

Animal Law and Ireland: More Questions Than Answers

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Introduction

The human–animal relationship, as a concept of study, spans multiple disciplines and indeed has been an area of interest across both time and geography. At its core are historic and cultural norms which often go unchecked and unquestioned. The set of legal rules governing human–animal relationships is known as animal law.¹ This area of law is a complex web of rules that govern many relationship types and situations related to animals. At an academic level this area of law is divided across ideological lines—welfare versus rights. The two schools converge in some areas of thought but are largely at odds in relation to their respective positions. The ideological position of those in the animal welfare school of thought is that animals can be utilised by humans for their daily living needs but that it must be done in a manner that upholds certain welfare standards in terms of the animals' experience of life.² Whereas, the animal rights ideological position perceives animals as sentient beings who should have certain rights to uphold their place in society as living creatures.³

This ideological division is not the only problem evident in the animal law field. Additional critiques include: it being static,⁴ selective in terms of application; lacking in legal and transnational protection regimes; and primarily contained in secondary law, which is typically not legally binding.⁵ Peters has argued that the current

top-down approach runs the risk of lacking cultural sensitivities and imposing cultural and imperial standards.⁶ Thus, she suggests that animal law will only positively contribute to society when it grows from the bottom up.⁷ Finally, little has been done to align animal law and human rights law in a complementary manner (ie exploring and accounting for human cultural variation when designing and applying the laws).

Animal law, like environmental law, is central to population health, environmental sustainability, and biodiversity. Zoonotic diseases are a real risk to the world's population; soil erosion due to overgrazing is a serious environmental risk; and deforestation is detrimental to the planet's biodiversity. As such, animal law has global reach and impact and thus its fractured nature needs urgent attention. The COVID-19 crisis has focused experts' and indeed citizens' minds on the area and yet discussions remain largely restricted to discipline-specific debates and traditional approaches to regulations and guiding practices.

It may be argued that animal law is following a similar trajectory to environmental law, which only recently became a key legal speciality. Environmental law is now a rapidly growing area with over 1200 courts and tribunals operating across 44 countries.⁸ It has become a legitimised legal speciality as a result of a number of facilitators: its alignment with human rights, public support for environmental issues, scientific support for a need for action, and a public health/survival debate.⁹ Animal law has not had the benefit of these key drivers heretofore. However, there is now increasing public support for ethical produce and the recent COVID-19 pandemic has brought the human–animal relationship into mainstream discourse.¹⁰ This discourse is now underpinned by scientific arguments about public

1 Anne Peters, *Studies in Global Animal Law* (Springer Nature 2020) 183; John CV Pezzey and Michael A Toman, *The Economics of Sustainability* (Routledge 2017).

2 Angus Nurse, 'Beyond the Property Debate: Animal welfare as a public good' (2016) 19(2) *Contemporary Justice Review* 174.

3 Anne Peters, 'Global Animal Law: What it is and why we need it' (2016) 5(1) *Transnational Environmental Law* 9.

4 Joost Pauwelyn, Ramses A Wessel, and Jan Wouters, 'When Structures become Shackles: Stagnation and Dynamics in International Lawmaking' (2014) 25(3) *European Journal of International Law* 733.

5 Caley Otter, Siobhan O'Sullivan, and Sandy Ross, 'Laying the foundations for an international animal protection regime' (2012) 2(1) *Journal of Animal Ethics* 53; Peters (n 3); Steven White, 'Into the Void: International Law and the Protection of Animal Welfare' (2013) 4(4) *Global Policy* 391.

6 Anne Peters, 'COVID-19 Shows the Need for a Global Animal Law' (2020) 11(4) *dA Derecho Animal: Forum of Animal Law Studies* 86.

7 *ibid.*

8 Ceri Warnock, *Environmental Courts and Tribunals: Powers, Integrity and the Search for Legitimacy* (Hart Publishing 2020).

9 *ibid.*

10 Dimitris Potoglou et al, 'To what extent do people value sustainable-resourced materials? A choice experiment with cars and mobile phones across six countries' (2020) 246 *Journal of Cleaner Production* 118957.

health, providing the green shoots that drove the legitimisation of environmental law. As such it may be an ideal time to revisit animal law using an empirical lens.

The aim of this article is not to answer comprehensively any of the complex questions raised but rather to open a space for intellectual debate and to stimulate interest in the area in Ireland. The article will commence with a discussion on some of the core areas of the human–animal relationship and why it is an important area to consider. The paper will then look at the diverging schools of thought that have emerged, namely the animal welfare and animal rights field, and how these debates align with law and more particularly animal law. Finally, the paper will move on to explore how a more therapeutic approach to law and legal frameworks may assist with progression in the animal law field, particularly if we wish to move beyond solely exploring this area from a human-centred approach as has occurred within the environmental law space.

The Human Animal Relationship

Humans and animals have had, and indeed continue to have, a long and complex relationship. This relationship has largely been characterised by various forms of interaction primarily underpinned by exploitation, with economic need and resource generation being driving factors.¹¹ This relationship has changed over time and varies across jurisdictions. Moreover, it takes multiple and varied forms—food, medicinal, companionship, and collectables. As outlined above, the relationship often has an economic aspect to its existence—people making a living through farming, by selling animal body parts for medicinal purposes, people supporting their family's survival through poaching for food, and people making vast profits from trafficking rare animals, to name but a few.¹² The rise in interest in the area of human–animal studies, particularly in the US,¹³ has led to increased questioning of this complex relationship and the presuppositions surrounding its framing.¹⁴ Moreover, the arrival of the COVID-19 pandemic has magnified such questions.¹⁵ The likes of intensive farming in the West and cramped conditions at animal/meat markets in the East have been associated with zoonotic diseases, whereby infectious diseases such as swine flu and COVID-19 have the potential to emerge and mutate, thereby infecting humans.¹⁶

This has reframed the human–animal relationship, moving it from a largely private and personal issue to a public health and societal issue. Interestingly, much emphasis has been placed on the East's practice of wet markets being the source of such problems.¹⁷ However, intensive farming in the West, which is largely hidden

behind closed doors, is not as emphasised as the wet market traditions, and yet research suggests that this form of farming is potentially equally as harmful to public health and the environment, despite the higher levels of biosecurity adopted.¹⁸ The human–animal relationship also impacts the climate and biodiversity. For example, reports suggest that livestock produce 14.5% of the total anthropogenic GHG emissions globally and clearing pastures for cattle ranching has been attributed with being one of the leading causes of deforestation.¹⁹ A problem identifiable in the literature is how to utilise laws and regulations in this complex space in which cultural sensitivities, cultural diversity, sustainability issues, and economic norms interact.²⁰

Animal Law: A Fractured and Stagnant Area

Those working in the animal law field have traditionally been divided along ideological lines. One school of thought views the animal law field through a pure animal rights lens, in that animals should have intrinsic rights regardless of human activity; the other school of thought views animal law from an animal welfare perspective in that animals' welfare is important but only insofar as it aligns with human activity. The abolitionist movement, aligned with the pure animal rights movement, believes that any animal welfare approach only entrenches ideas around animals being used by humans and therefore prolongs the problem. Many of those aligned with the animal welfare movement believe that, whilst the welfare approach is currently not sufficiently working to provide adequate protections for animals, it is a step along the road to achieve a better solution to the problem. Whilst there has been and indeed is a longstanding divide between the two schools of thought, there is also another body of literature that views them as more alike than different.²¹ Therefore, it has been suggested that the philosophical approaches may be more similar than immediately evident, albeit that the practical solutions proposed may be different.²² It must be recognised, however, that those in the animal rights field, particularly those who take the abolitionist perspective, perceive animal law as perpetuating the problem. This author suggests that animal law can be part of the solution and aligns more with what might be called a 'radical welfare' approach aimed at establishing core rights that seek out harmony with human rights through a form of therapeutic jurisprudence. We will return to this below. This position will be problematic for some working in the field and indeed my own understanding of my position may change with time, but for now this is where I can best position myself in this busy space.

11 Steven McMullen, *Animals and the Economy* (Palgrave Macmillan 2016).

12 *ibid.*

13 Simon Brooman, 'A Practical Approach to Animal Welfare Law by Noel Sweeney' (2021) 11(1) *Journal of Animal Ethics* 112; Maneesha Deckha, 'Critical Animal Studies and Animal Law' (2011) 18 *Animal Law* 207.

14 Thomas G Kelch, 'Towards Universal Principles for Global Animal Advocacy' (2016) 5(1) *Transnational Environmental Law* 81; Peters (n 3); Katie Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5(1) *Transnational Environmental Law* 55.

15 Tauseef Ahmad et al, 'COVID-19: Zoonotic aspects' (2020) 36 *Travel Medicine and Infectious Disease*.

16 Robert G Webster, 'Wet markets—a continuing source of severe acute respiratory syndrome and influenza?' (2004) 363 *The Lancet* 234.

17 Mamoon Chaudhry et al, 'Risk Factors for Avian Influenza H9N1 Infection of Chickens in Live Bird Retail Stalls of Lahore District, Pakistan 2009–2010' (2018) 8 *Scientific Reports* 1.

18 Elisabeth G Huijskens et al, 'Evaluation of Patients with Community-Acquired Pneumonia Caused by Zoonotic Pathogens in an Area with a High Density of Animal Farms' (2015) 63(2) *Zoonoses and Public Health* 160.

19 Pierre J Gerber et al, 'Tackling Climate Change through Livestock: A Global Assessment of Emissions and Mitigation Opportunities' (Food and Agriculture Organization of the United Nations 2013); Martha Bonilla-Moheno and T Mitchell Aide, 'Beyond deforestation: Land cover transitions in Mexico' (2020) 178 *Agricultural Systems* 102734.

20 Peters (n 3); Peters (n 6).

21 Liam O'Driscoll, 'Animal Law: Introduction, Discourse and the Irish Approach' (*Trinity College Law Review Online*) <<https://trinitycollegelawreview.org/animal-law-introduction-discourse-irish-approach/>> accessed 1 June 2022.

22 Peter Sankoff, 'The Animal Rights Debate and the Expansion of Public Discourse: Is it Possible for the Law Protecting Animals to Simultaneously Fail and Succeed?' (2012) 18 *Animal Law Review* 281.

Animal law is a difficult area of law as it has significant ambiguities around 'right and wrong'. For example, intensive farming is perceived as a 'wrong' amongst animal welfare and rights-based activists; however, it is also seen as 'right' by others as a result of the ability to produce cheap meat and thus provide food for large numbers of people. Adopting a Millian approach, traditionally law has followed a utilitarian and liberal pathway in terms of the former defining right and wrong and the latter defining rights within that framework. Utilitarianism adopts a philosophical position that prioritises the greatest happiness of the greatest number.²³ Liberalism on the other hand refers to individual rights that are intrinsic to justice and in this respect a rights holder can either align with or limit the utilitarian impact in certain areas of social life.²⁴ Hedonism, humans' seeking of pleasure and avoidance of pain, is central to this argument. However, hedonism is a complex experience; pleasure through ignorance may not be pleasure. A liberal approach, assuming one has a right to understand pleasurable experiences, may indeed reverse a hedonistic experience.

Aligning this with animal law is tricky as much animal life is hidden from humans' everyday lives. This means that the gaining of pleasure may be done in a manner that, unknown to the pleasure seekers, would actually cause them pain if they were fully aware of the context in which they are experiencing the pleasure. Thus, in this context, the utilitarian argument may fail if people are fully informed of the circumstances under which they are experiencing their pleasure, if not aware, it may be pain disguised as pleasure. An example of this is a self-proclaimed animal lover who enjoys the pleasure of a regular shop-bought sausage sandwich on a Sunday morning after a hard week's work. However, one must assume, with the person being an animal lover, that if they knew the living conditions of the pig and the slaughter mechanisms used to prepare the meat, they would not experience such pleasure from the sausage sandwich.

There is a real dilemma here as to enjoy a non-traditional organic bought sausage, where the animals experience higher standards in living conditions, may in fact cause economic pain due to its cost and thus reduce the pleasure of eating the sausage sandwich. Adding to the complexity and contradictions that appear to often circulate in this area is the acceptance of ignorance and/or indeed the requirement of ignorance to pursue pleasure. This is where the liberal individual right to pleasure, perhaps along with the greatest number in society, dominates the right to, or indeed desire for, information that may alter the pleasure principle in such a scenario. In other words, ignorance may indeed be required and desired to experience pleasure. Thus, the human-centric and individually focused approaches of utilitarianism and liberalism, alongside willingly accepted ignorance, have the potential to entrench the problems around animal law and indeed may be intrinsic to the stagnation in the area. However, adopting a higher form of happiness that relates to happiness for and with the greater good for all, for which Mill argued, might overcome these problems. It is beyond the scope of this paper to unpick these puzzles fully, but it is important to point out the tensions in the traditional legal framework when analysing this area and to consider such dilemmas when thinking about rules and laws in this space.

23 Alan Ryan (ed), *John Stuart Mill and Jeremy Bentham: Utilitarianism and Other Essays* (Penguin 2004).

24 Jonathan Riley, 'Utilitarian Liberalism: Between Gray and Mill' in John Horton and Glen Newey (eds), *The Political Theory of John Gray* (Routledge 2007).

These types of problems in relation to animal laws are not new. In the eighteenth century, when Jeremy Bentham was writing, the question of the position of animals within the world in terms of rights was an ongoing debate.²⁵ Bentham, a utilitarian, argued that animals should not be made suffer unnecessarily but their suffering was acceptable if it meant the betterment of man.²⁶ However, he did suggest that:

It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate...The question is not, Can they reason? nor, Can they talk? but, Can they suffer?²⁷

It would seem that Bentham's arguments hold true today; most national laws, EU regulations, and international instruments rely on morals and sentience and the avoidance of unnecessary suffering as their justification.²⁸ For example, laws that recognise sentience either have it explicitly enshrined in the relevant law or refer to it implicitly through only applying the law to sentient beings.²⁹ The Treaty on the Functioning of the European Union refers to the welfare of animals in agriculture, fisheries, transport, internal market, research, technological development, and space policies, using the sentient nature of animals as justification.³⁰ Directive 2010/63/EU of the European Parliament and the Council on the Protection of Animals Used for Scientific Purposes has gone beyond covering vertebrate animals and is inclusive of cyclostomes and cephalopods and refer to scientific evidence of their ability to feel pain, suffering and distress as their justification.³¹ Moreover, The European Convention for the Protection of Vertebrate Animals Used for Experimental and other Scientific Purposes explicitly states that man has a moral obligation to respect all animals and be cognisant of their ability to suffer.

This is similarly the case for national laws. The Finnish Animal Welfare Act explicitly outlines the obligation to protect animals from distress and pain in the best possible way (section 1.1).³² French welfare law (provisions laid down in the Penal Code and the Maritime Fishing and Penal Code) states that all sentient animals shall be placed by the owner in conditions comparable with their biological needs.³³ The German Animal Welfare Act (2006) refers to the responsibility of humans to protect the lives and wellbeing of their fellow creatures and that no one shall cause pain or suffering without good reason.³⁴ In India, the Prevention of Cruelty to

25 Johannes Kniess, 'Bentham on animal welfare' (2018) 27(3) *British Journal for the History of Philosophy* 556.

26 *ibid.*

27 JH Burns and HLA Hart (eds), *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1996) chapter 17, footnote b.

28 Charlotte E Blattner, 'The recognition of animal sentience by the law' (2019) 9(2) *Journal of Animal Ethics* 121.

29 *ibid.*

30 Treaty on the Functioning of the European Union (Lisbon Treaty) art 13.

31 Council Directive 2010/63/EU of 22 September 2010 [2010] OJ L276/33.

32 Animal Welfare Act 247/1996, amendments up to 1430/2006 included.

33 Loi n° 97-1051 du 18 novembre 1997 d'orientation sur la pêche maritime et sur les cultures marines.

34 Tierschutzgesetz 2006 BGBl I s 1206, 1313 <www.gesetze-im-internet.de/tierschgz/BjNR012770972.html> accessed 1 June 2022.

Animals Act (1960) defines animals as any living creature other than humans and in its Preamble explicitly outlines its aim as being to prevent the infliction of unnecessary pain on animals.³⁵

In the 1960s, the British Farm Animal Welfare Council developed the five freedoms for animals: namely, freedom from hunger and thirst; freedom from discomfort; freedom from injury, pain, and disease; freedom to express normal behaviour; and freedom from fear and distress.³⁶ The World Health Organisation for Animal Health recently launched a Global Animal Welfare Strategy which includes four pillars: developments of animal welfare standards; capacity building and education; communication with governments, organisations and the public; and implementation of animal welfare standards and policies.³⁷

Ireland relies upon the Animal Health and Welfare Act 2013 (as amended) and takes a similar perspective in terms of the infliction of 'unnecessary suffering'.³⁸ This type of terminology has been described as too ambiguous to practically enforce as any welfare concerns could be trumped by economic, business, or human health.³⁹ Indeed, similar arguments could be put forward in relation to the other EU and national regulations or legislation outlined above. The legal and strategic approach outlined above suggests that countries' ideological positions are limited to a basic animal welfare debate and that this is likely as a result of adhering to long standing economic, business, and human health practices. As a result, many scholars are now arguing that a more rights-based approach, although not necessarily to the level of human rights, may be necessary at an international level.⁴⁰ This raises more questions and potential barriers, for example, should all animals get equal rights? Or do some get different rights to others? This is evident in the debate related to rights for domestic animals versus non-domestic animals—some scholars argue that the former require fewer rights than the latter, whilst others argue that such rights simply need to be different.⁴¹ Furthermore, it asks questions about motivations for animal rights—whether animal rights are for the sake of human privilege or whether they are for a higher ethical and moral recognition of the position of animals in the world.

The intersection between human rights and animal rights is also an important area to consider. When an animal has a right, can it trump a human's right? And if so, when? For example, does a human's right to cheap meat trump an animal's right to live a more natural life? If a human has access to an alternative protein source is there a moral imperative on the human to take that option so as not to cause harm to an animal? Such changes in human consumption practices would bring about changes to supply and demand chains and thus require farmers to adapt, and this would require significant support to be put in place during a period of transition. Indeed, some changes are already underway as is evidenced in Ireland by the Department of Agriculture, Food and Marine, publication, *A Roadmap Towards Climate Neutrality*, where economic supports for rewilding/forestry

and other environmentally friendly farming practices are recognised as key to sustainability moving forward.⁴² However, the impact of such initiatives in terms of reducing agricultural area loss has been raised as a growing concern by some UK farmers.⁴³ Change is also evident in other jurisdictions, for example the UK is moving towards recognising animals, including decapods and cephalopods, as sentient beings, as well as banning live exports and the importation of hunting trophies. Furthermore, Spain has recently recognised animals as sentient beings in their Civil Code, animals already having sentient status in Spanish regional administrative laws and their Criminal Code.

This section has raised big questions and attempting to answer them is beyond the scope of this paper. However, their consideration is important as they are intrinsic to animal law not progressing in terms of stronger welfare/rights based approaches being proposed, supported, and adopted. They point to a current tension between human consumption practices and the ability to advance in a more sustainable and rights-based manner.

Therapeutic Jurisprudence: A Problem-Solving Legal Approach to Complex Socio-Legal Issues

The currently polarised positions and tensions in animal law, as outlined above, are not irreconcilable. Viewing this area as a complex socio-legal area that requires nuanced strategies to develop answers highlights the need for a legal framework that will assist with unpacking these problems and formulating solutions. A correct legal framework can simplify this space and move it forward. The current legal framework, based on utilitarian liberalism, has been questioned in terms of its ability to provide the necessary framework for the animal law field. This questioning has resulted from, alongside the issues listed above, its inability to adjust to and accommodate difference.⁴⁴ As such, Kelch has argued for a change in legal policy. For example, he suggests the Feminist Care Theory be utilised to generate universal principles aimed at changing this space.⁴⁵ However, to date this has brought about little change. The author of this paper suggests that consideration be given to therapeutic jurisprudence as a means to bring about change in this area. Therapeutic jurisprudence provides a problem solving approach that is applicable to complex socio-legal issues in a manner that upholds due process and rights-based approaches, whilst also connecting to the lived experience of those involved with the law and legal relationships.⁴⁶ Therapeutic jurisprudence therefore provides the core moral principles of Feminist Care Theory, compassion, sympathy and empathy, but retains the central pillar of due process, imperative to ensuring that legal rights are upheld to a high standard.

35 Prevention of Cruelty to Animals Act 1960.

36 British Farm Animal Welfare Council, 'Five Freedoms' <<https://webarchive.nationalarchives.gov.uk/ukgwa/20121010012427/http://www.fawc.org.uk/freedoms.htm>> accessed 1 June 2022.

37 OIE Global Animal Welfare Strategy (May 2017) <www.oie.int/fileadmin/Home/eng/Animal_Welfare/docs/pdf/Others/EN_OIE_AW_Strategy.pdf> accessed 1 June 2022.

38 Animal Health and Welfare Act 2013 <www.irishstatutebook.ie/eli/2013/act/15/> accessed 1 June 2022.

39 O'Driscoll (n 21).

40 Sykes (n 14).

41 Deckha (n 13).

42 Department of Agriculture, Food and the Marine, 'Climate Change, Bioenergy & Biodiversity' (2021) <www.gov.ie/en/publication/a8e47-climate-change-bioenergy-biodiversity/> accessed 1 June 2022.

43 Jonathan Riley, 'How farmers can reverse food self-sufficiency decline' (*Farmers Weekly*, 18 November 2021) <www.fwi.co.uk/news/farm-policy/analysis-how-farmers-can-reverse-food-self-sufficiency-decline> accessed 1 June 2022.

44 One must only look at the gay rights movement which centred around highlighting the sameness of gay people to non-gay people, thus they deserved rights. An animal rights argument cannot use the liberalism cornerstone of the law to uphold its argument, in fact it counters the argument. Deckha (n 13).

45 Kelch (n 14).

46 Etain Quigley and Blanaid Gavin, 'ADHD and the Irish Criminal Justice System: The Question of Inertia' (2018) 15 *Irish Probation Journal* 84.

Therapeutic jurisprudence is a philosophical approach or paradigm which is often discussed in terms of law and practice being therapeutic for those they affect.⁴⁷ The overall aim of therapeutic jurisprudence is to explore the therapeutic and anti-therapeutic nature of the law and to outline more therapeutic approaches: importantly, without breaching due process and/or constitutional rights.⁴⁸ The retention of due process and constitutional rights is key to a rights-based therapeutic jurisprudence that is not overly paternalistic, autonomy-depriving and/or punitive. As such, therapeutic jurisprudence is a framework that allows the law to move beyond a rigid rule-imposing approach and move towards a model that can adapt to the complex needs of those it governs whilst retaining due process.

Historically, the legal field has struggled with moving beyond the rule-based model, which is aligned with the classical school; and the rehabilitative based model, which is aligned with the positivist school. The classical school is based on two assumptions, namely, individuals make rational decisions about offending and that an appropriately designed system will result in primary and secondary deterrence. This school of thought is primarily concerned with ensuring equality before the law, proportionate, swift, and consistent responses, clarity of the law, and consistency of sanction. The positivist school, on the other hand, is based on different assumptions, namely, that individuals who offend have underlying problems and need psychosocial interventions to rehabilitate. This school of thought is primarily concerned with meeting the individual needs of the person rather than being concerned solely with the offence. Involvement with the system typically takes the form of rehabilitation rather than punishment and thus a person can be detained until such time as they are deemed rehabilitated, which can result in long and sometimes indeterminate sentences often impacting some of the most vulnerable in society.⁴⁹ The problems with applying such philosophies to the area of animal law are twofold: the classical school is rigid, lacks an ability to adapt to individual need, and fails to account for the proposition that the person may be acting in a rational manner as defined; the positivist school lacks due process, overemphasised the psychosocial, and is difficult to apply when pathology is absent. Therapeutic jurisprudence addresses these problems and provides a framework that facilitates an adaptable rule-based approach that meets the complex needs of individuals (including animals) without losing the core pillar of justice, namely due process.

Such problem-solving approaches have been applied to other areas of the legal field (e.g. environmental law, youth justice, and mental health). Although the shift to a problem-solving approach in these areas was hardly a panacea, the faults identified are learnings that can be adopted into the field of animal law. Those working in the animal law space have argued for a global animal law that is culturally sensitive, constructed through a shared and common discourse, empirically based, and theoretically sound.⁵⁰ The necessity of a global approach has also been espoused by many influential international agencies such as the World Organisation for Animal Health, the United Nations Food and Agriculture Organisation's One Health Strategy, the European Commission

47 David B Wexler and Bruce J Winick, *Essays in therapeutic jurisprudence* (Carolina Academic Press 1991).

48 David B Wexler, 'Mental health law and the seeds of therapeutic jurisprudence' in Thomas Grisso and Stanley L Brodsky (eds), *The Roots of Modern Psychology and Law: A Narrative History* (OUP 2018).

49 An example of this is Indeterminate Sentences for Public Protection in England, abolished in 2012.

50 Peters (n 3).

in its European Communities Proposal for Animal Welfare and Trade in Agriculture (2000), and the World Trade Organisation.⁵¹ As outlined above, the proliferation of legal instruments targeted at human-animal relations to date have managed to get us to a point where certain animal welfare concepts have become the norm. However, they fail to provide a more comprehensive solution in this space. As a result, animal law has been described as experiencing a period of stagnation. Therefore, a paradigm shift in terms of how this problem is viewed and addressed is required and it is suggested that a therapeutic jurisprudential approach be considered.

Progressing Animal Law

Preliminary research in Ireland suggests that animal law remains a fractured area, that it relies heavily upon a traditional welfare approach, and that it lacks a firm evidence-based theoretical guiding framework. Moreover, there does not appear to be consensus about the aims and objectives of animal law and indeed this seems to be a moving feast. Exploratory findings further suggest that minimal attention is being paid to how the law, as currently constructed and applied, impacts the lives of those it governs and how human rights law and animal law can align in a complementary rather than contradictory manner. Nor has there been any significant attempt to incorporate the lived experience into the development of legal structures governing this space. This is a complex and nuanced area that requires a complex, nuanced, and thoughtful solution that goes beyond the traditional legal rules-based/rehabilitative approach. Animal law is largely underpinned by historical and cultural norms and presuppositions which have mainly gone unquestioned heretofore. This author suggests that it is time to question these historic and cultural norms with the aim of reconceptualising the legal framework and challenging long standing presuppositions in the field.

It is time to explore this area through a new lens by developing an innovative and evidence-based approach to assist with the advancement of legal instruments and their application in the human-animal relations field in Ireland. Animal law needs to be reimaged in a manner that includes and values stakeholders' needs. The siloed areas of human rights, animal welfare, animal rights, and environmental law schools of thought need to work together with a view to developing shared consensus rather than division. Animal law needs to be brought beyond the traditionally rigid liberal utilitarian approach to adopt a problem-solving framework from which it can thrive. As such, a fundamental shift in the conceptual framework currently underpinning animal law in Ireland needs to occur. This will have the impact of developing a more sustainable approach to the human, animal, and law relationship moving forward.

51 World Trade Organization, 'European Communities Proposal: Animal Welfare and Trade in Agriculture' G/AG/NG/W/19 (28 June 2000) <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=12129&CurrentCatalogueIdIndex=0&FullTextHash=1&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True> accessed 1 June 2022.