

## Book Review

Edna Cardozo Dias

### A Tutela Jurídica dos Animais

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## Abstract

This book makes a historical analysis of moral philosophy, highlighting the thoughts of philosophers that demanded the inclusion of animals within our circle of moral consideration. In addition, the book analyzes the place of animals in many religions, as well as the animal protection laws, at an international, community and national level.

Keywords: Animal Law; animal cruelty; mistreatment of animals; animal rights movement; Federal Constitution of 1988.

## Resumen

Este libro recoge un análisis histórico de la moral filosófica, destacando los pensamientos de los filósofos que solicitaron la inclusión de los animales dentro del círculo de la consideración moral. Asimismo, el libro analiza la situación de los animales en algunas religiones, así como también las leyes de protección animal, a nivel internacional, comunitario y nacional.

Palabras clave: Derecho Animal; crueldad animal; maltrato animal; movimiento para los derechos de los animales; Constitución Federal de 1988.

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## 1. Introduction

The book “Tutela Jurídica dos Animais” (2018) is an updated edition of the seminal work of professor and lawyer Edna Cardozo Dias, a book first published in 2000 by publishing house Editora Mandamentos. It is the first doctoral thesis about Animal Law in Brazil, presented and defended by the author in 2000 in the Post-Graduate Law Program at the Federal University of Minas Gerais, under the guidance of Prof. Arthur Diniz.

Edna Cardozo Dias is one of the pioneers in Animal Law in Brazil, having dedicated all her career to public advocacy, animal rights activism, and to teaching Environmental Law in graduate and post-graduate

degrees in Belo Horizonte. Among the positions she has held we can highlight her being the Coordinator of Defense of Animals in the county of Belo Horizonte, Solicitor in the county of Ouro Preto, having also worked in the Chamber of Deputies and in the Secretary of Science & Technology and of Environment in the state of Minas Gerais.

When talking about the author, we cannot forget her work in the third sector as the president and founder of the League for the Prevention of Cruelty Against Animals (founded in 1983), her performance as a representative of the NGOs from the southeast region in the Environmental National Council (CONAMA) (an advisory and deliberative agency of the National System for the Environment in Brazil), and her participation in the writing of a protective legislation for animals in Brazil.

It is also important to enhance the active participation of Prof. Dias in the Constitutional Assembly of 1987, as a representative of the animal rights movement of the state of Minas Gerais, in the writing of the chapter regarding the environment in the Constitution of 1988. In fact, during the Assembly of 1987, Deputy Fábio Feldman designated a representative from each state to make the defense of the articles within the chapter on the environment that were being debated in the Assembly, and it fell on Prof. Dias, then president of the League for the Prevention of Cruelty Against Animals (LPCA), to participate in the elaboration of Article 225, §1º, VII, which happened in the Auditorium Nereu Ramos, in Brasília, on the 5<sup>th</sup> of June of 1987, before the rapporteur of the Assembly, Senator Bernardo Cabral.

Another position she held until very recently was that of president of the Animal Abolitionist Institute (IAA), the first abolitionist organization in favor of animals in Brazil, where she had meritorious results, organizing the IV Brazilian Congress in Bioethics and Animal Rights, which happened in the headquarters of the Brazilian Bar Association (OAB/MG) in 2017, and the VI World Congress in Bioethics and Animal Rights, which took place in the Cultural Center José Lins do Rêgo, in the city of João Pessoa, in the state of Paraíba, in September, 2018.

## 2. Content

The book is divided into nine chapters: Philosophy and animals; Fauna protection in the European Economic Community (EEC) and the United States; The birth of the animal rights theory; Fauna rights in Brazil and the legal nature of animals; Cruelty against animals; Animal trade and endangered animals; Animals and MERCOSUL; and the Ecological State.

At first, the book shows that, as a rule of thumb, the Law considers animals as property, a definition that is normally used in solving conflicts between the interests of humans and the interests of animals. Since property is considered to be a natural right, the book begins its approach with an analysis of *jus-naturalism*, showing that since Ancient History, the pre-Socratic Greek main belief was that, although man was a part of the Universe, he didn't possess any autonomy.

She also highlights that the moral and ethical crisis of the 5<sup>th</sup> century A.C. was the starting point that began the concrete division between humans and animals, since it was from this crisis that the Sophists shifted the object of philosophy towards man, man being the measure of all things, and developed the kind of thought that culminated in the ideas of Socrates, Plato and Aristotle, ideas which established the foundation of the anthropocentric paradigm.

The heir to this tradition, Christianity, especially that developed by theologians Thomas Aquinas and Augustine of Hippo, developed a doctrine that considers man to be a being gifted with an immortal soul, whereas animals, the beasts, were deprived of any spirituality. Next, the author underlines how Modern Philosophy, which stemmed from thinkers such as Francis Bacon, Descartes, Hobbes and Locke, further increased the gap that divides humans – subjects of property rights - and animals, mere objects of such right.

It is important to show that, despite this hegemonic way of thinking of the time, other philosophers like Montaigne, Rousseau and Goethe already claimed for a more humane treatment towards animals and even Nature itself.

In the second chapter, the book broaches the matter of fauna protection within the EEC and the United States, analyzing the main EEC directives on the subject. Here, we will also find the dissection of important decisions made by the American courts on animal rights, decisions that deal with the problem of recognizing animals and nature as subjects of law, with a special focus on the dissenting vote by Judge Douglas in the *Sierra Club v. Morton* case.

This particular case refers to the annulment request for the U.S. Forest Service decision that authorized Walt Disney to build a ski station inside Mineral King Valley, an area of environmental protection in the state of California. At the time, Judge Douglas, in his dissenting vote, argued that sometimes inanimate objects can take part in litigation, and just like a ship has a legal personhood and a company is a person for legal purposes, so can animals and plants be considered subjects of law.

In chapter three, this precious book discourses about the birth of an Animal Law theory that gained strength in the 1970s, propelled by the paradigm shift caused by the change in social values stemming from the fight for different civil rights around the world.

This new legal discipline will be further developed in many Law Faculties across the world, based on works of authors such as Henry Salt, Humphry Primatt, Peter Singer, Tom Regan, Steven Wise, and David Favre, among many others, like the author herself, Prof. Danielle Tetü Rodrigues, and prosecutors Laerte Levai and Luciano Santana.

Chapter four brings a detailed study of the Brazilian legislation regarding domestic, domesticated and wild fauna, analyzing the main legal tools available for the protection of these animals. It points out that one of the most important legal foundations for Animal Law is the Federal Constitution, for its Article 225 vehemently prohibits all practices that put at risk the ecological role of a species, cause the extinction of species, or submit animals to cruelty.

In this chapter we also find an important analysis of the legal nature of animals, developed from the comparative study between Brazilian law and foreign laws, especially regarding the Civil Codes of European countries that have already established a new legal status for animals, no longer considered as things but as sensible beings with specific interests that must be protected by Law.

The chapter ends with a proposition that the Brazilian legislation should be altered so that it acknowledges this new legal status for animals, in which they would stop being considered as a legal good and object of property law, and be considered as sensitive beings with their own interests.

In chapter five, after a thorough account of the cruel practices of humans towards animals, it presents the evolution of moral philosophy and religion regarding the animal condition, passing through analysis of the jurisprudence of the Federal Supreme Court regarding the Brazilian cultural manifestations that subject animals to cruel treatments, such as cockfights, rodeos, and dog races. Additionally, it seeks to describe the fight of the third sector to convince the Legislative Power that the mistreatment of animals should be typified as an environmental crime.

Chapter six discourses about the trade of animals within the context of community law and Brazilian law, facing the issue of the meat industry from the principle of historical moral continuity, which causes a slow evolution in habits and traditions towards the end of the institutionalized exploitation of animals. This chapter also touches on the matter of animal experimentation in Brazil, from the analysis of the mobilization process and the fight of the animal rights movement for the end of tests done on animals.

Chapter seven studies the treatment of animals and the environment within MERCOSUL. Chapters eight and nine explain how philosophy and science have showed that there is a unity within the cosmos, and that in such unity there is no hierarchy. The author considers that the role of Heisenberg was vital for the understanding of the material world by identifying an essential unity between all things and events, since no element is isolated.

After the study of ideas like the Gaia hypothesis, formulated by British scientist James Lovelock, to whom the Earth functions like a living creature, capable of regulating itself and its climate, the book concludes that we are returning to the holistic vision of the ancient Greeks that inhabit the *logos*; however, in order to recognize the rights of animals, we have to rethink many issues and change our relationship with the environment.

### 3. Conclusion

Animals are beings that, like humans, are completely absorbed by the adventure of being alive, in such a way that he or she who does not feel compassion towards animals should not have the right to mention human tortures, since for the just and fair all that lives is sacred.

The animal rights movement demands a higher level of altruism than the feminist movement or civil rights movement, since animals themselves cannot fight for their own freedom. Therefore humans are the only beings capable of changing themselves and the world around them.

The book concludes that one day humanity will discover a power stronger than the atomic – the power of love, true love, the only power capable of transforming the world, and on that day humans will be aware that they have a cosmic responsibility and then, only then, will they be able to say that humanity is the ruler of all creation and man is the son of God on Earth.

In this book, readers will find important foundations of Animal Law, and enjoy the beneficial and intellectual company of one of the most important authors on Animal Law in Latin America.