

SYRACUSE LAW REVIEW

FOREWORD

If you could invent a new field of law, what would it be; why would you do that; and how?

Starting in the late 1970s, a small group of attorneys came together and dared to dream of a world in which nonhuman animals are included within the circle of those whose interests matter. We set out to use our legal skills to challenge common practices that cause pain, suffering, and death to nonhuman animals. It was an enterprising goal, fueled by our devotion to the idea that all sentient beings should be treated with dignity and respect.

From the earliest lawsuits, in which we challenged the mass slaughter of feral burros,¹ the barbarity of the steel-jawed leghold trap,² and intensive confinement of male (“veal”) calves,³ to the current broad array of legal activities, animal lawyers have been charting new territory and, in that process, creating a distinctly different area of the law—animal law.

Animal law is currently taught at 161 law schools in the United States and Canada;⁴ student chapters can be found at 190 American law schools; animal law casebooks, law review articles, and law journals abound; litigation to protect animals is being brought by most of the national animal protection agencies; state and local bar associations, as well as the American Bar Association, have animal law sections and committees;⁵ and attorneys in private practice in many parts of the United States are handling cases, whether for a fee or pro bono. While in the 1970s, there was just a handful of us, wherever I travel to now, I regularly

1. *Animal Prot. Inst. v. U.S. Dep’t of Def.*, No. 81-124 (E.D. Cal. Mar. 27, 1981).

2. *Animal Legal Def. Fund v. Dep’t of Env’tl. Conservation*, No. 6670/85 (N.Y. Sup. Ct. Dec. 6, 1985).

3. *See Animal Legal Def. Fund Bos., Inc. v. Provimi Veal Corp.*, 626 F. Supp. 278, 279 (D. Mass. 1986), *aff’d*, 802 F.2d 440 (1st Cir. 1986).

4. This is a moving target. For up-to-the date information, see *Animal Law Courses*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/animal-law-courses/> (last visited Nov. 11, 2016). As of this writing, there are 193 student animal law chapters and groups in the United States and 22 in other countries. *Student Animal Legal Defense Fund Chapters*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/about-us/saldf/student-animal-legal-defense-fund-chapters/> (last visited Nov. 11, 2016). The jewel in the crown is the Center for Animal Law Studies at Lewis & Clark Law School, which offers the most extensive and forward thinking animal law curriculum in the world, including over forty animal law-related courses, an animal law clinic, moot court competition, journal, annual conference, and an LL.M. program.

5. *See Bar Association Animal Law Sections and Committees*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/law-professional-law-student-resources/law-professionals/bar-association-animal-law-sections-and-committees/> (last updated Sept. 20, 2016).

meet law students who are attending law school with the hope of practicing animal law, and attorneys developing new approaches to resolving complex legal issues related to animals. The emergent field of animal law, less than forty years old, is flourishing.

The progress we have made is energizing, but it is still very early in the race, and we are nowhere near the finish line. One of the most effective activists in the early animal rights movement was Henry Spira, who often said that his job was “to push the peanut.” Henry was right, but what he didn’t mention is that we have to get down on our hands and knees, and push that peanut with our noses; moreover, the distance is a long one.

When I began this work in 1979, I did not comprehend how difficult and slow the process would be to change how our society treats animals. The exploitation of animals is built into most aspects of our daily lives, from the food we eat, to the clothing and shoes we wear, to the cosmetics, chemicals, and pharmaceuticals that are tested on animals, to the tigers, lions, and other wild animals brutally trained to perform in circuses, and on, and on.

The average American gives scant thought to animals, and for good reason—it would be inconvenient to do otherwise. To her, the word “animal” encompasses the family dog or cat. She may complain that deer are eating flowers from her garden and wonder how to rid herself of those “pests,” rather than acknowledging that human encroachment has taken away the deer’s natural forage. Perhaps, her awareness extends to the plight of Canadian seals or “veal” calves, or she enjoys watching documentaries about animals in the wild. Yet, as she eats and wears animal parts, or uses products tested on animals, she is blissfully unaware of the massive amount of suffering that animals endure for her benefit, pleasure, and convenience.

The American legal system supports the exploitation of animals. As such, animals are the property of human beings, viewed and treated as resources. Their basic interests, instincts, and well-being are largely ignored or subverted in order to maximize their usefulness to humans. Indeed, their very identities are often tied to their roles in our lives. Thus, we use human-centered terms to describe them: “companion” animals, “research” animals, “food” animals, and “game,” as if their sole reason for existence is to serve humanity.

When one combines the pervasive belief that animals are not important with a legal system that supports the property and economic interests of humans, it is no wonder that there is widespread mistreatment of animals. This is quite evident in the giant meat and dairy industries, where legislators have all but abandoned “farmed” animals. There is no

federal law covering farmed animals during the ninety-nine percent of the time they are alive,⁶ and the majority of state anti-cruelty laws exclude from their protections the care and treatment of farmed animals.⁷ Yet, the number of animals this negatively impacts is astounding. Annually, we raise and kill ten billion farmed animals in the United States.⁸ Worldwide, that figure is seventy billion.⁹ The conditions these animals are kept in for their abbreviated lives are generally abysmal. Most are raised in massive indoor factories, where they are overcrowded, intensively confined, and subjected to painful mutilations such as castration, dehorning, or debeaking, with no administration of anesthesia or pain relief.

The treatment of pigs provides one example of this widespread abuse. Pigs are highly intelligent, emotional, and social animals, who can live ten to fifteen years. Approximately six million female pigs, called “sows,” spend their entire lives indoors in intensive confinement. Each sow is kept in a crate that is so small, she can only stand up and lie down. She can’t turn around or walk. The air in these buildings is putrid from the waste pits below the sows. There is nothing natural for the sow to do; in her boredom and frustration, she will chew on the metal bars of her crate or chew the air neurotically. She will never get to see the sun, feel the earth or breathe fresh air. She will never be able to socialize normally with her own kind. To industry, the sow is nothing more than a piglet production tool, thus, her life is an endless cycle of pregnancy, giving birth, and nursing. If you want to get a feeling for what a factory farmed sow’s life is like, imagine being confined in an airplane seat with nothing to do—for life. Her suffering continues until she is two to two and one-half years old, and is sent to the slaughterhouse to face a violent and terrifying death.

As animal protection attorneys, what can we do to bring relief to

6. Federal law covers only transport and slaughter. *Farmed Animals and the Law*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/advocating-for-animals/farmed-animals-and-the-law/> (last visited Nov. 11, 2016).

7. See *Contact Us: Protect Farm Animals*, HUMANE SOC’Y U.S., http://www.humanesociety.org/forms/contact_us/farm_animals_contact.html (last visited Nov. 11, 2016) (“There are no federal animal welfare laws regulating the treatment of the billions of ‘food animals’ while they’re on the farm. Further, while all 50 states have cruelty statutes, most explicitly exempt common farming practices, no matter how abusive.”); Joyce Tischler, *U.S. Lags Far Behind Europe in Protections for Farmed Animals*, ANIMAL LEGAL DEF. FUND: BLOG (Aug. 15, 2011), <http://aldf.org/blog/u-s-lags-far-behind-europe-in-protections-for-farmed-animals/>.

8. *Factory Farms*, WELL-FED WORLD, <http://awfw.org/factory-farms/> (last visited Nov. 11, 2016).

9. *Id.*

these animals? Once again, we must be creative, given the current lack of laws that directly protect farmed animals. Answers arise as we learn that, in addition to the welfare problem, factory farms are major contributors to climate change—the waste they produce pollutes the air, soil, and waterways. Additionally, factory farms have negative impacts on the humans living nearby, they treat their workers poorly, and this method of production creates human health issues. All of these factors provide us with alternate legal theories, as well as the opportunity to work with our colleagues in other movements—environmental protection, environmental justice, food policy, worker’s rights—to address these issues, and at the same time, create a larger tent.

While animal rights and protection lawyers are faced with a daunting task, we have seen progress. There has been a sea of change in attitudes of Americans toward companion animals. Most state anti-cruelty laws have been strengthened, and now have provisions for charging certain crimes as a felony, and using cost of care bonds, and forfeiture provisions to provide additional protections. Practices such as declawing cats, cropping the ears, and docking the tails of dogs, once unquestioned, are now considered inappropriate mutilations. Dogfighting has been banned in all fifty states, as has cockfighting. Dog racing is on the way out. If dogs and cats are the “gateway animals,” that is, if an increasing number of people care more about them, perhaps those people can discover a similar connection to wolves, chimpanzees, elephants, cows, and even chickens.

Indeed, societal attitudes toward chimpanzees have changed, in large part due to scientific studies proving how incredibly intelligent and emotionally complex they are, as well as the realization that we are driving them into extinction in the wild. Thus, after decades of exploiting chimpanzees in American laboratories, circuses, zoos, and even the NASA space program, the U.S. Fish and Wildlife Service announced that chimpanzees in captivity will henceforth be listed as endangered, rather than threatened.¹⁰ This will provide them with a greatly enhanced level of protection. The National Institutes of Health has agreed to retire all federally owned chimpanzees (currently in laboratories) and send them to sanctuaries, ending the practice of doing painful and lethal experiments on our closest nonhuman relatives.¹¹

10. U.S. Fish and Wildlife Service Finalizes Rule Listing All Chimpanzees as Endangered Under the Endangered Species Act: Protections Expanded to Include Captive Populations, U.S. FISH & WILDLIFE SERV. (June 12, 2015), <https://www.fws.gov/news/ShowNews.cfm?ID=E81DA137-BAF2-9619-3492A2972E9854D9>.

11. *NIH Plan to Retire All NIH-Owned and -Supported Chimpanzees*, U.S. DEP’T HEALTH & HUMAN SERVICES NAT’L INSTITUTES HEALTH, <https://dpcpsi.nih.gov/orip/cm/>

Another sign of progress came in 2007 with the release of a report from the National Research Council (NRC) titled *Toxicity Testing in the 21st Century: A Vision and A Strategy*.¹² In this report, a committee of toxicologists acknowledged that the current system of toxicity testing using animals is broken. They proposed moving away from using live animals and replacing them with alternatives, such as cell cultures, tissue cultures, computer models, and other methods, which will be faster, less expensive, and can more accurately predict how the human body will react to chemicals and toxins. In recent news, SeaWorld announced that it would no longer breed orcas or kidnap them from the wild.¹³ Ringling Brothers has ended the use of elephants in its circus acts.¹⁴ There is much more to celebrate, and these victories buoy those of us working in the trenches.

It should be noted that the field of animal law is inextricably bound to the larger social movement that demands either greater protections or legal rights for animals. The animal rights movement, born just a few years before animal law, asks whether it is morally or ethically justifiable for humans to dominate and exploit other sentient beings. If the answer is yes, on what basis? If the answer is no, then how do we turn theory into action? The much older animal protection movement accepts that animals will be used, but demands that humane standards be applied to the use. Some argue that these are separate movements. I believe they are part of an all-encompassing whole. Each of us plays our part: some educate, some demonstrate, some legislate, others litigate. It all works together. The job of the first generation of animal lawyers has been to lay a solid foundation on which to build toward greater protections and the development of legal rights for animals. I've said before and I still believe that our most exciting cases and legislation are yet to come.

I deeply appreciate that the *Syracuse Law Review* has chosen to publish this volume on animal law. The articles in this volume are written by some of the leading voices in the animal law field, and will offer the reader insights on animal law issues of note. You may disagree with some

chimpanzeeretirement (last updated Aug. 19, 2016).

12. COMM. ON TOXICITY TESTING & ASSESSMENT OF ENVTL. AGENTS, NAT'L RESEARCH COUNCIL, *TOXICITY TESTING IN THE 21ST CENTURY: A VISION AND A STRATEGY* (2007), <https://www.nap.edu/catalog/11970/toxicity-testing-in-the-21st-century-a-vision-and-a> (follow "Download Free PDF" hyperlink).

13. Nathan Bomey, *SeaWorld to Phase Out Killer Whale Shows, Captivity*, USA TODAY (Mar. 17, 2016, 4:16 PM), <http://www.usatoday.com/story/money/2016/03/17/seaworld-orcas-killer-whales/81900498/>.

14. Katherine Lackey, *Ringling Elephants Perform Last Show, End 145-Year Run*, USA TODAY (May 2, 2016, 6:01 PM), <http://www.usatoday.com/story/news/nation/2016/05/01/circus-elephants-perform-final-acts-before-retirement/83801062/>.

of what is written here. That's to be expected, but my hope is that these articles will plant a seed, and that in the future, you will *not* look at animals in quite the same way.

Cheers,

Joyce Tischler