

Teaching Animal Law in Spain*

Keywords: animal law; Spain; teaching

The questions that I would like to address in this editorial are, put briefly and succinctly, the following:

1. What is Animal Law?
2. Why teach Animal Law?
3. What purpose is served by teaching animal law?
4. What does Animal Law entail?

1. What is Animal Law?

Animal Law is an emerging branch of Law that is relatively new in Spain, but has both recognition and a long academic tradition in the United States of America.

Animal Law, like all legal disciplines, deals with real or potential conflicts in relations within organised society - in this case, between humans and animals, from the perspective of different disciplines that converge at the point of regulating, in a legal way, the interests of animals and the interests and responsibilities of human beings toward them.

Animal law is a transversal and international legal discipline that, while formulated autonomously, works interdependently with other consolidated legal subjects, and has been influenced by global society and new scientific advances in the field of Animal Welfare.

The Science of Animal Welfare has for many years fulfilled the role of investigating the needs of Animals as “sentient beings”; an expression proceeding from the world of Sciences relating to animals and the environment that has been integrated within the legal world as an expression for the standard of treatment and protection for animals, which the legal system has made its own.

These days, in the scientific as much as in legal and social fields, the expression “sentient beings” constitutes both a frontier for rejecting and punishing practices that constitute animal abuse, and the starting point for constructing legal and public policy resources for protecting the interests of animals in any way possible, meaning that the extension of this protection to the environments in which many animals live, which is understood to be the protection of biodiversity, emerges as a concurrent interest.

Consequently, when we think of sentient beings, Animal Welfare science does not exclude any animal, just as the Legal Sciences should not exclude them either. Animal sentience and the recognition of its protection is most often related to the economic value of the animal, but respect for animals and for their interests – that which constitutes the nucleus of Animal Law – is not limited to size, beauty, possible uses, or greater or lesser proximity to our daily life. Another question is how this three-part aspect should be articulated these days:

- a) social respect for animals and their regulation in conflicts with individuals
- b) public policy to ensure this respect
- c) the legal protection of animals as sentient beings, capable of experiencing pain and pleasure, fear and stress.

These are precisely the topics of foremost interest to Animal Law:

- a) the question of ownership over animals and its recent evolution
- b) the question of “anti-cruelty” legislation for animals and its extension to all types of animals
- c) the application of the rules of Animal Welfare to all animals, without exception

2. Why teach Animal Law?

Throughout the last decade it has become clear that in Spain there is a need for teaching Animal Law in legal faculties that is demanded by society, as it opens the doors for legal professions that relate to animals in a new dimension that better conforms to the needs of a society that reserves a legal space explicitly for animals and their relations with human beings.

The discussion on the legal situation for animals in law is often undervalued in the legal realm. However, there is an abundant and specific literature in both the Anglo-American and the European world, pertaining to aspects that are central to explaining the changes occurring to the legal status of animals. In Civil Law, special reference must be made to the Civil Codes of Germany (BGB), Austria (ABGB), and Switzerland that during the decade between the late 80s and late 90s changed the legal status of animals as they went from being understood simply as objects (a “thing” or *res*) to becoming part of a special category between human beings and things, with the denomination of “not things”. Without doubt, this category represented a great advancement, however it fell short due to a lack of ambition and legal specificity. As is well known, it is a category that is in crisis due, quite simply, to its inapplicability. From this point of view, it is crucial to discern whether an animal is treated by legislation as a simple object, or whether it can have its own distinct status, as recently awarded by France through its Civil Code.

This update leads not only to benefits for animals, but to benefits for legal science, as it opens new areas of debate, with repercussions for society as a whole and for the solution of certain specific problems that the Animal Welfare Sciences have tried to resolve, such as the situation of animals in farming, companion animals, or those in shows, that still nevertheless await a solution at global level. These days this produces paradoxes, as within society, animals are not considered simple objects; they are often admitted as being seen as members of a family. But while animal meat is eaten, concerns about how it has been produced still do not constitute a question of priority for the average consumer. We thought that recognising a new legal status of animals in law could lead to a better understanding of the society in which we live and an improvement in the relations between humans and animals.

3. What purpose is served by teaching Animal Law?

The role undertaken by animals in society has continued to change. It can currently be affirmed that, after centuries of silence from the law, animals are opening a path in this field. The many sentences produced by national courts, in contrast with the practical inexistence of animal jurisprudence up until only a few years ago, is evidence of this.

The challenges that a regulated teaching of Animal Law would enable us to reach can be formulated in the following way:

a) From a strictly legal point of view, one could expect significant improvement in constitutional and civil, as much as administrative and criminal, legislation from the application of animal sentience. The various programmatic texts of the UE have come to recognise animal sentience as a guide for Animal Welfare legislation over a 40 year period, but it was not until 2009, in art. 13 of the TFEU, named the Treaty of Lisbon, that the obligation was imposed on Member States to treat animals as “sentient beings” in internal legislation, and particularly on the subject of agriculture, farming, experimentation and shows. It is well known that the exceptions, explicitly mentioned in the second paragraph of art. 13 TFEU (religious rites, regional, traditional, cultural customs), have left the aforementioned article 13 and its possible applications very debilitated, particularly in the case of Spain and France on the topic of bull shows.

b) From a social point of view, the promotion of an informed and objective citizen conscience. This demands the adaptation of uses that characterise a society that has integrated animals as beings worthy of respect within daily life: transport, accommodation, vaccination, identification, consumption (information, labelling, responsibility), education in respect to all levels of teaching, responsible tourism, human-animal relations from the perspective of responsible tenancy and the promotion of stable bonds, the handling of animals, the definitions of their physical and behavioural welfare needs, the conditions and limits of studying animals and the tests that can be carried out (of course, New Zealand recently prohibited testing on animals in the cosmetic industry, as well as the sale of cosmetic products tested on animals, which has been the case in the EU since 2009), the obligation to alleviate the pain, stress, fear and illness of animals, and establishing severe penalties for cases of animal abuse and mistreatment and violence against them and against the most vulnerable elements of society, especially children.

c) From the point of view of the public agenda, the implementation of policies tended toward protecting the interest of animals so as not to be mistreated – which is today a position recognised by Animal Welfare science – with the same level of interest that a property owner has to protect their right. The questions of animal welfare must reach the status of a state responsibility - sufficiently important and clearly defined - in a way that regulates that of the animal owner. The option in some European States has been through the recognition of animal welfare as a duty of the State in its own Constitution, for the creation of a balance between, on the one hand, the interests of the owner, and on the other hand, those of the animal.

4. What does Animal Law entail?

Studies on animals have been enriched in recent decades with the protection of their interests within the legal world, and are breaking the traditional silence of the law in respect to animals – something that has characterised these studies – practically since Classical Antiquity until recent years.

Animal Law is a transversal speciality of Law, the formation and development of which is shaped by disciplines that, apparently, are traditionally remote from scientific dialogue, but that share the same interest and subject of focus, which are the animals at the core of globalised society. I am referring to:

a) legal disciplines most traditionally related with animals (Civil, Criminal, Commercial, International, Procedural, Administrative), specialised legislation (state, autonomous, local, that of the European Union, and International), and relevant Jurisprudence, which has in recent years experienced a very profound and notable growth;

b) those subjects of concomitant affinity to animals, such as veterinary sciences, ethics, economics, nutrition, environmental sciences, health sciences and humanities.

It is about trying to promote a genuine exercise of intellectual cooperation, that in relation to animals - although today it seems to have been forgotten – has been carried out since antiquity. But this issue will be dealt with another time. It is true that the confluence of interests of the sciences implicated in the achievement of a goal constitutes a “natural” phenomenon. Sciences, in the real sense, are not minuscule spaces of knowledge enclosed within themselves, but, quite to the contrary, tend to the open specialisation and cooperation between professionals that are able to contribute their knowledge to strengthen and advance their own discoveries.

This is one of the glories and the difficulties of Animal Law; a sign of its singularity and, at the same time, its justification as an autonomous discipline of Law. The treatment of animals is contemplated today as a holistic space of study and action, for which true cooperative and organised science is needed.

To have Animal Law recognised as one more branch of law in Spanish legal faculties would be a very desirable accomplishment. Our sight is focused on animals, on knowing more so as to work better for them.

THE EDITOR

Teresa Giménez-Candela

Professor of Roman Law

Director of the Master in Animal Law and Society

Director of the SGR Group of Investigation ADS

Autonomous University of Barcelona

Follow me on Facebook: <https://www.facebook.com/edidora.da>

* The idea behind publishing these reflections (purposefully synthesised) comes from my own experience of teaching Animal Law since the 2007-2008 course, through the subject “Animal Law and Welfare”, which is part of the official study plan of the Law Faculty at the Autonomous University of Barcelona, as an optional subject in the second term. Already there are various generations of future lawyers concerned with directing their profession toward animal-related

cases, but in any case, what is sure is that they have their own criteria and a solid training regarding the treatment that a State of Law owes to and should provide for animals. These reflections are born of many years of study and experience, becoming more clear in the last decade; in this sense, I am the creator and director of the Master in Animal Law and Society, which this year begins its 5th presencial edition, as well as of the online Master in Animal Law and Society, which is possible through collaboration with the prestigious legal editorial Tirant lo Blanch. I have founded, and now edit, the web page derechoanimal.info, which has now been around for five years as a vehicle for openly disseminating the global advances made and experienced by Animal Law, as well as offering the only database of Animal Law Legislation and Jurisprudence, with over 30,000 estatal, autonomous, local, EU and international entries. Since 2007 I have managed the SGR Investigation Group (Animals, Law and Society), which is a genuine “think tank”, both interdisciplinary and international, from which we initiate investigative works (theses, doctorates, verdicts, TFM, TFG), and organise conferences, lectures, workshops, monograph courses, as well as publications in reviews with verified scientific value. I have promoted and now manage the Legal Collection “Animals and Law” and the E-book Collection “Library of the Master in Animal Law” (to appear soon), both within the legal editorial “Tirant lo Blanch”.