

# The collapse of the past: COVID-19

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Received: June 2020

Accepted: June 2020

**Recommended Citation.** GIMÉNEZ-CANDELA, M., The collapse of the past: COVID-19, dA. Derecho Animal (Forum of Animal Law Studies) - DOI <https://doi.org/10.5565/rev/da.507>

## Abstract

We are faced with a global pandemic, the devastating consequences of which have struck the lives of millions of human beings. The first effect we intuitively sensed was the collapse of the past; a situation in which parallels with the scourges that past civilisations have experienced, as was the case in Rome, are clearly perceptible. The reflections we present in this new journal volume allow us to delve into the causes of this ravage. We try to enrich the debate on how a society can change the paradigms that have led us to this situation. Industrial activities, the conservation of wild fauna, cohabitation with urban animals, social responsibility in the face of climate change, the preservation of biodiversity, animal experimentation, governance of a global sector that requires global agreements beyond the EU, public policies recognising animal sentience, the contribution of an eco-centric ethical awareness. Overall, these are only some of the issues to which we may contribute, in order to know more to treat animals better. This is the moment to take on challenges that can help many to have assurances and stimulation at a time in which improving the lives of animals is equally to improve the lives of citizens.

**Keywords:** Coronavirus; COVID-19; pandemic; climate change; nature; animals; sentient beings; the fall of Rome; historical experience; Gibbon; *salus populi suprema lex esto*; public health; companion animals; interspecies communities; wild fauna; global animal law; animal-assisted therapies; Iberian lynx, Criminal Code Art. 337; China; animal experimentation; equinotherapy; ADHD.

## Resumen - *El colapso del pasado: COVID-19*

Nos enfrentamos a una pandemia planetaria, cuyas consecuencias devastadoras han golpeado la vida de millones de seres humanos. El primer efecto que percibimos, de forma intuitiva, fue el colapso del pasado. Una situación en la que el paralelismo con el azote que otras civilizaciones del pasado han experimentado, como es el caso de Roma, son claramente perceptibles. Las reflexiones que abordamos en este nuevo volumen de la revista, nos permiten profundizar en las causas de este estrago. Pretendemos enriquecer el debate acerca de cómo una sociedad puede cambiar los paradigmas que nos han arrastrado a esta situación. Actividades industriales, conservación de la fauna silvestre, convivencia con los animales urbanos, responsabilidad social ante el cambio climático, preservación de la biodiversidad, la experimentación con animales, gobernanza de un sector global que requiere de acuerdos globales más allá de la UE, políticas públicas de reconocimiento de la sentiencia animal, la contribución de una conciencia ética de carácter ecocéntrico. En suma, estos son sólo algunos interrogantes acerca de cómo podemos contribuir a saber más para tratar mejor a los animales. Es el momento de asumir retos que pueden ayudar a tantos a tener seguridades y estímulo ante un periodo en el que mejorar la vida de los animales es mejorar la vida de los ciudadanos

**Palabras clave:** Coronavirus, COVID-19; pandemia, cambio climático; naturaleza; animales; seres sentientes;

Caída de Roma; experiencia histórica; Gibbon; *salus populi suprema lex esto*; salud pública; animales de compañía; comunidad interespecies; fauna silvestre; derecho global animal; terapias asistidas con animales; lince ibérico; CP art. 337; China; experimentación animal; equinoterapia; TDAH.

A situation such as the one we currently face – a health crisis that has brought the death of thousands of beings all around the globe – can but invite us to reflect on what have been the causes, or the cause, to provoke this collapse of the past. So, just as the question of time, the life we knew ended,<sup>1</sup> the possibility to recuperate it in the state as we knew it before also ended. We have experienced the closest thing to a vital crisis, which momentarily stopped our lives that, beginning again, are not the same. We have left behind a past to which we are tributaries, to try to understand a present that begins to look like recuperation, of which we don't even have clear assurance on how it will develop in the coming months or years. We cannot be left indifferent by this situation, but more aware and in a state of alertness about how we have managed to contribute towards there being no turning back for our society, in which animals, climate change and nature have, thanks to our errors, played, and will continue to play, a role of great importance.

It is a fact repeated across history that external factors can be immediate executive arms bringing great change. A magnificent essay written by Kyle Harper<sup>2</sup> on the Fate of Rome has reconsidered the monumental and well-known thesis of Edward Gibbon<sup>3</sup> on the decline and the collapse of Roman civilisation, from the angle of the impact of climate change and the devastation produced by the bubonic plague in the final centuries of the Roman Empire, which, according to Gibbon, and not without important critical revisions,<sup>4</sup> had for centuries been associated with, in addition to factors linked with slumping economy and the incapacity of Rome to face the transformations of a world in crisis that required change, above all, the influx of new forms of thinking and ethical demands determined by the strength of Christianity in post-classic society. The impact of Gibbon's thesis, which was for many years uncontested and venerated, has today become a recognition of the irrefutable historiographic value of his work, as well as to a literary style that, as it has been affirmed, inaugurated the modern form of historical investigation through documents, data, and first-hand references.<sup>5</sup>

From another perspective, Harper's work has been well received in various sectors specialised in Classic Antiquity, however the pandemic that we are currently experiencing has granted Harper's work a new dimension that has also penetrated many layers of society. Effectively, the author impeccably highlights that the collapse of Roman civilization was also, and fundamentally, the result of the impact of climate catastrophes, the appearance of virus and bacteria that affected the population, the violence of volcanic eruptions, and, in short, the inadequacies in public health management (*salus populi suprema lex esto*),<sup>6</sup> that had been set up as a governing principle of imperial public policy since the crisis of the Republic,<sup>7</sup> many of which were ineffective or untimely, as the passing of centuries revealed.

The experience of the history of Rome serves as a vantage point for critically reflecting on our own behaviour in a world that has gone, as the Romans themselves did, contemporaries of events that drove them to experience an identity crisis<sup>8</sup> and a feeling of decadence, including at the peak of their splendour.<sup>9</sup>

It is clear that many voices have already been raised asking for some type of reshaping of our relationship with nature and with animals. In my opinion, it is about establishing a new ethic of integrated health that does not exclude animals, but includes their protection, and harmoniously integrates human beings with nature. A new ethic that must share the premise that the Law is part of the solution, but not the whole solution. In other words, we as individuals are authors of changes that the Law makes in the realm of animal

<sup>1</sup>In the case of Spain, this is done by RD 463/2020, of 14 March, declaring the state of alarm for managing the health crisis caused by Covid-19, [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-3692](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-3692), which has been the object of six 15-day extensions until now, in accordance with the stipulations of article 116.2 of the Spanish Constitution.

<sup>2</sup>HARPER, K., *The Fate of Rome. Climate, Disease and the End of an Empire* (Princeton 2017) 440p.

<sup>3</sup>GIBBON, E., *The History of the Decline and Fall of the Roman Empire* (London vol. I, 1776; vol. II and III, 1781; vol. IV, V, and Lausanne vol. VI, 1788).

<sup>4</sup>Vid. for general reference, GIMÉNEZ-CANDELA, M., *Commemoración en España del 1500 aniversario de la caída de Roma en el 476*, in *Anuario de Historia del Derecho Español* vol.LI (1981) 675-681.

<sup>5</sup>HEATHER, P., *The Fall of the Roman Empire: a new History* (Oxford University Press 2006); WARD-PERKINS, B., *The Fall of Rome and the End of Civilisation* (Oxford University Press 2005).

<sup>6</sup>Cic., de Leg. 3,8

<sup>7</sup>MANTOVANI, D., *Quand la santé devient politique*, en *Fondation Collège de France* <https://www.fondation-cdf.fr/2020/05/13/quand-la-sante-devient-politique/>

<sup>8</sup>DRINKWATER, J., ELTON, H. (Eds.), *Fifth Century Gaul: a crisis of identity?* (Cambridge University Press 1992)

<sup>9</sup>SPAWFORTH, A.J.S., *Greece and the Augustan Cultural Revolution* (Cambridge 2012) esp.4ss.

protection. Strengthening this awareness depends greatly on the training of the individual, calm study, and investigation. The line we have traced at ICALP and with the journal is a faithful reflection of how we work - without haste but without stopping - to reach out to many in all corners of the world with study materials, encouraging reflective perspectives. It is society – this includes all of us - and science that contribute to the progress of the Law,<sup>10</sup> to the changes that animals deserve.

In volume 11/2 (2020) of the journal, which punctually appears in June as promised to our readers, we offer new horizons of thought that allow us to reflect on the news of events we are currently experiencing, as well as on strategies we must pursue to efficiently improve the assistance of Law in strengthening animal protection and welfare, such as the adaptation of scientific hypotheses, in order to move forward in constructing an identity for animals more akin to their condition as sentient beings.

The new contributions included in this journal volume are aimed at consolidating Animal Law as an autonomous branch of Law and deal with legally relevant and socially impactful topics.

From separate viewpoints, two articles explore the legal treatment of companion animals as a result of the pandemic. From one side, Guillermo Cerdeira Bravo de Mansilla, Professor of Civil Law and the University of Seville, studies the consequences of allowing dog walking and visits to veterinarians in Spain during the state of emergency, as set out by RD 463/2020, of 14 March, in his article “Veterinary clinics and walks with pets before COVID-19: an essential activity for the welfare of the animal as a sentient being” (DOI: <https://doi.org/10.5565/rev/da.499>). From the other, the article by Brazilian professors Luciano Rocha Santana (Universidade Federal da Bahia) and Thiago Pires-Oliveira (Universidade da Sao Paulo), “Reflections on the responsible guardianship of companion animals in Brazil” (DOI: <https://doi.org/10.5565/rev/da.478>), deals with tenancy conditions of companion animals, highlighting the importance of the new federal law 13.426/2017<sup>11</sup> for adapting public policies relating to the living conditions of companion animals, to the proposals of animal sentience, which is the standard that the law in question uses as a starting point of normative text.

Two articles address important aspects of the legal treatment of animals in China. Professor GaoLihong, member of ICALP, who plays a relevant role in the academic scene of her country and promotes investigation in Zhongnan University of Economics and Law (Wuhan, China) examines, in “The laboratory animal legal system of China” (DOI: <https://doi.org/10.5565/rev/da.500>), the two fundamental pillars on which the treatment of animal experimentation in her country are based; governmental supervision and the third-party certification system. The article by Professor Jiwen Chang, Professor at Hunan University Law School and the School of Humanities of the China University of Geosciences, deals with an aspect of Chinese tradition – the consumption of wild fauna – which has been subject to regulation and prohibition in recent months. The article “Interpretation of the Decision of the Standing Committee of the National People's Congress of China to Abolish the Bad Habit of Consuming Wildlife Mindlessly” (DOI: <https://doi.org/10.5565/rev/da.497>), makes reference to new legislation passed in China in February 2020, which aims to eliminate the risk of a potential propagation of illnesses between people and wild fauna, as well as safeguard public health and maintain ecological balance. This is without doubt a great first insight that we offer with the journal; a detailed commentary, made precisely by one of the reviewers of the proposal of the aforementioned legislative reform. With this commentary, we reinforce the alliance between Orient and Occident of ICALP and the journal, which offers possibilities of advancement and understanding in the realm of Animal Law also.

Two articles in this latest volume address the relationship between governance and animals. In one of them, “Animal Politics: advocating for full access to health care for companion animals” (DOI: <https://doi.org/10.5565/rev/da.491>), Pablo Serra Palao (Investigator at the Faculty of Law at the University of Murcia) considers the creation of a genuine interspecies community politics, inspired by of the animals rights theory of Sue Donaldson and Will Kymlicka,<sup>12</sup> while the article “A Global Institution on Animal Protection” (DOI: <https://doi.org/10.5565/rev/da.482>), by Carolina Fumagalli, Lawyer specialised in Animal Law and former student of 5<sup>th</sup> online edition of the Animal Law Master, deals with this question from a global perspective, taking as a starting point the pioneering investigations in the area of globalisation and the animal world of Professor Anne Peters, Director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, who has done extensive work on this topic and has very recently published an important book of compiled studies, “Studies in Global Animal Law”,<sup>13</sup> which tackles the

<sup>10</sup>A critical and always useful view, the affirmation that the Law progresses in accordance with the requirements of society, from the perspective of occidental legal history, offered in WATSON, A., *Society and Legal Change* (Edinburgh 1977); vid. a review of this classic of legal literature, in *Michigan Law Review*, 78/5 (1980) 829-833.

<sup>11</sup>Lei Federal Brasileira 13.426/2017 [http://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/20137975/do1-2017-03-31-lei-no-13-426-de-30-de-marco-de-2017-20137896](http://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/20137975/do1-2017-03-31-lei-no-13-426-de-30-de-marco-de-2017-20137896)

<sup>12</sup>DONALDSON, S., KYMLICKA, W., *Zoopolis. A Political Theory of Animal Rights* (Oxford 2011; reprint. 2013).

<sup>13</sup>PETERS, A. (Ed.), *Studies in Global Animal Law. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht. Band 290* (Springer, Berlin 2020)

political treatment of animals from a global perspective. Given the intrinsic nature of animals – which is in itself global – it tends towards an inclusive political act that it cannot be limited to the state, regional or local ambit. Problems such as climate change and the degradation of the ground that create nutritional insecurity that tends to weaken resistance to biological infections, after all, require a global response.

With this volume - 11/2 (2020) - we are publishing, within a series of studies that have already been given light in our journal,<sup>14</sup> the question of animal-assisted therapies that are in need of solid, reliable regulation in Spain. This topic is addressed in this volume thanks to the work of Antonia Eraud - equine therapist, writer and artist, student of the 6<sup>th</sup> edition of the online Animal Law Master – entitled “A proposal for equine therapy intervention for children with ADHD from an animal protection perspective” (DOI: <https://doi.org/10.5565/rev/da.495>). It deals with a study based on an original methodology, where the practice of equinotherapy associated with pro-social strategies and innovations demonstrates that this therapy is viable and effective for reducing the effects and symptoms of children with ADHD.

In the Sentence Commentary section – a section we are particularly fond of, and have promoted with this journal since the beginning –<sup>15</sup> we are publishing two novel and highly interesting contributions. The first commentary is by Manuel Rodríguez Montserrat, Professor of the Law Faculty at the University of Cádiz, entitled “The protection of the Iberian lynx under criminal law: case note on the judgement 150/2013 of June 6, pronounced by Jaén Provincial Court” (DOI: <https://doi.org/10.5565/rev/da.490>), in which he makes an analysis that takes circumstantial evidence as the central axis of the trial, to analyse the criminal acts that aim to end the life of a protected and endangered species, such as the Iberian Lynx. It is important to highlight the achievement of the author for presenting this article, as well as its timeliness, as there are few judicial decisions that deal with autochthonous wild fauna, and many attempts against them within our territory, which does nothing but contribute towards the disappearance of a very important part of our biodiversity. In the second commentary, Anna M<sup>a</sup> Estarán López, coordinator of the legal area of FAADA, addresses “The definitive precautionary measures in the crimes of animal abuse. Commentary on the Orders of the Court of Manresa and Esplugues de Llobregat” (DOI: <https://doi.org/10.5565/rev/da.486>). The author deals with two pioneering decisions in Spain, recently ruled thanks to the author’s own intervention; the Auto del Juzgado de Primera Instancia e Instrucción núm. 3 de Manresa, on 18th June 2019; and the Auto del Juzgado de Primera e Instrucción núm. 1 de Esplugues de Llobregat, 18th November 2019, which address the cautionary penal measures in cases of animal mistreatment anticipated by art. 337 of the Criminal Code, consisting of definitive confiscation and adoption, which highlights the need to bring about reforms in the procedural area of coercive measures when dealing with animal mistreatment.

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<sup>15</sup>In the realm of Animal Law, the Sentence Commentary section of our journal has consolidated not only a genre of literature with great legal antecedent, but is contributing towards highlighting the importance of the creative capacity of judges who, in recent years, have been the true authors of progression on the subject of animal protection, thanks to innovative rulings that have on many occasions allowed the justification and anticipation of legislative reforms in this area.

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