

27TH ANNUAL
ANIMAL LAW CONFERENCE

PORTLAND, OREGON
OCTOBER 25-27, 2019

All the World's a Stage: Raising the Curtain on International Animal Advancements

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A Three-Act Play of Global Gains for Animals



- I. Setting the Scene**
- II. Spotlighting Developments Abroad**
- III. International Productions**



Act I: Setting the Scene

Waiting in the Wings: A Special Kind of Prop(erty) & Footholds in the Environment



A Special Kind of Prop(erty): Sentient Beings



Sentience Denied

Sentience Defined

- The capacity to feel, perceive, and have positive and negative experiences
- A subjective phenomenon: self-awareness; metacognition; a theory of mind

France – 1976, 2015

- 1976: animals' living conditions to meet “biological . . . requirements of their species”
- 2015: animals re-codified from “moveable property” to “living beings gifted [with] sentience”

The European Union – 1997, 2009

- “Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals . . .
- . . . while respecting the legislative or administrative provisions and customs of the EU countries relating in particular to religious rites, cultural traditions and regional heritage.”



A Special Kind of Prop(erty): Sentient Beings



African Union – 2017 (AU-IBAR: APAW)

Animal Welfare Strategy:

- “an Africa where animals are treated as sentient beings . . .”
 - “competitive and sustainable animal resource industry”
 - “to contribute to socio economic transformation”
- “adoption of good animal welfare practices for the human wellbeing, sustainable livelihoods, poverty reduction and economic growth”

A Peek at Select Jurisdictions

- Tanzania (2008); South Africa (2008* just elephants); Lithuania (2012); US – Oregon (2013); Malta (2014); Quebec (2015); New Zealand (2015); Colombia (2016); Brussels (2018); Australia* – Australian Capital Territory (2019); ...others?



Living Creatures/Beings

- Portugal (2017)
- Slovakia (2018)
- Spain (2019?)

- Dignity
- Special category

- Limitations, definitions, significance



Footholds in the Environment

Constitution of Ecuador

- **The Rights of Nature:**
 - Art. 71: Existence; maintenance; life cycles; evolutionary process; restoration . . .
 - Art. 72: State to restore nature, mitigate exploitation, species loss
 - Art. 73: Affected individuals / communities to be compensated
 - Art. 74: Anyone may call on the state to enforce nature's rights



Footholds in the Environment

Bolivia's Law of Mother Earth

- **Chapter 1: Principles**
 - Establishes rights of Mother Earth, and duty of State and society to uphold them
 - Humans to live in harmony with nature
- **Chapter 2: Definitions**
 - Mother Earth as dynamic living system, indivisible community of interrelated life
 - Mother Earth's rights as a collective public interest
 - Hierarchy of rights: living system, collective, individual
- **Chapter 3: Rights**
 - Life, diversity of life, water, clean air, equilibrium, restoration . . .
- **Chapter 4: State and Societal Duties**



Act II: Spotlighting Developments Abroad



Animal Gains in Foreign Theaters: India, South Africa, Argentina, and Others



Indian Theater

Singh vs. State of Haryana (2019)

- **Background:**
 - 29 cows allegedly smuggled for slaughter in violation of Prohibition of Cow Slaughter Act
- **Conviction upheld**
- **Other state and national laws:**
 - Haryana Motor Vehicles Rules
 - Prevention of Cruelty to Draught and Pack Animals Rules
 - Transport of Animals Rules
 - Prevention of Cruelty to Animals Act
 - Transport of Animals on Foot Rules, 2001
 - Aquarium and Fish Tank Shop Rules, 2017
 - Dog Breeding, Marketing, and Pet Shop Rules, 2017
 - Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009



Indian Theater

Singh vs. State of Haryana (2019)

- **Legal personalities:**
 - Religious idols
 - Corporations
 - Animals
- **Ernest Barker:**
 - “Just as the parts in a play are created and assigned by the dramatists, so . . . personae in law are created and assigned by similar agencies” in the state.
- **Citizens as *loco parentis***
- **Statutory rights**
- **Constitutional duties:**
 - Art. 51(A)(g): to have compassion for living creatures
 - Art. 51(A)(h): to develop humanism



Indian Theater

Singh vs. State of Haryana (2019)

- **Personhood Implications:**
 - Haryana to raise regulations to meet state and national welfare laws
- **Pronouncement:**
 - “The entire animal kingdom . . . are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person.”
- **Questions/Concerns:**
 - Legal rights predicated upon legal duties?
 - What duties, if any?



South African Theater

NSPCA v Minister of Justice and Constitutional Development (2016)

Background:

- Religious sacrificial slaughter of two camels – cruel & inhumane treatment
- Failure by Prosecutors to prosecute, NSPCA powers for private prosecution

Constitutional Court - Unanimous Decision:

- “The rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals”
- “Animal welfare is connected with the constitutional right to have the “environment protected... through legislative and other means”.”
- “This integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values.”



South African Theater

Lemthongthai v S (2014)

- “The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.”

NSPCA v Openshaw (2008) (minority judgment)

- “...the statutes recognise that animals are sentient beings that are capable of suffering and of experiencing pain.”

NSPCA v. Minister of Environmental Affairs (2019)

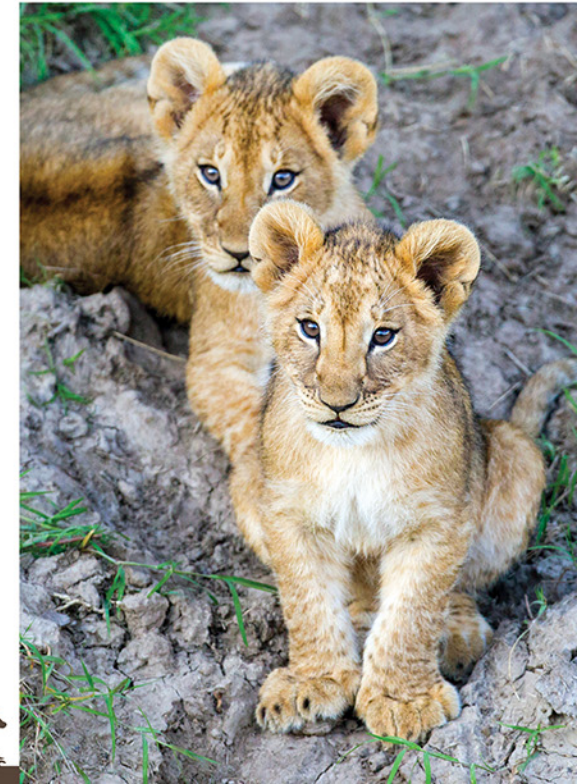
- “The treatment of lions in captivity ...is inextricably linked to the constitutional issue of what may constitute the elements of the right to an environment and the right to have it protected for the benefit of this and future generations that Section 24 of the Constitution articulates”



South African Theater

Important takeaways and conclusions

- **Protection of animals is about animals**
 - Not just about humans, human values & moral status
- **Animals have intrinsic value**
 - Not just instrumental value
- **Animals are important as individuals**
 - Not just in conservation and biodiversity considerations
- **Human right to environment includes animal welfare**
 - Not just wild animals in the wild
- **Animal welfare and animal conservation = intertwined**
- **Opens the door...**
 - Opportunities ahead!



Argentinian Theater

Cecilia: P-72.254/15 (2016)

- **Background:**
 - Cecilia held captive for 30 years in Mendoza Zoo
 - Deplorable conditions
- **AFADA brings habeas action, alleging:**
 - Illegal detainment
 - Conditions pose risk to physical and emotional wellbeing
- **AFADA deemed an inappropriate party**
- **Court invokes power of *iuranovit curia***



Argentinian Theater

Rights of Human Subjects

Art. 43: collective impact
Art. 41: right to environment

- quality of social life
 - natural patrimony
 - cultural resources

Nat'l Law 22.241: fauna are public interest and duty
Art. 16: broad powers

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Cecilia

Subject & Object
Dual Identity
Prop-Actor-Prop

Objects of Human Rights

Art. 41: right to environment

- quality of social life
 - natural
 - parks
 - landscapes
 - cultural resources
 - sculptures
 - natural & cultural
 - fauna

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Argentinian Theater

Cecilia: P-72.254/15 (2016)

- **Animals as actors in the theater of human law:**
 - “Zoos are the stage where great apes are exposed to visits of human beings . . . Great apes . . . are involuntary objects of the law. Consequently, animals are involuntary actors in the theater of human law. Recognizing great apes as legal persons is the best act of inclusion as involuntary parties in the legal system human beings can do . . .”
- **Questions/Concerns:**
 - Anthropocentric discourse
 - Obligations after relocation



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- A large African elephant with prominent, curved tusks stands on a dirt path. The elephant's trunk is lowered towards the ground. The background features a lush savanna with green trees and bushes under a clear sky.



Act III: International Productions

Animals on the International Stage & Platforms for Future Productions



Animals on the International Stage

International Animal Law

- **Introduction:** background, issues, aims, functioning, gaps, challenges, criticisms

Convention on Biological Diversity (CBD)

- “Conscious of the intrinsic value of biological diversity” “...sustainable use”

World Animal Health Organisation (OIE)

- “...an associated ethical responsibility to ensure any such use is humane, as defined through the OIE’s international standards for animal welfare, in recognition of the sentience of animals” (Animal Welfare Strategy: 2017)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

- “...for the protection of certain species of wild fauna and flora against over-exploitation through international trade”
- COP18?



WTO: Animal Welfare as a Moral Concern



EC Seal Products Case (2014)

- **History of GATT and WTO**
- **EU establishes EU Seal Regime:**
 - Prohibits import of seal products
 - Exceptions: travelers; resource management; indigenous community hunts
- **Canada and Norway allege Seal Regime violates:**
 - GATT Art. I:1 – Most favored nation
 - GATT Art. III:4 – National treatment
- **EU asserts Art. XX exceptions:**
 - Art. XX(a): Seal Regime necessary to protect public morals
- **WTO Appellate Body Ruling:**
 - Animal welfare qualifies as a public moral
 - However, Seal Regime fails Art. XX's chapeau requirement



Platforms for Future Productions

Background

Universal Declaration on Animal Welfare (UDAW) (2000, 2003, 2005, 2011)

- “Animals are sentient beings and that their welfare is an issue worthy of consideration and respect”

Universal Declaration of Animal Rights (UDAR) (1978, 1989)

- “All animals are born with an equal claim on life and the same rights to existence”

International Convention for the Protection of Animals (ICPA) (1988)

- “humans derive many diverse benefits from...associations with animals and their utilization”
- “Life has intrinsic value...” “killed unnecessarily” “unnecessary suffering”

Observations

Other possibilities?



The Final Curtain

Concluding Thoughts:

- **General trends in animal status**
 - Upwards: advances and gains
 - Varied in scope, approach, rationale, application
 - Benefits for considering animals to humans
- **International animal law possibilities**
- **Trends to consider the rights of nature/earth**
- **Actual implications for animals**
- **Static / Regressions**
- **Challenges**
- **Opportunities created**
 - The show must go on!



Curtain Call

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