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Sentient Beings

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The idea of animals as beings that experience emotions, pain, suffering, happiness, pleasure, as any other being does, does not feel like a novelty these days, but a scientific fact proven for centuries.

The perception that animals feel is found in certain writings from Antiquity. Reading book VIII.1 of Pliny's Natural History (Rome, 23AD –Stabia, 79AD), which is dedicated to elephants, Pliny, following in the footsteps of Aristotle, affirms NH.I.1.1: The elephant is the largest of them all, and in intelligence approaches the nearest to man. It understands the language of its country... It is sensible alike of the pleasures of love and glory, and, to a degree that is rare among men even, possesses notions of honesty, prudence and equity"; 5.11: "[the elephant] is said to have so much mildness towards animals with less strength, that in a moving herd of sheep, the elephant parts the crowd with his trunk, so that it would not unknowingly harm them. Not unless they are excited, would do they harm, and they always walk in packs, never one wandering along from the rest. When they are surrounded by cavalry, they place the sick, tired and wounded in the centre of the pack, and, just as if they were under orders and well disciplined, they rotate among themselves to hold the front line". This is only an example of what was deduced in CI AD from the simple observation of animals and respect felt for them as part of nature, which constitutes a distinguishing feature throughout the whole Age of Antiquity. I will not go any further here on this aspect, but I would like to highlight that respect for animals was diluted and lost in the following centuries, until science began to interest itself again in restoring objective studies on animal sentience.

To this end, by the initiative of the [Humane Society of the United States](#), with the patronage of the [WSPA](#) and of [Compassion in World Farming](#), a [Congress in Gallaudet University](#), in Washington D.C. was recently celebrated under the title: "[The Science of Animal Thinking and Emotion: Sentence as a Factor in Policy and Practice](#)", in which I had the honour of being able to participate with a presentation relating to how the criteria for animal sentience can be influenced in order to improve their protection through legislation ("The influence of sentience on Animal Law Research").

In the first session we could listen to novel contributions from invited colleagues relating to the capacity for knowledge of dogs and apes ("Ape and Dog cognition", Brian Hare, PhD, Duke University), on the emotional structure of animal brains ("The Emotional Brain", Jaak Pankseep, PhD, Washington State University), on the capacity of fish to feel ("The Fishes", Victoria Braithwaite, PhD, Penn State University), on the diversity of animal language ("Animal Language", Con Slobodchikoff, PhD, Prof. em. No. Arizona University), on the pleasure that animals feel ("Animal Pleasure"), Jonathan Balcombe, PhD, The Humane Society of the United States), on dog emotions ("Dog Emotions", Greg Berns, MD, PhD, Emory University).

The second session was dedicated to the implications of animal sentience (also evident in crocodiles – “Swamp Smarts: Discovering Cryptic Intelligence in Crocodylians”, Vladimir Dinets, PhD, MSc, University of Tennessee) on other branches of knowledge, such as psychology and psychology (“Sentience, Psychology, and Social Change”, Hal Herzog, PhD, Western Carolina University), Bio-Politics (“Sentience and Biopolitics”, Bernard Unti, PhD, The Humane Society of the United States), culture (“Sentience, Development and Cultural Change: Human-Animal Relations in Contemporary China”, Peter Li, PhD, Humane Society International), communication (“Marketing Science through the Media”, Clare Molloy, PhD, Professor, Edge Hill University, UK), Law (“The Influence of Sentience on Animal Law Research”, Prof. Dr. M. Giménez-Candela, Professor in Law, The Autonomous University of Barcelona), European animal welfare legislation (“Sentience and Animal Welfare in the EU”, Marguerite Kuzma, Policy Officer, Animal Welfare Unit, the European Commission) and climate change (“Sentience, Cetaceans and the Global Conservation Agenda”, Mark Simmons, OBE, Sr. Marine Scientist, Humane Society International). Overall it was a plan well accomplished, an organisational success owed to the initiative of the Humane Society of the United States team, led by Andrew Rowan, President and CEO of the Humane Society International. I would also add that this Congress is a step forward in the knowledge and practical application of animals as “sentient beings”.

From the point of view of the Law, the application of animal sentience gives hope for a significant improvement in constitutional, civil, administrative and criminal legislation. For now, a sign alone would be good. There are many programmatic EU texts that have been increasingly recognising animal sentience as a guide for animal welfare legislation for 40 years, but it was not until 2009, in Art. 13 of the TFEU, the Treaty of Lisbon, that the obligation to treat animals as “sentient beings” through the internal legislation of each of the Member States, particularly in the areas of agriculture, farming, experimentation and shows, was imposed on Member States. It is well known that the exemptions, explicitly mentioned in the second paragraph of the cited Art. 13 TFEU (religious rights, regional heritage, cultural traditions), have significantly weakened it and its possible application, and particularly in the cases of Spain and France, relating to bull shows.

However, it is worth pointing out that the EU has made a determined effort towards the consideration of animals as sentient beings in its legislation on Animal Welfare. A clear example of this is [Directive 2003/13/EC](#), on animal experimentation, which was reflected in [Directive 76/768/CEE](#), on the approximation of the laws of the Member States relating to cosmetic products (“testing ban”). This European regulation, which has since 2009 entailed the sale of cosmetic products tested on animals, was applied in Spain ten years later by means of Royal Decree 53/2013 of 1 February. It is interesting to note that, as much in the programmatic part of the cited regulations as in the normative text in which animals are mentioned as sentient beings, the pain threshold used for experiments is the prick of an injection.

Let us think for a moment about what change would mean, for example, for criminal regulations, in which the current boundaries of animal suffering are either direct death or a painful death (without specifying how this could be measured), which determines

whether the action is qualified as a crime or an offence before the respective sanctions are applied, so the legislator is thinking in terms of an animal-thing, a possible victim of mistreatment. Let us think, on the other hand, that the Criminal Code would apply it as a parameter for valuing the pain or suffering of an animal, a victim of mistreatment, as that of a “sentient being”. Would they change, *strengthen*, certain punishments that are currently wholly insufficient?[1]

I will leave this question open, for both jurists and non-jurists. It is clear that the legislation relating to animals must start to be clearer, more precise, and more applicable. And after all, the level of treatment for animals should be for the legislator to decide, as they are sentient beings. ,

Pensemos, por un momento, qué cambio significaría, por ejemplo, para la normativa penal -en donde actualmente la frontera de sufrimiento del animal es, o bien la muerte directa o la muerte con dolor (sin especificar cómo se puede medir)-, lo cual determina que la acción se califique como delito o falta y se apliquen las respectivas sanciones, pues el legislador está pensando en un animal-cosa, víctima posible de maltrato. Pensemos, por el contrario, que en el Código Penal se aplicara, como parámetro de valoración que el dolor y el sufrimiento del animal, víctima de maltrato, es el de un "ser sintiente". ¿Cambiarían, para agravarse, algunas penas que hoy resultan, a todas luces insuficientes?. Dejo abierta esta cuestión, tanto para juristas como para no juristas. Es claro que la legislación relativa a los animales debe empezar por ser más clara, más precisa, mas aplicable. Y, desde luego, el módulo de tratamiento de los animales debería ser para el legislador, que son seres sintientes.

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[1] Vid. this months Jurisprudence Bulletin, published on the site: "Noticias de los Tribunales" (link), to make a comparison between the mistreatment caused to an animal and the punishment applied to the culprit.