

## Book Review

Vicente de Paula Ataide Jr.

*Introdução ao direito animal: A teoria das capacidades jurídicas animais*

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Deborah Regina Lambach Ferreira da Costa

Pontifícia Universidade Católica de São Paulo

deborahlambach@gmail.com

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## Abstract

*Introdução ao direito animal: A teoria das capacidades jurídicas animais* by Vicente de Paula Ataide Jr. is a trailblazing contribution and a mandatory source for those dedicated to the research and effectiveness of Animal Law in Brazil and overseas. The author's new work builds on the work of his previous book, *Capacidade processual dos animais*, concentrating on the presentation, development and doctrinal elaboration of the theory of legal capacities. This book, though introductory, proposes this theory as a doctrinal framework (scientifically systematizing legal sources) and advocates for Animal Law as an independent discipline. The theory argues that all non-human animals are subjects of legal rights, though they lack legal personhood. Precisely because of this absence of legal personhood, legal capacity is seen as an appropriate category to organize the collection of rights that each species or animal group can possess. Consequently, certain animal species have a more robust set of rights than others. This is rooted in a dogmatic viewpoint: animals do not all possess the same subjective rights. Their rights do not derive from a generic aptitude to have them, but rather from those explicitly granted by the legal system. For instance, not all animals, such as those intended for livestock, have the right to life. This distribution of subjective rights to animals is therefore determined by the legal capacity of each species group, categorized into three levels: full legal capacity, full reducible legal capacity, and reduced legal capacity. These levels of animal legal capacity are dynamic. An expansion of the protective spectrum of animal rights can occur with the emergence of facts that lead to the promotion of species or individuals to higher levels of legal capacity.

**Keywords:** theory of animal legal capacities; sentience; subject of rights; legal doctrine

## Resumen

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*Introdução ao direito animal: A teoria das capacidades jurídicas animais*, escrito por Vicente de Paula Ataide Jr., constituye una contribución pionera y de lectura obligatoria para quienes se dedican a la investigación y efectividad del derecho animal en Brasil y en el extranjero. El nuevo trabajo del autor profundiza en las investigaciones de su libro anterior, *Capacidade processual dos animais*, concentrándose en la presentación, desarrollo y elaboración doctrinal de la teoría de las capacidades jurídicas. Este libro, aunque introductorio, propone esta teoría como un marco dogmático (sistematizando científicamente las fuentes legales) y aboga por el derecho animal como una disciplina autónoma. La teoría postula que todos los animales no humanos son sujetos de derechos, aunque carecen de personalidad jurídica. Precisamente debido a esta ausencia de personalidad jurídica, la capacidad jurídica emerge como una categoría adecuada para organizar el conjunto de derechos que cada especie o grupo animal puede poseer. En consecuencia, ciertas especies animales tienen un conjunto de derechos más robusto que otras. Esto se basa en un punto de vista dogmático: no todos los animales poseen los mismos derechos subjetivos. Sus derechos no derivan de una aptitud genérica para tenerlos, sino de aquellos explícitamente otorgados por el ordenamiento jurídico. Por ejemplo, no todos los animales, como los destinados a la ganadería, tienen derecho a la vida. Esta distribución de derechos subjetivos está, por tanto, determinada por la capacidad jurídica de cada grupo de especies, categorizada en tres niveles: capacidad jurídica plena, capacidad jurídica plena reducible y capacidad jurídica reducida. Estos niveles de capacidad jurídica animal son dinámicos. Una expansión del espectro de protección de los derechos de los animales puede ocurrir con la aparición de hechos que conduzcan a la promoción de especies o individuos a niveles superiores de capacidad jurídica.

**Palabras clave:** teoría de las capacidades jurídicas animales; sintiencia; sujeto de derechos; doctrina jurídica

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## Introduction

In his work *Introdução ao direito animal: a teoria das capacidades jurídicas animais* Vicente de Paula Ataide Jr. presents an innovative theory of animal legal capacities. This theory is framed as a dogmatic legal approach to animal rights, systematically constructed by the author through the careful organization of rights attributed to non-human animals across diverse regulatory sources of law (constitutional, international, legal, infra-legal and jurisprudential). The author's pioneering contribution in Brazil, guided by criteria of justice, is firmly rooted in positive law. It particularly emphasises the constitutional regime of universal protection for animal dignity (FC, art. 225, § 1, VII, *in fine*), which posits that all animals are subjects of rights and integral members of our moral community. However, this universal fundamental protection does

not imply that all animals possess the same subjective rights. Scientific reasons, tied to the unique characteristics and peculiarities of each species, affirm that animals are not all the same and thus, do not require identical protection through attribution of rights. Therefore, the distribution of subjective rights to animals is structured according to the legal capacity of each group of animal species. The Brazilian legal system assigns a specific volume of rights to these groups, divided into three levels: full legal capacity, full reducible legal capacity, and reduced legal capacity. To achieve the desired effectiveness of Animal Law, the author dedicates himself to the theoretical systematization of legal sources. This work has provided organic integrity and coherence to all available regulatory material, thereby facilitating its practical application and eventual judicialization, leading to better-grounded judicial decisions.

## Part 1: Origin and regulatory sources of Animal Law

The book is organized into three main parts. The first analyses the legal origin of Animal Law, the second examines its regulatory sources, and the third formulates a theory of animal capacities as a doctrinal theory of animal rights in Brazil.

The first part studies the principles of Animal Law specifically. It emphasizes the importance of the term “Animal Law” over “Animal Rights,” shows how it is separate to Environmental Law and defines what it means. It also explores the factual, axiological and regulatory foundations of animal law in Brazil, drawing on Miguel Reale’s three-dimensional theory.

In particular, the book explores the factual foundations of animal sentience. There is consensus among the legal community that humans are not the only living beings with full organic functionalities. The Cambridge (2012) and New York (2024) Declarations on animal consciousness affirm the neurological substrates that generate consciousness in other species (Ataide Jr., 2025: 49).

The author interprets the provision in Article 225, Paragraph 1, Item VII of Federal Constitution of Brazil through the lens of Ingo Sarlet and Tiago Fensterseifer, who view non-human animals as possessing intrinsic values and as being “an end in itself [...] who come to have their moral status recognized and share the same moral community with the human being” (Ataide Jr., 2025: 52). This interpretation informs the concepts of animal dignity and the intrinsic value of non-human animals. The axiological foundation, therefore, rests on the Federal Constitution’s positive valuation of animal sentience by prohibiting cruel practices against these beings.

In summary, animal dignity is associated with a minimum catalogue of fundamental rights. Animals possess at least one implicit fundamental right: the right to a dignified existence, free from cruel practices. The author exhaustively outlines the principled statute of Brazilian animal law, grounding it in the primary constitutional rule: the prohibition of cruelty against animals, as stated in Article 225, § 1, VII, *in fine*, of the Federal Constitution.

## Part 2: Regulatory sources of Animal Law

Next, Vicente Ataide Jr. examines the regulatory sources of Animal Law, classifying legal norms as animal-related, contingently animal-related, and non-animal-related to reflect their transversal nature across various branches of law. He compiles and organizes constitutional, international, legal and infra-legal regulatory sources, emphasizing their constitutional content within the foundational rule prohibiting animal cruelty. Notably, Ataide Jr. highlights Decree 24.645 of 1934, known as the Golden Law of Animals, as Brazil's first General Statute of Animal Protection. This decree was instrumental in criminalizing animal abuse and is considered pioneering for establishing the principle of universality, as its first article stipulates that all animals in Brazil are protected by the state. Although partially in force, the decree also laid the groundwork for the tertiary judicialization of animal guardianship in Brazil.

Brazilian Animal Law is further solidified by typically animal-related state and municipal norms. The author's comprehensive compilation of federal, state and municipal legislation is particularly noteworthy. Furthermore, jurisprudential regulatory sources concerning non-human animal protection are thoroughly examined.

In this second part, the book includes a dedicated section criticizing the treatment of animals within the Brazilian Civil Code of 2002. This critique addresses the Code's classification of non-human animals as mere "things", which appears to obstruct the book's proposed legal framework. Ataide Jr. argues that a reinterpretation is necessary, aligning with the 1988 Federal Constitution and anticipating reforms proposed by the Commission of Jurists, of which he is a member, under the Federal Senate's initiative. This section also discusses the legal status of animals in other civil codes: Austria, Germany, Switzerland and Holland explicitly state that animals are not things, while France, Portugal, Spain and Belgium recognize animals as living beings endowed with sentience.

### **Part 3: The theory of animal legal capacities as a fundamental theory of animal rights in Brazil**

In the third and final part of the work, Ataide Jr. introduces his theory of animal legal capacities, which functions as a fundamental theory of animal rights in Brazil. This theory begins by cataloguing the volume of rights attributed to individuals of specific species based on existing law. The primary criterion for defining each level of legal capacity is the national legal system's conferral of the right to life upon individuals of a given species.

It is essential to note that these three levels of capacity – full legal capacity, full reducible legal capacity, and reduced legal capacity – are dynamic. This dynamism aims to optimize the legal protection of animals through attribution of rights. This means animal species or even individual animals can be elevated to a higher level of legal capacity. For example, domestic animals beyond just dogs and cats, or even animals currently subjected to economic exploitation (e.g., livestock or fish), can attain full legal capacity if reclassified as pets or companion animals.

Similarly, a species of wild animal, once listed as endangered, can transition from reducible full legal capacity to full legal capacity, rendering its right to life inviolable. Animals initially designated with reduced legal capacity can also be promoted; for instance, if rescued from abuse, they might ascend to full reducible legal capacity. In such cases, wild animals with promoted status cannot be killed, even for ecological or scientific purposes, effectively moving them to full legal capacity.

### **Development of the *theory*: From the initial stage of the ethical-philosophical foundation of animal law to the phase of regulatory-dogmatic foundation**

It is imperative to reiterate that within Animal Law, animals are no longer considered mere objects, things or chattels, but rather subjects of rights. The Cartesian conception of the animal as an automaton, driven solely by instinct, has been definitively superseded. Animals are not a universal and abstract whole; as sentient beings possessing inherent dignity they are holders of specific rights affirmed by law and integrated through judicial precedents, all stemming from the constitutional prohibition against animal cruelty. In essence – and this warrants emphasis – all animals possess rights, distributed across varying levels of legal capacity. This distribution is predicated on their intrinsic value and inherent dignity, consistent with the constitutional valuation of the right to life.

The theory of animal legal capacities thus emerges to methodically organize this inherent inequality in rights distribution, establishing quantitative levels of rights corresponding to different animal species groups. Scientific advancements have unequivocally demonstrated that a significant number of animal species possess the necessary organic structures for the manifestation of conscious states. Consequently, their individuals subjectively experience the world, exhibiting intentional and affective behaviours.

Animals are sentient beings capable of feeling and suffering, a capacity from which their interest in avoiding suffering directly derives. Beyond mere sentience, several animal species, particularly great apes, demonstrate behaviours indicative of reconciliation, empathy, altruism and even a sense of justice in their intersubjective relationships.

These scientific contributions regarding the existence and essence of animal being underscore their proximity to natural persons (despite legal systems not formally recognizing them as such) and distinguish them from entities without personhood (e.g., bankruptcy estates, inheritance in abeyance). This leads to a unique *sui generis* legal capacity: that of subjects of rights without legal personhood. It is from this quality of “disregarded personhood” that a legal doctrine theory becomes necessary to account for the variability of rights among diverse animal species groups. Some animal species possess a more extensive “volume” of rights than others. For example, while certain animals, such as those destined for livestock, may not possess the right to life, they nonetheless hold the right to a dignified existence. This varying “volume” of animal rights is precisely what is encapsulated by the concept of animal legal capacity, forming the foundation of the theory presented in this book.

Fundamentally, the theory of animal legal capacities is premised on the regulatory understanding of animals as subjects of rights disregarded as persons under the law.

As established within the origin of Animal Law, particularly through an analysis of its regulatory sources, the Brazilian legal system extends at least one fundamental right to all animals: the fundamental right to a dignified existence. This right stems directly from the constitutional prohibition of cruelty and the principle of animal dignity, both enshrined in Article 225, § 1, Item VII, *in fine*, of the 1988 Federal Constitution.

However, infra-constitutional legislation further elaborates on this fundamental right, specifying additional rights essential for protecting animal dignity. Based on the recognition (or non-recognition) of the right to life by the legal system, animal legal capacity can be categorized into three distinct levels:

- full animal legal capacity;
- full reducible animal legal capacity; and
- reduced animal legal capacity.

Animals possessing full animal legal capacity are those to whom the legal system unequivocally guarantees an inviolable right to life. This status precludes their suppression for ecological, economic or scientific reasons. Within this highest tier of animal legal capacity, two primary classes can be distinguished: cetaceans and domestic dogs and cats.

Full reducible animal legal capacity is attributed to animals whose right to life is guaranteed by the legal system yet is permitted to be suppressed under specific ecological or scientific justifications. Such suppression is contingent upon explicit permission, license or authorization from the relevant authority. This category primarily encompasses wild animals, including liminal (or synanthropic) species, as defined by Article 1, header, of Law No. 5,197/1967 and Article 29 of Law No. 9,605/1998.

Finally, animals with reduced legal capacity are those to whom the legal system does not a priori grant the right to life, despite their inherent fundamental right to a dignified existence. This category primarily includes animals subjected to livestock and fishing exploitation, consistent with Articles 23, VIII and 187, § 1, of the Federal Constitution. Additionally, animals utilized in scientific-didactic research fall into this category, as regulated by Federal Law No. 11,794/2008.

The theory of animal legal capacities is fundamentally dynamic, not static. This dynamism permits the promotion of animals from lower to higher levels of legal capacity, particularly when circumstances such as rescue from mistreatment arise. This principle of promotion was notably affirmed during the judgement of the Brazilian Federal Supreme Court's Fundamental Precept Action (ADPF) 640. Justice Gilmar Mendes, as rapporteur, established the thesis that any interpretation of infra-constitutional norms authorizing the slaughter of animals seized due to mistreatment is illegitimate. Such animals are consequently elevated to a higher level of legal capacity upon the occurrence of the respective triggering event.

Beyond rescue from mistreatment, other factors can trigger this promotion to full legal capacity. For instance, the affective interaction and integration of an animal previously destined for livestock (e.g., cattle) or scientific research (e.g., a rabbit) into a multispecies family unit constitutes such a triggering event. As Ataide Jr. (2025: 376) argues, "Once a pet, the domestic animal cannot become cattle or research animals". In another scenario, a wild animal species, initially classified at a lower legal capacity, can be promoted to full legal capacity, rendering its right

to life inviolable, upon its inclusion in the official list of endangered species.

Ultimately, the theory of animal legal capacities is characterized by its inherent dynamism, consistently aiming to expand the legal protection afforded to animals. This framework facilitates the precise categorization of all possible animal legal statutes, while meticulously respecting the unique peculiarities and specific protection needs of each animal group. Furthermore, it crucially acknowledges the inherent dependence of many animals on humans, a factor that often renders these beings more vulnerable to violence, oppression, mistreatment and cruelty.

In the Brazilian legal system, it is still not possible to consider animals as *legal* persons, although they are subjects of rights without personhood.

## Conclusion

The emergence of a distinct doctrinal school of Animal Law in Brazil, spearheaded by the book's author, has culminated in the development of the theory of animal legal capacities. This theory systematically organizes and codifies the regulatory sources of animal rights conferred upon non-human animals by the national legal order.

The foundational premise of this theory is that all sentient animals, including invertebrates, are subjects of rights. Furthermore, they implicitly possess at least one fundamental right: the inherent right to a dignified existence, free from subjection to cruel practices. This interpretation aligns with a teleological reading of Article 225, § 1, VII, *in fine*, of the 1988 Federal Constitution. However, it is essential to avoid a one-dimensional conception of "animal rights" that assumes a uniform "animal" with homogenous characteristics and needs. The rights attributed to animals do not derive from a generic aptitude for rights but rather from those effectively granted to them, recognizing their intrinsic value and inherent dignity.

Consequently, within the framework of the Brazilian legal system, all animals are recognized as subjects of rights in accordance with the constitutional principle of universality. Nonetheless, animal rights are unequally distributed among species, reflecting varying levels of legal capacity, given that formal legal personality and treatment as "persons" are not yet attributed to them.

While animals currently lack personhood, they possess rights proportional to their respective levels of legal capacity. Thus, the legal category of "capacity" is optimally suited for distributing rights among diverse animal species groups, respecting their ontological and regula-

tory distinctions. This cataloguing of animal rights is delineated across three levels of legal capacity: full legal capacity, reducible legal capacity, and reduced legal capacity.

In practical terms, by enabling the rational distribution of substantive rights to animals, this theory also outlines the modalities through which these rights can be exercised. This considers the inherent, atypical absolute incapacity of these living beings for civil acts. Consequently, animals will be represented in judicial proceedings by those legally obliged to fulfil duties of custody, care and protection of animal rights, serving as their legal representatives.

In essence, the theory of animal legal capacities seeks to advance Brazilian Animal Law beyond its initial phase of ethical-philosophical foundation into a new, regulatory-doctrinal phase. In this advanced phase, animal rights are systematically organized and sufficiently mature to be effectively defended in court.

Undoubtedly, this is an arduous undertaking. However, this book distinguishes itself by courageously proposing a critical discussion of this novel theory. Indeed, to paraphrase the author's own declaration, this work is designed to invite scholarly engagement and potential refutation, thereby fostering robust academic discourse.

