

Chronicle of the III Global Animal Law Conference Hong Kong, May 2018

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Abstract

On May 4th and 5th, 2018 the III Global Animal Law Conference was held at the University of Hong Kong, Law school. Keynote speakers from different countries took part in the event.

Keywords: Global Animal Law, Conference, Comparative law, University of Hong Kong.

Resumen - *Crónica de la III Conferencia Global de Derecho Animal – Hong Kong, Mayo 2018*

El 4 y 5 de mayo 2018 la III Conferencia Global de Derecho Animal tuvo lugar en la Facultad de Derecho de la Universidad de Hong Kong. El evento contó con la participación de ponentes procedentes de países diferentes.

Palabras clave: Derecho Animal Global, Conferencia, Derecho comparado, Universidad de Hong Kong.

The 3rd Global Animal Law Conference was held at the University of Hong Kong, Law school, hosted by Prof. Amanda Whitfort (University of Hong Kong) on May 4th and 5th, 2018¹, for the first time in Asia following the first conference in U.S.A. and the second in Spain. Inviting speakers from all over the world, i.e. 5 from China/Hong Kong, 6 from U.S. A., 2 from U.K. including Scotland, 1 from Canada, Australia, N.Z., India, Chile, Argentina, Brazil, Spain, Finland, France, Poland, Switzerland, Zimbabwe, South Africa, Kenya, and Japan, the name of the conference very well represented its content².

In the study of comparative law, in general, a pure comparison of law is hardly possible due to other elements that influence law, such as aims, values, and interests, which varies from jurisdiction to jurisdiction, from case to case, or even from person to person. In animal law, however, those elements are common and absolute among animal lawyers. It is "for the animals" that they employ law in the best way in their own jurisdictions. Their devoted activities "for the animals" using law as their means, illustrates characteristics of each legal system and the circumstances around them.

In civil law, as the legal concept plays an essential role, the concept that the animals are "things" had to first be challenged. Going back to the source of the civil law, *res* meaning a "thing" in Latin, comprised slaves within the concept and could signify not only the objects but also the subjects of a legal transaction. Through the historical developments, nevertheless, the word *res*, i.e. the thing, is understood solely as an object today. In order to concede the animals their "rights", a transition of the concept from object to subject in case of animals was required. Prof. Maria Teresa Gimenez Candela (Autonomous University of Barcelona) explained this transition. Supported by zoology and veterinary science, animals should firstly be recognized as "sentient beings," then attributed their "dignity (Würde)" based on their sentience and finally be considered as a "person."

In the US, the concept of the "person" is used in more practical way. Mr. Steven Wise, an attorney-at-law in New York State and a president of the Nonhuman Rights Project³, thinks that the "person" is a "cup" to hold rights. He argued that, if the court in the State of NY would admit that the animals are a "person", the rights of the non-humans could also be admitted as the contents of the "person." Based on the research that the court of the State of NY values the autonomy, he selected chimpanzees as "autonomous" animals and claimed *habeas corpus* of four chimpanzees living in the State of New York.

His purpose in bringing the lawsuits was not necessarily to provide the apes with a better environment but to establish a precedent to prescribe "person" to animals, which could be a step to granting "personhood" to more animals and to grant more rights as its contents. He describes this activity as "kicking down the wall between humans and non-humans" but seems to have little interest in the question where the new wall should be built. This seems to reflect an American way of the creation of law in which the court takes the lead.

Also, in the US, there seems to be a room for the statutes to be relied on in order to provide a better environment for the animals which are not protected by the Federal Animal Welfare Act. Prof. Joyce Tischler, Co-founder and General Counsel of the Animal Legal Defense Fund, introduced the cases related to CAFO (Concentrated Animal Feeding Operation) and urged that any law available, such as consumer protection law, competition law, environmental law, etc., should be used in order to prevent cruelty to animals in the CAFO. Interestingly enough, the same approach is taken by Chinese animal lawyers where the legal framework of animal protection is still insufficient⁴.

Prof. Radford from Aberdeen University, Scotland, emphasized the significance of

¹ <https://law.lclark.edu/live/events/283980-global-animal-law-conference-iii> (last visited on Oct.29, 2018)

² Full program is at the end of this chronicle.

³ <https://www.nonhumanrights.org> (last visited on Oct. 29, 2018)

⁴ Mr An Xiang, Beijing Dexiang Law Firm, PRC.

the legislature, in which the important feature would be to switch from a concept of "prohibition of cruelty" to "animal welfare." Such conversion would result in, for example, a lower burden of proof for animal lawyers, because they would only have to prove a violation of the animal welfare, instead of proving the cruelty. This could even pave a way towards proactive measures. Furthermore, by focusing on the animals' quality of life instead of their pains, and by changing the objective from avoiding something negative to creating something positive, such legislation would even bring a difference in human behavior.

Even among the Civil law countries, where codes are the main sources of law, whether the animal rights should be prescribed in the Constitutions, can also be an issue. Currently, Finland is in a process to draft an extensive chapter that secures fundamental rights for the animals, starting with a preamble defining the sentience animals as "individuals". The rationale behind this attempt is to foster stronger protection by the Constitution with its supreme validity over the particular laws⁵.

On the other hand, however, the constitutional norms would not necessarily lead to a better protection in other countries. In Brazil, for example, the Supreme Court prohibited the sport "Vaquejada" based on an article to secure animal rights in their Constitution⁶. "Vaquejada" is a kind of rodeo of which the objective is to catch a cow from two parallel running horses and turn up side down at the goal. It is obviously cruel to cows, that they should be dragged by the cowboys with a speed of 75 km/h and violently overthrown by their tails. Nevertheless, the Brazilian population protested against the decision of the Supreme Court and led to a political compromise to protect the culture of Vaquejada by issuing the governmental permission to avert the Supreme Court's prohibition⁷. Such a conflict between the Supreme Court and the Government is often seen also in India that the protection of animals is sometimes at stake.⁸

China and African countries have the common objective to dispel the image of their peoples being cruel to animals. As Chinese traditional philosophy does not conceptualize animals as objects of human consumption, the notion of animal rights does not conflict with Chinese culture⁹. On the other hand, the present situation of dog-eating and bear-farming should be eliminated as soon as possible which would result in restoring the "face" that China actually deserves¹⁰. Reports from some activists of animal protection were also presented at the conference¹¹.

The richness of the wild animals in Africa proves that people have been protecting animals in this region for generations. However, in order to make locals be engaged in animal protection, it is essential to minimize the damages caused by the animals. For this purpose, for instance, an introduction of insurance system to cover the damage was suggested. Video-audio-recording was also mentioned as an effective tool to tackle with poaching¹².

The conference was a true learning experience from the perspective of comparative law. It was extremely interesting not only to see the difference between Common and Civil law but to identify the same approach based on the common socio-political circumstances taken in different jurisdictions without any mutual influences. Legal systems, legal awareness of the people, and the political situation in different jurisdictions can be

⁵ Prof. Birgitta Wahlberg, Abo Akademi University, Finland.

⁶ decided on Oct. 6, 2016

⁷ Professor Tagore Trajano, Federal University of Bahia, Brazil.

⁸ Nuggehalli Jayasimha, Managing Director of Humane Society International, India.

⁹ Prof. Chang Jiwen, Institute of Resource and Environmental Policy, Development Research Centre of the State Council, PRC, Prof. He Hairan, Institute of Law of the Chinese Academy of Social Sciences, PRC.

¹⁰ Ass. Prof. Peter Li, The University of Houston-Downtown, USA.

¹¹ World Dog Alliance, SPCA, etc.

¹² Jim Karani, Attorney, Kenya.

highlighted through the filter of the common objective “for the animals”. The animal law studies seem to have a great potential for a research field of comparative law.

Paul Littlefair, RSPCA

International Drivers for Animal Protection Legislation in China

Associate Professor Peter Li, The University of Houston-Downtown, USA

Animal Protection Law Making in China: The Political and Institutional Obstacles

Associate Professor Amanda Whitfort, The University of Hong Kong

The 2010 HKU/SPCA Review of Hong Kong’s Animal Welfare Legislation: Where are we now and where do we need to be?

Professor Olivier Le Bot, Aix-Marseille University, Paris

Is it useful to have Animal Protection in the Constitution?

Professor Tomasz Pietrzykowski, University of Silesia in Katowice, Poland

Polish Animal Welfare Law after 30 Years; Highlights, Achievements and Challenges

Antoine F. Goetschel, Attorney at Law, Switzerland

Let Animals Arise! Why and How the Animals in the UN – and the GAL Animal Law Friendly Index for all the Nations

MB Rodriguez Ferrere, Faculty of Law, The University of Otago, New Zealand

Sentience, animals and the limits of symbolic legislative reform

Nuggehalli Jayasimha, Managing Director of Humane Society International, India

Legislative Reforms in Animal Welfare: Indian Sub-continent

Mariko Igimi, Faculty of Law, Kyushu University, Japan

Japanese Concept of Animals and Law

Professor Chang Jiwen, Institute of Resource and Environmental Policy, Development

Research Centre of the State Council, PRC

The Current State and Future Direction of China’s Animal Protection Legislation

Professor Kristen Stilt, Harvard Law School, United States

Halal Animals

Associate Dean Pamela Frasch, Lewis and Clark Law School, USA

How to Advocate for Animals beyond Filing Lawsuits

Associate Professor Katie Skyes, Thompson Rivers University Faculty of Law, British Columbia, Canada

Whales, Inside Canada

Pablo Buompadre, President, Argentina Lawyers Association for the Rights of Animals

Defending Animals: Leading Cases “Orangutan Sandra and Chimpanzee Cecilia

Carolina Leiva Ilabaca, Legislative Coordinator, Parlamentarios por la Dignidad Animal, Chile

The Crime of Animal Abuse in Chile: history, present and challenges in light of the new criminal type

Professor Mike Radford OBE, University of Aberdeen, Scotland
A Duty to Care: the case for animal welfare legislation

Professor Marita Giménez-Candela, Universitat Autònoma de Barcelona, Spain
Recent Developments in Spain's Animal Law

Professor Birgitta Wahlberg, Åbo Akademi University, Finland
Finnish Animal Welfare Law Reform and work by the Animal Rights Lawyers Association

Professor David Favre, Michigan State University, United States
Increasing the visibility of Animals in the US Legal System

Joyce Tischler, Founder/General Counsel, Animal Legal Defense Fund, USA
Using Consumer Protection Law to Battle Factory Farming

Steven M Wise, Esq., President of the Nonhuman Rights Project, USA
The Struggle of the Nonhuman Rights Project to Attain Legal Rights for Nonhuman Animals

Ever Vimbai Chinoda, Executive Director for Speak Out For Animals, Zimbabwe
Introduction of Animal Law in Africa

Amy Wilson, Attorney, South Africa
The Design and Development of Animal Law Curriculum for Use in South African Universities

Jim Karani, Attorney, Kenya
Wildlife Issues of Kenya

Professor Tagore Trajano, Federal University of Bahia, Brazil
Brazilian Animal Law: A Constitutional Latin America Overview

Dr. Steven White, Griffith Law School, Queensland, Australia
Australian Farm Animal Protection Standards: Reform on the Horizon?

Mr. An Xiang, Beijing Dexiang Law Firm, PRC
Using Non-animal Protection Laws to Protect Animals

Professor He Hairen, Institute of Law of the Chinese Academy of Social Sciences, PRC
Animal Protection against the Background of Opposition to a Culture of Violence: A Chinese Perspective

Professor Gao Lihong, Zhongnan University of Economics and Law, PRC
Historical Retrospect of China's Animal Protection Legal System