

*History and Evolution of the Legal Subjectivation of the Nonhuman Animal in the  
Argentinian Criminal Law*

*Ganzalo Luis Corti*

From a legal perspective the reality of nonhuman animals suffers from numerous internal contradictions and notable legal heterogeneity. Some animals are protected by an increasingly consolidated trend towards legal subjectivity, while others do not even come close to surpassing the status of private property. In the middle, a repertoire of particular situations is displayed depending on the species in question and the place where it lives.

The regulatory framework that involves the nonhuman animal in the criminal aspect of the Argentine legal system is relatively limited. Only a few references can be found in the Penal Code and some crimes contemplated in the Wildlife Conservation Law No. 22,421, to which are added special laws such as the Animal Abuse Law No. 14,346 and the most recent Law No. 27,330 of prohibition of dog racing.

However, at the end of 2014, a ruling was handed down that would change the course of the animal rights debate: the Sandra case. Dictated by Chamber II of the Federal Chamber of Criminal Cassation, it had the virtue of opening the debate and establishing a jurisprudence of great weight although, that is to say, with laconic arguments. This work would later be complemented by the Third Court of Guarantees of Mendoza through the case known as “Cecilia” in which the foundations of the court decision are amply delved into, which entailed the same consequences as its predecessor: the recognition of the ape as a subject of right and the fostering of Habeas Corpus, ordering their release and transfer to a sanctuary suitable for their species. The consolidation of this jurisprudence remains to be seen, but the progress that these rulings represent in the legal situation of these species is undeniable, constituting a firm step towards their legal subjectivation.

In short, currently, nonhuman animals find themselves in a heterogeneous legal-criminal situation depending on the species, geographical location, and other circumstances in question. In this way, animals might have no more protection than any object that can be appropriated by humans, living very close to others that are considered subjects of law. In the middle there are others who are recognized as sentient beings, objects of human pity, and others who are part of nature that must be respected in itself. Thus, countless other legal situations could be cataloged. Suffice it to say that the legal debate and the production of knowledge in this field must necessarily be addressed, since the legislation on the matter is scarce and outdated and current society demands, perhaps excessively, the expansion of criminal law on this issue.

The present project proposes to start from the criminal codification process initiated with the presentation of the Tejedor project in 1868 which, despite not having become a national code, was the law in force in eleven Argentine provinces, thus constituting the first local norm that sought to comprehensively regulate national criminal law. The itinerary will continue with the successive special laws that criminally regulated the situation of nonhuman animals (Sarmiento law, Benítez law, fauna conservation law, among others) to end with the recent jurisprudence that recognizes the nonhuman animal as a subject of law (Sandra, Cecilia, etc.).