

**JOURNAL OF
ANIMAL
&
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RESOURCE LAW**



**Michigan State University
College of Law**



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PEER REVIEW COMMITTEE

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PEER REVIEW COMMITTEE CONTINUED

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Peter Sankoff is an Associate Professor at the University of Western Ontario, Faculty of Law who specializes in animal law, criminal law, and the law of evidence. He is the author or editor of five books, including *Animal Law in Australasia: A New Dialogue*, the first book ever published in the Southern Hemisphere to focus exclusively on animal law issues. Peter lectures and publishes on a variety of animal law topics. He taught animal law at the University of Auckland from 2006-2010, and also as a Visiting Professor at Haifa University in Israel, and the University of Melbourne Australia. Peter also taught an advanced animal law course entitled Comparative Concepts in Animal Protection Law at Lewis and Clark College of Law

Steven M. Wise is President of the Center for the Expansion of Fundamental Rights, Inc. and author of *Rattling the Cage—Toward Legal Rights for Animals* (2000); *Drawing the Line—Science and The Case for Animal Rights* (2002), *Though the Heavens May Fall—The Landmark Trial That Led to the End of Human Slavery* (2005), as well as numerous law review articles. He has taught Animal Rights Law at the Vermont Law School since 1990, and at the Harvard Law School, John Marshall Law School, and will begin teaching at the St. Thomas Law School. He has practiced animal protection law for over twenty-five years

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The 1983 Supreme Court case of *U.S. v. Place* set initial parameters to tell police how and when dogs could be used at airports and in a number of other environments. Recently, narcotics detection dogs have come to be considered “walking search warrants” by their human counterparts. Particularly since the United States Supreme Court decided *Florida v. Harris* in 2013, such attitudes in law enforcement have been reinforced as to the use of such dogs in public places. This article explores the interaction of canine forensics and police culture, particularly focusing on the Supreme Court’s decision in *Harris*.

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The Law Commission of England and Wales is examining how the country’s rich patchwork of wildlife laws might be updated. At the same time the government, advocates, and the public are in the midst of a vigorous debate over whether badgers should be culled in an effort to control the spread bovine tuberculosis within the United Kingdom. Both of these efforts highlight how divergent views regarding our relationship to wildlife and the natural environment in the 21st century influence both broad questions regarding the structure of laws and regulations affecting wildlife, generally, as well as how to approach very specific problems and issues. While these sorts of debates over wildlife are not new, the vast majority of the population in the

U.K. and many other industrialized countries has lost much of its connection to the wild as urbanization has continued to grow. Accordingly, what is new in today’s world is the degree to which popular support for one or another position advanced by interested parties depends not upon actual experience with nature and wildlife but rather with the popular public image of the wildlife at issue—and whether they are perceived as either “good” or “bad”.

Additionally, addressing the increasingly complex range of human interactions with wildlife in today’s world, where very little remains that is still truly untouched and “wild,” also means that new ways of thinking about wildlife issues would be useful. The traditional emphasis upon the beneficial or detrimental aspects of particular species, and the proper way for humans to interact with that species, tends to minimize interconnections with similar issues associated with other species. Rather than perpetuating this somewhat vertical, species specific, approach—as seen in the current debate over badgers in the U.K.—the wildlife law reform project provides the Law Commission with an opportunity to reframe the law with a more horizontal, cross-cutting, approach that reflects the various human interests at issue when dealing with all types of wildlife. Doing so would not only achieve the objective of making the current legal framework more coherent, but provide a significant model for the future.

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This Note explores *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Entertainment*, a case in which five orca whales “sued” SeaWorld for violating their Thirteenth Amendment right to be free from slavery and involuntary servitude. The case received widespread publicity as it was the first time a U.S. federal court had been asked to determine whether the Thirteenth Amendment to the United States Constitution affords protection to non-humans. The *Tilikum* case departed from the traditional model of litigating animal issues by utilizing what this Article deems an animal rights-based litigation strategy.

This Note first provides an overview of the traditional animal welfare-based model of litigating animal issues. This Note then analyzes the *Tilikum* litigation strategy to show how it departed from the traditional animal welfare-based model. Additionally, this Note weighs the advantages of both litigation strategies, ultimately recommending that animal advocacy organizations not depart from animal welfare-based litigation strategies. Finally, this Note explores the theoretical possibility of expanding legal rights to animals based upon the expansion of legal rights to other non-human entities, such as corporations.

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develop new uses or products, which they patent in their own countries. They do this, however, without compensating the indigenous groups who initially supplied the base knowledge. The indigenous people also claim that the cost of medicine and other goods rises, as their traditional knowledge may now come with a licensing fee. This Note discusses “traditional knowledge,” as this indigenous knowledge has been termed. It looks at what this knowledge is and the difficulties in defining it. It further looks at the problems traditional knowledge presents in terms of finding a solution both parties are satisfied with. As traditional knowledge generally does not fit the Western concept of protectable intellectual property, this Note looks to the problems this conflict between differing property systems creates. Finally, this Note considers the current protections that are available for individual tribes or nations to choose between to fit their own individual needs, despite the numerous failed attempts to integrate such protections into international treaties.

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