

## ANIMAL LAW: A PARADIGM CHANGE

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Felicitaciones!

You have successfully worked yourself through a major part of the Master Programme **Animal Law/Derecho Animal**, although you still have to finalise your master theses. This programme is unique in Europe if not worldwide. With your studies in animal law, and with this degree in your pockets you are participating in a **legal revolution**.

A “revolution” can mean at least three different things.<sup>1</sup> It could, firstly, mean physical violence justified on higher moral grounds. As you know, some animal activists commit illegal acts involving damage and destruction of other persons’ property (demolition of factory farming facilities, attacks on pharmaceutical companies, smashing windows of fur shops, spraying fur coats, impeding whaling boats from pursuing their course, and the like), or they utter threats against representatives of the relevant industries, scientists, or farmers. While activists reclaim for them a right to civil disobedience which would legitimise such violence and destruction, some states have reacted by reinforcing and extending criminalisation of these activities, notably by penalising the simple fact of being a member of certain animal activist associations, and by qualifying those associations as a criminal or even “terrorist” enterprise. With the knowledge and skills you have acquired during your studies, you might be able to defend some of those activists against criminal charges - this is a necessary and even noble task in all legal systems governed by the rule of law.

Second, the diagnosis of a “revolution” which has (maybe) already begun in the field of animal law, and the normative quest for actively furthering this phenomenon, relates to societal attitudes, and to the fundamental and all-encompassing nature of the cultural, social, and political consequences attached to it. Along that line, Richard D. Ryder has called his book “Animal Revolution”, mainly referring to the change of humans’ attitudes towards animals (Richard D. Ryder, *Animal Revolution: Changing Attitudes toward Speciesism*, Berg Publishers, 2<sup>nd</sup> and reviewed edition Oxford 2000). Ryder believes that he is “discussing a matter of fundamental importance for the future of our planet. The struggle against speciesism is not a side-show; it is one of the *main arenas of moral and psychological change in the world today*. It is part of a new and enlarged vision of peace and happiness<sup>2</sup>. He continues: “A revolution, to be a revolution, does not merely entail a total change of attitude; it must affect

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<sup>1</sup> These reflections build on: Anne Peters “Animal Law – A Paradigm Change”, in: Anne Peters/Saskia Stucki/Livia Boscardin (eds), *Animal Law: Reform or Revolution?* (Zürich: Schulthess 2015), 17-32.

<sup>2</sup> Ryder 1 (emphasis added).

aspects of the human condition which are fundamental”<sup>3</sup>. Any significant reduction or even termination of the worst forms of man’s uses of animals would make a huge difference for our everyday life: “Changing all this will have *revolutionary consequences*, affecting what we wear, what we eat, the price of food, the development of science, the appearance of our environment, the character of industries, and the way we spend our leisure”<sup>4</sup>. This is another reason why such change seems so difficult to realise.

Finally, related to the cultural revolution, and most important for you as professionals and as scholars, is **revolutionary science**. While “reform” means legal change (and change of legal scholarship) *within* the existing legal and scholarly paradigms, a “revolution” implies both a normative and a scholarly rupture. This terminology is owed to Thomas Kuhn’s influential book “The Structure of Scientific Revolutions”, first published in 1962 (Thomas S. Kuhn, *The Structure of Scientific Revolutions*, International Encyclopedia of Unified Science Vol. II No. 2, The University of Chicago Press; 2d. edition 1970). Kuhn dealt with natural sciences, but I submit that his sociological insights and his conceptualisation can equally be applied to scholarship in the social sciences and humanities as well. In his seminal book, Thomas Kuhn uses the term “paradigm” in two different senses. “On the one hand, it [paradigm] stands for the entire constellation of beliefs, values, techniques, and so on shared by the members of a given community. On the other, it denotes one sort of element in that constellation, the concrete puzzle-solutions which, employed as models or examples, can replace explicit rules as a basis for the solution of the remaining puzzles of normal science”<sup>5</sup>. A *change of paradigm* consists in “discarding some previously standard beliefs or procedures and, simultaneously, by replacing those components of the previous paradigm with others”<sup>6</sup>.

How is such a paradigm change triggered? It is triggered by an “awareness of anomaly”, by a “growing crisis”, and by a “period of pronounced professional insecurity”<sup>7</sup>. Kuhn opines that scientists (and we might here add scholars of the social sciences and humanities) start questioning the current paradigm “when aware only that something has gone *fundamentally wrong* at a level with which their training has not equipped them to deal”<sup>8</sup>.

I submit that all this: anomaly, crisis, insecurity, and the awareness that there is something “fundamentally wrong” currently pervades both the relations between man and animal, and our scholarship investigating these relations.

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<sup>3</sup> Ryder 4.

<sup>4</sup> Ryder 5 (emphasis added).

<sup>5</sup> Ibid. (postscript of 1969) 175.

<sup>6</sup> Kuhn 66.

<sup>7</sup> Ibid. 67-68.

<sup>8</sup> Ibid. 86 (emphasis added).

This constellation is apt to trigger a paradigm change, and – in the words of Kuhn: “The resulting *transition to a new paradigm is scientific revolution*”<sup>9</sup>. Kuhn uses the notion of revolution as a “metaphor”. Again, Kuhn stresses the element of crisis which both phenomena share: “In both political and scientific development the sense of malfunction that can lead to crisis is prerequisite to revolution”<sup>10</sup>. Importantly, the (scientific or scholarly) revolution is a matter of value choices and beliefs: “As in political revolutions, (...) this issue of paradigm choice can never be unequivocally settled by logic and experiment alone (...)”<sup>11</sup>. The choice and the change of paradigms require that scholars be “persuaded to change their minds”<sup>12</sup>. It is a “conversion experience” that is “at the heart of the revolutionary process”<sup>13</sup>.

Animal law and accompanying legal scholarship is capable and in need of a revolution in that sense. Along that line, some scholars strive towards the abolition of the lawful use of animals altogether. This would constitute a true legal revolution – as opposed to the reformist improved regulation of using and keeping animals. Abolitionism would indeed constitute a radical and fundamental overturning of the existing legal, economic, political, and social framework governing the relations between humans and other animals. The assignment of (some) fundamental rights to (some) animals (as opposed to the regulation of their special status unlike, but by and large analogous to things, as it is done in Germany, Austria, Switzerland, and France) would constitute a “*changement de logique*”.<sup>14</sup> And this explains why it is so difficult to achieve.

Whichever career path you choose, you will be equipped to contribute to this paradigm change. Congratulations!

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<sup>9</sup> Ibid. 90 (emphasis added). Kuhn defines as follows: “scientific revolutions are here taken to be those non-cumulative developmental episodes in which an older paradigm is replaced in whole or in part by an incompatible new one.” (ibid. 92).

<sup>10</sup> Ibid. 92.

<sup>11</sup> Ibid. 94.

<sup>12</sup> Ibid. 152. “Though a generation is sometimes required to effect the change, scientific communities have again and again been converted to new paradigms. Furthermore, these conversions occur not despite the fact that scientists are human but because they are.” (ibid.).

<sup>13</sup> Kuhn (postscript of 1969) 204.

<sup>14</sup> Rémy Libchaber, *La souffrance et les droits: A propos d’un statut de l’animal*, Recueil Dalloz no. 6/7587, 380-388, 190 année, 13 février 2014.