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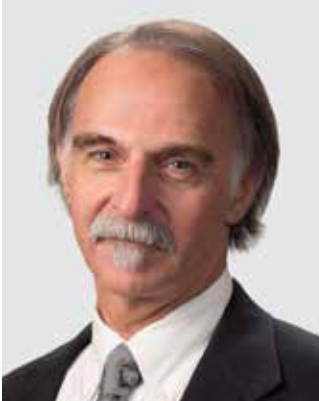


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Animal Law in America – Decades of Change, Millions of Lives Impacted

Bruce WAGMAN

↳ Dans cet article, l'auteur explique ce qu'est le droit animalier, en retrace l'histoire et offre un bref aperçu du droit de la faune sauvage, des animaux de compagnie et de la cruauté envers les animaux, des animaux d'élevage ainsi que des animaux utilisés dans le divertissement. Dans leur ensemble, il met en lumière les avancées majeures réalisées en matière de protection et de bien-être animal.

↳ En este artículo, el autor explica qué es el derecho animal, aborda su historia y ofrece una breve panorámica del derecho de la fauna silvestre, de los animales de compañía y la crueldad hacia los animales, de los animales de granja y de los animales utilizados en el entretenimiento. En conjunto, explora los grandes avances que se han logrado en materia de protección y bienestar animal.

What is Animal Law?

"Animal law" may be defined and described in many ways. The field covers laws and regulations (federal, state, and local) and judicial decisions in which the nature of nonhuman animals – whether based on their biological nature or their ability to experience emotions – is an important consideration.

The U.S. has three different sets of laws: (1) those that apply nationwide (federal), (2) those that apply throughout a given state (but not in other states), and (3) "local laws," which apply only within certain cities or counties.

The field of animal law advocacy, while relatively new, has been growing at an extremely rapid pace in America for the past 60 years, mostly within the last three decades. This article will briefly highlight some of its hallmarks.

Some Fundamentals

A threshold legal issue when considering animal law is that animals are personal property. This means they are owned

by someone (wildlife is owned by the government), and that they are subject to the desires and whims of those owners if an owner's conduct does not otherwise violate the law. Animal cruelty laws exist in every state, but owners are generally not prohibited from killing their own animals in a fashion that is considered "humane" (a term with many interpretations depending on the animal being killed and the way they are killed). And because they are property, and we are yet slow to understand their communications, animals do not have true legal rights with respect to laws that affect them.

While the property construct underlies our consideration of animals, their ability to think and feel separates them from all other legal property, and animal law doctrines incorporate their sentience into its tenets, often without even expressly recognizing it. But because of that integration, unimaginable gains have been made for animals by advocates who have been actively fighting for their protection.

The History

There are a variety of ways to look at animal law. Because many people are interested in what the practice means in terms of actual application, the kinds of animals helped, and the specific changes that are made to the way we interact with them, this article approaches the field with those questions in mind.

Over time, there has been a notably more focused and increased attention paid to laws that bear on the welfare, treatment, and use of animals in society, whether directly or indirectly. Because animals play such an important role in human lives daily, the field has expanded to touch on all the various ways that people and animals interact. This ranges from the connection that owners have with their companion animals, to the relationship between hunters and the animals they hunt, to the agricultural businesses

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involved in the raising and slaughtering of animals, and the production of animal products such as meat, eggs, dairy, fur, and leather.

Wildlife

Laws regulating the preservation – and the killing – of certain wildlife species are some of the most longstanding, including governing activities like hunting, efforts to preserve species that may be in danger of extinction, and the ownership and transfer of wild animals internationally and between the states. Since the late 1960s, an increasing amount of advocacy has been seen in this area, by groups attempting to limit the types and methods of hunting, and to increase protections for wildlife whose survival may be threatened by affirmative acts (killing) or loss of habitat.

The Endangered Species Act (ESA), enacted in 1973, is considered the strongest animal protection law ever written, and has been the basis for hundreds, if not thousands, of lawsuits in which the degree of protection afforded to various species has been litigated. And the lawsuits come from both sides, from

advocates who believe not enough is being done for the animals, and from others who believe that too much is being done, which negatively impacts their otherwise lawful activities, such as land and other industrial development.

There are many other laws that focus on wildlife, both those living in nature and those who are captive. Two examples are:

- The Wild Free-Roaming Horses and Burros Act (WHA) was enacted in 1971 specifically to protect equine species because of their rapidly declining numbers in the American West. There may have been as many as three million wild horses living on the American range in the early 1900s. By 1971, when the WHA was passed, the population was down to an estimated 60,000, due almost solely to human activity. The WHA sets up a structure where the federal government is mandated to “manage” wild horses on federal lands. There has been much litigation and contention over the appropriate level of management, but the WHA is notable for the Congressional recognition of horses’ place in allowing the migration west, and as symbols of our frontier spirit.
- The Chimpanzee Health Improvement, Maintenance and Protection Act (CHIMP Act) was enacted in 2000 and amended in 2013. This law is notable for providing a government-funded pathway for chimpanzees previously used in biomedical research by the federal government. The CHIMP Act was the result of years of advocacy on behalf of research chimpanzees, with recognition of their



contribution to medical science. Its enactment was the beginning of change for captive/research chimpanzees, who in 2015 were finally given complete protection under the ESA.

Companion Animals and Animal Cruelty

States and local governments within states (as opposed to the national government) are the main sources for laws with respect to companion animals, or pets. Americans love their pets, and so there has been special focus on their protection and relationships with humans. In 2022, almost 70% of American households had at least one pet, with 63.4 million dog-owning homes (with an average of one dog), and 42.7 million with cats (with an average of two cats), for a rough estimate of 150 million American pets.

Because so many Americans have a strong emotional connection with these species, there has been a corresponding desire, and growing movement, to protect them through the courts and the legislatures, as well as a need to regulate their interactions with people in our modern world. And all these protections are modulated by the first principle that animals are property, which limits the government’s ability to interfere with ownership.

An area of national attention, one that has been rapidly changing over the past decade and is being dealt with mainly on a local level, is the legal status and protection of free-roaming unowned cats who live mainly outside, often known as “community cats.” There are an estimated 30-90 million such cats across the country, living and usually thriving in their outdoor homes. Veterinary experts have designed programs to address the welfare of these cats. The legal status and appropriate treatment for these community cats is developing as communities and courts examine these recommended programs.

Local governments also play an important role in monitoring, caring for, and saving domestic animals, especially dogs and cats, throughout the country. Animal shelters are available in most communities to deal with pets who either have no permanent home, who have been

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lost or abandoned by their owners, or who are otherwise in need of protection and housing. The laws governing shelters vary from state to state, and shelters play a vital role in American society as they are the connectors between the citizenry and the governmental responsibility for the management and protection of companion animal species. Shelters are regulated to varying degrees by state and local laws.

There are many examples of laws that govern and seek to direct the lives of companion animals by imposing requirements on shelters. Some of the most common laws require that animals be surgically sterilized (“spayed” or “neutered”) before being adopted out; or that mandate a period in which animals must be held in a shelter for adoption or reunification with their owners before they can be released and/or euthanized; or that prohibit or require certain types of treatment of shelter animals. Because millions of animals enter American shelters annually, these laws have a significant impact on those species with whom Americans spend the most time.

For the most part, the governance of animal cruelty in the United States is considered to be within the purview of the state and municipal governments within the states. Every state in America has one or more laws prohibiting a variety of acts that constitute certain types of animal cruelty, and there are more being written and adopted every year. The animal cruelty laws range from generalized broad prohibitions on affirmative abuse of animals (torturing, tormenting, killing) to general crimes of omission and neglect (failure to provide with sustenance, shelter, water), to prohibitions on specific activities (e.g., dogfighting) or with respect to a particular species (e.g., abuse of elephants).

Even though animal cruelty is generally forbidden, most state anti-cruelty laws have significant exceptions to their prohibitions to accommodate common human interaction with and use of animals. Therefore, many standard practices that cause animals pain, suffering, and death are completely legal. For example, the treatment and use of animals in agriculture and for food production, biomedical research, and sports and entertainment are often exempt from anti-cruelty laws, leaving only a small

subset of acts that constitute illegal animal cruelty. The animal cruelty that gets the most attention, both in the media and in the courts, is mistreatment of dogs and cats and other companion animals, either in individual cases, or circumstances of mass animal cruelty (hoarding) where dozens to hundreds of animals suffer from egregious neglect.

Farm Animals

Perhaps the area of greatest legal and social change in America involves the animals we rely on for our food and clothing – cows, pigs, birds (like turkeys, chickens, and ducks), and fish. Food production activities encompass the largest number of animals directly impacted by humans. Common estimates are that ten billion land animals, and over 47 billion aquatic animals, are killed each year in the U.S. as part of the food production business. Because of these large numbers, and the treatment of especially land animals in the food production process, views and laws about our use of these animals have evolved significantly in the last 20 years.

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Animal lawyers and the public have been actively moving to improve the conditions under which these animals are kept, while the agricultural industry has fought to maintain the *status quo*. Most of this activity has been at the state level, although there are also limited sets of federal laws that set standards for the use of animals that ultimately produce food for human populations, such as meat, eggs, and dairy. The Twenty-Eight Hour Law, the Humane Methods of Slaughter Act (HMSA), and the Federal Meat Inspection Act (FMIA), are the three that cover the final stages in food production.

The Twenty-Eight Hour Law provides *de minimis* restrictions that relate solely to the transport of animals across state lines, and it applies only to a very small percentage of animals raised for food. The law requires

that if those covered animals are going to be transported “in a vehicle or vessel” for more than 28 hours, there must be a break to provide rest, food, or water after that period.

The HMSA operates solely within federally-inspected slaughterhouses and provides standards for the humane handling and slaughter of animals. However, those standards allow for extreme cruelty in the process.

Finally, the FMIA was enacted in 1907 in response to concerns about the safety of the meat supply. The law was created to ensure that the *“health and welfare of consumers [is] protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged.”* The FMIA also requires all slaughterhouses to comply with the standards for humane handling and slaughter of animals set out in the HMSA.

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At the state level, there has been significantly more activity aimed at providing less inhumane treatment, especially for three types of animals. The first are egg-laying hens (who are treated vastly different than chickens that we eat), whose beaks and toes are cut off, and are

crammed into “battery cages,” where they have virtually no room to move, and spend their lives laying eggs until they are “spent” and discarded.

Pregnant female pigs, or sows, who are used to produce the pigs who become most of the world’s pig products, are the second category, because of a standard industry practice using what are known as “gestation crates,” which keep these pigs intensively confined to stalls in which they cannot turn around.

And finally, young cows (calves) whose flesh is sold as veal, and who are confined in “veal crates” which also do not let them turn around or otherwise get any of the exercise and movement they would normally engage in.

There has been a broad range of advocacy, utilizing several legal doctrines and procedures, seeking to affect farm animal welfare. Many state laws have also been enacted, with much of the focus on those most intensive forms of confinement. In 2002, Florida amended its state constitution and banned the use of gestation crates. Since then, several states have banned the practice, and California and Massachusetts also prohibit the in-state sale of most pig products (regardless of origin) related to gestation crate housing, eggs that come from hens who are not given more room, and veal from calves raised in veal crates.

Additionally, many lawsuits have been brought regarding the welfare of farm animals, specifically their treatment before they are slaughtered, how they are slaughtered, and the conditions in which they are raised. To change public sentiment about food production, lawsuits have

also been brought on a consistent basis claiming that companies selling animal products are intentionally misleading consumers by failing to inform them about the ways in which animals are raised. This remains a very active area, both for making laws and for lawsuits, in 2025.

Animals in Entertainment

One final area of focus for the progress of animal laws has been on activities which are considered entertainment and sport, in which animals are often harmed or killed. Defining “entertainment” as an act that provides enjoyment or amusement to people, there is a wide range of activities that continue, many of which might seem offensive to a large section of the population.

Where a majority of the public finds an action reprehensible or without moral justification, entertainment involving extreme cruelty is often prohibited. For example, dogfighting and cockfighting, in which two members of the respective species are urged to fight with each other, often to the death, have both been outlawed in every American state. And while horse racing remains a billion-dollar industry, dog racing (usually the greyhound breed) has been mostly eliminated. While every state allows and promotes hunting using guns or other weapons, many states have prohibited some forms of hunting and trapping that large segments of the population deem to be unacceptable.

America’s differential approach to entertainment involving animals – allowing many practices (like hunting and fishing) that result in severe harm or death to the animals but prohibiting others – is really the perfect demonstration of America’s schizophrenic treatment of animals dependent on how their use integrates with our legal and moral sensibilities. It is a good example of the continuing growth and arc of animal law. That is, as the law and opinions change, so do societal – and legal – limitations on our use of animals.

Conclusion

The development of animal law, and its extension into so many areas where we interact with animals, has been rapid and extensive. Despite the continued legal status of animals as property, great strides have been made for their protection and welfare, and the tide continues to turn towards a more effective and efficient approach to animal advocacy, thanks to the large number of individuals working towards the same goal, a world in which animals are treated better than they are now. ■

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