

First Animal Code In France: A Response To A Dissonant Animal Law

Marie Laffineur-Pauchet

PhD Candidate, Public Law, University of Montpellier. IDEDH Member, France

ORCID: 0000-0002-5600-249X



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Abstract

In March 2018, the first non-official Animal legal Code was published in France. It includes national and European legislation and jurisprudence. Having no legal effect, it will be argued that this work aims to respond and provide a practical solution to an unclear French Animal Law framework and encourages a reconsideration of animals' legal status.

Keywords: First Animal Code 2018; French Animal Code; French Animal Law; Animal Law's juridical codification; Complexity and fragmentation of Animal Law; Animal condition; Animal Philosophy; Professor Jean-Pierre Marguénaud; Florence Burgat animal rights' philosopher; Evolution of Animal Law; Master in Animal Law and Society of Autonomous University of Barcelona (UAB).

Resumen - *Primer Código del Animal en Francia: una respuesta a un derecho animal disonante*

En marzo de 2018, fue publicado en Francia el primer código jurídico non oficial del animal, que reúne disposiciones y jurisprudencia nacional y europeas,. Al no tener efectos jurídicos, se argumentará que tiene como objetivo responder y proporcionar una solución práctica a la obscuridad del Derecho Animal francés y fomentar una reconsideración jurídica de los animales.

Palabras clave: Primer Código del Animal 2018; Código francés del animal; Derecho Animal en Francia; Codificación jurídica del Derecho Animal; Derecho Animal; Derecho Animal en Francia; Complejidad y fragmentación del Derecho Animal; condición animal; filosofía animal; Dr. Jean-Pierre Marguénaud; Florence Burgat filósofa de los derechos de los animales; Evolución del Derecho Animal; Máster en Derecho Animal y Sociedad de la Universidad Autónoma de Barcelona (UAB).

Résumé - *Premier Code de l'animal en France : une réponse à un Droit Animalier dissonant*

En mars 2018, a été publié le premier Code non-officiel de l'Animal en France, compilant législation et jurisprudence nationale et européenne. En l'absence d'effets juridiques, il sera démontré que l'ouvrage vise à répondre et à apporter des solutions pratiques à l'obscurité du Droit Animalier français et à encourager le réexamen du statut juridique des animaux.

Mots clés : Premier Code de l'Animal; Code français de l'Animal; Droit Animalier en France; Codification du Droit Animalier; Complexité et fragmentation du Droit Animalier ; Condition animale ; Philosophie de l'animal ; Professeur Jean-Pierre Marguénaud ; Florence Burgat philosophe des droits des animaux ; Evolution du Droit Animalier ; Master en Droit Animalier et Société de l'Université Autonome de Barcelone (UAB).

“The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate.”

Jeremy Bentham (1748 - 1832)

Introduction to the Principles of Morals and Legislation (1789)

Terminological choices

Non-human: For simplification reasons, in this article, the term "non-human" refers to other animals than humans (non-human animals). It does not include here other living beings or organic matters.

Animal: To avoid repetition, "animal" or "animals" can here refer to non-humans.

Animal Law (*Droit Animal/Droit Animalier*): In the French language, a distinction can be made between *Droit Animal* and *Droit Animalier*¹. The first term (*Droit Animal*) refers to the set of rules regulating non-human's actions and can be criticized as the concept of animal is too abstract and here strictly opposes Animal from Human², whereas humans are animals too. The latter, preferred in this article, refers to the legal sphere in which humans and non-humans interact and results from a conciliation of their interests which is most of the time unequal. The term of Non-Human Animal Law is more adequate to avoid an anthropocentric terminological foundation.

Animal rights: Juridically, animal rights (or non-human animal rights) are prerogatives recognizing and protecting non-human animals for their own value. Parallely to human rights, they are universal, inalienable and sacred. The Declaration of Animal Rights, proclaimed in New York on 5th of June 2011, proposes a drafting of these rights³; however, it has no binding legal value.

The terminological choice of the title "Code of the animal" has itself been discussed by the authors and is commented in the article⁴.

Summary of the French Animal Code

The *Animal Code* is the result of more than one year of research and work by a team of experts in Animal Law and was achieved thanks to the collaboration of the French Foundation *30 Millions d'Amis*. This team was composed of the private law teachers Jean-Pierre Marguénaud and Jacques Leroy (both directors of this first edition) as well as the university lecturers Emilie Chevalier, Séverine Nadaud and Caroline Boyer-Capelle and the philosopher Florence Burgat.

Their work allowed to create in one book and at a given time a “compilation or photography”⁵ of applicable rules related to animals in France. This work “does not always show exciting and positive elements”⁶. Thus, this private Code therefore includes, in its 1058 pages, a variety of normative instruments, proceeding from national, European and some international legal sources as well as national or European jurisprudence.

¹ Please consult the French version of this article for more precise definitions of *Droit Animal* and *Droit Animalier*.

² On the two critiques, see: CROZES, A. Du droit de l'animal au droit animalier : Ou l'extension de la notion de sensibilité à l'épreuve d'une domination de l'Homme sur l'animal. *Université de Strasbourg* (2016) 15-16.

³ Our Planet Theirs Too. The Declaration of Animal Rights. New York (05/06/2011). URL: <http://declarationofar.org/textSign.php> Part II] A) 3

⁵ Code de l'animal. Préface de Florence Burgat. LexisNexis. Dir : J-P. Marguénaud et J. Leroy. 1st ed. V

⁶ *Ibid.*

The Code's structure⁷ is the following and will be discussed in more detail at continuation:

- Preface (by Florence Burgat)
- Introduction
- Book I – Domestic Animals and Assimilated
- Book II – Wild Animals
- Book III – Animal Protection Actors

Introduction

It is often said that the animal rights movement was created by philosophers⁸. Nevertheless, today, could philosophers have passed the torch to jurists and Law teachers? In fact, although a wave of Animal Law's juridical development is currently passing through the world, non-human animals are still lacking consideration in many legislations. For Reha Hutin, President of the French Foundation *30 Millions d'Amis*, Animal Law however represents "a major issue in a modern society"⁹. The publication of the French Animal Code on 22th March 2018 by *LexisNexis*, the first juridical code dedicated to animals and their protection, aims to address this issue and reflects the idea that Animal Law needs a push forward in France.

By firstly recognizing animal sentience in a 1976 Law¹⁰, French animal legislation may be considered as one of the precursors. However, until the 2015 Civil Code reform that withdrew non-human animals from the category of legal things¹¹, it was clearly insufficient to address concerns related to animal protection.

As animals are gaining interest and place in French legislation, all regulations aiming to protect them face deep reticence and opposition and are often the result of extended discussions and compromises¹². As a result, regarding the juridical codification amongst other things -one of the basis of French legal system-, this field of Law is still not considered as independent. It is in fact fragmented into numerous pieces of legislation related to non-human animals and human actuations concerning them.

In this sense, according to Jean-Pierre Marguénaud's definition, the *Animal Code* is not an official juridical Code but a piece of work compiling « applicable rules to animals in France; rules that equally come from French laws, decrees, regulations as well as from European directives, main French jurisprudence and European Court of Human Rights' decisions. »¹³. Therefore, it will be argued in this article that one of its main objectives is the Animal Law's emancipation in France and, certainly, across borders.

Notwithstanding, being a legislation recompilation, to what extent may the French Animal Code really contribute to Animal Law's evolution in France? Is it a mere symbolical attempt towards the reunification of Animal Law or a tool that will legally and practically improve animal protection?

To answer this question, it will firstly be argued that this work presents itself as a logical answer to French Animal Law's ambiguity, as it aims at giving a clear outlook of its dispositions (I), and that its implications may thus be more important than it seems (II).

I] The *Animal Code* as a way to clarify French Animal Law's ambiguity

Firstly, the presentation of French Animal Law's ambiguity (A), will allow us to understand that the Code's structure was chosen to clarify and denounce some of its aspects (B).

A. French Animal Law: a complex, fragmented and uncertain context

⁷ For a more detailed overview, please consult: Tendence Droit. Code de l'animal [Extrait]. (01/01/2018) 9-13.

⁸ In this sense: WISE, S. Animal rights. Encyclopædia Britannica (2016, August 18).

⁹ 30 Millions d'Amis. La Fondation 30 Millions d'Amis à l'origine du 1er Code de l'animal (2018, March 21). URL: <http://www.30millionsdamis.fr/actualites/article/13456-la-fondation-30-millions-damis-a-lorigine-du-1er-code-de-lanimal/>

¹⁰ Law n° 76-629 of 10 July 1976 relative to the protection of nature Article 9. *JORF* 13 July 1976. Rectificatif 28 November 1976

¹¹ French Civil Code. Article 515-14 created by Law n°2015-177 of 16 February 2015.

¹² For instance, on the Senate's debate about the new agriculture and alimentation law (Egalim) and refusal to adopt most of the amendments aiming at protecting farmed animals: Assemblée nationale. Agriculture et pêche : équilibre des relations commerciales dans le secteur agro-alimentaire [Dossier législatif].

URL: http://www.assemblee-nationale.fr/dyn/15/dossiers/alt/equilibre_relations_commerciales_agriculture; Vegan Society. New Food & Agricultural Law in France: Progress for Animals and Plant-Based Food? [Research News] (January 2019). URL: <https://www.vegansociety.com/about-us/research/research-news/new-food-agricultural-law-france-progress-animals-and-plant-based-food>

¹³ MARGUENAUD, J-P. Interview by LAFFINEUR-PAUCHET, M.. Autonomous University of Barcelona (UAB). Faculty of Law. Campus of Bellaterra (12/03/2018)

1. The evolution of animals' legal status in France: a complicated removal from the category of things

Firstly, to illustrate the difficulties facing French Animal Law, the evolution of non-human animals' legal status in France should be detailed. In fact, since 28 September 1791 with the first law defending animals as property, thanks to the rising inclusion of animalist preoccupations in its neighbours' legislations¹⁴, and, especially, since the 1850 Grammont Law prohibiting domestic animals to protect human's sensibility, animal protection has been gradually included in French legislation¹⁵. Although, in Civil Law, animals were considered as things until 2015 according to the categorization of the 1804 Civil Code, a crucial step was achieved with a law of 10 July 1976 (n°76-629) which granted the "sentient beings" quality to animals having an owner¹⁶. Another important moment was the law of 10 January 1999 (n°99-5) which distinguished animals from "inanimate bodies" [*corps inanimés*] (art. 528) and "Fund's business items" [*objets servant à l'exploitation du fonds*] (art. 524). Paradoxically, this ever more specific protection reaffirmed their quality of property¹⁷. Their exclusion from the category of things in 2015 with the Civil Code reform¹⁸ was therefore the logical continuation of this evolution:

"Animals are living beings endowed with sensitivity. Subject to the laws that protect them, animals are subject to the regime of things." (Civil Code, Article 515-14)

Nevertheless, the previous provision does not mean that animals are considered as legal subject or person, which are central concepts in French legal system. Instead, they are submitted to a hybrid legal status and are, according to J-P. Marguénaud in a "juridical levitation" situation¹⁹; Today, they are not subject, but object of protection and their legal consideration therefore depends on those other laws that may concern them²⁰.

French Animal Law's evolution could therefore be described according to the following scheme: a previous *reification*, an attribution of a certain protection and a current *desreification* and, hopefully, in the future, a *personification*.

2. An uncertainty about granting animals with legal personhood

In this sense, similarly to past revendications of the antislavery and civil rights movements, the generalisation of legal personhood to all animals appears as one of the biggest steps and battles towards the recognition of their rights, or at least, an extension of their legal protection. The obtention of this legal personhood is necessary in France or in other systems based on a dichotomy object/subject to grant animals with rights.

As a matter of fact, while based on distinct legal system and certain specific categories of animals, the revolutionary Court cases brought by the Non-Human rights project²¹ in the United States as well as the *Cecilia* case in Argentina²², founded on the *habeas corpus*, support this idea by demanding the recognition of non-humans' legal personhood and right to bodily liberty.

On the contrary, in France, although huge developments according to animal legal status occurred, the attribution of this personhood is still very uncertain²³. Notwithstanding, a part of the doctrine advocates for it. A supporting example is the proposition to create a new category of legal physical person: the non-human

¹⁴ For instance, England and Austria

¹⁵ See for instance: Decree n°59-1051 of 7 September 1959; Law n°63-1143 of 12 November 1963

¹⁶ Article 9 codified in Article L214-1 of the Rural Code: "Any animal being a sensitive being must be placed by its owner in conditions compatible with the biological imperatives of his species." [unofficial translation]. This article therefore seemed to acknowledge the sentience of all animals but only had direct legal consequences for owned animals. For more information on this point, please consult: CANSÉLIER, S. Les grands progrès de la protection animale en droit français et européen. *Histoire de la recherche contemporaine* 4:1 (Juin 2015) 6-12.

¹⁷ MARGUENAUD, J-P. L'animal en droit français. *dA.Derecho Animal* 2013 (4 :2), 19 (2013, Avril).

¹⁸ By Law n°2015-177 of 16 February 2015

¹⁹ MARGUENAUD, J-P. Une révolution théorique : l'extraction masquée des animaux de la catégorie des biens. *Semaine juridique* (10-11), 501 (Mars 2015).

²⁰ In this sense: RIOT, C. Legal Personhood of Animals (I): The case for the legal personhood of companion animals. *dA. Derecho Animal (Forum of Animal Law Studies)* 9/2 (2018) 57; "This provision means that the animal is an object (not subject) of protection, with the effect that legal persons can bear and exercise property rights over it"

²¹ Non-human rights Project. Litigation (2018). URL: <https://www.nonhumanrights.org/litigation/> [Consulted on 26/06/2018]

²² Poder Judicial Mendoza (Argentina). Tercer Juzgados de Garantías. Chimpancé "Cecilia", Sujeto no-humano. *EXPTE. NRO. P-72.254/15* (2016, November 3).

²³ See: Ministère de la Justice. Statut de l'animal dans le code civil. 14e législature. Question écrite n° 02982 de M. Roland Povinelli. Réponse du Ministère de la justice. *JO du Sénat* du 29/08/2013. 2515.

physical person²⁴.

3. A fragmented legislation

Because of the gradual inclusion of non-human animals in French legislation, similarly to what previously occurred with Environmental Law, phenomenon of Animal Law's multiplication, dispersion and therefore fragmentation of its norms occurred. In fact, at the difference of many of its European neighbours who have enacted Animal Protection Acts²⁵, French Animal Law framework proceeds from a variety of sources. A quick research on the website *Légifrance*, an official legislative database, allows to distinguish 62 different legal thematic related to animals, 2588 legislative or reglementary dispositions mentioning and 1592 codified articles mentioning animals from seven different juridical codes.

Regarding Environmental Law, this issue was addressed thanks to an approximation of laws and the creation of an Environmental Code by the legislator in 2000²⁶. For Animal Law, things do not seem so simple. Its implementation is facing great opposition due to economic considerations, lack of interest in the animal cause or legal debates about animal status²⁷, all linked to the question of personhood and codification.

Therefore, in the lack of official code in France about animals, the compilation of rules made with the *Animal Code* provides the lector with a more unified and clearer perception of a still fragmented and unclear Animal Law. More than an answer and first step towards its emancipation, it also goes further. Its content seems to reflect problematics related to the legal status of animal and exposes French Animal Law's dissonance.

B. A structure denouncing French Animal Law's ambivalence towards animals

1. Ambitious texts from the beginning of the work: the preface, the Universal Declaration of Animal Rights and the Convention on Biological Diversity

The *Animal Code* begins with a short but intense preface written by the philosopher Florence Burgat, specialist in animal rights. She presents the work's practical and philosophical interest (which will be discussed in the second part) and denounces our ambivalent relation towards animals. She also criticizes our society's lack of interest in their sentience, in favour of a violence manifesting itself by their exploitation²⁸.

Followingly, the Code includes the Universal Declaration of Animal Rights (UDAR), a non-binding international instrument listing fundamental animal rights, proclaimed on October 15, 1978 at the United Nations Educational, Scientific & Cultural Organization (UNESCO)²⁹. Its inclusion in the work is questionable for several reasons. Firstly, it reflects Animal Law and Rights' current state, suffering from a lack of support from states. Secondly, it seems contradictory to include a text admitting *de facto* animal exploitation (Article 5.3)³⁰, right after a preface that sounded against it³¹. Nevertheless, this declaration has the merit to endow animals with some basic rights. Its inclusion could also reveal the editors' will for universality and ampliation of Animal Law.

Finally, the decision to include the Convention on Biological Diversity of 5 June 1992 successively to the UDAR echoes the French Constitution content. In its Preamble, the latter lays down French people's attachment to Human Rights and rights and duties defined in the Charter of the Environment of 2004. This is an ingenious attempt to put in parallel both instruments. This symmetry seems to indicate, on the one hand, the insufficiency of norms protecting animals in the French Constitution and, on the other hand, that non-humans also deserve their own fundamental text.

2. More than forty national or European court decisions

²⁴ REGAD, C. Genèse d'une doctrine : l'animal, personne physique non-humaine. dA. *Derecho Animal (Forum of Animal Law Studies)* 10/1 (2019), 203 (January 2019); REGAD, C. RIOT, S. SCHMITT (dir.), *La personnalité juridique de l'animal (I) – L'animal de compagnie*, LexisNexis, (2018)

²⁵ For instance: United Kingdom, Germany, Austria

²⁶ See: WARSMANN, J-L.. *Simplifions nos lois pour guérir un mal français. La documentation française.* (2009, February) 81; « The codification work must be continued as it constitutes a factor of greater legibility and accessibility of our Law ».

²⁷ See footnote n°12

²⁸ Code de l'Animal. Préface de Florence Burgat. LexisNexis. Dir : J-P. Marguénaud et J. Leroy. 1^{ère} ed. V (2018) V ; « S'agissant des animaux, les utiliser signifie pour ainsi dire toujours les faire souffrir [...] »

²⁹ Revised text of 1989 by the International League of Animal Protection

³⁰ Article 5 (3): «All forms of breeding and uses of the animal must respect the physiology and behaviour specific to the species»

³¹ For this reason, the use of the Declaration of Animal Rights of 5 June 2011, signed in New York, would have been preferable.

The mention of around forty French or European jurisprudential decisions through the Code proves that judges are already brought to think about animal status. It also transmits the seriousness of author's reunification work as well as the selection that was made to expose Animal Law foundations to the public.

At the French level, is for instance included the *Lunus* case (Cass. Civ. 1. 16.02.1962. N°33. Publié au bulletin) admitting for the first time the compensation for non-material damage following an animal death, in this case a race horse.

At the European level, can be found the European Court of Human Right's case of *Georgel and Georgeta Stoicescu v. Romania* of 26 July 2011 that notably interested the doctrine³². In fact, by admitting the violation of an elderly woman's right to privacy when attacked by seven stray dogs in Bucarest, this case extended this right's scope of application.

3. Three legal regimes into three different books: domestic and assimilated animals, wild animals and animal protection actors.

The content of the *Animal Code* is divided in three parts: domestic and assimilated animals, wild animals and animal protection actors.

The first and denser part (Book I, from pages 5 to 641) is the one compiling the legislation applicable in France to "domestic and assimilated animals" [*Animaux domestiques et assimilés*] and concerns many "categories" of animals: companion, protecting humans, categorized dogs, production, lab, entertainment, stray. Because of the length of the two following subparts, one can rapidly see that most of the legislation in France concentrates on the one hand, on domestic animals (Chapter I, Title II) and, on the other hand, on production animals (Chapter IV, Title II).

This first book therefore highlights that different principles apply to those animals according to the function that was attributed to them by humans. This part includes for instance Article 521-1 of the Penal Code, sanctioning cruelty towards domestic animals but allowing exceptions for bull or cockfighting "in localities where an uninterrupted tradition can be established". It also shows, in the subpart about production animals, the strict and numerical regulation of animals' path towards their death and what methods of exploitation and killing can be used (number of animals that can be transported, space allowance, seconds in which an animal must die). One can rapidly see that juridical gaps are allowed for certain types of animals (chickens, fishes or those that do not enter in the numerical categorizations).

Followingly, Part II, which is much smaller (approximately 300 pages), exposes the legal consideration of wild animals [*Animaux sauvages*]. Thanks to an intelligent juxtaposition of norms in the work accomplished by the authors, this part also highlights our dissonant legal relationship with them. In fact, when stating that wild animals are considered as living and sentient beings (Title I), the cruel cases of use for scientific purposes and trapping are right away mentioned. Subsequently, in the next Title, special rules on protected animals (Chapter I), Hunting and Fishing (Chapter II) and "Likely to cause damages" (Chapter III) also reflects a diversity of rules and principles according to our selective consideration of those animals.

Going *decrecendo*, at the image of the legal importance of each part in the French order, counting, Part III is the shorter one. Counting with approximately 100 pages, it concerns "Animal protection actors" [*Acteurs de la protection animale*]. While short, this part is very well detailed. It exhaustively exposes legal provisions concerning animal protectors' works [*oeuvres*] (Title I), people carrying out chirurgical and medical procedures on non-human animals (Title II), and national or European bodies having a mission related to animals (Title III and IV). Including declared and non-declared actions and organizations, it reveals the means of actions, sanctions, difficulties and legal basis (for public bodies) of all people acting in the field of Animal Law. In this sense, it includes for instance article 2-13 of the Criminal Procedure Code, denouncing the strict conditions to act in certain cases of animal cruelty.

Therefore, with a well-organised architecture, this work clearly and easily shows the juridical ambivalences of rules applicable to animals. It could therefore be argued that it aims at denouncing the incoherence of French Animal Law.

According to the director of this edition, "Concretely, as we do not have the power to change any rule, the *Animal Code* does not change a thing."³³ Nevertheless, as doctrine and publications is to Law, each act and work in the sense of animal protection and rights may contribute to the evolution of Animal Law. In this sense, this work may have more implications than it seems.

³² MARGUENAUD, J-P. L'animal en droit français, *Ibid.*, 25

³³ MARGUENAUD, J-P. Interview. *Ibid.*

II] Implications of the *Animal Code*

Presenting itself as an way to structure French Animal Law and thus to highlight its incoherences, the *Animal Code* substantially represents a will to improve Animal Law (A) but remains, on the other hand, practical-oriented work (B).

A) Towards Animal Law's improvement

1. Philosophically: a call to reflect on an ambivalent Animal Law

After reading the *Animal Code*'s content and understanding its structure, it may appear as a call for questioning French Animal Law.

In this sense, the different categories and parts elaborated in this work exposes at a glance Animal Law's diversity and variability. Thus, the Code clearly reveals the contradictory idea that 'All animals are equal, but some animals are more equal than others.'³⁴ which may be found in French legislation and consequently proves Animal Law and its penal provisions' schizophrenia³⁵.

As explained very well by Florence Burgat, « La condition animale est mise à nue »³⁶. The *Animal Code* aims to put on paper and structure our dissonant relationship towards non-human animals; sometimes caring -companion animals and wild protected animals- or, on the contrary, harshly cruel -animals used for entertainment-, and sometimes disguised under the principle of animal welfare -production or lab animals- that would legitimate usurping sentient beings' lives³⁷. Contradictorily to what may be understood about article 515-14 of the French Civil Code, those being are not considered in an uniform manner. They are subject to the appropriation we made of them, brought to light by the Code's structure.

One may argue that this normative variability depends on the place accorded to some animals in our society. However, the consideration of animals in French legislation is quite far away from a social or political theorisation³⁸. As French Law is based on an object/subject dichotomy, this legislative ambivalence may partly and easily be explained by animals' subordination to the regime of things, lacking of anything better by now.

For Jean-Pierre Marguénaud "More than a practical and symbolical work, the *Animal Code* is an invitation to think about animal rights."³⁹ and, especially, about Animal Law. Given recent changes related to animal legal status, the legislator must now decide about Animal Law's future. Will this be done according to animals' own lives and sentience already acknowledged and thus organise a harmonious society amongst all beings? Or will animals' legal status be thought only in terms of their use and exploitation by humans? The interrogation made by Linda Kalof and Amy Fitzgerald, "How shall we (and, some would ask, should we) rethink, rebuild and recast our relationships with other animals?"⁴⁰, may here apply to the legislator. A rethinking, rebuilding and recasting of current legislation, by trying to adapt it to the evolution of moral thinking towards animals could be the next steps of Animal Law.

In this sense, such legal work dedicated only to legislation concerning non-humans and people working with them is a crucial and innovative. At the image of the origami metaphor which constitutes the design of the Code, it shows that we now have the possibility to construct, model or transform our views of non-human animals.

2. Symbolically: Animal Law's empowerment

The Code's publication is also relevant from a symbolic point of view. Without exaggerating its consequences, if legal scholars may not have concrete and direct power to change any rule, for Jean-Pierre

³⁴ ORWELL, G. *Animal Farm* (London 1945) Chapter 10.

³⁵ The idea of juridical schizophrenia is inspired by the notion of humans' moral schizophrenia of humans towards animals developed in animal philosophy (see footnote n°36). Maître Véronique Tardy, among others, uses the term of « schizophrenia » when analysing dispositions of the French Penal Code concerning animals. See : Ensemble pour les animaux. Ineffectivité de la protection de l'animal par le droit pénal (06/12/2017) URL : <https://www.ensemblepourlesanimaux.org/project/ineffectivite-de-la-protection-de-lanimal-par-le-droit-penal/>

³⁶ Code de l'animal. Préface. *Ibid.* V

³⁷ Our dissonant relation towards non-humans is the result of what Gary FRANCIONE qualifies as "moral schizophrenia" in his book *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia 2000)

³⁸ On this point, I recommend the lecture of *Zoopolis. A Political Theory of Animal Rights*, by KYMLICKA W. and DONALDSON S. (Oxford 2016)

³⁹ MARGUENAUD, J-P. Interview. *Ibid.*

⁴⁰ KALOF, L. and FITZGERALD, A. *The Animals Reader: The Essential Classic and Contemporary Writings*. Berg Publishers (Oxford 2007) XIV.

Marguénaud, « the fact that we bother to assemble for the first time all rules concerning animals constitutes a vast improvement. It is an indicator that Animal Law made a step towards more respectability, which may initiate other steps, amongst other, juridical ones. »⁴¹. In fact, its publication forms part of Animal Law's "democratization and empowerment movement"⁴², aiming for its emancipation.

3. Terminologically: A work focusing on animals

The title's terminological choice "*Code de l'animal*"⁴³ instead of "*Code animalier*"⁴⁴, for instance, also allows to question the current evolution of the animal rights movement and its transcription into Law as well as on the authors' position.

In fact, the juridical connotation -linked to philosophical, activist and political considerations- of the first notion [*Code de l'Animal*] appears quite negative as it reflects a strict opposition Human/Animal⁴⁵. On the contrary, the latter [*Code animalier*] would have been more inclusive of the diversity of animals themselves as well as the conciliation of human and non-human interests⁴⁶. Nevertheless, as this inclusiveness is not reflected in the French Animal Law framework, the choice of the title appears somewhat justified. One can also see a desire to focus this book on non-human animals themselves.

Although a theoretical reflection can be conducted on the Animal Code, it is also, and above all, a work that was thought for practical purposes.

B) Practical implications

1. Facilitating access to Animal Law

Firstly, regarding the accessibility of Animal Law, when stating that the *Animal Code* does not change a thing, Jean-Pierre Marguénaud however added that "It makes available more rapidly pertinent rules to those interested in animal protection. When rendering help to an animal, if the search for applicable legislation requires one third of the time previously required, the animal will have thrice as much time of pulling through."⁴⁷ Indeed, as it was detailed in the previous part, this Code gathers all relevant dispositions in the field of Animal Law in one well organized book. It also includes a table of all codified or non-codified legal texts cited in the book as well as a jurisprudential one, the "Liste des grands arrêts". For foundation *30 Millions d'Amis*, "The first *Animal Code* responds to the imperious need for numerous texts' reunification, that were dispersed in 7 codes regulating our relation to animals (Civil, Penal, Criminal Proceeding, Rural Development and Maritime Fisheries, Environmental, Public Health, of the General Local Authorities). It combines thousands of French and European dispositions as well as the main jurisprudential decisions affecting pets, farm animals, wild animals and tamed ones."⁴⁸

By unifying confused and dispersed provisions, it facilitates their availability. For Florence Burgat, "Such a tool will quickly become indispensable for many actors. Teachers and researchers now have on hands the elements they did not go out looking for.

But it is also addressed to professionals who are involved in the use of animals"⁴⁹. It has therefore the potential to be very useful for law practitioners, researchers, authorities, veterinarians, animal protection's associations and activists and citizens interested in animal law and protection and might be of crucial help when non-human animals are in a critical situation.

⁴¹ MARGUENAUD, J-P. Interview. *Ibid.*

⁴² LAFFINEUR-PAUCHET, M. The French Animal Code: a step forward for Animal Law according to Jean-Pierre Marguénaud, director of the edition. *dA web Center* (2018, May). URL: <https://derechoanimal.info/en/master/news/2018/french-animal-code-step-forward-animal-law-according-jean-pierre-margueraud>

⁴³ The *Code de l'animal* Can also be translated as "Code of the Animal". In this text, the term of Animal Code has been used for reasons of clarity.

⁴⁴ Literary, "animalier" could be translated in English into "animalist", but the English term has philosophical connotations. In French, "animalist" could be considered as "animaliste". On the notions of *Animal* and *Animalier*: CROZES, A. Du droit de l'animal au droit animalier : Ou l'extension de la notion de sensibilité à l'épreuve d'une domination de l'Homme sur l'animal. *Université de Strasbourg* (2016) 15-16.

⁴⁵ The French term "*Code des animaux*" would also have been more inclusive of the diversity of animals themselves. Please consult the French version for more information on terminology.

⁴⁶ *Ibid.*, CROZES, 16

⁴⁷ *Ibid.* Interview J-P. MARGUENAUD

⁴⁸ *30 Millions d'Amis* (2018, March 21), *Ibid.*

⁴⁹ Animal Code. Preface of Florence Burgat. LexisNexis. Dir : J-P. Marguénaud et J. Leroy. 1st ed. V (2018)

2. An incentive to apply the law

From an incentive and dissemination of information point of view, it should be stated that having a coherent and professional juridical Code dedicated to animal protection makes a significant difference from only having on hands unclear and multiple legal provisions. Indeed, Animal Law's obscurity could cause difficulties of application and enforcement⁵⁰. Increase in acknowledgement, understanding and motivation to apply the Law and/or improve it could result from its publication. Echoing again the Code's preface, what law enjoins could not be ignored anymore⁵¹.

3. Growing interest for Animal Law and start of a codification movement

In continuation, another interesting point is the *Animal Code's* repercussion in national medias⁵² which generally present this work as a great step for Animal Law in France. As well as contributing to the publicity of Animal Law itself and asserting its importance in our society, it also reinforces the idea that a reunification is today crucial. Thanks to this, it could also inspire other countries, regions or institutions or scholars to create similar codes. It should be noted that since its publication, on the 3rd of October 2018, the Parliament of Wallonia adopted the Wallon Code for animal welfare. This confirms that Animal Law enters in a period of autonomation and codification.

The consecration of the *Animal Code's* potentiality will of course depend on the use that will be made of it. Nevertheless, the success of sales and launching of a second printing already proves a great interest in Animal Law and that such work was needed. Thus, its publication may confirm the independence and importance of this field of Law in France.

Conclusion

From its cover design until the choice to divide its books according to the status of animals and animal protection's actors, the Animal Code centres on animals themselves and on their protection.

Its content, structured in three parts (domestic and assimilated animals; wild animals and animal protection's actors), is as well organized and detailed as an official juridical code and therefore responds to the issue of French Animal Law's fragmentation and complexity. It clearly includes all relevant national and European provisions and main jurisprudence concerning the legal status of non-human animals.

This picture of the French Animal Law framework indeed shows the protection accorded to some animals but also reveals negative elements. This field of Law appears to have evolved towards a better consideration of non-humans in the last decades, especially with the recognition of sentience of non-human animals. Nevertheless, it is still based on a dissonant dichotomy (object/subject) and therefore faces, besides political opposition, structural problematics, making it difficult to efficient legal protection's provisions to non-human animals and actors that protect them.

For sure, there is no doubt that the *Animal Code* cannot fill the gap of French Animal legislation, but it has the merit to provide a practical work for those interested in Animal protection, facilitating accessibility as well as increasing acknowledgment and legitimacy of Animal Law and could inspire other works in this sense.

In fact, besides this structural attempt of reunification, this work is the first juridical Code dedicated to animals, and therefore has a symbolical value. It is an appeal to Animal Law's emancipation. Allowing a global picture of current applicable provisions, it was also thought, thanks the inclusion of some instruments and provisions, its title's terminology and organisation, to encourage Animal Law's reconsideration.

Its publication therefore raises some doubts regarding the future steps of Animal Law, in particular regarding its autonomy and the evolution of the legal status of non-human animals themselves. Meanwhile and unless France inspires from its Walloons neighbours, new version of the *Animal Code* could be useful.

⁵⁰ For a more detailed analysis: Ensemble pour les animaux, *Ibid*.

⁵¹ Animal Code. Preface. *Ibid*.

⁵² For instance : Le Monde. Le premier code juridique de l'animal voit le jour en France (2018, March 21). URL : https://www.lemonde.fr/planete/article/2018/03/21/le-premier-code-juridique-de-l-animal-voit-le-jour-en-france_5274284_3244.html. Le Figaro. Le Code de l'animal, un nouvel outil juridique pour défendre les bête (2018, March 22). URL : <http://www.lefigaro.fr/actualite-france/2018/03/22/01016-20180322ARTFIG00008-le-code-de-l-animal-un-nouvel-outil-juridique-pour-defendre-les-betes.php>. Le Parisien. Le premier code de l'animal rédigé à Limoges (2018, May 22). URL : <http://www.leparisien.fr/societe/le-premier-code-de-l-animal-redige-a-limoges-22-05-2018-7728957.php>. Also in Belgium: DH. Le 1er Code de l'animal est là (2018, April 1). URL : <http://www.dhnet.be/actu/belgique/le-1er-code-de-l-animal-est-la-5abcdba9cd702f0c1a96fca6>

Moreover, following the doctrinal debates aiming at creating a new juridical category for animals, what type of Code will be necessary?

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