

## BOOK REVIEW

*By Oriol Caudevilla<sup>1</sup>*

### ***ANIMALS AND THE LAW***

The book *Animals and the Law*, edited by Professors *Teresa Giménez-Candela<sup>2</sup>* and *David Favre<sup>3</sup>*, has just been published in May 2015 by the prestigious publisher Tirant lo Blanch as the first volume of a new collection wholly formed by books related to Animal Law. This book is composed of twenty eight articles, written in English, Spanish and French, that originate from the International Conference "Animals and the Law" celebrated in October 2011 at the Universitat Autònoma de Barcelona, thanks to a Research and Development Project (DER 2010-21301) which recognized, for the first time in Spain, support for investigating the link between Animals and the Law.

I consider that being a pioneer is probably the main characteristic of this book there is no other book in Spain dealing with these issues from an academic and scientific perspective.<sup>4</sup> Besides, given the variety of the participants' origins in the Conference that originated the book, both issues related to Common Law and Civil Law are dealt with, which gives this study a significantly broader scope. Thus, reading *Animals and the Law* becomes mandatory for all those people interested in learning and discussing a broad range of topics related to Animals from a legal and social point of view.

The main thesis that we find along the twenty eight articles is the one enounced by Prof. Giménez-Candela in its Introduction: times are changing. In Europe, countries with deep legal traditions such as Germany (1990) and Austria (1988), as well and Switzerland (2000) and the Czech Republic (2014) too have modified their respective Civil Codes to declare animals as "*not-things*", which is the case too of the Civil Code of Catalonia, which in 2006 declared that animals are "*not-things too*". As a consequence of all this, an in-depth reflection on animals, which has been taking place for many years in the United States, Australia, New Zealand and Canada, has begun to take place in Spain and in the rest of Europe. *Animals and the Law*, precisely, seek to rethink and reposition animals within our codified legal systems, seeking to open a discussion that develops a new frontier for Law.

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<sup>4</sup> Also all the other activities carried out by this Research Project in general, like the Master Degree in Animal Law and Society created in 2011 by Prof. Giménez-Candela.

Summarising all the articles would be meaningless, as there are too many issues derived from these twenty eight articles to discuss; therefore, just a summary and discussion of the most relevant key issues will be provided in this review. However, before doing this, an index of the topics that the articles deal with will be provided: articles deal with article 13 of the Treaty of the Functioning of the European Union (two articles); live export of animals for slaughter in Australia; nonhuman animals in sports and entertainment throughout history; the American Pet Trust; pets in public transportation in Barcelona; the evolution from Animal Intelligence to Animal Rights; the legal regulation of stray cats in Catalonia; how Common Law equity concepts may enhance animals' status; the current policy and framework of Animal law at an EU level; an overview of Spanish Animal Law; the adoption of pets in the Spanish law; the protection of wildlife; animal suffering in Canada; ways of changing the legal status of animals; animal testing from a bioethical point of view; Environmental Law vs. Animal Law and, at last, Animal Rights and Public Policy.

As we can see, all these topics are very different, but all of them share a deep interest for the animals as sentient beings and for the animals as the object of an academic and rigorous study too; as stated by Professor Giménez-Candela in the Introduction; "this book is an open door for discussion, as is every book, and its aim is to contribute to developing the necessary debate that allows jurists to tackle a new frontier of Law, whose limit has not been defined previously, as is innate in every scientific issue"<sup>5</sup>

One of the key issues dealt with in this book is the direct inclusion of Animal Welfare in the text of article 13 of the Treaty of Lisbon (Treaty of the Functioning of the European Union -TFEU), which defines animals as *sentient beings*, definition that must be complied with by not only the EU but also by all the Member States; nevertheless, as Director *Marlene Wartenberg*<sup>6</sup> writes: "there is a legal uncertainty in the vast derogation included in Article 13 TFEU (...) The derogations implemented by Article 13 in relation to religious rites, cultural traditional and regional heritage are almost unlimited because of the use of the term '*in particular*'."<sup>7</sup> Thus, we observe how the regulation contained in Article 13 which establishes Animal welfare as an ethical value is undermined by these derogations regarding religious rites and cultural heritage; for instance, bullfighting in Spain may continue to exist thanks to these derogations.

Besides, and still focusing on Article 13, these derogations are not the only practical problem. According to the article written by State Councillor *Enrique Alonso*<sup>8</sup>, leaving apart the formulation of the article, we find attached another problem: most part of Spanish legal operators do not know the content of Article 13, as they are not aware of

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<sup>5</sup> Page 16.

<sup>6</sup> Director of the FOUR PAWS European Policy in Brussels.

<sup>7</sup> Pages 356 and 364.

<sup>8</sup> State Councillor in the Spanish Council of State.

the TFEU or even of the case law of the European Court of Human Rights.<sup>9</sup> This is in my opinion a clear problem as, even if Article 13 does not provide a complete regulation, at least this incomplete regulation should be known by legal operators.

The second key issue dealt with in this book is how Animal Law is regulated in Spain; Professor Giménez-Candela deals directly with this issue providing us a thorough overview of Spanish Animal Law, and there are several other articles that study some concrete aspects of this regulation in Spain, Catalonia and Barcelona. Her article seeks to discuss the strong and weak points of Spanish Animal law. In fact, as Giménez-Candela claims; "there is not an academic discipline, within Faculties of Law, called Animal Law in Spain [and] this expression does not even exist in the usual vocabulary of the general public".<sup>10</sup> Yet, some initiatives have been started, like the Master in Animal Law and Society taught at the Autonomous University of Barcelona.

There is no provision contained in the Spanish Constitution related to animals in general (or even to the domestic ones), in the sense of granting them any kind of protection by the public powers against any type of abusive situations. There is neither any provision related to wild fauna. Apart from the lack of regulation contained in the Constitution, there is no general law about animal protection, being the Autonomous Communities the ones that have gone further into this matter, having all of them a Law for Protection of Animals, copying all of them the model of the Catalan law for Protection of Animals promulgated in 1988. Thus, a general law granting regulatory coherence between the EU standard and autonomous legislation would be necessary in Spain.

The third key issue dealt with in this book relates to the way common law equity concepts can help enhance animals' status; this issue is studied by Professor David Favre, who proposes a new use of the exiting property law concepts to change the legal personhood status of animals. An interesting point of this article is the fact that it introduces a study made from a common law perspective because, as mentioned above, *Animals and the Law* intends to broaden the discussion of the matters related to Animal Law to both the civil law and common law systems.

Animals are currently classified as personal property, which gives them no status in the legal system for the protection of their interests, but Professor Favre considers that it would be possible to create a new category of property, *living property* -category which, using common law concepts of equitable title, would allow for the creation of a new form of self-ownership in an animal, an *equitably self-owned animal*. As Professor Favre establishes; "Animals are not humans and are not inanimate objects.[...]. By using existing concepts of property law, it is possible to construct a new paradigm that

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<sup>9</sup> With "Spanish", I consider the same situation exists in several EU countries.

<sup>10</sup> Page 211.

gives animals the status of juristic persons without entirely severing the concept of property ownership."<sup>11</sup>

Reading *Animals and the Law* is very advisable for all those people interested in animals in general and in Animal Law in particular. The historic lack of interest in Animal Law by part of the lawmakers must not bring us to consider that it will remain so; in fact, just as people's minds are changing, Law will have to change. We all know that, sometimes, law reacts slowly to the changes that take place in our society, but it finally has to react. As Professor Favre summarises in the Epilogue of the book; "the authors of the chapters of this book are seeking to examine both where we are and what steps might be possible on behalf of animals. [...]. The animals rightfully trigger our compassion and concern, but it is only through the best dispassionate scholarship that we will find the paths forward for helping the animals that live among us."<sup>12</sup>

This book means a huge contribution to its field, as it is the first book published in Spain containing the study of Animal law from an academic point of view, and it suggests interesting avenues for future research, as most part (if not all) of the articles contained in the book could lead other scholars to study these issues monographically. Indeed, this is the first book of a collection which I am sure will be completed by many other interesting studies in the future.

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<sup>11</sup> Page 199.

<sup>12</sup> Page 372.