

Farmed animals' status and rights in France: developments, challenges and outlook

The status and rights of animals have evolved radically in the West, and developments have gathered considerable momentum over the past few decades. One of the latest shifts involves production-animal welfare. There has been remarkable progress on this front, but several currents of thought want to take it even further. The underlying trend in society seems to be heading towards greater concern for animal welfare, but this question is still the subject of some debate. Thinking about the status and rights of animals invariably involves thinking about the relationship between humans and animals, and views on this issue in particular diverge and occasionally clash. Whatever the answer, this societal trend entails—in the case of animals used in the service of humankind, and livestock in particular—the need to reconcile a new status and new rights with the need to manage the services they render (their productive function) and therefore constantly putting animal and human interests into perspective.

Status and rights are closely linked notions, because rights are defined as acknowledged privileges to enjoy or do something. This means that the individual entitled to those privileges has a status, i.e. a set of regulatory provisions that legally acknowledge and establish that individual's particular position.

Today, two principles are used to determine that animals are entitled to a status: on the one hand, the fact that they have central nervous systems, meaning that they are sensitive to pain¹, and certain cognitive skills; and on the other the level of interaction with humans. At this point, mainly domestic animals, i.e. the ones in close contact with humans, enjoy such a status. Wild free-roaming animals, to the contrary, do not have an individual status (*res nulli*) unless they belong to endangered species². However, wild animals in captivity, like domestic animals, are protected against ill-treatment under the French Penal Code—confirming, once again, that close contact with humans is the main criterion for granting rights.

This paper focuses exclusively on domestic animals in agricultural environments. It provides a brief historical recap on how the status of animals has evolved, and reviews that status and the associated rights today, especially in light of the notion of welfare. Then it examines the various currents of thought at play today, and finally discusses the main issues and challenges down the road.

How legislation defines domestic and wild animals

Based on the criteria underlying the definition in the French ministerial bylaw enacted on 11 August 2006³, domestic animals live near people, under their protection, depend on them, are fed by them, and breed in captivity, in exchange for their production, work or simply company. This same bylaw lists the animal species in question, or the domestic varieties of originally wild species. Domestic animals encompass pets, and sporting, working and breeding animals.

Unlike domestic animals, wild animals are defined in the French Environmental Code⁴ based on the fact that they belong to a species that has not undergone selective breeding by humans.

1 - How the status of animals has evolved in the West⁵: the key notions and milestones

Without going as far back as Greek and Latin thinkers, it is safe to assume that animals had legal personalities in the Middle Ages, because they were held accountable for their actions, and sometimes indeed taken to court for their misdeeds⁶. Examples include Renart in the eponymous novel, and common real domestic animals (see Figure 1).

A few centuries later, conversely, philosopher René Descartes in his *Discourse on the Method* (1637), then Nicolas Malebranche,

1. There is an exception to this rule: regulations on experiments with animals take into account cephalopods.

2. This list was enshrined in an Ecology and Agriculture Ministry joint bylaw. In this case, animals have individual status.

3. Bylaw of 11 August 2006 listing species, breeds or varieties of domestic animals.

4. Articles R 411-5 and R 413-8.

5. Interactions between humans and animals differ from one culture or geography to another.

6. <http://theses.vet-alfort.fr/telecharger.php?id=377>

did not consider animals moral beings but machines, which were unable to feel pain because they were not endowed with reason.

More deferential attitudes towards animals started surfacing in the late 18th century, for example through philosophers such as Jeremy Bentham⁷ who, after Jean-Jacques Rousseau, underscored the fact that animals are able to feel, rather than reason. The fact that animals are able to feel was considered necessary and sufficient to establish an animal's "interest", which needed to be taken into account when humans made decisions, in keeping with the utilitarian principles that this author held dear.

This philosophical angle on the interaction between humans and animals prevailed, and went on to shape the major developments that followed in the 19th and 20th centuries. Regulation on this issue, however, took several decades to materialise. It was not until 1850 that French MP Jacques Delmas de Grammont pushed and passed the country's first law protecting animals—in this case punishing cruelty towards animals in public⁸. The subsequent meaningful provisions were only passed in the second half of the 20th century in France.

That period kick-started a string of legal texts tightening animal rights. French Law 63-1143⁹ of 19 November 1963 aims to curb the unnecessary abuse of domestic animals, domesticated wild animals or animals held in captivity. Bylaw 64-334¹⁰ of 16 April 1964 on the protection of domestic animals and the conditions for slaughtering them requires abattoirs to stun meat animals beforehand (with exceptions for emergency or ritual slaying). But it was Law 76-629¹¹

of 10 July 1976 that laid the real foundation for France's animal-rights policy to this today. It still follows Bentham's line of thought, because it stipulates that animals are sentient beings, and therefore have a right to be spared pointless suffering, unnecessary death and abusive exploitation. This principle proscribes killing or physically harming an animal as a leisure pursuit or for entertainment, and without a genuine need to do so in order to sustain human life. Exceptions to accommodate cultural heritage, such as bullfights, are nevertheless granted.

A substantial corpus of like-minded regulation concurrently came together in the European Community. It started on 10 March 1976 when the Council of Europe adopted a Convention¹² on the protection of animals kept for farming purposes, which until then had a less protective status than pets or sporting animal. This Convention was transposed into French legislation in the 2 November 1978 bylaw¹³. The measures adopted in that law focus more specifically on animal populations in intensive farming systems. For example, production animals need to be held in satisfactory premises, with suitable facilities and adequate light and dampness.

The Treaty of Amsterdam brought another momentous shift when it replaced the notion of animal "protection" with that of animal "welfare" in 1997, reflecting the semantic leap that this Treaty enshrined. This new terminology is brimming with meaning: the notion that humans protect animals, which elicits the feeling that humans are superior to and dominate animals, gives way to a fairer concept: instead of merely appealing to a person's duty vis-

à-vis an animal, it transfers the focus to the fact that an animal's rights indeed underpin the person's duties. The Farm Animal Welfare Committee¹⁴ (FAWC), a British government agency, defines the principle of welfare—specifically for farmed animals—as a combination of freedom from hunger and thirst; freedom from discomfort; freedom from pain, injury or disease; freedom from fear and distress; and freedom to express normal behaviour¹⁵. The European Commission promptly decided to step up these conditions with inspections, which it provided in Directive 98/58 of 20 July 1998 concerning the protection of animals kept for farming purposes¹⁶, then in 2007 by establishing animal welfare as a condition for CAP aid¹⁷.

The method to assess farmed animal welfare, however, is still the subject of research and discussion. The notion of "well-treatment"¹⁸ of animals by farmers sometimes emerges as an alternative and may have caused some confusion. A report by the French Académie Vétérinaire¹⁹ clarified the notions. Succinctly, *bien-être* ("welfare") encompasses an animal's physiology and behaviour, and *bien-traitance* ("well-treatment") refers to a person's care for an animal. These notions, in other words, complement each other but are not interchangeable: well-treatment is one of the conditions for welfare. But it is not the only one because it does not

Figure 1 - A sow on trial

This sow mutilated a child, who died from his injury. She was sentenced to have her snout severed and to death by hanging. This illustration is not a period image but a recreation—and a sign that interest in the Middle Ages rekindled in the mid-19th century—from *Curiosités judiciaires et juridiques : les procès d'animaux*. In this 1858 book, author Emile Agnel discusses several medieval animal trials. Besides the frequent cases involving child-scoffing swine, there is a story about a bull hung for goring a young man, mice and caterpillars excommunicated for damaging harvests, and even a rooster burnt at the stake for laying an egg.



7. Bentham J., 1789, *An Introduction to the Principles of Morals and Legislation*.

8. Jacques Grammont was shocked by the way in which certain stagecoach drivers treated their horses. Besides protecting animals, this law also—and perhaps primarily—aimed at protecting human sensitivity.

9. http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19631120&numTexte=&pageDebut=10339&pageFin=

10. http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19640418&pageDebut=03485&pageFin=&pageCourante=03486

11. http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19760713&numTexte=&pageDebut=04203&pageFin=

12. <http://conventions.coe.int/Treaty/fr/Treaties/html/087.htm>

13. http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19781118&pageDebut=03879&pageFin=&pageCourante=03879#

14. <http://www.fawc.org.uk/reports/FarmAssurance.pdf>

15. The FAWC has been dissolved, but is considered authoritative by the EU. http://ec.europa.eu/food/animal/welfare/farm/index_fr.htm

16. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:221:0023:0027:FR:PDF>

17. http://agriculture.gouv.fr/IMG/pdf/DGPAATC20123069Z_cle459363.pdf

18. A neologism (as opposed to ill-treatment), originally referring to care for very vulnerable people (babies, and elderly, dependent and severely disabled people), which later stretched to farm and experiment animals.

19. <http://academieveterinaire.free.fr/rapports/bien-traitance.pdf>

address freedom to express normal behaviour, which is a much more restrictive condition, is often hard to define, and is not always possible to achieve. It is also important to point out that well-treatment is in general easier to assess than welfare, because it merely involves ticking off the items that the farmer complies with on a chart.

2 - The status of animals in France today

Adopting the term welfare has ushered in an entirely new angle on interactions between humans and animals. But it remains an ethical and technical notion, encompassing several aspects, which are not easy to encapsulate in legal concepts. This ambivalence and complexity associated with capturing a principle that is not immediately operational in legislation, perhaps explains why the status—or rather statuses—of domestic animals in France remain fairly ambiguous.

Today, the status of domestic animals is defined in different terms in the French Civil Code and in the French Rural and Maritime Fishing Code. In the Civil Code, animals are considered property and, depending on their purpose, movable or immovable. Animals used for farming are immovable property under article 524, and domestic animals are movable under article 528.

The Rural and Maritime Fishing Code sees animals as sentient beings. As such, “every animal [...] needs to be placed by its owner in conditions that are compatible with the imperative biological requirements of its species” (article L 214-1). This Code moreover stipulates that “It is prohibited to ill-treat domestic animals, domesticated wild animals, or animals held in captivity” (L 214-3).

Lastly, the French Penal Code distinguishes criminal offences against animals and against property, and thereby confirms the notion that animals are sentient beings. Ill-treating animals can entail up to €30,000 fines and 2-year prison sentences.

Over and above recent developments in ethics applied to animals, relatively new currents of thought are advocating a more radical angle on animal rights. These movements could lead to greater consistency between the current statuses.

3 - Several trends involving the status of production animals

The condition of production animals has sparked many discussions in contempo-

rary philosophical and scientific circles, in particular since the advent of animal production science and intensive livestock farming triggered adverse responses to these practices, and those responses promptly grew into structured and substantiated hostility. The negative views on industrial breeding clearly transpire through books such as *Le grand massacre*²⁰: “Animals are now nothing but things, they are slowly crushed by the cogwheels of a blind industry. Intensive livestock farming subjects living beings to a life of torture from their birth to their death.” Philosopher Elisabeth de Fontenay, the author of *Le silence des bêtes*, goes even further, referring to animals in general and herbivores in particular as innocent martyrs²¹. Other noteworthy authors, such as Jocelyne Porcher²², have added that intensive livestock farming harms farmers by crippling interaction between humans and animals.

On the other hand, certain thinkers consider that improving animals’ living conditions is not necessarily justified. One of them, philosopher Janine Chanteur²³, argues that only humans have duties and therefore only humans should be entitled to rights²⁴. British academic Roger Scruton²⁵ follows a similar line of thought.

Most recent publications, however, clearly call for an extension of animals’ rights. The most prominent movements include utilitarianism (or welfarism²⁶), and abolitionism. Utilitarianism, the prevailing position today, stems from Bentham. This consequentialist doctrine contends that a population’s welfare should direct its actions. It nevertheless comprises several variants and the various thinkers in this movement span a wide spectrum of nuances. Abolitionism is closer to a code of conduct. Rather than taking animals’ “interests” into consideration, this approach argues that animals can never be a “means” to an end, and advocates the abolition of all animal exploitation by humans.

The most radical positions emerged in North America during the last quarter of the 20th century, among and around People for the Ethical Treatment of Animals (PETA), an American organisation. Australian philosopher Peter Singer, who wrote *Animal Liberation* in 1975, equates speciesism²⁷ to human racism. He defines himself as a welfarist, but he is a fairly radical one: he admits that humans and animals may be treated differently, and accepts that humans may exploit animals, but contends that humanity and animality should nevertheless be treated with the same consideration. His positions, which many consider

extreme, are nevertheless moderate compared to those of American academics such as Tom Regan, who objected to any and all forms of mammal exploitation in his 1983 book *The Case for Animal Rights*, and Gary Francione, who has written several books since 1995 advocating the extension of abolition to all forms of animal life, not only the ones with complex cognitive skills²⁸. French thinkers, including philosopher Florence Burgat²⁹, also uphold abolitionism.

Neurobiologist and philosopher Georges Chapouthier, a specialist in the condition of animals, tenders a more balanced approach and warns against two opposed temptations: enshrining a complete distinction between humans and animals, and refusing to acknowledge that humans are in any way different from animals, and hence on an equal standing³⁰. Lastly, certain philosophers such as Jean-Baptiste Jeangène Vilmer are calling for “pragmatic” animal ethics, which is yet to be built³¹.

4 - The stakes and challenges for tomorrow

The more radical views we have summarised above are of course far from joining the mainstream, but awareness of these issues is growing. The fact that the notion of welfare has stretched from pets and sporting animals to all domestic animals is one clear sign of that. Similarly, the opinion that utilitarian domestic animals such as farm and lab animals should enjoy certain rights during their lifetimes abridged by production cycles, is also gaining force.

20. Kastler A., Damien M., Nouet J.-C., 1981, *Le grand massacre*, Fayard.

21. Fontenay de E., 1999, *Le silence des bêtes. La philosophie à l'épreuve de l'animalité*, Fayard.

22. Porcher J., 2011, *Vivre avec les animaux. Une utopie pour le XXI^e siècle*, Editions La Découverte.

23. Chanteur J., 1999, *Du droit des bêtes à disposer d'elles-mêmes*, Seuil.

24. The services that production animals render to humans do not qualify as duties because duties by definition involve a voluntary, fully conscious and reasoned decision to fulfil them.

25. Scruton R., 2006, *Animal Rights and Wrongs*, Continuum international publication group.

26. The two notions are not distinguished here because the views on interaction between humans and animals are analogous.

27. This word, coined by Ryder in 1970, means discrimination based on species.

28. Francione G., 2000, *Introduction to Animal Rights: Your Child Or the Dog?*, Temple University Press.

29. Burgat F., 2012, *Une autre existence : la condition animale*, Albin Michel.

30. Chapouthier G., 1999, *Au bon vouloir de l'homme, l'animal*, Seuil.

31. Vilmer J. B. J., 2009, *L'éthique animale*, PUF.

Consumers are also more sensitive to an ethical stand on production, and care about sustainable development and animal welfare. In France, this approach is also gaining enough momentum to influence buying habits³², provided the additional cost is not prohibitive. This trend has deeper roots in certain Northern European societies: German consumers, for instance, are particularly sensitive to this issue³³.

These developments are posing many challenges for the agricultural world's stakeholders as well as public authorities. Livestock farmers, first of all, are already seeing very tangible consequences today, in the form of upgrades that European Community regulations are requiring them to provide. An April 2011 survey by the French livestock breeding institute (*Institut de l'élevage*) showed that they had already made significant efforts on that front³⁴, but there are new requirements in the pipeline, in particular regarding cages for laying hens³⁵ and pens for gestating sows, which will need to be collective instead of individual. These upgrades sometimes entail significant financial investments for farmers, and often materialise gradually. But they can also prompt certain operations to

consider a more radical shift, for instance towards organic farming or straw beds for pigs, by choice or by force. But, in any case, the competitiveness challenge is there.

Research is also an important issue, especially in the case of pain (freedom from pain is naturally one of the main aspects of welfare). Several studies in various research organisations, in particular INRA in France³⁶ are focusing on this issue—and even more so in the aftermath of the *Rencontres animal et société* in 2008³⁷. This research could challenge a number of non-vital painful operations such as pig castration³⁸.

Another major challenge is the globalisation of production animals' rights. Today, their welfare is principally a concern in OECD countries (the EU, US, etc.). Protecting animals is sometimes perceived as a concern for "rich" countries, even though production animal welfare can have a positive effect on people's welfare. Regardless, this issue is making inroads, however limited, on the international scene. Animal rights were enshrined worldwide at an eminently meaningful gathering 35 years ago, on 15 October 1978, in Paris: UNESCO's Universal Declaration of Animal Rights³⁹, which drew extensively on the 1948 Declaration of Human Rights. More recently, in 2004, the World Organisation for Animal Health⁴⁰ (OIE) ranked respect for animal welfare among its top priorities⁴¹. The OIE Terrestrial Animal Health Code lays down the principles for animal welfare⁴² that it hopes its 178 member countries will embrace over time. Another international institution, the UN Food and Agriculture Organization (FAO) set up a worldwide forum on animal welfare in early 2012.

Over and above the purely ethical aspect, the gap with countries that still have rudimentary animal welfare standards is still perceived among more virtuous EU Member States as a factor distorting competition. The World Trade Organization (WTO) has not yet included rules on animal welfare in its standards for sanitary and phytosanitary agreements. These aspects of coordinating welfare policy, which is one among other forms of collective preference, will be decisive over coming years.

Lastly, looking at the bigger picture, there is the question about tallying growing demand for food the world over (see FAO forecasts for 2050) and greater concern for animal welfare. If intensive livestock farming will probably develop further on a

worldwide scale, it will need to accommodate improvements to provide acceptable living conditions for animals.

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Ultimately, the general trend towards taking animal rights into account and improving farmed animal welfare should continue, and interaction between farmers and animals should continue to evolve. We can assume, however, that the most radical approaches will not join the mainstream. The paradox in these theories is that, while they appear more protective because they censure all forms of animal exploitation, applying them across the board could entail losing a number of species because they are unable to survive in the wild.

A powerful trend, away from exclusive anthropocentrism and towards a form of biocentrism, seems to be surfacing. But this trend does not mean the shift will be free from breakpoints, postponements and perhaps backtracking on occasion. Because it unveils deep-seated cultural dynamics, and points to large-scale social as well as economic challenges, the recurring question about reconciling human interests (health, food) and animal interests, may brew conflict. This conflict may in turn hamper linear and smooth progress towards a hypothetical consensus. But, in any event, this issue seems to be on the political agenda for the long term.

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Tel.: +33 1 49 55 85 75

Typesetting: SSP Beauvais
Legal deposit: on publication, © 2013

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33. http://www.ouest-france.fr/actu/AgricultureDet-Les-consommateurs-allemands-prennent-gout-au-bien-etre-animal_3640-2156680_actu.Htm.

34. <http://www.rmt-bien-etre-animal.fr/IMG/pdf/Kling.pdf>.

35. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:fr:PDF>.

36. http://www4.inra.fr/agri_bien_etre_animal/Leseminaire-AgriBEA/Comptes-rendus-des-seminaires/Lettr-n-13-Avril-2002.

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37. http://agriculture.gouv.fr/IMG/pdf/Animal_Societe_Reu_cloture_Doss_Presse.pdf.

38. <http://www.web-agri.fr/actualite-agricole/economie-social/article/la-fin-de-la-castration-c-est-pour-demain-en-france-1142-83833.html>.

39. http://fr.wikisource.org/wiki/D%C3%A9claration_universelle_des_droits_de_l'animal.

40. An international conference on animal wellness in November 2012 underlined the need to roll out standards gradually in member countries.

41. First OIE world conference on animal welfare in February 2004 <http://www.oie.int/fileadmin/Home/eng/Conferences/Events/docs/pdf/proceedings.pdf>.

42. http://web.oie.int/fr/normes/mcode/fr_chapitre_1.7.1.htm.