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Animals and Law in a Global Society

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Animals have always been with us. Since the dawn of humanity, animal presence has been constant, not only as a fact, but primarily for their relation with human beings; a relation never broken, always changing, and definitely fascinating.

The reflections of thinkers and philosophers on animals and man's relation to them goes back centuries, and publications on this subject constitute their own independent and abundant part of the bibliography on, for example, the sciences of Antiquity ("Altertumswissenschaft").^[1]

This point alone leads to thoughts about the importance that animals have had in our lives and in the development of our history; a history that both we and animals have weaved and enriched with our contributions. However, in this story, the role of animals has only ever been as necessary extras. Perhaps it is no exaggeration to state that the instrumental conception that society has had of animals has amounted to an imperturbably anthropocentric view of events, in which animals have always been voiceless witnesses, vectors for divinity, companions in war, comforts to pet, means of consumption for different cultures and social conceptions. Always present and always set aside, except recently, and above all in the West, where debate on their legal condition and the uses we make of them has caused us to consider the deeper aspects of their nature and needs, and to compromise more for their interests, which, of course, has come about in more recent times. I am referring to the concept of animal welfare.

When it has not been totally silent, the law in recent times has acted reservedly towards animals. For centuries, much of what has had to be said about the legal condition of animals and on their role in social life has been said. Aside from this, there have only been sporadic, albeit interesting, incursions in the animal world and debates for the purpose of human needs that always end up being more important than reflections on the introduction of animals into social life and the legal system.

In the history of thought, Greek philosophy stands out in terms of discussion on animals. For centuries it has been a guiding star that has inspired all from biologists and veterinarians to philosophers and thinkers of all disciplines. Some of its principle ideas have served as guidelines for reflection and debate, when not as a necessary standard for the exposition of theories relating to man and animal, their similarities and differences or on questions of species.

One of the unsolved questions that enlivens discussion on Greek philosophical thinking is the ability to speak.^[2] Effectively, speaking constitutes the differentiating element with which we establish the difference between humans and animals. On the basis of this distinction, the other differentiating parameter between humans and animals is the ability to reason, which entails the ability to think about and recognise oneself, which – it is affirmed - belongs exclusively to the human being.

With such premises, the law – which plays its specific role of regulating realities – has made the “person” the central nucleus for attributing obligations and responsibilities, separating itself from the Aristotelian notion that the rational man with the ability to express himself is the prominent subject of the law. The common thread of this notion, which causes ripples in the concept of the person (united with the human being) as something immovable, pervades all Western legal thinking to its core.

These days, the relation between animals and the law is getting narrower. Legal stances on animals are beginning to change, even though at the fundamental level the categorisation of animals as ‘things’ of property and the refusal to reconsider, and perhaps broaden, the application of the term ‘person’ to animals themselves, persist. But, against all settled logic, this has been done in India, as dolphins have been qualified as “non-human persons”.^[3] I am not sure whether the term is correct, or whether a better one exists, but, for those who find this idea strange, I would like to remind them that for many centuries the term “person” has been applied to entities totally unrelated with being human, but instead with heritage, activities, functions; to *legal*, not *human*, persons...

Animal welfare has come to be a subject of increased attention. The worries of our society have seemingly come to be focused on questions about which they were completely indifferent hardly a decade ago. Society increasingly demands a greater respect for that which, with a certain amount of imprecision, is known among us as “animal rights”,^[4] or, more precisely, “animal welfare”.^[5] Our society is beginning to demand not only that domesticated animals receive dignified treatment and that abandonment and mistreatment end, but that animals enjoy increased consideration by way of treatment adequate for their condition as sentient, living beings and, while the debate is not yet widespread in Europe, that the animals own position as an object of law increases with greater legal consistency.

The division between countries of catholic and protestant traditions (which, it is always said, corresponds to the countries of the centre-north and the south of Europe) also reveals itself as a division of traditions by more or less respect for animal welfare. The EU itself, which was born as an economically based Union, nonetheless recognises the status of animals as sentient beings that form part of our environmental surroundings, in an article of its Constitution. The Treaty of Lisbon has further insisted on the qualification of animals as sentient beings,^[6] leaving the door open for legislative development that, one hopes, would be in line with this qualification.^[7] However, paradoxically, the European directives on the topic of animal welfare tend to be applied by Agricultural Ministries, where the animal is always considered a “product”.^[8]

In France, since the 70s, a great group of intellectuals (one active member taking part being Marguerite Yourcenar, Member of the French Academy) has provoked many conversations and conferences on animal rights, up to the point that the conditions for animals crossed the frontiers of speculative theory and became an urgent political issue which no longer made reference to “animal protection”,^[9] to instead prioritise human-animal relationships and to consider animals as sentient beings, distinguishable from inanimate objects.^[10]

For this reason, in a paradoxical context such as that of our globalised society, certain aspects within European legislations that have until now only been the subject of insufficient theoretical consideration, should be prioritised. The animal and law binomial should include:

- establishing a legal definition of animal, which separates it from the idea of “thing” or “product”
- considering animal welfare as a predicament of sustainable development
- normatively protecting the unnecessary suffering of animals (farmed or used in experiments)
- provoking sector-based studies intended for different areas of interest: legal, social, economic, veterinary
- collaboration between agents potentially involved in animal welfare:
- public administrators
- protection societies
- economic agents responsible for transport, feeding, slaughter or scientific and technical experimentation

In short, as highlighted by [Tonio Borg, European Commissioner for Consumer and Animal Health](#), study, education, and professional training are the instruments required for improving the treatment afforded to animals. We owe this to him.

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[1] A brief selection comprising the following publications: TOYNBEE, J.M.C., *Animals in Roman Life and Art* (Baltimore-London 1996), John Hopkins University Press (1st ed. in London 1973; Thames and Hudson); SAELIUS GILHUD, I., *Animals, Gods and Humans* (New York 2006); DIERAUER, U., *Tier und Mensch in Denken der Antike. Studien zur Tierpsychologie, Anthropologie und Ethik* (Amsterdam 1977); ALEXANDRIDIS, A./ WILD, M./ WINKLER-HORACEK, L., *Mensch und Tier in Der Antike Grenzziehung und Grenzüberschreitung* (Wiesbaden 2008).

[2] HEATH, J., *The talking Greeks: speech, animals and the other in Homer, Aeschylus und Plato* (2005); rev.:

[3] [Giménez-Candela, Delfines: a propósito de una cuestión ética](#)

[4] Francione, *Introduction to Animal Rights: your child or the dog?* (2000).

[5] Regan, *The Case for Animal Rights* (2004); *Animal Rights and Human Obligations* (1989); Cohen and Regan, *The Animal Rights Debate*

(2001); Regan and Masson, *Empty Cages: Facing the Challenge of Animal Rights* (2005); Singer, *Animal Liberation* (New York 2002); *In Defense of Animals: the second Wave* (2006).

[6] [Giménez-Candela, T., Seres Sintientes](#)[7] Treaty of Lisbon, 12.12.2007, part. B, Tit. II, Art 5b, n. 21: “...in formulating and implementing the Community’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Community and the Member States shall since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage”.

[8] In this sense, the Director General of Animal Welfare, of the Ministry of Agriculture, Fisheries and Food; vid.

<http://www.mapa.es/es/ganaderia/pags/bienestar/granja.htm>,

<https://www.mapa.gob.es/es/ganaderia/pags/bienestar/laboratorio.htm>) the sections relating to: “sector carne de

porcino”, “sector aves de puesta”, “sector de carnes de aves”, “sectores de vacuno y ovino/caprino”, “sector apícola”, “sector cunicola”; but also “emisiones de gases en ganadería”, “plan nacional de investigación de residuos”, or “normas zoosanitarias para la introducción de animales domésticos en España”.

[9] The Minister of Agriculture encouraged a meeting in Paris (23.10.1986), on “Protection animale et société contemporaine” and in 2002, the publication of a “Charte des principes fondamentaux de la relation entre l’homme et l’animal”, under the imperative premise: “Respectons et protégeons les animaux”.

[10] From 12 September 2007 to January 2008 it was possible to see the exposition in Paris (Grand Halle de la Villette) [“Bêtes et Hommes”](#), with the aim of reflecting on how animals and man relate together in the modern world, through the perspective of the animal itself, as a living being in all senses.