

It's somebody (not something)

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Abstract

It is a seemingly natural perception that animals are “somebodies” and not “something”, especially to those who live with them, as Picasso did with Lump, as portrayed by photographer David Douglas Duncan in his reference book. The law resists recognising the reality of animal sentience, although in recent months Spain has seen the beginning of a process of change of the legal status of animals (from things to sentient beings) in its Civil Code, which is briefly reflected by this Editorial, although it is a project that I have scientifically supported since my first involvement in this emerging field of law – Animal Law.

Keywords: Animal sentience, sentient beings, legal status of animals, de-objectification, animals as things, Tom Regan, reform of the Spanish Civil Code, Animal Law, Picasso, Lump, David Douglas Duncan

Trying to define what an animal is, and its relation with the Law, without stumbling through the repetition of recognisable phrases,¹ is what has been proposed to me for this first Front Row of 2018.

When I was going around in circles thinking of how to speak about animals, such as how they are, and the distinct ways they cause us consider and treat them, I found in my hands a beautiful book of photographs showing the friendship between Picasso and Lump, a little Dachshund that came to see him at “La Californie” one day in April 1957, and decided to stay there for six years.² From the first moment, Picasso – who already shared his life with Yan the boxer and Esmeralda the goat – had a very different way of treating Lump than the other animals; he took him in his arms, allowed him to come into his studio while he painted, fed him with his hands and used him as a model in many of his works. The relationship between Picasso and Lump was, in his own words, not a relationship with a dog or with little

¹ Always helpful, CHAPOUTHIER, ¿Qué es el animal?, (Ediciones AKAL, Madrid 2006).

² DOUGLAS DUNCAN, D., Picasso & Lump: A Dachshund's Odyssey (Bullfinch Press, New York 2006).

man, but a link with “somebody”.³

This particular Picassian perception toward his Dachshund Lump - close to the philosophy of Tom Regan -⁴ is what has interested me, because it defines exactly what an animal is: “Somebody”, not “something”. A view that all who live with animals are able to affirm. They are somebody, not something. Somebody with experiences and feelings that is capable of expressing and feeling. Therefore, the fact that animals are considered things (with no distinction from stationary things) in our primary legal texts and, outstandingly, in our Civil Code, is no more than an anachronism, in one sense, and, in the other, a lack of adaptation of our regulations that for years we defended and request that it must change. Science affirms, in a decisive manner and by no means in vain, that animals are sentient beings. An affirmation that we hope rises and permeates all social and legal structures, as we see beginning to occur in relation to the legal status of animals, with the necessary caution required for a change in legal categorisation.⁵

Animal Welfare Science has undoubtedly achieved – over many years – the role of investigating the interests of Animals as “sentient beings”; an expression that comes from the world of Sciences relating to animals and the environment, which has integrated itself within the legal world as an expression of the degree of treatment and protection of animals, which the legal system seems to have already decided for itself, despite neither the term sentience, nor the expression sentient beings, even figuring in the Dictionary of the Royal Spanish Academy of Language (RAE); another deficiency that we would like to see resolved as soon as possible.

These days, in the scientific as much as the legal and social fields, the expression “sentient beings” constitutes as much a border for rejecting and punishing the practices that amount to animal cruelty, as the point of reference for constructing legal resources and public policies of protection for animal interests by their own methods, for which, the extension of this protection to the environment in which the majority of animals live, which is always recognised as protection for Biodiversity, results in accompanying interests.

The convergence of interests across the sciences implicated in the achievement of an objective constitutes a “natural” phenomenon. In this sense, the sciences (and scientists) are not miniscule spaces of knowledge shut away within themselves, but, quite to the contrary, they tend more to open specialisation and cooperation between professionals that can offer their knowledge, in order to reinforce and advance their own discoveries. This is, to my knowledge, the most desirable way of making progress in terms of protecting animals and, in a particular way, the recognition of their sentience in legal texts, starting with the Civil Code. In this sense, the advances that have been made in the last months in Spain in terms of the legal consideration of animals are worthy of being highlighted, as maybe we are close to a very necessary change.

From the first unanimous approval by the Congress of Deputies, on the 14 February 2017, of the proposal,⁶ in which the Government was urged to create a legal regulation

³“Lump, he’s not a dog, he’s not a little man, he’s somebody else.”, in RIDING, A., Picasso’s Other Muse, of the Dachshund Kind, en *The New York Times* (26.8.2006).

(<http://www.nytimes.com/2006/08/26/arts/design/26lump.html>)

⁴ Of next appearance, ROCHA, L., La teoría de los derechos animales de Tom Regan: ampliando las fronteras de la comunidad moral y de los derechos más allá de lo humano (Tirant lo Blanch, Valencia 2018) in print.

⁵BIRCH, J. (2017), Animal Sentience and the precautionary principle, in *Animal Sentience: an interdisciplinary Journal on Animal Feeling* 16 (1) 8s.

(<http://animalstudiesrepository.org/animsent/vol2/iss16/1/>)

⁶ Official Court Bulletin on 22.2.2017, nº108/1: 162/000200 “Proposición no de ley presentada por el Grupo parlamentario Ciudadanos sobre la modificación del régimen jurídico de los animales de compañía en el Código civil

(http://www.congreso.es/public_oficiales/L12/CONG/BOCG/D/BOCG-12-D-108.PDF)

specific to animals,⁷ which clearly separates and distinguishes them from the consideration of things and establishes a differentiated category between stationary things, it has arrived at the conclusion that animals must have a specific category, that can be for nothing other than animals, and as such, a category *a se* or category *sui generis*.

In other words, in alignment with the request directed toward the Government by the approval of the Parliament, it advocates firstly for the creation of a specific category for animals, with which the traditional Roman bipartite classification: persons and things, would remain constructed as tripartite, much more consistently with the changes that society, the law and, principally, European legislation⁸ has come to experience in relation to the consideration of animals as sentient beings that cannot continue to be held back by a legal status of things that, nowadays, no longer corresponds to them, as such it clearly comes to recognise after the 12th December when the Parliament voted, again by unanimity, the aforementioned Government proposal.⁹

At this time, we await the possible amendments that could present themselves by the Deputies and the Parliamentary Groups, within the 15 working day period expected by the Regulation of the Chamber,¹⁰ after it remembers to take into consideration the aforementioned proposal of modification and it orders the passing of it also, with clear legislative competence, to the Commission of Justice.¹¹

I hope that this long journey ends with success.¹² A success that will solely and exclusively benefit animals. To these “somebodies”, that will no longer legally be “something”

⁷CODINA, J.I., Unanimidad en el Congreso de los Diputados para instar la reforma del Código civil español y reconocer a los animales como seres dotados de sensibilidad, in dA. Derecho Animal, 2/2017 (<http://derechoanimal.info/es/actividades/2017/unanimidad-en-el-congreso-de-los-diputados-para-instar-la-reforma-del-codigo-civil>)

⁸ GIMÉNEZ-CANDELA, T., An Overview of Spanish Animal Law, in FAVRE, D. y GIMÉNEZ-CANDELA (Eds.) Animals and the Law (Tirant lo Blanch, Valencia 2015) 211ss.; “Estatuto Jurídico de los animales: aspectos comparados”, in BALTASAR, B. (Coord.) El Derecho de los Animales (Marcial Pons, Biblioteca de Gobernanza y Derechos Humanos, 2015) 143ss.; La descosificación de las animales I y II, in dA (Forum of Animal Law Studies) 2017 vol.2 y 3 (<http://revistes.uab.cat/da/issue/archive>); reprinted in “La descosificación de los animales”, Revista Eletrônica do Curso de Direito da UFSM, v. 12, n. 1 / 2017.

⁹Official Court Bulletin on 13.10.2017, nº167-1: 122/000134 “Proposición de ley de modificación del Código civil, la Ley Hipotecaria y la Ley de Enjuiciamiento sobre el régimen jurídico de los animales” (http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF)

¹⁰Official Court Bulletin on 22.12.2017, nº167-3

¹¹Para el seguimiento de la tramitación, vid. Iniciativas XII Legislatura (http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?_piref73_2148295_73_133_5437_1335437.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IW12&PIECE=IWA2&FMT=INITXD1S.fmt&FORM1=INITXLUS.fmt&DOCS=2-2&QUERY=%28I%29.ACIN1.+%26+%28ANIMALES%29.ALL.)

¹²MENÉNDEZ DE LLANO, N., Los animales nos son cosas: una reforma legal en marcha, in El blog de Derecho de los animales de Abogacía Española (<http://www.abogacia.es/2018/01/19/los-animales-no-son-cosas-una-reforma-legal-en-marcha/>)