

# Without brutality but when unjustified

The year that has just ended has left us some good news in the sphere of animal protection. It seems as if the Law were beginning to wake from its long lethargy regarding animals and wished to extend, slowly, the mantle of goodwill that Jeremy Bentham wrote about, to begin to deal compassionately with everything which breathes on the face of the earth (“Why should the law refuse its protection to any sensitive being? The time will come when humanity will extend its mantle over everything which breathes.” [\[1\]](#)). I would like to recap in a few points all the progress we have made in these past months, and to formulate some ideas that may help to encourage even more resolute and effective improvements in the Law that may place us in the Front Row of the defence of animals, that is, of all animals without exception.

The title of this month’s “paper” has its place in the good news section, and it is deliberately a paradox. I do not wish to confuse but to highlight what the Penal Code has achieved in its article 337: to do without doing, aiming to appease.

On 23<sup>rd</sup> December 2010, with somewhat weary rejoicing, we woke to the headlines of some newspapers [\[2\]](#) voicing the comments of animal advocates and private individuals, who were very satisfied with the (supposed) increased protection of animals in the revised Penal Code [\[3\]](#). These comments stressed the deletion of the aggravating circumstance of cruelty in article 337 of the Penal Code [\[4\]](#), a factor which was previously required in order for the criminal offense of mistreatment of animals to apply [\[5\]](#). The requirement has indeed been eliminated, and this is undoubtedly reason enough to celebrate. But it is also true –and this is why I speak of a paradox– that the term “unjustified” remains as a necessary qualification of animal mistreatment. In other words, it could be possible to mistreat an animal and not be punishable for it, if the mistreatment was “justified”. I cannot help raising my eyebrows in amazement, as I ask myself: When, how and why would mistreatment of an animal that causes death or serious injury, that seriously damages the health of the animal, be regarded as justifiable?

True, the previous inclusion of cruelty as a required aggravating circumstance in article 337 was a source of strong disagreement in the courts, and it allowed the exoneration of perpetrators of abominable cases of animal mistreatment [\[6\]](#). However, the revision is short-sighted and insufficient because it maintains, in the sentencing, a margin of impunity for the abuser. If in the place of animals we should think of the mistreatment of a human being, a child, an elderly person, a woman, is it possible to sustain that the abuse could be justifiable and that the courts could resort to exculpation on the basis of “justifiable mistreatment”?

Moreover, the revision has maintained the same sanctions of 2003 (“...three months to a year of prison and special barring of one to three years from professional practice and commerce with animals”). This, of course, has no deterring effect on would-be abusers. A great opportunity has been missed to make an example, with punishments proportional to the cruelty of the abuse, reflecting the views of the Spanish society, which is ever more sensitive to matters of animal welfare.

Another bit of good news in 2010 was, no doubt, the banning of bullfighting in Catalonia. I will not go into this point at length: I have already commented on it on Front Row [\[7\]](#). I only wish to reiterate, from the (as yet close) perspective that time offers, that the perception of a large portion of Spaniards has changed. Today one may still disagree with the banning of bullfighting, but the debate has broken out of

the small animal advocacy circles and reached the international press and a public opinion in which many citizens now have the courage to openly approach an issue that has been silenced and reduced to worn clichés.

It is also great news that the postgraduate course in “Animals, Law and Society”, the first of its kind in Spain, kicked off this month at UAB. We are convinced that professional training in this area will improve the position and status of animals in Spain. To be pioneers demand extra effort, a good dose of optimism and a level of maturity that the team that is setting on this fascinating adventure certainly has.

There is still a lot to do, however. Among other things:

1. The EU, having led the way in animal welfare for the Member States in the last few years (2006-2010), especially regarding production animals (transport, slaughter, health, battery cages, etc.) [8], no intends to focus its attention during the next few years (2011-2015) on the improvement of European legislation regarding companion animals [9], for which the disaccord between the different States is substantial. Indeed, we lack common European standards of care and protection and which establish effective prevention strategies, especially with regard to the problem of abandonment. This is a line of action we all have to work on. In Spain, where the abandonment rate soars [10], we have to work hard to uproot this veritable blight of our society.
2. Training and professionalization. This is the way forward, and it is a whole Programme, as the EU itself has expressed (“Education in Animal Protection”). It is very true that animals need our care, our empathy, our protection. They also need our knowledge; they need us to create a solid social base shaped in compassion and empathy. This goal will be achieved beginning with school, continuing in university and further in Continuing Education Programmes, Postgraduate Degrees and Doctoral studies. A course on Animal Protection and Legislation should be included in every educational programme, and, at university, Law schools should include a course on Animal Law. I myself have been teaching such a course at UAB for the past five academic years, and the course is included in our faculty’s new Bologna Education Programme. Critical thinking and knowledge of the legal status of animals are the most effective instruments with which to improve our legal texts and apply the law in the Courts. The best way to sensitise society, improve the treatment of animals and contribute to their protection is through education in schools and all educational institutions.
3. A legal goal, but also a social and political one: breaking old barriers. The defence of animals is no longer an interest of a small minority. It may become –and I hope it does– a social and a political priority. It will probably take time to reach the goals, but new generations –and in this area I can provide reliable information– react with interest and a sense of urgency to what until now had been the sole concern of small groups of activists: animals matter increasingly to people.

2011 will surely offer many new developments. Working on the Front Row is to knowingly accept fascinating challenges: “working for animals!”, as a distinguished American colleague, who has been working passionately for many years in pursuit of the goals I have mentioned, wrote to me in his Christmas greeting.

THE EDITOR  
Teresa Giménez-Candela  
Professor of Roman Law  
Director of the Animal Law and Society Master  
Director of ICALP  
Universitat Autònoma de Barcelona  
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[1] BENTHAM, J., An Introduction to the Principles of Morals and Legislation, 1789. Latest edition: Adamant Media Corporation, 2005.

[2] Vid.e.g.: [External link](#)

[3] BOE 23 de Junio 2010, Ley Orgánica de 22 de junio de 2010 [Download](#).

[4] “Cruelty” is defined as an aggravating circumstance qualifying the liability of the agent, by which unnecessary or unordinary suffering is caused to the victim, either in terms of pain caused to the victim or through its submission to protracted agony, deliberately seeking to cause suffering beyond the mere execution of the offense.

[5] CP. Art. 337: “Los que maltrataren con ensañamiento e injustificadamente a animales domésticos causándoles la muerte o provocándoles lesiones que produzcan un grave menoscabo físico serán castigados con la pena de prisión de tres meses a un año e inhabilitación especial de

uno a tres años para el ejercicio de profesión, oficio o comercio que tenga relación con los animales.” [Anyone who cruelly and unjustifiably mistreats domestic animals causing them death or serious injuries shall be punished with three months to a year of imprisonment and one to three years of disqualification from professional activities or commerce with animals.]

Revised CP. Art. 337: “El que por cualquier medio o procedimiento maltrate injustificadamente a un animal doméstico o amansado, causándole la muerte o lesiones que menoscaben gravemente su salud, será castigado con la pena de tres meses a un año de prisión e inhabilitación especial de uno a tres años para el ejercicio de profesión, oficio o comercio que tenga relación con los animales”. [Anyone who by any means or procedure unjustifiably mistreats a domestic or tamed animal, causing it death or injuries that seriously damage its health, shall be punished with three months to a year of imprisonment and one to three years of disqualification from professional activities or commerce with animals.]

[6] AP La Coruña, Secc. 1, 10.6.2009 (a cat was thrown through out of a window); AP Valencia, Secc.3, 26.2.2009 (a cat was struck and killed with an excavator scoop).

[7] GIMÉNEZ-CANDELA, T., [Bulls and bullfighters](#).

[8] Vid., esp. reports by the Council of Europe. [External link](#)

[9] Vid. news report in the Web Centre. [Download](#)

[10] The Affinity Foundation publishes a revealing yearly statistic. [External link](#). For commentary on the matter, vid. esp. GIMÉNEZ-CANDELA, T., [Abandoned](#).