

Book Review

Sabine Brels

Le droit du bien-être animal dans le monde. Évolution et universalisation.

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Preliminary note. The book reviewer has translated the words within quotation marks.

Abstract

Even though there are various legislations on the protection of animal welfare in Europe and in many countries in the world, there is no such existent international treaty. This book contributes to the reflection on the opportunity of making use of an international legal tool, that is binding and effective, which incorporates all the aspects of animal welfare. The author does not see any theoretical obstacles that could prevent the fulfilment of this project. In fact, from the comparative analysis of the current legislations, it emerges that there are two principles of universal relevance: (i) do not abuse and (ii) treat well, that could be translated into legal obligations through a global convention.

Keywords: Global Animal Law, Animal Welfare, Protection, Convention, Evolution, Universalisation, United Nations.

Resumen

Aunque hay varias leyes que protegen el bienestar de los animales en Europa y en muchos países del mundo, no existe un tratado internacional en este sentido. Este libro contribuye a la reflexión sobre la oportunidad de adoptar un instrumento jurídico internacional, vinculante y eficaz, que incorpore todos los aspectos del bienestar animal. La autora no ve

obstáculos teóricos que impidan que esta operación se lleve a cabo. De hecho, a partir del análisis comparativo de las leyes en vigor, hay dos principios de alcance universal: (i) no abusar y (ii) tratar bien, que una convención global podría traducir en obligaciones legales.

Palabras clave: Derecho Animal Global, Bienestar Animal, Protección, Convención, Evolución, Universalización, Naciones Unidas.

Human beings have always been interested in animals, for affection, fun, economic value, services and quality of products derived from their use. Many of them must have always desired that their animals lived well. However, it was only since the 1960s that animal welfare became an object of social debate, of ethical studies, scientific researches and discoveries. Even law has had its part, by assuring them protection. What is meant by animal welfare in the legal world? Well, it is not easy to define it, because it deals with a complicated notion that cannot be explained simply by the concept of health of the animal, but which also implies other aspects, that require a multidisciplinary approach. This complexity did not avoid adopting legislations. What is really missing is a proper protection of animal welfare on an international level. And this is what is found at the heart of this book, the title of which already announces the vast number of topics mentioned and their possible developments.

Sabine Brels, LL.D. in Law at the University of Laval (Québec, Canada) has faced these issues investigating in all the continents. Starting from the realisation of the non-existence of hard laws on a global and universal level, the research has been based fundamentally on these questions: is public international law capable of protecting animal welfare? What could be the fundamental of this protection? How to go about realising it? The results are shown in this book, which has developed along two main arteries. On the one hand, the author analyses the laws on animal welfare in the world with the aim of identifying what emerges from the current rules, and how these can be used. On the other hand, by making use of the data that emerged from this research, she explains the reasons why it is possible to elaborate global and universal protection tool for animal welfare, which could take the form of a framework convention.

The research is one of vast proportions, but the author moves capably in the huge sea of jurisdictions. She analyses minutely the European Union law and that of various countries in the world. This study of sources has been carried out with a critical eye, with the scope of studying its various developments on an international level. To avoid confusion with other philosophical and legal notions, the author emphasises that with “animal welfare law” (p. 42) it is meant that particular branch of the “*jus animalium*” (p. 42) that incorporates all the legal rules that refer to the use of animals by humans.

The introduction is rich in historic, philosophical and literal references, that allow to move in the cultural backstage of affairs that are discussed in the book. For example, it is known that animals occupied an important place in the Egyptian world, but it is interesting to discover that rules of a religious nature, especially in the East, elevate the respect for animals as a universal duty for mankind. The author quotes philosophers who had included animals in their reflections (e.g. Pythagoras, Montaigne and Voltaire) and writers who have loved them (e.g. Hugo and Zola). She cites the passage of the animal from the concept of being a mere object (Descartes and Malebranche) to that of the animal as a sensitive being (Bentham), to arrive to the contemporary reflection on animal subjectivity, particularly on the issue of rights and legal personhood.

The first part of the book is descriptive. The author analyses the development of the animal welfare legislations on a national and European level, showing how national rules have passed from anti-cruelty laws, that are limited to repressing criminal acts against

animals, to laws that protect their wellbeing. It starts with the laws that Ireland, England and United States adopted since the 17th to the 19th centuries to arrive to those of continental European countries. It is highlighted that, in the 19th century, these laws did not protect the animal as such, but other legal goods (e.g. public morality) so that acts of cruelty were punishable only if they happened in public. Since the beginning of the 20th century, the laws adopted by some European countries (e.g. Italy and Germany) marked a step forward, and no longer required to be public to be considered crimes. After Europe, the book presents the anti-cruelty laws used in Africa, Asia and Latin America.

The author points out that anti-cruelty laws represent the first step towards animal protection, whereas those that establish positive obligations to assure their wellbeing will mark their future. These latter laws have already been adopted in Anglo-Saxon countries (England, United States, Canada, Australia, New Zealand) and in continental countries (Germany, Austria, Switzerland, Netherlands, Belgium, Lichtenstein, Croatia) whereas other countries have continued to use anti-cruelty schemes (France, Italy, Czech Republic). In the 21st century, laws in favour of animal welfare have been introduced in Tanzania, in some Latin American, Middle Eastern and Asian countries, whereas India and China are elaborating law proposals.

For over forty years, the European Union and the Council of Europe adopt legal rules on the protection of animal welfare, detaching themselves from the worldwide picture. The author points out the presence of this “double protection” (p. 153) in the transport system, farming, slaughtering, experimentation, as well as the issue of the wellbeing of companion animals, which is still centre of debate. She also notices the existence of a “reinforced protection” (p. 193) due to the fact that animal welfare is one of the objectives of the European Union, declared in its primary legislation (article 13 of the Treaty on the Functioning of the European Union) and promoted also on an international level. In case of commercial agreements, the results have been seen with the ban of importation of baby seal skin (1983), furs of animals caught with inhumane snaring methods (1991), dog and cat fur (2007) and of products derived from seals (2009).

The legal scene is therefore quite heterogeneous, with protection levels that vary from one jurisdiction to another, going from two extremes represented by countries that have taken on *avant-garde* laws and others that are totally without. There is however a tendency to develop the law of animal welfare, even on the wave of the interest that it raises among the public opinion, stimulated by the circulation of information and the actions taken by animal rights associations.

The second part of the book is propositional. The author explains how animal welfare law is emerging on an “international and universal” (p. 230) level. In international law there are already the OIE rules on the welfare of production and laboratory animals, which refer to animals as “sentient beings” (p. 266). Besides, the OIE rules are the only ones that have a definition of animal welfare, and include its principles, among which the “5 freedoms” and the “3 Rs” (p. 239). Even though dictated by environmental concerns, there are also general agreements on nature and biodiversity, the convention on the conservation of the species threatened by international commerce (CITIES) and that to regulate whale hunting. Of course, progress is being made also in the OMC area. However, many issues remain unsolved, as commercial reasons prevail over “ethical considerations” (p. 295). In any case, the existence of a proposal for the Universal Declaration of Animal Welfare, UN documents and FAO reports show that the need to protect animal wellbeing is making its way in international law, even though slowly.

The key issue of the problem remains: there is no international treaty. How can this legal void be filled? The author identifies a solution, starting from the existing laws. After having searched through the various legislations of the world, she discovers that these all contain elements in common, that could become the catalyst for a law, still in the making, which is able of protecting the welfare of animals on an international level. In other terms, the author made an inventory of the sources of law on a “national, European, international

and universal” (p. 68) level and compared them to identify a “common core” (p. 71) from which to derive universal principles.

The author has shown how existing laws are not limited only in protecting animals from human cruelty but establish also for humans the obligation of treating animals properly. In both cases, the laws taken into consideration pursue the same goal: protect animals from the harmful actions or omissions of humans. From this common element, the principles of “non-cruelty” (p. 310) and “good treatment” (p. 310) are derived that can be recognised by the international legal system and become universal. The International Court of Justice could play a main role in this operation. The universalisation of these general principles can lead to the adoption of a “global convention on animal welfare” (p. 352) of which the author identifies “the outlines” (p. 375).

This book is useful for the richness of its recorded legal sources. Moreover, it is fascinating for its ideas, presented by the author through her style of writing that transmits her enthusiasm and the strength of her beliefs. Of course, the book is voluminous and often repetitive. The author is aware of this, but she specifies that this choice was dictated by “methodological reasons” (p. 72, f.n. 275). However, even the more hasty reader can use some references, thanks to the illustration tables found in the appendix. Another quality of this book is that it will not risk becoming obsolete. The author also manages a legal platform, GAL Project (<https://www.globalanimallaw.org/>), the flagship of which is the database of animal welfare laws in the world, which is constantly being updated.