpinning the fundamental values of EU law as expressed in the EU Charter.

Animals and humans in global value chain law

A GVC can be defined as a contract-based and connectivity enhancing network stretching from suppliers to customers engaged in the extraction, transmission, and incorporation of condensed components of meaning – i.e. animals, capital, commodities, components, knowledge, persons, and products – from one legally defined societal context to another.[1] This happens as part of the production of economic value and the reproduction of societal conditions enabling the perpetuation of economic value creation. In other words, law and legal tech-

niques play a crucial role in the constitution of GVCs; and they do so both in the narrow sense in which GVCs can be understood as chains of contracts and in the broad sense as socio-legal assemblages mixing legal and managerial techniques.

In a legal sense, recent national – such as French[2] and German[3] – and EU due diligence legislation[4] provide the most ambitious attempts for a holistic regulation of GVCs to date. It is a regulation that, in the EU context, builds on robust sectoral rules governing everything from diamonds and palm oil to timber. In the 58-page Corporate Due Diligence Directive, constituting the core of present EU GVC Law, there are only two mentions of animals. In recitals 13 and 35 it states, respectively:

> *"Due diligence requirements under this Directive should contribute to [...] protecting the health and well-being of people, animals and ecosystems from environment-related risks and negative impacts."*

and

> *"This Directive acknowledges the 'One Health' approach as recognised by the World Health Organization, an integrated and unifying approach that aims to sustainably balance and optimise the health of people, animals and ecosystems. The 'One Health' approach recognises that the health of humans, domestic and wild animals, plants, and the wider environment, including ecosystems, are closely interlinked and interdependent."*

In short, animals are incorporated into a "holistic approach" – an integrated "one-health approach" according to which

condensed components of meaning, i.e., animals, capital, commodities, components, knowledge, persons, and products, are treated the same in principle. This can be read in two ways. First, a recognition of the equal standing and importance of animals (and ecosystems) with humans. Second, that animals and nature are subsumed under the same rationalising logic of modern law as humans are. The form of objectification is largely the same.

The objectification of animals and humans through law

The objectification of animals and nature through law is a fate shared by humans based on a double strategy: First, through an enabling of their objectification, and secondly through imposing conditions and limitations to the form of objectification. In substantive law dealing with transportation of animals, i.e. animals in GVCs, law structures the extraction, transmission, and incorporation of animals from one legally defined context to another while imposing limitations. In Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations, provision 1.2 states, for example: "Sufficient space shall be provided inside the animals' compartment and at each of its levels to ensure that there is adequate ventilation above the animals when they are in a naturally standing position, without on any account hindering their natural movement." This resembles the first modern "corporate social responsibility-measures" imposed on the GVC for slave trade. The 1788 UK Regulated Slave Trade Act, for example, placed limitations on the number of enslaved Africans that British slave ships could transport. Ships could transport 1.67 slaves per ton of the ships' weight.

Tellingly, the logic guiding the abolishment of the slave trade[5] followed the same trajectory of current day animal rights advocacy: First comes NGO style activism aimed at raising awareness, at transforming the societal acceptability of existing norms. Second comes soft law guidance, followed by recommendations. Then comes hard law regulation allowing for and enabling the activity to continue, but restraining it to certain conditions. Ultimately, and fourthly, follows the outright banning of the activity in question. Current animal law in the EU seems to have arrived at stage three.

The dual-domestication of animals and humans

This allows us to draw more general insights into how law distills meaning – how it objectifies and moulds material forms, including animals, humans, and plants, from a position of authority. Law seemingly approaches all forms of materiality in the same way. Living organisms such as animals, humans and plants share the fact that they are being cultivated and domesticated with the help of law.

In *The Civilising Process*[6] (*Über den Prozeß der Zivilisation*[7]) from 1939, Norbert Elias describes how the rise of the legally enshrined state monopoly on legitimate physical violence implied a disciplination and cultivation process of humans. Immediate and impulsive acts in relation to sex, violence and general behavior were increasingly marginalised and supplanted with internalised self-restraint and particular codes of conduct. A process not dissimilar to the reconstitution processes of the subject which Michel Foucault described decades later.[8] Hence, following this line of thinking, human subjects are "artificial" – that is, "non-natural" – constructions, domesticated through

social techniques, with law at the very center of this process. Since such processes of human domestication are intrinsically tied to state power, the regions of the world where they have advanced most are those where strong, centralised, and rationalised state authority has been a defining feature for centuries. It is therefore hardly surprising that Hans Magnus Enzenberger in *Europe, Europe: Forays into a Continent* from 1989[9] (*Ach Europa! Wahrnehmungen aus sieben Ländern*[10]), described Sweden as the country – of the seven European nations he visited for the book – where the state's domestication of the population had progressed the furthest.

Plant breeding also implies changing the characteristics of plants through often century long cultivation processes,[11] which are likewise carried out with the help of law and legal techniques, i.e. intellectual property rights. It is a process that entails the objectification of nature and its transformation – quite literally – into cultivated artefacts shaped and defined by law. Animals have also been subject to systematic domestication and breeding throughout social history, aimed at advancing features and behaviors, be it for the purpose of nutrition or the social role as a pet.

In *The Court Society*[12] (*Die höfische Gesellschaft*[13]) from 1969, Elias topped off by adding that the domestication of humans not only implied increased self-restraint but also the active development of new codes of conduct in the form of manners and rules of social engagement. These manners and rules of social engagement enabled new forms of inter-human competition for status and material goods – without necessarily involving physical violence. This logic of engagement was, according to Elias, originally developed in front of the courts. Dressing style, table manners and not least the art of holding an interest-

ing conversation rather than brute physical force was what brought one close to the monarch and hence gave access to power and privilege. A logic which now has spread throughout society and become central to almost all social interactions.

Equestrian sports,[14] in particular dressage, the most "refined" form of sports involving animals, were also an invention of the court and the closely associated military power providing the backbone of the state monopoly on legitimate violence, just as hunting dogs and the modern version of pets have clear links to court society. The norms governing interactions between humans and those shaping our relations with domesticated animals co-emerged and co-evolved.

Freedom through submission

Do these insights repudiate the values, norms and intentions inscribed in the Charter and its package of fundamental values? Not necessarily. It merely highlights that androcentrism falls short of grasping the social condition. The "social" is a far broader category than what can reduced to mere human activity. A category which today, apart from animals, plants and other living organisms, also involves electronic agents. As Niklas Luhmann tirelessly pointed out, the basic category of sociality is therefore communication rather than humans,[15] thereby making the concept of the human condition, as for example developed by Hannah Arendt,[16] appear reductionist. Hence, the co-evolutionary logic guiding human and non-human developments is the crux of the matter. To the extent that the history of humankind is understood as a history of the condition of possibility of human existence, that history cannot

be written without systematically involving the other dimensions.

But the Charter is implicitly – and at times even expressively – a "Kantian package", committed to the ideals of the Enlightenment including the notions of freedom (or freedoms), which appear 35 times in text. Does the dual-domestication thesis of animals and humans as outlined above undermine the philosophical foundations of the text? At first glance, it does. Humans are not free if understood as having agency on the basis of being "untouched", "unmoulded" or "natural". But this looks different if, like animals, humans are understood as social beings for whom the condition of possibility of acting socially lies in their (self-)constraint through adherence to a social form, as often imposed through law. Or as Jacques Lacan noted in his juxtaposition of the works of Immanuel Kant and Marquis de Sade,[17] they both, paradoxically, believed that freedom was to be found through submission. Animals and humans alike are social beings and as such their freedom necessarily involves submission.

Animals do not enjoy a particular status in GVC law and with that in economic law and also not in the Charter, perhaps the two most crucial cornerstones of EU law. Both rely on a reductionist perception of sociality ignoring crucial insights from history and social theory. A new set of fundamental values fit for the 21st century would need to be based on a far broader notion of sociality including animals as well as other living organisms. This does not, however, necessarily imply a decentering of humanness. It merely begs an epistemological switch away from a static conception of humanness, and towards a relational and dynamic concept emphasising that humans are

never alone and not the only carriers of sociality. That is, it demands a form of sociality that is constantly evolving.

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Maneesha Deckha

A Child's Right to Non-Anthropocentric Education

A New Way to Think about Art. 14 of the EU Charter

The European Charter on Fundamental Human Rights ("the Charter") is not concerned about the core topic of contemporary animal law: animal rights. But although the Charter is silent about animals, it is possible to connect certain human rights it enshrines to animals in a manner that can foment animal rights. The protection of a healthy environment in Article 37 is an obvious choice inasmuch it is backed up by Article 191 of the Treaty on the Functioning of the European Union (TFEU) and the European Green Deal's commitment to net zero greenhouse gas emissions by 2050. Indeed, there is a growing body of work aimed at harnessing environmental support for the rights of nature in favour of animal rights. In this contribution, I want to suggest a lesser theorised human right in the Charter that similarly has considerable potential to benefit animals: the right to education under Article 14.

Beyond animal welfare laws

The benefit to animals I am contemplating is one that goes beyond welfare. Animal welfare laws emerged several centuries ago in Europe and have remained more or less the same since then. As I have recently outlined,[1] animal welfare laws regulate the use of animals to ensure "humane" use; they do not prevent death or other harm resulting from the human purposing of animals for instrumental ends. From an animal-centered perspective, as Stucki has observed, this is akin to international humanitarian law that regulates human warfare.[2] Violence is central to both regimes subject to certain minor limits, which are often disrespected or poorly enforced. Animal welfare laws are thus ill-equipped to actually protect animals, even in the European Union which is a worldwide leader in supporting

animal welfare. Animal law advocates in Europe seeking much greater protection largely concur that rights[3] – at least for sentient animals[4] – are needed to meaningfully reduce animal suffering and the many harms flowing from human exploitation of animals.

Scholars have suggested different legal pathways to foment these rights sourced in existing legal frameworks. At the EU level, these have included plans[5] to move away from animal-using industries and importing the growing Rights of Nature[6] movement inspired by Indigenous and non-Western cosmologies and traditions from other countries. As noted above, some have also included marshalling the human right to a healthy environment to curb anthropogenic activities that harm animals and the planet.[7] All of these pathways seek to stop harmful activities and facilitate the transition to truly sustainable and healthy economies.

The human right to education as a new pathway

The human right to education has not been prominent in this discussion about creating new pathways to animal rights out of existing legal frameworks. Instead, the human right to education has received some attention regarding vegan inclusivity[8] and the rights of vegans and vegan families not to be discriminated against in public school settings. The right to education in the EU Charter and EU in general is not age-specific, but a core focus is children, as the leading case law and treaties confirm.[9] Ensuring that the school setting and school curriculum do not require families to participate in activities that go against their values is an important dimension of the human

right to education. However, there is more to parse out from this right with wider effect.

When we delve deeper into this right, we learn it has been interpreted as a right to quality education for children.[10] What might a right to quality education for children mean in the age of the Anthropocene, when rapid transformative change is urgently needed to halt climate change and place the planet on a viable course, and in an age when the EU has started to legislatively respond to this reality through the European Climate Law? Could it entail a right to acquire critical information about anthropogenic activities that harm animals along with other beings?[11]

The European Union has already started to implicitly answer that question by connecting the right to quality education to climate literacy.[12] This would appear to build upon the Convention on the Rights of the Child (CRC) at the international level. Article 28 of the CRC establishes the right to education for all children. Article 29 discusses the aims of education, listing "respect for the natural environment" in clause (e). The reader can infer that a curriculum that omits this skill is deficient, rather than a truly qualitative education.

Animal rights literacy

But to achieve climate literacy, children also need animal rights literacy. Even as much as governments and media outlets have underreported the connection,[13] and the EU Vision for Agriculture and Food does not identify the need to reduce animal-based farming,[14] it is impossible to responsibly discuss climate change and environmental perils without impugning animal agriculture.[15] Consider that 80% of the land mass on Earth is

taken up by animal agriculture,[16] displacing and accelerating the loss of species and contributing at least 14% to CO2 emissions and close to 30% of methane emissions (methane is 10 times more warming than CO2).[17] Discussing this connection invariably brings up the conditions under which animals are raised and the ethics of using animals as food commodities in the first place.[18] The population, especially children, need to know more about the connection between climate impacts and animal exploitation – not less – to achieve quality climate literacy.

Some may argue that including animal rights in an educational curriculum is biased against industry and not objective. Some may worry that recognising animal rights in law jeopardises respect for human rights. But the lack-of-"objectivity" objection ignores the hidden curriculum that already exists in schools that normalises the animal-subordinating *status quo*.[19] Indeed, the literature theorising about children's education in relation to animal rights,[20] as noted above, uncovers this hidden anthropocentric basis for education. The current curriculum often marginalises vegan children and their parents in conventional schools with conventional catering, zoo field trips, science dissection, and books that normalise animal use and exploitation. Instead, it is plausible to argue, as Pedersen has, that the omission of alternative perspectives and critical thinking about the anthropocentric *status quo* compromises the inclusivity of children's education, and hence its quality.[21]

We could also suggest that another aspect of the human right to education is implicated, namely, that of the parents. Under Article 14 of the CRC, parents have a right to have their children educated in a manner that aligns with their beliefs. Omitting content about animal rights can be said to violate the

commitment that education should be "objective, critical, and pluralistic" as recognised as early as 1976 by the European Court of Human Rights in interpreting Article 2 of Protocol No 1 to the European Convention on Human Rights (ECHR).[22]

The second objection above worries that respect for animal rights will jeopardise human rights because it will dehumanise humans who are not socially recognised as fully human due to systemic ableism or racism. These are legitimate concerns, but getting exposed to different views in this debate is precisely what critical and pluralistic education should be about.[23] There is ample literature[24] of why continuing to exclude animals from moral and legal regard actually undermines respect for human rights.[25]

Overcoming the status quo

We do children more than a severe disservice when we do not teach them about such debates and other ways of imagining animals. If we continue to rely on the *status quo* in education, we implicitly promote the conventional Western worldview casting animals as non-sentient objects who we are relatively free to instrumentalise. In this day and age, it is reasonable to conclude that the *status quo* of human-first thinking in schools undermines children's right to a quality education.[26]

We also make it much harder to reach our climate goals, let alone a world characterised by interspecies justice and harmony. The latter is something most people would probably claim to want. Citizen initiatives have prompted the EU to consider a ban on fur farming and cosmetic testing and catalysed the EU Parliament to adopt resolutions regarding transitioning to animal-free research among a few other pro-animal initiatives.[27] While

these are excellent developments that value animals as sentient beings, the cognitive biases and gendered ideologies that characterise adult human social psychology and social relations pose considerable barriers to realising individual change where it is most important for the climate and for animals: in dietary habits.

Conventional masculinity is associated with sexualised dominance over animals and denial of empathy for the vulnerable,[28] making adult dietary change among men encultured to eat meat to perform their masculinity[29] difficult and creating stigma[30] against vegans in general common. This is why reaching humans at an earlier age when associations with food are developing but not yet hardened is important. Schools can deliver more critical information about both animal rights and gender ideologies. While parents can of course also educate their children, including such information within education curricula to fulfill children's right to quality education under the Charter would more widely ensure that such information does in fact reach children.

As I have suggested elsewhere,[31] this type of pro-animal intervention seems particularly important given how much human children identify with animals in an empathetic way, indeed they often even initially find it difficult to distinguish themselves from animals. In Europe and beyond, childhood is immersed in relating to animals through books, films, and daily interactions.[32] Yet, as suggested above, children also learn to dissociate from animals through such adult-mediated messaging. As part of a maturation process,[33] they come to understand that properly relating to animals means extending compassion, but also maintaining a sharp differentiation from animals and a position of human superiority over them.

If climate literacy initiatives are going to have the impact we want them to have, then children need to learn more critical information about the global food system including the European component and history. And if we truly wish for a different relationship to the nonhuman world, we are going to have to undo the human exceptionalist outlook we have in law but also in our worldviews. That will certainly require education and should be seen as a future-forward definition of a child's right to education under Article 14 of the Charter. Who knows? One of those children may one day alter the Charter itself or other human-focused rights documents to include animal rights as well.

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Sara De Vido

An Ecofeminist Approach to EU Biodiversity Law

The Case of Hunting

This chapter aims at briefly addressing the issue of hunting as it is regulated in EU biodiversity law – mainly the Habitats Directive (92/43/EEC) – using legal ecofeminism as method of analysis. It starts from a reflection on ecofeminism as related to hunting, then argues that EU law, including the EU Charter of Fundamental Rights of the EU (EU Charter FR), is inherently anthropocentric, and highlights the ambiguities of EU biodiversity law – only partly overcome by the most recent Restoration of Nature Regulation (EU) 2024/1991 – with regard to the system of derogations. By referring to a judgment rendered by the Court of Justice of the EU (CJEU) on the conservation of wolves in 2019, which applied the precautionary principle to non-human animals for the first time,[1] this chapter encourages an ecofeminist legal reading of EU biodiversity law in an attempt to eradicate patterns of discrimination and domination present both intra and inter-species and to "learn" how to legally consider non-human animals as part of an environment of which we all belong. Ecofeminism can add a valuable dimension to EU biodiversity law.

Ecofeminism, hunting and the law

Hunting has been already analysed from an ecofeminist perspective (see for example by Gaard[2], Emel[3] and Kemmerer[4]), but rarely from a legal ecofeminist point of view. Using a feminist method means to read international and EU law in a way that disrupts traditional categories of law and binaries that are construed in an anthropocentric way. This can help unravel patterns of discrimination and power imbalances tolerated and reproduced by States.

Other interesting approaches have developed criticism against the structural patterns of oppression in the legal systems and shed light on controversial aspects of the mainstream international law.[5] However, the feminist, and the ecofeminist method more specifically, is considered here as a further potential perspective that adds the layers of intersectionality and of nature to the analysis of schemes of oppression and subordination.

The premise on which the ecofeminist thought is founded is that patterns of oppression and domination are not only intra-species but also inter-species, in the relation between humans and the nature (see Grear[6] p. 241). As Lisa Kemmerer pointed out in a recent article, ecofeminist scholars observed that "false value dualisms in the Greco-diaspora 'other' and denigrate individuals and nature, leading to their exploitation, exposing a root cause of interfacing oppressions"[7]. For example, the idea of us (humans) vs. wild life, sacrificing the latter when human interests are at stake, is based on this premise. She also underscores the connections between sexism and speciesism, which explain (though not justify) the narrative of hunting as a "sexual pleasure" and "advertisements/images that juxtapose the bodies of young (fertile) women with those of female farmed anymals (widely viewed as available for reproductive exploitation)". Women, especially those at the intersection of different grounds of discrimination, are "disembodied, objectified, sexualized, anymalized. As a result, though humans almost invariably state that they value life and feel strongly about protecting the lives of the vulnerable and the innocent, they tolerate and often verbally defend hunting".

Ecofeminism is extremely powerful in disrupting and unveiling the falsity of common "narratives" and "justifications/ratio-

nalizations" such as, Kemmerer mentions, "that hunting is a treasured and important (and therefore protected) tradition/sport, that hunting funds the protection of ecosystems/anymals, and that hunting is good for anymals". Ecofeminism, that in the past was accused of essentialism and of being "Global North"-oriented, is actually a powerful method of legal analysis that can (and must) embrace de-colonial concerns on the role of hunting in indigenous communities (see Gaard[8]). I have tried to demonstrate how ecofeminism expresses its own potential in several contexts, especially in relation to environmental law,[9] and in a forthcoming book dedicated to the phenomenon of "environmental chronic emergencies".[10] In this chapter, legal ecofeminism will be applied with regard to EU biodiversity law.

EU law as an inherently anthropocentric system

EU law, in particular EU environmental law, is inherently anthropocentric (see, in that respect, Jones[11] using a posthuman feminist approach). It could be argued that every law is anthropocentric by virtue of being human-made. However, the issue lies not only in who is making the law, but in how the law reproduces discrimination and schemes of oppression in our societies and inter-species. For example, while Article 13 of the Treaty on the Functioning of the European Union recognises animals as sentient beings and underscores the importance of animal welfare, this principle is, in practice, only minimally reflected in EU animal husbandry. The reality is that current husbandry conditions in European stables remain far from species-appropriate, despite the existence of some welfare provisions (see Martinez/von Nolting[12] in that respect). Animal welfare is mainly associated to animal husbandry, even though,

in a 2021 judgment in the Case C-900/19 on the application of the Birds Directive (2009/147/EC), the CJEU argued that animal welfare considerations are relevant when assessing the admissibility of derogations under the latter legal instrument.

Turning to the EU Charter FR, Article 37 requires that "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". But does environmental protection include non-human animals? The concept of sustainable development also shows several weaknesses, and, in its original conception, clearly excluded non-human animals (however, see the Global Sustainable Development Report[13], acknowledging the concept of animal welfare). A feminist analysis, which develops ecological and postcolonial concerns, highlights the fact that the concept of sustainable development is anthropocentric and androcentric, it does not affect the dynamics of power – among men, women, and gender non-conforming people; between human and non-human; between developed and developing countries – and encourages a model of growth that perpetuates structural inequalities (Wilkinson Cross[14]). Criticism of sustainable development from an ecofeminist perspective exposes the failure to see the interconnections between systems of power both intra and inter-species.

Moving to secondary law, and only limiting our scope to biodiversity law, the Habitats Directive contains prohibitions on killing or capturing an animal, as well as a prohibition on their disturbance during their life cycle (Article 12). However, despite acknowledging that the "threatened habitats and species form part of the Community's natural heritage", the Habitats Directive provides for a system of derogations that makes economic

and human interests prevail, under certain (narrowly interpreted) circumstances (Article 16). The Directive is based on annexes, that provide for different levels of protection. Species under Annex V are considered as less threatened than those under Annex IV. As it was interestingly argued,[15] "for Annex V animals, the taking in the wild of specimens is allowed, as long as their exploitation is compatible with a favourable conservation status", and the human interest of sustainable use of natural resources is the one that guides the choice. In other words, individuals belonging to the species under Annex V "can be killed or captured as long as their taking remains compatible with sustainable exploitation"[16].

The cultural aspect of hunting inevitably emerges from a system of law that conceptualises an anthropocentric hierarchy among animals – those deemed worthy of protection from hunting (whales and seals are emblematic cases in that respect), and those that can be sacrificed on the altar of sustainability (such as wolves). Also, the Nature Restoration Regulation (EU) 2024/1991, which marks an important shift from conservation to restoration of habitats, still allows for derogations and misses to acknowledge human responsibility for climate change, allowing for derogations in case of "unavoidable habitat transformations which are directly caused by climate change" (Article 4.14).

The role of the CJEU

Tapiola, a Finnish association for nature conservation, filed a complaint against the Finnish Wildlife Agency, which authorised the killing of a total of seven wolves in the region of Pohjois-Savo (Finland) in 2016. The Agency argued that the

management measure was necessary to prevent poaching and that it had taken the harm wolves had caused to other animals over the years and the concerns expressed by local population into consideration. The Supreme Administrative Court of Finland referred the case to the CJEU, asking for the interpretation of Article 16 (1) Habitats Directive, as applied to wolves, that were listed in Annex V. Without explaining the details of the *Tapiola* judgment in C-674/17 (on which see De Vido[17]), decided in 2019, it is interesting to highlight that the CJEU applied the precautionary principle to non-human animals: "In that context, it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation" (para. 107 of the judgment). For the first time, the Court went beyond a strictly anthropocentric view by recognising the relevance of conservation measures for non-human animals, applying the precautionary principle in light of the scope of the Habitats Directive. As it was argued,[18] "tolerance hunting of wolves could in principle be based on Article 16(1)(a), although the evidence proving such hunting to be firmly in the wolf's own interest would need to be at least as strong". As it is known, conservation of wolves will be more difficult in the future, as a consequence of the downgrading of wolves from Annex V to Annex IV, supported by the considerations we criticised above: the idea of opposing "us" (humans) vs wild life, the latter always succumbing, without an informed and participatory analysis of the pros and cons of the lowering of the protec-

tion. This proposal has been (correctly in our view) defined as "a relapse towards old-fashioned anthropocentrism"[19].

Moving beyond anthropocentrism

An author strongly encouraged the incorporation of feminist and ecological concerns into a "more inclusive definition of sustainability that has the potential to address more completely the interrelationships between social equity and environmental destruction".[20] She identified some conditions of the so-called "feminist sustainability", including "an ethical perspective that is based on solidarity, reciprocity, and non-hierarchical and non-violent relationships among and within human societies and between humans, non-humans, and the ecosystem". In the case of hunting, an ecofeminist legal approach avoids choosing sides – either with the wolves or with "us" humans, for example – but encourages a policy of listening that allows different interests to be reconciled, giving a voice to those who have no voice on the legal level, including non-human animals and marginalised groups within the communities that belong to the affected habitats.

An ecofeminist method does not found its reasoning on numbers – for example, the idea that an increase in a species' population automatically justifies authorising hunters to kill – but rather reflects on how certain practices are justified for pure economic interests without applying consolidated principles such as the precautionary one to the choice of viable alternatives and before deciding for a reduction of the level of protection of a certain species.

There are different ways to protect non-human animals, many of which have been brilliantly explained in several articles

(for example rights of nature as a response to failing protection[21]) and in the EU Charter on Rights of Nature. To start with, animal rights, or at least (even though this would not be sufficient) animal welfare, should be included in the EU Charter FR. This would represent a groundbreaking step forward to the recognition of animal rights as fundamental values of the EU system.

What an ecofeminist method could help with, and I hope to have made a tiny little contribution in that respect, is to realise the interconnections existing between layers of oppression and domination intra and inter-species, and acknowledge the contribution of humans to the deterioration of biodiversity and ecosystems which is at the heart of the problem. If we are discussing levels of conservation of the so-called "wild fauna", it is because humans have been destroying the delicate equilibrium among the elements of the environment, to which human animals belong too. Humans tend to forget that we are part of, if not the main cause of the problem, but as lawyers we need to work towards a paradigmatic shift in the way we practice and teach law, including EU law.

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Bertjan Wolthuis

A Wolf's Right to the Surface of the Earth

The EU Habitats Directive, Animal Politics, and Kant

The European Union recently changed the legal status of the wolf from "strictly protected" to "protected". In this contribution, I advocate a different response to the problem that wolves prey on animals kept by humans: the further development of the European ecological network called Natura 2000.[1] The premise of my argument, based on animal rights theory and Kant's philosophy of law, is that wolves have the right to be on Earth. In the past, humans have tried to eradicate wolves, which is a clear violation of this right. I argue that this historical injustice generates the duty to restore the habitats and natural infrastructure used by wolves, so that wolves can find natural prey and need not turn to livestock.

The protection status of the wolf

The EU has lowered the protection status of the wolf in response to wolf attacks on livestock. The EU and its Member States are party to the Convention on the conversation of European wildlife and natural habitats[2] or Bern Convention that entered into force in 1982. This convention introduces a distinction between animals that are "strictly protected" (Appendix II of the convention) and "protected" (Appendix III). According to Art. 6 of the convention, the contracting parties have to "prohibit all forms of deliberate capture and keeping and deliberate killing" of "strictly protected fauna species". Exceptions are allowed if these are not "detrimental to the survival of the population concerned" and if this is the only way "to prevent serious damage to [...] livestock" (Art. 9), for example. Populations of animals on the "protected"-list should be "maintained" or brought up to "a level which corresponds in particular to ecological, scientific and cultural requirements, while taking

account of economic and recreational requirements [...]" (Art. 2).

Council Directive 92/43/EEC of 21 May 1992, on the conservation of natural habitats and of wild fauna and flora, implements the Bern Convention. This Habitats Directive also has a list of animals "in need of strict protection" (Annex IV) and a list of animals "whose taking in the wild and exploitation may be subject to management measures" (Annex V).

On 27 September 2024, the EU submitted a proposal to the secretary of the Bern Convention to change the protection status of the wolf from "strictly protected" to "protected".[3] The reason advanced for this, is that the number of wolves in Europe – currently more than 20.000 – doubled in the last decade, which "led to increasing socio-economic challenges with regard to coexistence with human activities. This is due, in particular, to harm to livestock, which has reached significant levels". On 6 December 2024, the Standing Committee of the Bern Convention adopted the EU proposal.[4] The changed protection status of the wolf entered into force on 7 March 2025.[5] On 8 April 2025, the European Parliament voted in favour of a change in the wolf's protection status in the Habitats Directive, to align it again with the Bern Convention.[6]

Animal rights theory

I want to criticise this response by the EU in light of insights developed in animal rights theory and especially one branch of it called "Animal Politics".

Firstly, the rights of wolves, or animals in general, are not sufficiently protected by EU law. To begin with, the rights of animals are not recognised in the Charter of Fundamental

Rights of the European Union. The "environment" referred to in Art. 37 EU Charter is that of humans. The Habitats Directive itself is also labelled as "anthropocentric" and "not fully ecocentric".[7] At most, this Directive is viewed as granting animals "preliminary rights", as the "by-product of human interest in biodiversity".[8]

Secondly, the EU simply assumes that humans have the authority to make decisions about the protection of animals. The branch of animal rights theory called "Animal Politics"[9] or "Political Theory of Animal Rights"[10] questions this authority. Animal Politics asks not only: "What rights should animals have?" but also: "Who gets to decide what rights animals should have?" And, more specifically: "Why do humans have the authority to decide what rights animals should have?" Who gave the European Union, a union of states (of humans) and citizens (humans), the authority to rule over societies of non-human animals? The premise of Animal Politics is that many animals are political beings in their own right, complete with unwritten rules and authority structures.

How to approach human-wolf interactions?

If we agree with Animal Politics about this, the key question becomes: "How should states of humans and states of animals interact with each other?" What models can we use to analyse and coordinate human-wolf interactions? There is a tendency in Animal Politics to use models and notions already developed for regulating the interaction between states of humans. Donaldson and Kymlicka,[11] for example, approach the relation between humans and wild animals in terms of "wild animal sovereignty".

The difficulty with this suggestion, however, is that the international law model does not seem to apply to the relations between states of humans and states of animals. The reason is that there are no borders between the territories of different species. Wolf territory is usually also deer territory. And humans tend to see all of the Earth's surface as human territory. So, the world of wolves, the world of deer and the world of humans overlap. Within each of these worlds, the international law-model may make sense. Within the wolf world, for example, packs of wolves can be identified and rules may apply between such packs. But the issue here is how to adjudicate between the worlds of wolves, deer, humans, etc. How can or should all these worlds coexist on only one Earth?

The innate right to the surface of the earth

Here, I want to suggest, Kant may come to the rescue. In his theory of law, Kant ascribes to human beings the innate right to the surface of the Earth, "*das Recht der Oberfläche*".[12] Human beings have this right, he argues, because they are inhabitants of planet Earth. They are earthlings by nature and hence their right to the surface of the Earth is innate. The right to the surface of the Earth is the right to occupy space on the surface of the Earth and move around on it. This right to the surface of the Earth of one person is limited by that of another. Your right to occupy space and move around is limited by the same rights of others. You have no right to force me off the space that I currently occupy. The rights to the surface of the Earth of human beings are mutually limiting.

My position is that we should ascribe also to animals – and to plants[13] – this right to the surface of the Earth, since it is also

their nature to live on this planet. So, this right should also be seen as innate in animals and plants. The implication is that the rights of humans to the surface of the Earth are limited also by the rights of animals and plants to the surface of the Earth.

To be clear, the right to the surface of the Earth is not the right to live. Wolves eat deer and deer eat plants. This natural behaviour is not contrary to the rights to the surface of the Earth of animals and plants. Wolves do not want to remove deer from the face of the Earth. Human beings, on the contrary, have attempted to "wipe wolves off"[14] the North-American continent and have persecuted wolves in Europe.

In general, human beings have taken more and more space on the Earth's surface for themselves, at the cost of space for animals and plants. In terms of the right to the surface of the Earth: we humans have not let the rights to the surface of the Earth of these other living creatures limit our rights to the surface of the Earth. If we accept that our rights to the surface of the Earth are limited by the rights to the surface of the Earth of these other species, then we recognise the historical injustice committed by us, and we understand that this injustice generates the obligation to restore as much as possible the naturalness of the planet and so to make room again for other species.

Extending the EU's Natura 2000 network

My proposal is that the mutually limiting rights to the surface of the Earth of human beings, animals and plants can serve as a proper background from which to address the issue how humans should respond to encounters with wolves.

As indicated at the beginning, the EU's answer has been to lower the wolf's protection status. The protection of animal and

plant species is laid down in Articles 12-16 of the Habitats Directive. Animal Politics, with Kant's right to the surface of the Earth extended to animals and plants added to it, can affirm the measures to restore and further improve the Natura 2000 network, an objective that is specified in Articles 3-11 of this Directive. The reason is that the rights to the surface of the Earth of animals and plants can be seen as underlying and deepening the duty to "restore" and "maintain" natural habitats (preamble of the Directive 92/43/EEC) because these rights trigger the duty to give back the space we took from them. This is in line with Animal Politics, since it presupposes a horizontal relation between humans, animals and plants, all viewed as bearers of the same innate right. The EU acknowledges in the preamble that "natural habitats are continuing to deteriorate and [that] an increasing number of wild species are seriously threatened". In light of the right to the surface of the Earth of animals, a crucial duty is to restore and maintain not just habitats for species but entire "networks" (Art. 3) of habitats, which should be ecologically coherent (Art. 10). Making room for this natural network requires EU Member States to "manage" those "features of the landscape which are of major importance for wild fauna and flora", especially for the "migration, dispersal and genetic exchange of wild species", such as "rivers" and "stepping stones" (Art. 10). Wildlife bridges are an important example: they help animals cross human roads and railways. Human infrastructure fragments animal habitats and blocks the natural infrastructure animals use.

Extending and strengthening the Natura 2000 network is also a powerful response, I suggest, to wolf attacks on livestock, particularly sheep. The sheep that are bred and held by humans lack the means of self-defence that wild sheep have. Wild sheep

have horns and live high up in the mountains, where predators have difficulty tracking them down. Unprotected domesticated sheep are easy prey for wolves, to which they turn when there is not enough natural prey for them. By expanding the Natura 2000 network, more space is returned to plants and animals, including animals preyed on by wolves. This solution to the problem fulfils our duty to give back to animals and plants what we took from them, contrary to their rights to the surface of the Earth.

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Ester Herlin-Karnell

Animals and the EU Charter

The Potential for an Animal Turn in EU Law

The EU Charter of Fundamental Rights does not currently include any explicit reference to animal rights. While Article 37 of the Charter calls for a high level of environmental protection in line with the principle of sustainable development, it has rarely been interpreted to encompass duties toward animals or their welfare. This omission stands in contrast to a growing global trend: An increasing number of constitutions now explicitly enshrine the protection of animals.[1] Incorporating animal rights and welfare into the EU's foundational values and the Charter would not only align the Union with this global development but also strengthen the long-term credibility of the EU project by shifting its integration model away from an overly anthropocentric focus. Importantly, the EU already recognises animals as sentient beings under Article 13 TFEU, which entails a duty of respect. Moreover, the Union has the legal tools within its current framework to further embed these protections into its legal order. Failing to do so risks entrenching patterns of domination over non-human life and undermining the EU's normative standing, both within Europe and on the global stage.

An animal turn in EU law?

In EU law, animals are recognised as sentient beings, as stated in Article 13 TFEU. However, while political philosophers continue to debate the scope of animal rights and their role in contemporary society, EU law often frames animal welfare in the context of environmental protection, rather than treating animals as right holders. This environmentalist position commonly focuses on aspects of bio-diversity and the plurality of species, while neglecting the rights of individual animals or the duties of the EU, its Member States or bystander humans

have in regards to them.[2] While Article 13 TFEU has been hailed as groundbreaking for recognising animals as sentient beings and requiring their welfare to be respected, concerns persist about its weak enforcement and the lack of political will to adopt robust animal welfare legislation.[3] Paradoxically, Article 13 TFEU does not exempt animal sentience from deference to Member States' cultural traditions and religious rites, even though the EU is meant to give full regard to animal welfare.

As for the Charter, while it currently does not explicitly recognise animal rights as mentioned above, it already plays an important role in protecting animal welfare at a minimum. For example, the Court of Justice of the EU (CJEU) has banned religious slaughter without stunning by referring to the Charter as a living instrument (*Centraal Israëlitisch Consistorie van België and Others*, C-336/19). Specifically, the CJEU stated that:

> *"like the ECHR, the Charter is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States [...]. Animal welfare, as a value to which contemporary democratic societies have attached increasing importance for a number of years, may, in the light of changes in society, be taken into account to a greater extent [...]."*

Moreover, although the EU Charter remains structurally anthropocentric – reflecting a human-centred paradigm of dominance over nature[4] – it is nonetheless imperative for the EU to assume a leading role in advancing animal welfare. This includes interpreting the Charter's obligations as encompassing responsibilities toward animals, even under non-ideal legal conditions in which animals continue to be largely instrumentalised.

On dignity and liberty

How could an EU turn succeed in legal practice? One promising approach is to recognise animals as subjects of dignity. In his recent book on human dignity, Colin Bird has suggested an understanding of dignity as a living concept.[5] He argues that while animals cannot possess human dignity, they do have a right to dignified relations with nature. Similarly, Visa Kurki suggests that the notion of dignity is significant for animals because it expresses a duty of respect toward them.[6] It is helpful to refer to dignity as an overall concept rather than the more narrow definition of human dignity (for a critique of dignity see Maneesha Deckha[7]). In the Charter, dignity anchors a core set of rights (Articles 1-5), including the right to life, prohibition of torture and the ban of forced labour and trafficking. Furthermore, dignity is an explicit EU value under Article 2 TEU and in the Charter's preamble.

Charter rights such as protections against trafficking, slavery and the assurance of a dignified existence are arguably rights that many people would agree should apply to animals and are highly relevant to their welfare. Extending the concept of dignity with regard to the right to life, on the other hand, faces an immediate practical hurdle: Animals' right to life is rarely protected in practice. Pet owners may have animals euthanised for financial reasons when the vet bill is too expensive, while livestock are routinely killed for consumption.

Another approach centres on the value of liberty. The Charter guarantees the right to liberty and security (Article 6). While the right to security is relatively straightforward to extend to animals – for example, ensuring that horses have secure

paddocks and safe stables, or that pets are protected from poisonous foods – the right to liberty is more complex because it is unclear what "liberty" precisely implies for animals. For example, Alistair Cochrane has suggested that unlike human slaves, animals do not necessarily have an interest in complete freedom if they are treated well and with respect, but this difference may well vary between species.[8] For example, some animals – such as dogs, cats, and horses – have long been favoured for their affinity with humans and cooperative dispositions, traits that humans have selectively reinforced through deliberate breeding interventions.

Reciprocity and rights

A further complication of incorporating animals into a human rights regime arises from a debate in animal law theory about reciprocity.[9] Traditionally, rights are grounded in reciprocal social relations. Animals cannot participate in society as humans do – they do not deliberate, vote, or belong to the political community in the same sense. Yet they still require representation, as they are frequent victims of human exploitation and remain highly vulnerable to human domination. EU instruments such as the Habitats Directive (Directive 92/43/EEC), EU biodiversity laws,[10] the EU Green Deal with emphasis on improving the welfare of animals, and its sustainability framework are all relevant with regards to this vulnerability.[11] Another interesting venue for securing the protection of animals is a turn to the EU constitutional principles of sustainability and solidarity. These principles can and should be interpreted to fully include animals' welfare and interests.

Sustainability and solidarity

Beyond the EU's precautionary principle[12] – which rightly mandates a risk-sensitive approach to the treatment of animals, aimed at minimising their suffering in light of enduring ethical and epistemic uncertainty – other EU constitutional principles also come into play. The principles of sustainability and solidarity provide additional constitutional grounds for strengthening animal protection. These principles offer a broader normative foundation for embedding animal welfare into EU law and policy. More specifically, the EU sustainability framework and the European Green Deal[13] could serve as potentially important measures for animal welfare to flourish. Indeed, one of the criticisms of sustainability is that it has not included non-human animals sufficiently yet.[14]

While the EU has various animal protection laws in place, there is still a lack of constitutional law research exploring how animal rights could be understood as part of the EU's fundamental values and sustainability goals. In addition, the dimension of solidarity – both among Member States and in relation to the EU – deserves closer examination in the context of animal welfare policy. Although the notion of solidarity appears multiple times in the EU Treaties and the Charter, primarily as part of the Union's values and in relation to free movement, its conceptual scope is clearly broader than its technical legal uses suggest. As a constitutional value and concept in EU law, solidarity already resonates with the idea of protecting animal welfare and promoting respect for animals as part of a shared European commitment.

An interesting test case in the context of both sustainability and solidarity is that of the equestrian sport (see also Kjaer in this book and me[15]). A series of recent scandals involving animal cruelty – such as the misuse of bits and whipping practices – has raised the pressing question of whether the equestrian sport is undergoing sufficient reform to enhance animal welfare. The equestrian sport has a whole variety of dimensions to it: animal welfare, animal-human relations, and gender equality, being one of the few disciplines where men and women compete in the same competitions. But it is also an area where there is a tension between sports autonomy, ethics in sports and animal welfare.[16] Especially the misuse of the bit and bridle has been a hot topic in the equestrian world during the past year – particularly in the dressage, where signs such as a gaping mouth and excessive foaming often indicate discomfort or stress caused by ill-fitting tack. Yet these expressions of equine distress are frequently overlooked by judges, reflecting a troubling gap between animal welfare concerns and prevailing evaluation standards. In a recent emergency meeting on animal welfare, the International Federation of Equestrian sport (FEI) concluded (on 17-18 June 2025) "Prohibited Methods", for equine welfare reasons. In this report the FEI sports authority states that:

> *"It is strictly forbidden to use any type of substance/product inside or around the Horse's mouth and/or tongue that may (i) imitate, induce or cause foaming; and/or (ii) coat or otherwise cover, or partially cover the bit. [...] Contravening this rule will entail a Yellow Warning Card and Elimination."*

Although it is excellent that the FEI is active, it is highly questionable why these efforts should be left to sports organisations only.[17] In EU law, fairness in sport is very important, and must include a high level of animal protection if animals should be allowed to compete at all. Moreover, it appears increasingly incoherent that corporations – or even rivers – can be vested with rights and legal standing, while the same remains uncertain for animals. In such cases, the commonly invoked reciprocity argument – that animals cannot hold rights because they are not members of the political community – seems especially tenuous.

Waiting for the CJEU?

Courts in South America and the U.S. have already recognised that animals can be "interested persons"[18] or even have Habeas corpus rights.[19] The EU Charter could play a significant role in advancing animal welfare and rights in the EU. Typically, it is the CJEU that initiates such developments, and, as noted above, the Court has already invoked the Charter as a living instrument in cases concerning slaughter methods. It is also worth recalling that the EU was founded as a peace project, which connects sustainability goals, justice, peace, and inclusiveness to our broader aspiration to live in harmony – with each other and with nature.

While this piece has focused mainly on domesticated animals and animals in our vicinity, the gap in rights protection between humans and non-humans is striking. This is not a call to liberate animals from all forms of anthropocentric legislation, but rather a call to recognise their sentience and affirm their right to live in dignity alongside nature – a vision to which

the EU Charter could lend important symbolic and normative force. Animals deserve greater recognition and respectful treatment – an aspiration already embedded in EU constitutional principles such as solidarity and sustainability. These principles call for a deeper sense of responsibility toward our fellow creatures, and suggest that the value of solidarity should extend across species boundaries. Explicitly incorporating a duty to respect and promote animal welfare into the EU Charter is therefore both a legal and political imperative. In conclusion, there is a genuine opportunity for an "animal turn" in EU law – one that should evolve in parallel with broader ethical and political debates about how we treat and conceptualise non-human life.

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Yaffa Epstein, Eva Bernet Kempers

Rights for Non-Humans in EU Law

The Potential of the EU Legal Order

The recognition of animals and nature as potential rights holders has long been a controversial proposition within European legal discourse. However, we believe that the EU legal order is more hospitable to such recognition than one might expect. In a recent article, we argued for a rights-based reinterpretation of EU animal welfare and environmental protection laws.[1] EU constitutional and secondary laws can be construed as entailing legal rights for non-human entities – even if these rights are not explicit in the texts. We consider how the EU Charter of Fundamental Rights and other EU legal acts may support a post-anthropocentric vision of Union law.

A Hohfeldian perspective

Our argument is grounded in a Hohfeldian framework: that rights exist where legal duties are owed to an intended beneficiary. Many EU legal instruments impose duties not merely in service of human interests but also with a view to protecting animals and nature, sometimes justified at least partly by the value of these entities for their own sakes. Where this is so – where non-human interests are protected for their own sake – these beneficiaries should be considered as holders of rights under EU law.

This legal pivot, from treating animals and ecosystems as objects of protection to recognising them as subjects of law, has important implications. It challenges the conventional notion that only humans (or legal persons such as corporations) can be beneficiaries of EU rights. It also aligns with some judicial interpretations of the EU Charter.

Article 13 TFEU and the EU Charter

The Treaty of Lisbon elevated animal welfare to constitutional status through Article 13 TFEU, which obliges the EU and its Member States to "pay full regard to the welfare requirements of animals" as "sentient being". While Article 13 is not part of the Charter, its status as a foundational Treaty provision necessarily informs the interpretation of Charter rights.

Consider the 2020 decision in *Centraal Israëlitisch Consistorie van België* (C-336/19), where the Court of Justice of the EU (CJEU) upheld restrictions on ritual slaughter based on animal welfare concerns. Notably, the Court weighed animal welfare against the right to religious freedom under Article 10 of the Charter. It concluded that animal interests could legitimately justify limitations on a Charter right – an implicit recognition that these interests hold constitutional weight.

But the implications are deeper still. If animal welfare can justify curtailing a fundamental right, then it must rest on a normatively significant legal basis. We believe that the weight given to animals' interests by the CJEU implies a legal status for animals that is not merely derivative of human interests. At a minimum, it indicates that animal interests are recognised within the Charter's normative ecosystem – even if not expressly catalogued among the rights listed.

Expanding the Charter's material scope

That rights can be inferred from legal duties is already well-established in EU law. Courts applying the doctrine of direct effect, as developed since *Van Gend en Loos* (Case 26-62), have

repeatedly reaffirmed that clear, precise, and unconditional legal duties in EU law confer enforceable rights. The CJEU has applied these rights in the context of environmental law and procedural environmental rights in line with Articles 37 (environmental protection) and 47 (right to an effective remedy) of the Charter.

Logically, if legal instruments like the Habitats Directive (Directive 92/43/EEC) or the Directive on the Protection of Animals Used in Experiments (Directive 2010/63/EU) aim to protect animals or ecosystems at least in part for their own sakes, then these entities – not merely humans – are their intended beneficiaries. From a Charter perspective, this demands a reassessment of Articles 37 and 47, as well as the underlying assumptions about legal personhood and access to courts.

Could the right to an effective remedy in Article 47 be interpreted to include procedural standing for representatives of non-human rights holders? Could Article 52, which governs the scope and limitations of Charter rights, be deployed to balance these non-human rights against others, rather than merely weighing human rights against environmental "objectives"?

A stronger case for animal rights

The case for acknowledging implicit animal rights in the EU is currently stronger than that for rights of nature, particularly in light the acknowledgment of animal sentience in Article 13 TFEU as a reason to protect them in law. Unlike animals, which are increasingly treated as individual moral and legal subjects, ecosystems and natural entities tend to be protected as collective goods or "heritage" in EU environmental law, often without

clear reference to their intrinsic or ultimate value. This asymmetry reflects deeper philosophical tensions: Animal rights are typically grounded in the interests and suffering of sentient individuals, whereas rights of nature claim moral status for systems or wholes – such as rivers, forests, or biodiversity – sometimes even at the expense of individual animal interests. The EU legal framework, which remains rooted in anthropocentric rationales and individualistic rights structures, appears better suited – at least for now – to accommodating the former. However, it is significant that EU environmental protection laws such as the Birds and Habitats Directives implement international laws, the Convention on Biological Diversity and the Bern Convention on the Protection of European Wildlife and Natural Habitats, which do explicitly recognise the value of biodiversity and species, respectively, for their own sakes. There is therefore potential for EU law to be interpreted to recognise non-human beneficiaries of environmental obligations as legal subjects in their own right, in light of international law.

More-than-human dignity?

Whether non-human animals and other natural entities can have rights is no longer a philosophical question alone. The planetary crisis and growing political momentum for the rights of nature – seen in developments from New Zealand to Colombia – have already prompted legal reforms outside the EU. Within Europe, the 2022 recognition of legal personality for Spain's Mar Menor lagoon ecosystem may be a bellwether; new laws for the rights of nature and animals are currently under consideration in several EU countries. Moreover, laws that

would explicitly grant rights to both nature and animals are broadly supported throughout the EU.[2]

The Charter, with its commitment to human dignity, environmental protection, and justice, must be interpreted in light of this shifting normative terrain. According to a 2024 judgment from a lower court in Erfurt, Germany, rights of nature can already be derived from the EU Charter through the living-instrument doctrine.[3] If dignity is not to be allocated on the basis of species membership only, and if environmental protection is to have teeth, then the EU must move beyond a model in which rights are the exclusive preserve of Homo sapiens. To some extent, we argue, it already has. There is the potential though, for these rights to be explicitly recognised and strengthened, for instance by improving access to courts in the name of non-human interests.

In conclusion, we believe that the EU's legal order already contains the seeds of a more inclusive community of rights. How they grow will be determined by judges, lawyers and scholars as we argue about, interpret and apply the Charter and other EU laws.

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Nina Braude

The "Best Available Science"

Scientific Pluralism and What it Means for the Charter

The "best available science" standard is a feature of environmental decision-making, sitting at the interface between science, law, policy and conservation. However, two recent high-profile disputes over fisheries closures – one in the UK, the other in South Africa – illustrate that the "best" science is not always discernible, that there is no singular science, and that conservation and resource management decisions do not simply apply scientific "facts". Rather, the scientific material accessed and used by decision-makers is entangled with multiple sciences, "truths", power-plays and uncertainties. Science, in other words, is far from being a "black box" as Bruno Latour famously argued decades ago.[1]

This chapter explores how the "Sandeel case" before the Permanent Court of Arbitration (PCA) (for previous discussion see Kassoti[2]) and the "Penguin case" before the High Court of South Africa,[3] fractured the scientific black box – only to reassemble "the science" in ways that preserved certainty, deference to decision-making, and the authority of the expert. These cases could have important implications for the future application of the EU's Charter of Fundamental Rights and its growing relevance for biodiversity and animal protection.

"Best available science"

The best available science standard is well-established in international and domestic law from the United Nations Convention on the Law of the Sea (UNCLOS) to South Africa's Marine Living Resources Act, 18 of 1998, the UK Fisheries Act, 2020 and the EU's Common Fisheries Policy (most recently: Regulation (EU)1380/2013).

Courts and tribunals have long treated "science" as a unitary object or, in Latour's terminology, a "black box": impenetrable to non-scientists and accepted as "fact". However, as Latour argued, considerable work goes into "black box" thinking and there are multiple disagreements within and between scientific communities. These contestations were clearly visible in the scientific disputes over sandeel and sardine/anchovy closures, where remarkably similar patterns emerged between those advocating for biodiversity-driven closures and those resisting fishing restrictions.

Deconstructing the black box

In the Sandeel case, the EU challenged the UK's sandeel closures on three main grounds. I will only discuss the first of them here: The claim that the UK's measures were not "based" on the "best available scientific advice" as required by Articles 496(1) and (2) read with Article 494(3)(c) of the Trade and Cooperation Agreement (TCA). The EU argued that the modelling produced by the UK's conservation agencies (Natural England, the Centre for Environment, Fisheries and Aquaculture Science (Cefas) and the Joint Nature Conservation Committee (JNCC)) was the sole justification for total closures; not the best available science; and the measure thus breached the UK's obligations. The Tribunal disagreed.

Forced by these arguments to open the scientific "black box", the Tribunal systematically placed the messiness of scientific argument into the ordered parameters of law's "truth machine": clarifying the legal standard; applying the law to the facts; and conducting a means-ends analysis to determine

whether there was an "objective relationship" between "the science" and "the decision".

The best available scientific advice

Absent a specific TCA definition, the EU argued that the ordinary meaning of the treaty text, its context and UNCLOS, FAO and trade law interpretations, meant that "best available scientific advice" should reflect fisheries science practice: data-rich, model-based, and capable of producing objectively verifiable conclusions (PCA para. 189). Article 494(3)(c) supported this interpretation by prioritising scientific advice from the International Council for the Exploration of the Sea (ICES) – Europe's advisory body tasked with fisheries stock management.

The Tribunal agreed that scientific advice must form the foundation of decisions but rejected a technocratic adoption of science by decision-makers (PCA paras. 477-478). Scientific advice, it held, should be objective, transparent, evidence-based and determined by the norms of its particular discipline (PCA para. 487) with methodological rigour. The Tribunal thus acknowledged that science was not unitary. But it went even further: The "best advice" was not a quest for perfection, but rather what was reasonably available at the relevant time (PCA paras. 488-491). Here, public law echoed one of the law's most familiar cipher – the reasonable man. This legal figure allowed the Tribunal to assess both the quality of scientific advice and the rationality of the decision-making which followed (PCA para. 504). And so, while the Tribunal deconstructed the scientific black box, it simultaneously replaced it with one of its own.

Scientific fact and legal evidence

This is reflected in how the Tribunal addressed the EU's technical arguments which centred on attacking the the Ecopath with Ecosim (EwE) model used by Natural England/Cefas/JNCC.

The EwE model was peer-reviewed in 2007 after six years of development and subsequently updated and validated by ICES in 2015. However, Natural England/Cefas/JNCC had again updated the EwE and this (unvalidated) update was critiqued by the EU for its assumptions and data – inadequate consideration of Europe's stock-management "escapement strategy"; omitting key catch data; aggregating key datasets which should be treated separately; and failing to address spatial predator distribution.

These contentions presented the updated model as a black box – inaccessible to scrutiny and built from the "wrong" science. Yet, the Tribunal rejected each critique, variously finding insufficient (legal) evidence to assess the parties' scientific arguments; that alleged flaws were present but not "material"; or that omitted data was not "reasonably obtainable". Thus, although claiming the power to scrutinise science, the Tribunal retreated behind familiar legal devices. The result? The UK's science simply found a new validator in the Tribunal.

The reasonable decision-maker

The Tribunal applied similar logic to its rationality enquiry – and particularly the interpretative dispute over advice procured during the parties' 2023 consultations (the ICES Advice). This, together with the Natural England/Cefas/JNCC Advice, formed

the "foundation" of England's decision. No one contested that the ICES Advice was "the best available scientific advice" – and with the Tribunal having determined that the Natural England/Cefas/JNCC Advice met the legal standard, it was only left to determine whether the English decision was "based" on this advice. For the parties, however, the question of whether or not the ICES Advice validated that of Natural England/Cefas/JNCC was important. The Tribunal side-stepped the issue, simply examining whether the advice had been considered by the English Minister and was reflected in his decision.

Significantly, ICES itself seemed to defer the conservation decision to "the law":

> *"ICES advice on fishing opportunities is given at stock level and cannot function at the level of individual feeding grounds [...]. Therefore, a large part of the question of whether management is supporting ecosystem functions should occur at the level of national regulations [...]. However, it would make sense to evaluate the degree to which such closures could be targeted to maximise the benefits while minimising the costs."*

The South African penguin litigation

The limitations of stock assessment, the potential of national regulation to conserve ecosystem function, and the search for an appropriate trade-off between the two were precisely the issues behind the Penguin dispute.

The case was rooted in a long history of scientific debate over the conservation benefits of sardine and anchovy no-take zones. In 2008, a ground-breaking experiment commenced to

test whether closures around African Penguin breeding colonies would improve access to prey and thus population growth. First confirmed in 2018 by seabird scientists, this benefit was fiercely contested by fisheries scientists – including those aligned with the sardine and anchovy industry.

The subsequent battle of models and statistics prompted the Minister to call for a review of "the science". When this review reflected dissent, she called for two further scientific investigations – and ultimately a review by an international expert panel.

The report was provided, read by seabird scientists as supporting the need for closures – and it seemed that the Minister agreed. In August 2023, she decided to impose ten-year closures around key penguin colonies. And with a Ministerial decision made – the law intervened.

The trade-off mandate

Crucially, the Minister did more than simply ask for a review of "the science". Her Terms of Reference asked the panel to advise on how to delineate closures reflecting a "trade-off" between maximising African Penguin benefits and minimising fisheries impact.

The intention, at least from the conservationists' perspective, was clear: to create an objective, evidence-based framework for selecting among competing closure proposals – a definitive "black box" for settling competing scientific claims.

Yet when the Minister announced the closures, the trade-off analysis was absent and apparently unexplained. Conservationists argued this rendered the decision irrational: There was no objective relationship between the information before the Minister, the analysis she had procured and her decision. Here

was a familiar rationality complaint: The decision was not "based on" the best available scientific advice.

Interpretation and the appeal to law

Interpretation of the panel's report – the kind of legal wrangling sidestepped in the Sandeel decision – became a major fault line in the Penguin case. The respondents argued that the trade-off chapter was too vague to offer clear guidance on closure delineations (or at least, that their approach required more data and analysis). First, however, they veered into extensive analysis of the panel's statement that "fishing closures around the breeding colonies are likely to have a positive impact on population growth rates, but that the impacts may be small"[4].

This statement did not appear in the trade-off chapter, but in the panel's assessment of whether experimental closures predicted "benefits" for penguins. No party actually contested the Minister's decision to close fishing grounds: The issues were rather those of size, scale, location and selection method.

By dissecting the meaning of "small", "likelihood" and "benefit", the respondents – and the applicants in reply – revived the scientific divisions that had simmered since 2018. Explaining-science-to-lawyers thus became the vehicle to claim the Court's endorsement of one or other science, tracing familiar paths of credibility and evidentiary weight.

The plurality of science(s)

In their founding papers, the applicants' deponent was presented as an expert in marine ecology and African Penguin ecology. The applicants' explanation of the Minister's irrational-

ity was supported by this expertise and an additional expert affidavit from a team-member who had worked on applying the panel's trade-off chapter to "the data".

Industry responded with their own expert, using statistics to critique the applicants' approach and demonstrate the errors in their science. In reply, applicants highlighted key disciplinary distinctions, arguing that "traditional statistical methods" were inappropriate and that industry experts misunderstood how conservation science worked. Buttressing their arguments, they introduced further expert evidence: The expanded universe of population dynamics, multi-criteria decision-making and ecological science pitted against fisheries statistics.

Reconfiguring the black box

This exchange revealed deeper tensions. Initially, both sides presented their science as authoritative "black boxes." Confronted with competing claims, the applicants shifted position, acknowledging multiple scientific approaches while asserting theirs was contextually appropriate.

Their critique was telling: The industry expected the panel's recommendations to operate mechanically – input data, output closures. But that, the applicants argued, is not how science – particularly ecological science – works. Scientific decision-making required expertise, judgment, and the right disciplinary lens. Their scientific perspective – though plural – proved correct. Industry and the state were not.

Both sides thus sought to deconstruct their opponent's science while asserting the superiority of their own – a dynamic that again revealed how legal disputes over conservation are

entangled with competing scientific "truths", power struggles, and contested expertise.

Breaking and making the legal black box

Both cases reflect that "the best available science" is far from an objective, unitary standard. Once entering the adversarial realm of law, the black box cracks open, revealing competing methodologies, disciplinary boundaries, and contested interpretations of data. However, this does not diminish the notion of a truth-telling science.

Rather, while acknowledging scientific plurality, and exposing the variability of science, courts and lawyers use legal reasoning to preserve (and sometimes relocate) scientific authority. Science remains a "black box" – not because its contents are hidden, but because the legal system reconstructs the variability of scientific process and output as a unitary legal object capable of being assessed, measured and ordered by legal norms.

In this context, the EU's Charter of Fundamental Rights and its growing relevance for biodiversity and animal protection present both an opportunity and a challenge. Simply invoking "the science" of animal cognition or welfare will not settle fundamental questions about the moral and legal status of animals. Instead, such invocations may create new battlegrounds where different scientific communities – behavioural ecologists, veterinarians, agricultural scientists, economists – are likely to compete for space within the boundaries of the "black box" of legal authority.

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Ester Herlin-Karnell

Vet Bills and the EU Charter

Is Your Dog Insured?

Over the past decade, there has been an increasingly intense debate[1] on veterinary costs and animal welfare in both Europe[2] and North America[3]. Most EU Member States do not regulate veterinary costs. However, there are EU regulations that affect the cost structure of veterinary medicines and services, particularly through the European Medicines Agency. In several European countries, Market and Competition Authorities are looking into the matter (the UK[4], the Netherlands[5], and Sweden[6]) because costs for the same veterinary practice vary greatly and prices are rarely made transparent. Other EU countries, such as Germany, do regulate vet prices, and veterinary treatment costs are largely standardised. This divergence means that the cost of regular veterinary care, as well as access to such care, can vary significantly depending on the EU country and the specific area within that country. Many companion animal owners are distressed about veterinarian costs, and the "high veterinary care costs have received attention in the lay press and from competition authorities"[7]. Prices are considered unfair, arbitrary, and not animal-friendly. If any of the Charter rights are to have real effect, and if Article 37 on sustainability is to be understood as a living concept when it comes to animals, the largely unregulated veterinary market in many EU countries deserves some closer scrutiny.

Cooperate ownership and veterinarian clinics

A recent veterinary study reveals that investment companies have been entering the European veterinary sector since 2011, consolidating the market by establishing dominant chains of veterinary care providers backed by investment firms.[8] These firms are investing in veterinarian clinics, and the costs are

unimaginable. Cooperations are taking over the market for the veterinary industry,[9] often closing down small veterinary practices. This is a familiar story in the U.S.,[10] but not specific to it – it has also developed in Europe. Often, animals are insured,[11] but depending on the insurance policy, the deductible can be very high. From a strict EU consumer perspective, it is also not always clear to pet owners what exactly it is they are paying for. As an animal owner, you trust your veterinarian. This raises an important question: Can pet owners afford to treat their animals? As insurance premiums have risen significantly in many countries,[12] and as the deductible portion is sometimes as high as 50%, this is not at all straightforward.

Corporate pricing strategy and risk capital are common problems in the animal welfare sector in the U.S. and Canada as well. For example, in the Canadian example, corporations are acquiring more veterinary clinics, and six corporations dominate the Canadian market; two of them, Vet Strategy and the U.S.-based IVC, have acquired many clinics in Europe. Another one is the U.S.-based Altano group. These corporations own big veterinary hospitals in Europe. In Sweden, one of them is the Evidentia chain, which frequently appears in the news due to its high prices.[13] As a result of pressure to bill clients, there have been allegations of medical neglect. Additionally, in Sweden, the prices for veterinary services are often significantly different; more and more corporations are acquiring animal hospitals, driving up prices, and hiring a majority of the available veterinarians on the market.

What does the Charter have to do with it?

The EU Charter refers to the freedom to conduct business, as stated in Article 16. Limiting incentives to work is usually not a good model for ensuring quality healthcare. However, the current model that is taking shape seems unfair and unbalanced and also fails to respect EU competition laws. Moreover, the Charter also speaks of healthcare (Article 35) and the right to dignity (Article 1). Additionally – Maneesha Deckha did in this volume – the right to education could come into play, which would help increase knowledge about animals and, hopefully, lead to the avoidance of veterinary care altogether. Also, Article 37 of the EU Charter demands a high level of environmental protection and states that the improvement of environmental quality must be integrated into the Union's policies and ensured by the principle of sustainable development. It is seriously questionable whether this normative standard is taken seriously if the entire existence of an animal depends on the economic power of its owner. Many pets and animals are part of our households, and by not extending sentiments such as fairness and justice from the Charter to animals, they are not treated with the respect they deserve.

In Germany, the veterinary market prices are at least partly regulated, and vets are prohibited from overcharging, as there is a list of fees that creates some foreseeability for the customer as well.[14] Germany also applied to the Commission for permission to provide state aid to increase animal welfare in livestock breeding, with a clause that allowed it to be applied to more animals.[15] The EU should consider a regulated sector where the state subsidises part of animal care, as is the case with human

care, or a tax if you will. In some cases, veterinarians recommend multiple X-rays in situations where a consumer with no experience or in-depth knowledge may struggle to make an informed decision, and declining treatment for their beloved animal is something that the veterinary business often thrives on.[16] Of course, there may be cases where the vet should say no to pet owners as well.

Language requirements are not always proportionate

Another concern worth highlighting is the limitation of competition. This arises, among other things, for the language requirement some countries impose. Again, consider the example of Sweden.[17] Sweden has a shortage of veterinarians, and there is only one higher education institution in the whole country. From an animal welfare perspective, it does not make sense to demand a Swedish language requirement. If there are no veterinarians within 4-hour drive or more, does it really matter if your animal receives help in English? It does not seem so. Several animal clinics have been closed down in recent years, and there is no emergency service available. As a result, if one's animal becomes sick after five on a Friday, one will have to wait until Monday morning. One reason, as mentioned, is the trend of big cooperatives that close down small veterinary clinics to limit competition. Another reason is the shortage of veterinarians, and due to language requirements, it is challenging for non-Swedish speakers to access the market. When there is an animal welfare concern, there is no proportionality to uphold this language requirement. Allowing English should be an option, and most pet owners, at least in Scandinavia, speak and understand English and would much rather receive treatment for their

animal in English than none at all. After all, it is the animal that is the patient, not the owner.

Charter rights in practice

Currently, in many European countries – similarly to North America – there is a lack of transparency, and clinics generate significant profits depending on the insurance one can afford and the veterinary clinic one lives near, which can determine the life or death of one's animal. In some cases, animals are put down simply for financial reasons. If we believe that dignity should mean something in the context of animals, this is problematic and needs to change.

I have three recommendations to address this deficiency: First, more EU countries should take a closer look at the German model, where veterinary prices are regulated (even if they allow for some variation depending on the situation). Secondly, the language requirement for veterinary practice – as is the case in some countries, such as Sweden – should not be so strict. If there is a shortage of veterinarians, it is better to receive treatment in English than none at all. After all, the animal is the patient, and it seems that insisting on a strict language requirement limits competition. Thirdly, if we want to treat animals with respect, it should not be up to large corporations to decide whether we can afford to treat them or not.

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