The Citizenship Rights of Veracruz's Roosters

Los derechos de ciudadanía de los gallos de Veracruz

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Abstract: The aim of this paper is to show that Mexico is leading the current trend of recognizing non-human animals as subjects of rights by acknowledging them citizenship rights. In the paper it is argued that a recent resolution by Mexico's Supreme Court regarding a local legislation must be interpreted as conceding citizenship rights to the non-human animals living in the state where that legislation applies. The paper starts by discussing the context in which the relevant law was discussed and approved, and the judiciary actions taken against it. Then, it discusses the analysis and resolution carried out by the Supreme Court of the rights involved and the dynamics among them, the paper also includes a defense of this resolution. Furthermore, the paper argues that the protections established by this resolution must be interpreted, according to the contemporary academic theories regarding citizenship and animal rights, as rights and that these rights must also be interpreted as citizenship rights. The paper ends by replying to some objections and drawing some general conclusions.
Keywords: Animal Protection, Resolutions, Citizenship Rights, Protection, Objections.

Resumen: *El objetivo de este artículo es mostrar que México está a la vanguardia de la tendencia actual que reconoce a los animales no humanos como sujetos de derecho, al reconocerles derechos de ciudadanía. En el artículo se argumenta que una reciente resolución de la Suprema Corte de Justicia de México, relativa a una legislación local, debe ser interpretada como concediendo derechos de ciudadanía a los animales no humanos que residen en el estado donde la legislación aplica. El artículo comienza discutiendo el contexto en el que la ley en cuestión fue discutida y aprobada, así como las acciones judiciales tomadas en su contra. Posteriormente, se discuten el análisis y la resolución alcanzados por la Suprema Corte de los derechos involucrados y la dinámica entre ellos; el artículo también incluye una defensa de esta resolución. Más aún, el texto argumenta que las protecciones*

establecidas por esta resolución deben ser interpretadas en concordancia con las teorías académicas contemporáneas sobre la ciudadanía y los derechos animales como derechos, y que estos derechos deben ser interpretados como derechos de ciudadanía. El artículo termina respondiendo a algunas objeciones y presentando varias conclusiones generales.
Palabras clave: Protección animal, resoluciones, derechos de ciudadanía, protección, objeciones.

I. Introduction

On October 31st, 2018, the First Chamber of the Supreme Court of Justice of the Nation (SCJN) of Mexico resolved the "amparo 163/2018" (amparo en revisión 163/2018, 2018).[1] This resolution transcended to the media and the public opinion due to its implications for the defense of animal rights and animal welfare.

In this text I will defend that the best interpretation of the SCJN resolution is the establishment of citizenship rights for non-human animals (NHA). To defend this thesis, I will carry out an analysis of the SCJN resolution using the broad and illuminating academic debate on citizenship carried out in recent years in normative political academic philosophy.

The article is structured as follows. The first section discusses the context in which the Animal Protection Law for the State of Veracruz was discussed and approved, as well as the protection claims against it, and the first resolutions to these. It also addresses the rights in question and the reasons presented to defend or question the law. The second section discusses the analysis carried out by Minister Arturo Zaldívar Lelo de Larrea on the rights involved and defends the interpretation that the SCJN resolution implicitly establishes domestic animals as subjects of law and presents a defense of it. The third section argues that this protection must be interpreted as a right and that the rights established by this resolution must also be interpreted as citizenship rights. The fourth section reviews some objections to the argumentation presented. Conclusions are drawn in a final section.

[1] An *amparo* is a figure present in Mexican legislation. It consists, succinctly, in a remedy for the protection of constitutional rights.

II. The Law for the Protection of Animals and the Protection of the Environment

On October 31st, 2016 (H. Congreso del Estado de Veracruz, 2016), the bill to amend the Animal Protection Law for the State of Veracruz (LPAEV) was approved unanimously with 33 votes in favor, zero votes against, and zero abstentions. This bill was then published in the Official State Gazette (Gobierno del Estado de Veracruz, 2016) as decree number 924 on November 10th of the same year. This modification of the law was the result of extensive work by activists and animal advocates who argued the need for the law to recognize and prevent the harm of violence against animals, because of the implication both to animals' and children's welfare.[2] The law establishes new provisions regarding civil associations that offer animals up for adoption. It also establishes the functions of animal health centers, creates a Specialized Prosecutor's Office for Crimes Against Animals, protects the habitat of wild species, establishes the obligation to have bioethics committees for institutions that carry out experimentation with animals, and prohibits circuses, cockfights, and, in general, any activity that threatens animal welfare, except for bullfights.

It is this last provision that primarily interests us in this article. For this reason, it is worth reproducing, in full, the relevant fragments of the legislation:

> Article 2. All animals that are permanently or temporarily within the territory of the State are protected by this Law.
>
> (amended, second paragraph; November 10, 2016)
>
> Excluded from the application of this Law are bullfighting shows, country tasks, horse racing, activities related to the sport of charrería, jaripeos, Game Farms, Environmental Management Units (UMAS), and others permitted by law, which must be subject to the provisions of the Laws, Regulations and other legal ordinances applicable to the matter.
>
> (amended; November 10, 2016)
>
> Article 3. The hunting and capture of any species of wild fauna in the State, animal fights and circuses with animals, as well as the acts referred to in article 28 are prohibited by this Law.
>
> …
>
> Article 28. The following acts are considered acts of cruelty and abuse, which must be sanctioned in accordance with the provisions of this Law and other applicable regulations, carried out to the detriment of any animal, coming from its owners, possessors, managers or third parties that enter into

[2] This information was trusted to me by some involved in the discussion prior to the approbation of the bill. The fact that this argument was used will become important below.

relationship with them, with the exception of the provisions of the second paragraph of article 2 of this Law:

…

(amended, go November 10, 2016)

V. Holding fights between animals;

…

(amended, go November 10, 2016)

VIII. The use of animals in the celebration of clandestine rites and patron saint festivities that may affect animal welfare;

…

(amended, go November 10, 2016)

VIII Bis. The circus shows;

…

XI. Any fact, act or omission that may cause pain, suffering, endanger the life of the animal or affect its welfare; (Veracruz, 2016)

These new legislations that regulate in a stricter way the treatment of NHA are becoming more common around the world: circuses, zoos, bullfights, horse races, and cockfights among other practices are being abolished throughout the world. From this perspective Veracruz's new legislation is part of an international drive to repay an ancestral debt owed to NHA. However, at the international level, resistance by sectors that have benefited from these practices has also been very common.

On December 6th, 2016, the Mexican Commission for Gallistic Promotion, Civil Association, (CMPGAC) through its president, Efraín Rábago, filed an amparo that would later be registered by the Supreme Court of Justice of the Nation (SCJN) with the file number 163/2018 in the Correspondence Office of the District Courts of the Seventh Circuit, with residence in Jalapa, Veracruz (amparo en revisión 163/2018, 2018). The CMPGAC is an association founded in 2009 whose mission is to defend individuals and their families who practice cockfighting. This association arose because the National Section of Breeders of Combat Birds (SNCAC), the organization that was previously in charge of defending the interests of these individuals, is part of the National Union of Aviculturists (UNA), and the latter organization demands, in order to be a member, to be a poultry producer. Many individuals who benefit from cockfighting do not directly produce or raise any birds, due to this, the CMPGAC was founded. This association tries to bring together all those interested in defending "gallistics" (the practices related to cockfighting) in Mexico and works together with the SNCAC and "Traditions United by Mexico AC" (TUMEXAC)[3] to defend gallistics and those who sympathize or benefit from it.

[3] An association which also defends bullfighting, horse racing, and circuses.

In the original amparo presented in Jalapa, the following statements were presented to argue against the new law:

1) No affectation to animal preservation.
2) Violation of the right to culture.
3) Violation of the right to property.
4) Violation of freedom to work.
5) Violation of the guarantees of legality and legal certainty by legislating on something in which there is no jurisdiction.
6) Economic impact on families who depend on on gallistics.
7) Violation of the progressivity of the law.
8) Violation of the right to equality and non-discrimination.
9) Lack of the guarantee of justification and motivation (amparo en revisión 163/2018, 2018)

On December 8th, 2016, the district judge registered the case, while on March 13th, 2017 the hearing was held and on June 5th of that same year he decided to deny the petition. On June 17th, the CMPGAC filed an appeal for review which was admitted for processing by the President of the Second Collegiate Court on Administrative Matters of the Seventh Circuit on June 28th, 2017. Later, this court requested the SCJN to assume its jurisdiction to learn about the review appeal. On February 26th, 2018, the President of the court registered the matter, admitted the appeal for review and turned it over to Minister Arturo Zaldívar Lelo de Larrea, current president of the court.

For the purposes of this article, it is not necessary to discuss all the arguments presented by the CMPGAC; I will focus the analysis on the first four. In what follows I will discuss the initial arguments presented by the *galleros* (the people involved in cockfighting), the reply presented by the district judge, and the objections put forward, again, by the *galleros* in their appeal for review.

1. *No Affectation to Animal Preservation*

The CMPGAC argued that there is no impact on animal preservation. This is because, on the one hand, the reproduction of the species the roosters belong to is of interest to the *galleros*, since these animals represent their work source. It is argued that the *galleros*' job specializes in the reproduction, breeding, and maturation of individuals of this species. Additionally, it was argued "there are studies that indicate that combat birds fight among themselves by instinct, with the strongest surviving,

or sometimes both birds dying. So that the dignity, respect, and consideration of animals is not violated either" (Amparo en revisión 163/2018, 2018, p. 7).

The district judge's reply considers the previous argument to be *unfounded*. The judge begins by drawing a distinction between preserving fighting cocks *as a species* and protecting and ensuring respectful treatment of *individuals*. Although the galleros guarantee, since it is in their interest, the preservation of the species of fighting roosters, what is in dispute is whether they respect the roosters individually. In this second respect, the cockfighting activity, affirms the judge, "incites, forces, and coerces the fighting rooster to harm, injure, mutilate, or cause the death of another rooster" (Amparo en revisión 163/2018, 2018, p. 12), that is, actions that can appropriately be described as mistreatment, and that, therefore, constitute disrespectful treatment of each individual animal. The district judge argued that the disrespectful treatment constitutes a violation of the right to a healthy environment enshrined in the fifth paragraph of the fourth article of the Constitution.

It is relevant to transcribe the text in question: "Every person has the right to a healthy environment for their development and well-being. The State shall guarantee respect for this right. Environmental damage and deterioration will generate responsibility for whoever provokes it in terms of the provisions of the law" (Constitución Política de los Estados Unidos Mexicanos, 2021).

In response, the Commission argued that it is "inaccurate" to state that in cockfighting some roosters are incited, forced, or coerced to cause harm to others, so that there is no mistreatment in cockfighting, and there is no disrespectful treatment towards the roosters by the galleros. Additionally, it was argued that although the object of the imputed norms is animal protection, it is also true that these norms violate the right to culture. This counter-reply leads us to the next argument.

2. *Right to Culture*

The *galleros* also argued a violation of the right to culture because cockfighting is an ancient tradition that is currently celebrated particularly in the patron saint festivities and rooted in all social classes.

In his reply, the district judge considers the argument *unfounded*. To justify this, he begins by pointing out that the right to culture is not an absolute right, and that its enjoyment is limited by the protection of other rights. In this case, it is argued that the legislator considered it necessary to limit the right to culture in order to protect the environment. To sub-

stantiate this, the Universal Declaration of Animal Rights (DUDA) approved by the United Nations Organization is appealed to (United Nations Educational Scientific and Cultural Organization [UNESCO], 1978). Said declaration, although not binding, establishes, in the judgment of the district judge, that "the prohibition of animal fights is directly related to the protection of the environment".

In this sense, and this will be important later, the district judge establishes an *external* limitation to the right to culture, since it is the respect for the right to a healthy environment that limits the right to culture, which in turn leads to the protection of cockfighting under this right.

In their reply, the *galleros* argued that this response does not specify how the prohibition of cockfighting can be justified from the right to the environment.

Additionally, they replied to the appeal to DUDA that this "international instrument is intended to protect the existence of animal species, when in reality with cockfighting in no way this species is put at risk" (amparo en revisión 163/2018, 2018, p. 15). They reaffirmed that it is in the interest of the *galleros* to protect the *species* of roosters.

In this section, it would be pertinent to cite those articles of the DUDA from which the district judge interprets a link between the prohibition of cockfighting, or some other type of harm to individual roosters, and the protection of the environment. In addition, it would be pertinent to cite those articles the *galleros* could use to affirm that this instrument is intended to protect animal species. However, the DUDA does not contain any article that allows this kind of conclusion to be established.

The DUDA establishes individual rights of animals: the right to be respected, the right to freedom, the right to attention, care, and protection from man, as well as the right to a life in accordance with the natural longevity of the individuals of the species to which each animal belongs. It also establishes normative categories to regulate coexistence with animals, such as equality between all animals from birth and the description of certain acts, such as abandonment, as cruel and degrading. Finally, the Declaration establishes the type and object of different crimes involving animals, as well as the obligations that stem from it for governments and people.

At no time is the environment spoken of, other than to speak of the *individual* animals belonging to a wild species to live in their natural environment. Species protection is not mentioned either, since the species concept is only mentioned to categorize animals as belonging to wild species or species that traditionally live with humans, to later specify that depending on which category these animals belong to, they will enjoy different rights.

3. *Right to Work*

The CMPGAC also argued that there is a violation of the freedom to work: the new legislation makes a profession illegal, that of gallistics, which previously was not, which violates human rights and violates the principle of progressivity.

The judge's reply is like the previous one, the argument is considered *unfounded*. Once again, it is observed that the right to work is not absolute and that it can be limited by

> …the protection of animals, which results in the protection of the environment. In this case, the fundamental right to a healthy environment, in its aspect of protecting biodiversity, has a greater weight than the individual freedom to engage in an activity, so a restriction of this nature is justified and therefore, it is clear that the right to freedom of work is not violated. (Amparo en revisión 163/2018, 2018, p. 11)

The counter-reply of the *galleros* reframes the previous answer. If it has already been shown that the district judge in his argumentation has not duly justified the link between the ban on cockfighting and the right to a healthy environment, then the restriction of the freedom to work is not justified in the legislation by the protection of another right. Therefore, there is a violation of both a human right and the principle of progressivity.

4. *Right to Property*

Finally, it is argued that the new law unjustifiably restricts the right to property of the *galleros*:

> ...the contested articles impose on the fighting birds —understood as goods owned by the *galleros*— the limitation consisting of not being able to carry out events with them such as cockfighting, which does not obey any public interest, but adopts a position that seeks to grant animals a "veiled condition" similar to that of human beings. In this sense, animals are not subjects of law but objects regulated by law.

As an objection, the district judge responded that this argument is *ineffective* since it starts from the false premise which affirms that the law deals with the property rights over the birds. The legislation in question has the objective of preventing animal cruelty and for this purpose; the property over the animal is not legislated.

In their reply, the *galleros* argue that "The essence of the argument […] is not the ownership of the fighting birds, but rather the limitation

of the exercise of the right to use and enjoy from these assets" (*Amparo en Revisión 163/2018*, 2018, p. 16). Additionally, they argue that, since the main activity for which roosters are used is fighting, this represents a strong limitation to their ownership of these birds.

III. The Analysis of Zaldívar and the Rights of the Roosters

Minister Zaldívar divides his in-depth study of the grievances into three parts. The only one that interests us for this article is the second one, where the methodology of the proportionality test is used to analyze the violation of the right to property, right to culture, and freedom to work. To follow this methodology, the Minister analyzes whether the contested legislation affects *prima facie* any of these rights. If this is the case, it is subsequently analyzed whether the articles of the legislation have a *legitimate purpose*. If this is also the case, the adequacy, necessity and proportionality of the legislative measure are successively examined.

Before beginning with the detailed analysis of the rights in question, it is worth noting an important argument made by Zaldívar that is not found in the discussion of these rights. Zaldívar agrees with the *galleros* when they object that in the argument of the district judge the link between, on the one hand, the prohibition of cockfighting and the mistreatment that this activity implies and, on the other, the right to a healthy environment is not clear.

> [T]his Supreme Court considers that in constitutional terms the protection of the environment cannot be equated with the protection of animal welfare. Although the constitutional mandate to protect the environment supposes the possibility of establishing general norms that protect animal species that "subsist subject to the processes of natural selection and that develop freely" —known as "wild fauna"—, we must not lose sight that there are many animal species that are born, grow and reproduce in environments controlled by human beings for different purposes: food, experimentation for medical or scientific purposes, companionship or help to people, entertainment, among others. Thus, the protection of all animal life is not an issue that can be redirected to the protection of the environment or natural resources. (Amparo en revisión 163/2018, 2018, p. 22)

Zaldívar's argument seems to start from distinguishing two types of animal species and can be outlined as follows:

1) The constitutional protection of the environment only includes species considered as wild fauna.

2) There are animal species that are not considered wildlife.
3) All animals, regardless of their species, have welfare subject to protection.
4) Therefore, the constitutional protection of the environment does not protect the welfare of all animals.

Premise (2) establishes a distinction between wild fauna and other types of fauna, which, following a usual distinction in the literature, we could call *domestic fauna*.

However, this argument ignores a second difference between the constitutional protection of the environment and the protection of animal welfare, a difference that the *galleros* use in their reply to the district judge's arguments.

The protection offered by the Constitution to the environment is a protection to the species, which implies the obligation to ensure that the populations that make up each species remain healthy: with a healthy number of individuals and with sufficient genetic variability. However, this protection does not include obligations towards the individuals belonging to the species. The protection of the environment is compatible, if no species is threatened or in danger of extinction, with the violation of the welfare of several of the individual members of these species. This last statement is true regardless of whether the species involved are wild or domestic.

Following a common distinction, and without getting into the details of it, we could say that the protection offered by the Constitution is a social right, while the protection offered by Veracruz's reformed law is an individual right. This distinction between the right to a healthy environment and the animal right to welfare will be relevant later.

Right to Culture

The response offered by the SCJN to the argument regarding the right to culture has been the aspect of the sentence that has transcended the most in public opinion. This is easily explained, since the argument based on the right to culture is one of the most popular to defend practices similar to cockfighting, such as bullfighting. Thus, once the SCJN has considered this argument unfounded, this opens the door to penalizing other practices of animal abuse. However, the response to this argument has been widely misunderstood, and, I will argue, is not the most interesting contained in the sentence.

Minister Zaldívar begins by observing that although the right to culture is enshrined in article 4 of the Constitution, the first chamber of the court

had already interpreted the right contained in this article as constituted of three aspects: "1) as a right that protects the access to cultural goods and services; 2) as a right that protects the use and enjoyment of them; and 3) as a right that protects intellectual production" (amparo directo 11/2011, 2011; amparo en revisión 163/2018, 2018). However, the *galleros* challenge a violation of their right to culture because cockfighting is a *cultural expression,* and cultural expressions are not protected by the aforementioned constitutional article.

However, they are protected by subparagraph a) of article 15.1 of the International Covenant on Economic, Social and Cultural Rights, which establishes: "Article 15. 1. The States Parties to this Covenant recognize the right of every person to: a) Participate in cultural life" (ACNUDH, Pacto Internacional de Derechos Económicos, Sociales y Culturales, 1966).

This legislation allows, apparently, to substantiate the argument of the *galleros* because the Committee on Economic, Social and Cultural Rights of the UN has interpreted that this article supposes the obligation that the State party refrain from interfering "in the exercise of *culture practices*" and that "[e]very person has the same right to seek, develop and share with others their knowledge and *cultural expressions*" (Consejo Económico y Social de la ONU, 2010).

Therefore, it only remains to justify that cockfighting is a cultural expression protected (at least) *prima facie* by the right to participate in cultural life established in this legislation, in order to grant the argument to the *galleros*. However, the latter is not trivial. Although it is unquestionable that cockfights are a cultural expression from an *anthropological viewpoint*, because they have historical, cultural, and popular roots, as well as a clear symbolic element, the question is not only whether cockfighting is a cultural expression, but whether this cultural expression deserves constitutional protection. To this last question Zaldívar answers negatively.

The argument begins by pointing out, as we have done previously, that the right to culture is not absolute. As it is not, it is relevant to study its (internal) limits. Regarding these, it is stated: "This First Chamber shares the idea that «culture is not admirable for being traditional, but only when it *bears values* and rights that are compatible, first of all, with human dignity, and secondly, with the mutual respect that we human beings owe each other, and with which we all owe nature»" (amparo en revisión 163/2018, 2018, p. 32).

Consequence of this idea is that any practice that involves unnecessary suffering or mistreatment of NHA cannot be considered a *cultural expression* that deserves to be protected not even *prima facie* by the Constitution.

Subsequently, Zaldívar argues that cockfighting is, precisely, a practice that involves unnecessary suffering of NHA. For this it is shown that the argument put forward by the cockfighters against the mistreatment of roosters due to their instinctive tendency to fight is unfounded, since, as it is evident, regardless of the veracity of the statement "roosters fight instinctively" it is transparent that in cockfights roosters are *encouraged* to injure each other.

In conclusion, Zaldívar establishes that the right to culture enshrined in the Constitution and in international treaties does not protect cockfighting as a cultural expression. In other words, unlike the district judge who bases his argument on an *external limitation* to the right to culture, the Supreme Court sentence is based on an *internal limitation* of this right. This important aspect of the sentence is usually ignored.

In one of the articles that have been published commenting on the court's resolution, Oscar Leonardo Ríos García affirms: "[A]nimal rights were taken into consideration as a guide for a judicial decision. The foregoing is so, since after examining the matter, it was determined that there is no direct impact on people, but on animals... the duty of the Constitutional club prevails to respect and guarantee animal rights" (García, 2018, p. 5).

This is false. On the one hand, the court's resolution never *explicitly* mentions animal rights, it even mentions: "we must remember that our Constitution does not contain any provision from which it can be inferred that the legislator is constitutionally obliged to enact regulations that protect animals of mistreatment" (amparo en revisión 163/2018, 2018, p. 38).

On the other hand, the interpretation that Ríos García makes of the resolution is as an external limitation to the right to culture, since this right is limited by animal rights, while the most natural interpretation of Zaldívar's analysis is as an internal limitation.[4] This is so because Zaldívar does not consider that the right to culture protects cockfighting because these fights violate the rights of roosters, but because cockfights are not bearers of *values* compatible with the respect for nature.

[4] Not to mention that Zaldívar himself clarifies that the correct interpretation is the internal one: "it is important to clarify that the question that is being analyzed now is not the external limits of the law, that is, it is not discussed whether this aspect of the right to culture can be limited by the State when pursuing other legitimate purposes. Instead, the question to be answered has to do with the internal limits of the right to participate in cultural life. Thus, what must be determined is whether the right whose violation is alleged grants at least prima facie protection to any cultural expression —including cockfighting— or whether only some of them deserve constitutional coverage" (amparo en revisión 163/2018, 2018).

Let us illustrate this with an example. Suppose there is a cultural practice that consists of the cutting down and subsequently burning of a dry tree. This practice is motivated by the admiration of the unjustified domination and destruction that humans can exercise over nature. Let us suppose, even more, that this practice is only exercised once a year by small populations so that it does not endanger a healthy environment. Following Zaldívar's argumentation, we can consider that the legislation that prohibits this practice does not violate the right to culture.

However, our argument does not need to start, as Rios García suggests, from the supposed rights of the tree to life, or from the right to a healthy environment, as the district judge suggested. Our argument can simply be based on pointing out that a cultural practice that admires domination and unjustified destruction over nature is not worthy of constitutional protection. Since this practice is not compatible with values of respect for nature, it does not deserve that level of protection.

This argumentative strategy is common in animal ethics; one of the pioneers of this strategy is Immanuel Kant himself, who argued that although we may not have obligations *towards* animals, and therefore they do not have rights, we do have obligations *regarding* animals.[5]

Surprisingly, a sentence by the SCJN from 2022 uses the external limitations arguments in the context of bullfighting. In this sentence, Minister Alberto Pérez Dayán argues that the human right to a healthy environment externally limits the alleged cultural right to bullfighting or cockfighting:

> Culture and the participation in it are only conventional and constitutionally valuable and worthy of protection as long as they are truly compatible with human rights… [therefore] It must be established if bullfighting or cockfighting are compatible o reconcilable with the human right to a healthy environment… the answer is clearly negative. This is so because it is an evident fact that bullfighting and cockfighting constitute, inherently, the agony, suffering, and even death, of sentient animals, just to serve the entertainment, sport or recreation (amparo en revisión 80/2022, 2022).

Even if this argumentative path follows the common strategy of using the human right to a healthy environment to further animal rights, as was famously suggested by Judge Pinto de Albuquerque (*Case of Herrmann v.*

[5] Kant argues that we have no direct obligations to NHA as they cannot make moral judgments, however, we do have indirect obligations to NHA. This means that we do not owe the good treatment of the NHA to them, but we owe it to other humans to treat NHA correctly, since, similarly to what Zaldívar argues, treating an animal incorrectly prompts vicious behavior, and we owe it to other humans not to behave viciously (Kant, 1997, p. 212) [Ak 27: 459].

Germany, 2012), I have already pointed out some flaws with this strategy: 1) it focuses its attention on the social rights of species, 2) it only grants rights to wild species.

To conclude, from my interpretation, the resolution of the SCJN does rule on animal rights, and I will argue for this in the next section. Nonetheless, we can't justify this interpretation based on the analysis of the right to a healthy environment.

IV. Right to Property and Freedom to Work

Regarding the right to property, the amparo ruling affirms that the legislation does *prima facie* affect this right. Minister Zaldívar argues that article 27 of the Constitution establishes three inherent and consubstantial rights to private property: "the right to use the thing, the right to enjoy it, and the right to dispose of it" (amparo en revisión 163/2018, 2018, p. 36) as well as a guarantee that restricts the way the State can limit these rights.

Thus, a *prima facie* intervention of this guarantee occurs "if the measure is provided for in a general rule with a vocation for permanence; and if it affects any of the attributes of private property: use, enjoyment and disposal" (amparo en revisión 163/2018, 2018, p. 40). In the opinion of the First Chamber of the SCJN, both requirements are satisfied.

With regard to freedom to work, the sentence affirms that the legislation also affects *prima facie* the freedom to work. The sentence argues that article 5 of the Constitution establishes a right linked to *personal autonomy,* since it establishes a protection to allow individuals to perform the professional activity that best suits their life plan.

Given that the legislation in question legally prevents cockfighting by establishing a ban that considers this activity illegal, it is concluded that the regulatory portions that are challenged affect the freedom to work.

Once a *prima facie affectation* of the content of both rights has been established, what is appropriate now is to analyze the legitimacy of the purposes sought with the articles of the legislation in question.

As it has already been argued, the aims sought with the legislation cannot be understood from the right to a healthy environment, but must be understood as directly *protecting animal welfare*, which must be interpreted as an individual protection of animals, and not of the species of which they are part of. This interpretation is strengthened in the amparo sentence with evidence from the legislation itself and from the opinions of commissions prior to their voting and the publication of the modifications to the law.

Having established the purpose of the law, the question left is whether it is legitimate. Zaldívar states that there is no constitutional provision regarding animal welfare: there are no provisions that mandate the legislator to protect animal welfare (because it has already been established that animal welfare and a healthy environment are not comparable concepts), but there are also no provisions that prohibit the legislator from advancing measures for this purpose. Additionally, the Constitution does include a democratic principle, which empowers the legislator to make the most important decisions for the political community it represents. This principle "transmits its constitutional status to the objectives that Parliament pursues through its interventions and that are not explicitly or implicitly prohibited by the Constitution" (amparo en revisión 163/2018, 2018, p. 48). Additionally, Zaldívar points out that the protection of animal welfare is clearly a purpose compatible with the values of a liberal democracy. With this, the amparo ruling concludes that the purpose sought is legitimate.

Having established this, Zaldívar proceeds to show that the legislative measure is suitable, necessary, and proportional.

Now, the methodology of proportionality is contentious. Many believe this methodology does not satisfy basic criteria of objectivity or impartiality and they believe there is too much room for the judges to bring in their own prejudices or personal values (Habermas, 1996). Robert Alexy (2007) has replied to this line of thought by presenting an objective test for the proportionality principle. As it is common in social sciences, mathematics is brought into the picture to show the methodology is objective enough.

The proportionality principle is used to solve tensions among other juridical principles or rights. In a concise way it says that: *a restriction or dissatisfaction of a set of principles S is permissible in a context C only if the satisfaction of the set of conflicting principles S' is more important than the restriction or dissatisfaction of S in context C*.

This principle suggests a methodology to justify the restriction of a set of principles or rights:

1) Establish the degree of satisfaction or dissatisfaction of the conflicting rights in the given context.
2) Establish the degree of importance of the conflicting rights in the given context.
3) Establish if the importance of the satisfaction of the rights in question justifies the restriction or dissatisfaction of the other rights in the given context.

Alexy suggests a triadic scale for the intervention of a right: mild (m), average (a), and high (h). The three conflicting principles are: right to property, freedom to work, and animal welfare.

Regarding the *right to property,* the new law restricts this right *mildly*, because the owners of the roosters can still use them in any way unrelated to cockfights. The *restrictions to freedom* to work should also be considered as *mild*, since the realm of activities that are deemed as illegal by this law is very small: only those related to fights involving animals (and this does not even include bullfights). Citizens of the state of Veracruz are still allowed to interact in many ways with NHA, including roosters, and to have a job related to it. While, obviously, they are also permitted to have jobs that do not directly involve NHA.

Meanwhile, the interventions to *animal welfare* are *very high*. Cockfights significantly reduce the welfare of roosters: they are injured, mutilated, and killed as an intended result of these practices. Also, contrary to what the *galleros* argue, this intervention on animal welfare could be significantly reduced by outlawing this practice.

Regarding the importance of the conflicting principles, it is not hard to see why the *right to property* and the *freedom to work* are *highly* important principles. In liberal democracies, the right to pursue the life plan that best suits the desires and values of the citizen is one of the most important rights to be protected. It is clear this right would not be possible without an extended freedom to work and without an important protection on personal belongings and other properties.

Establishing the importance of *animal welfare* is harder. Contemporary debates on bioethics have shown there are principled and pragmatic reasons to regard animal welfare's importance at least as *average;* and I will argue it should be regarded as *high*. As we will briefly discuss in the following sections, the same ethical principles that protect human welfare can be shown to also protect NHA welfare, that is why we have strong principles that show the importance of it. On the other hand, the climate crisis, as well as the outrageous actions committed by the food industry, have shown us why there are pragmatic reasons to care more about animal welfare. Lastly, it is also important to mention that even the *galleros*, and the people who dispute the new law, agree with this, as they have argued that it is part of their job to care for the welfare of the roosters.

To complete the last step Alexy suggests the following equation:

$$G_{1,2-3} = \frac{I_1 G_1}{I_2 G_2 + I_3 G_3}$$

Where the variables represent:

- $G_{1,2-3}$ The concrete importance of the satisfaction principle 1 (if its satisfaction restricts principles 2 and 3). This is because the importance of the principle in the relevant context is directly proportional to the general proportion of the principle and the degree of its satisfaction, and inversely proportional to the importance and the dissatisfactions of the principles that will be restricted.
- I_1 The general or abstract importance of principle 1 (respectively for I_2 and I_3)
- G_1 The satisfaction of principle 1 (respectively for G_2 and G_3)

If we assign the values 1 for mild, 2 for average, and 3 for high and we regard the abstract importance of animal welfare as *average* we get:

$$G_{1,2-3} = \frac{2 * 3}{3 * 1 + 3 * 1} = 1$$

And if we regard it as *high*:

$$G_{1,2-3} = \frac{3 * 3}{3 * 1 + 3 * 1} = \frac{3}{2}$$

Following Alexy, the concrete importance of the satisfaction of a principle justifies the restriction of the other conflicting principles if the value of it is greater than 1, and in the case of it being equal to 1 we have a tie and need further analysis to resolve the issue. This shows that, according to the proportionality test, the legislation limits the right to property and freedom to work in a permissible way only if the abstract importance of animal welfare is similar to the abstract importance of freedom to work and the right to property. The following sections will argue why it should be like this, but it is important to stress that this analysis shows that the resolution of the court is unique in its kind by implicitly acknowledging the aforementioned similarity of the importance of these principles.

I hope this analysis also eases the worries of those who criticize the methodology of proportionality. Not only has this analysis shown

why there are objective reasons to assign the degrees of importance and satisfaction that have been assigned, and so replied to the objection that this methodology allows personal prejudice to guide the decision, but this analysis has also used an objective mechanism to ponder those degrees, and, therefore, it has proved why this methodology should not be criticized for being too subjective.

V. The Right to Animal Welfare

Once the argument presented by the SCJN has been exposed, it is necessary to normatively interpret the type of protection for animal welfare that is established. In philosophy of law, it is argued that the reasons for limiting a right must meet extremely demanding criteria.

This has given rise to the interpretation of rights as trumps developed by Ronald Dworkin (Dworkin, 1978), where rights allow their holders to act in certain ways even when the social interest could be promoted if they acted in the opposite way. Although Dworkin's perspective has been widely discussed, it is not necessary to adhere to it to accept that every right has among its motivations the protection of certain benefits or interests of its owner, and that allowing any motivation to constitute a limitation of that right renders the right in question useless.

This reflection implies that, from the perspective of the SCJN, the protection of animal welfare meets high demands, since it limits rights such as the right to property or freedom of work. This suggests the interpretation that the protection of animal welfare should be conceived as a right, for the position that only one right can limit another seems, at first sight, reasonable.

However, even in a theory such as Dworkin's, which starts from the idea that rights are an individual protection against social interest, there are limitations to rights that do not constitute other rights such as: a clear and enormous social interest, the continuation of the democratic order, national security, social tolerance, feelings (of dignity or not humiliation) and constitutional principles (Barak, 2012, pp. 265-277).

Therefore, we cannot immediately conclude from the fact that animal welfare limits other rights that it constitutes a right. Despite this, understanding the protection of animal welfare as a right is the most natural interpretation of the cited articles of Veracruz's legislation and the SCJN ruling.

It is not only the case that the protection of animal welfare *externally* limits other rights, but animal welfare cannot be properly classified as any

of the usual motivations for limiting a right previously mentioned. Perhaps the only classification in which it could be assigned is that of social interest.

However, it seems clear to me that animal welfare is not socially recognized as a clear and capital interest, because otherwise institutions such as zoos, slaughterhouses, and intensive farms would be considered illegal. Even so, it is possible that *legislators* have identified this interest as clear and legitimate based on a detailed analysis of the social benefits that its protection entails.

Now it is difficult to explain how the recognition of this social interest differs from the recognition of a right. Especially if we remember the established protection of welfare is considered as an individual protection of individual animals, which motivates sanctions to their perpetrators, as well as the normatively loaded description of their acts as cruel and mistreatment. Remember, the protection of animal welfare is distinct from the social right the species have due to the right to a healthy environment all citizens have.

It seems to me that all of this shows why the most plausible normative interpretation of the resolution of the SCJN is as a recognition of the individual right NHA have to their own welfare.

1. *Animal Welfare as a Citizenship Right*

The last decades have seen a wide debate on the rights of citizenship. Schematically, it has been observed that there are different aspects of citizenship. Citizenship as a legal status, citizenship as an aspect of identity, citizenship as the source of solidarity, and citizenship as a civic virtue. It is the first aspect that interests us in this text. From the legal status of citizenship, four types of citizenship rights are recognized: civil rights, political rights, social rights, and cultural rights (Wayne & Kymlicka, 2007).

Some examples of civil rights are the right to freedom of expression or religious freedom. The protection of animal welfare is, evidently, this type of right, as I will argue.

However, it is important to note how citizenship rights differ from other types of rights. The contemporary theory of law, particularly in its liberal tradition, is composed of two theories. A theory on universal rights, which are usually included in Human Rights, and a second theory about citizenship rights.

Citizenship rights arise to recognize that subjects of law are not only holders of certain claims because of the type of subject they are (in the case of Human Rights, for the simple fact of being human), but they also have other claims as a consequence of being members of certain political com-

munities. Some of the rights that are usually associated with citizenship in this sense are rights of sovereignty, rights of residence, and rights over a territory.

An important part of the debate on the rights of citizenship has been regarding the way in which these rights are acquired. Following theorists such as Joseph Carens, we can affirm that these rights are acquired by actively participating in a political community (Carens, 2013). According to this analysis, the legal status of citizens, and several of the rights that accompany it, have as their source the belonging to a community, and its motivation is to protect this community and its members; social membership ought to imply legal membership.

Parallel to the development of these debates, various authors such as Peter Singer and Tom Regan have argued (Regan, 1983; Singer, 1975), from the developments of animal ethics, that the normative obligations we have towards other humans do not differ significantly from the obligations we have towards NHA. A good part of the premises of this debate have arisen from studies in biology or ethology that have shown close analogies between the mental abilities of humans and NHA. Additionally, this debate has shown that the only reason for refusing to recognize domestic animals as members of our political community is a discriminatory attitude, or a speciesist prejudice.[6] For these reasons, some theorists have proposed recognizing the citizenship rights of NHA (Donaldson & Kymlicka, 2011). While these theorists have argued that NHA should be accorded civil, political, and social rights, for the purposes of this article it is only necessary to defend the existence of one civil right of citizenship of NHA: the right to welfare.

So far, in this section, I have only laid the ground, arguing that there is conceptual space in modern legal theories for a right to animal welfare. And that, from a normative perspective, there are reasons that draw from the theories of citizenship rights and animal ethics to recognize this right. However, it still remains to be argued that both the LPAEV and the SCJN ruling establish this as a right of citizenship and not as a universal right.

On the one hand, we have already clarified that the amparo sentence, in its argumentation on the non-identification of the right to a healthy environment and the right to animal welfare, establishes the distinction between wild fauna and domestic fauna. The domestic fauna being composed of NHA that have been raised, socialized and sometimes even edu-

[6] A big portion of the debate on speciesism (the discrimination of NHA), has taken the the concept of discrimination as unproblematic. Elsewhere I have discussed this problem as well as the arguments that that show why many of our practices regarding NHA are discriminatory (Reyes, forthcoming).

cated to coexist in human society, that is, in political communities where humans play a transcendent role.

In this way, the ruling already establishes in its arguments a normatively relevant distinction between those animals that are part of communities where human presence is essential and wild animals. Distinction that is already present in DUDA.

The LPAEV also establishes this distinction:

> Article 4. For the purposes of this Law, it shall be understood as:
>
> …
>
> IV. Domestic animal: One that does not naturally exist in the wild habitat, that has been reproduced and raised under human control, that lives with it and depends on it for its subsistence;
>
> …
>
> IX. Wild animal: One that reproduces and breeds without human control, that does not require it for its subsistence and that lives in its natural wild habitat.

Furthermore, this legislation explicitly establishes that the obligations regarding animal welfare depend on the classification under which it falls:

> Article 6. The State authorities, in the formulation and conduct of their policies for the protection of animals, shall observe the following Principles:
>
> I. Animals must be treated with respect and dignity throughout their lives;
>
> …
>
> III. Every domestic animal must receive attention, care and protection from humans;
>
> IV. Wild animals will live and reproduce freely in their own natural environment;
>
> V. Domestic animals will live and grow at the pace and in conditions of life and freedom that are typical of their species (Veracruz, 2016).

That is, the right to animal welfare includes a universal negative right (expressed in section I) that requires respectful and dignified treatment. However, the right to well-being also includes a positive right (expressed in section III) to attention, care, and protection from humans, and this right is exclusive to domesticated NHA. In other words, the right to well-being is recognized as a positive civil right of citizenship.

It is worth mentioning that the decision of the legislative power to conceive the positive part of the right to animal welfare (attention and care) can be justified beyond political or conjunctural considerations, and so it can be defended in a way that the decision to exclude the protection of animal welfare established by the law to bulls in bullfights cannot.

The debate on predation, discussed by authors such as Jeff McMahan and Óscar Horta (Horta, 2017; McMahan, 2015), has made it clear how controversial it is to extend this positive right to welfare to wild animals as well. The supposed obligation to attend and care for wild animals implies the obligation to end predation in nature, the implementation of which would have consequences that would change life on the planet as we know it.

This being the case, not only can it be interpreted that part of the right to well-being established in the LPAEV is a citizenship right, but there are compelling normative reasons to consider it this way.

2. *Objections*

The central argument of this text can be divided into two parts. The first concludes that the amparo ruling recognizes the right to animal welfare, the second concludes that this right is a right of citizenship. Therefore, my argument is open to objections at both steps.

Let us first consider objections to the first step. It could be objected that the obligation to respect animal welfare is not a *direct* duty to NHA, but an indirect duty, and, therefore, NHA do not have a right to their individual welfare. Along these lines, it could be argued that the obligation to protect their well-being can only be owed to subjects of the law and not to objects regulated by the law. So we have a duty to protect the animal welfare that we owe to other humans, but not to NHA.

However, this makes little sense. Although the discussion before the vote of the bill emphasized that obligations towards children could indirectly justify the protection of animal rights, the discussions also emphasized the importance of avoiding cruel treatment and mistreatment of animals due to the damage this causes to the animals themselves.

Additionally, the sentence of the SCJN mentions that animal welfare is a legitimate end in itself, and not that it is justifiable because it extends the rights of some other subject of human rights. Furthermore, as we reviewed in the discussion on the right to culture, the sentence *explicitly* recognizes the value of nature as a *final value*[7], and not only as an *instru-*

[7] I use "final value" in the sense that many use "intrinsic value", to contrast it to instrumental value. I do so because the opposite of intrinsic value is extrinsic value, and not instrumental value; intrinsic value is the kind of value something has due to its intrinsic properties, the same is true for extrinsic value and extrinsic properties. Contemporary discussions have shown that some things have final value due to their extrinsic properties, so they have non-instrumental non-intrinsic value, making the semantic distinction I am issuing important (Rønnow-Rasmussen, 2015).

ment to advance human interests. And so, it is far from the view that only humans have final value or rights.

A second objection could be motivated by the texts of Gary Francione. From this perspective, it could be argued that welfare protection cannot be conceptualized as a right, or if it is done so it is an empty right, since the fact that NHA continue to be considered as property trivializes this protection.[8]

The proportionality analysis is an excellent reply. In this analysis it was argued that the protection of animal welfare is so important and its limitation to the right to property of the *galleros* is so insignificant in relation to all the other rights that the *galleros* have as owners, that the measure of prohibiting cockfighting is a necessary, suitable, and proportional measure. This shows that the right to animal welfare 'has claws' and can generate significant protection for NHA.

A third objection could be motivated by a certain interpretation of the right to a healthy environment as, partially, a right of future generations. This interpretation has also been used by the SCJN, so it is important to discuss it here (Suprema Corte de Justicia de la Nación, 2009). It has already been argued that the protection of animal welfare cannot be derived from the right to a healthy environment, and so, we do need to propose a new normative principle to protect animal welfare. On top of that, I have already argued that the motivation of the legislators from Veracruz was not just to protect animal welfare to further human interests, the motivation was to protect animal welfare as a final value. So, this normative principle is owed to NHA. Because I have already argued that this protection must be interpreted as a right, we can conclude that the right to animal welfare is a right *of* NHA, and cannot be derived from any right owed to humans, neither present nor future.

Let us now consider objections on the second step. It may be objected that it is not possible to grant citizenship rights to non-citizens. Article 24 of the Constitution makes it clear that only humans can be citizens.[9] While article 25 establishes what the rights of Mexican citizens are, among which the right to animal welfare is not found, this objection is prey to confusion. The thesis of this article is not that the Political Constitution

[8] "The property status of animals renders completely meaningless any balancing that is supposedly required under the humane treatment principle or animal welfare laws, because what we really balance are the interests of property owners against the interests of their animal property" (Francione, 2000, p. xxiv).

[9] Article 34. Citizens of the Republic are men and women who, having the status of mexicans, also meet the following requirements: I. Have reached the age of 18, and II. Have an honest way of living

of the United Mexican States or that the laws emanating from it recognize NHA as citizens. The thesis is that the LPAEV and the amparo ruling 163/2018 recognize animal welfare as a right, part of which must be interpreted as a citizenship right (following contemporary theories on citizenship rights). This second thesis is independent of whether the legislation *explicitly* recognizes this right as a right of citizenship. What is in question is whether the correct interpretation of this protection, as found in the mentioned texts, should be through the theory of citizenship rights.

The theories about citizenship rights have made extensive developments since the last decade of the last century. It is expected that the legislation cannot always keep up with the latest academic developments, but this fact does not invalidate an argument that, based on these developments, conceptualizes a legal protection using the theoretical tools of recent developments.

VI. Conclusions

The Supreme Court judgment 163/2018 of the SCJN has given much to talk about, both in specialized areas and in public debate. I have argued that this sentence establishes the protection of animal rights as a right of non-human animals, and that part of this right is a positive civil right of citizenship of domestic animals. This was done based on a detailed analysis of the amparo ruling and the LPAEV. I argued, on the one hand, that the protection established in the local legislation articles, which were challenged in the amparo lawsuit, is an individual protection for non-human animals that is conceptually different from the right to a healthy environment enjoyed by all Mexican citizens. Protection that, by limiting other rights such as the right to property and freedom to work, must be understood as an individual right.

Later, I argued that this individual protection establishes different obligations towards wild animals and domestic animals. Additionally, I argued that domestic animals should be considered as members of political communities to which we humans belong, taking up the discussion in animal ethics about the capacities of non-human animals, their contributions to the human community, and the problems of speciesist prejudice. Finally, I argued that the legal status of citizens is precisely a consequence of belonging to a political community, this leads to the conclusion that a part of the right to animal welfare is a citizenship right.

If my argument is correct, the sentence of the SCJN has enormous implications. Although there are international precedents where legal per-

son status is granted to NHA and even the precedent of the Constitution of Mexico City where NHA are conceived as sentient beings, this would be one of the first cases of recognition of a citizenship right to NHA. I have presented several virtues of recognizing the citizenship rights of NHA. It both offers strong protections to their welfare in the practical realm and solves complex deontological problems in the theoretical realm. On top of this, there are other citizenship rights that could be recognized to NHA, both civic and political, which could lead to finally conceiving domestic animals as legitimate members of our society, a recognition we have owed to them for a while.

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