ANIMAL RIGHTS

WHAT EVERYONE NEEDS TO KNOW

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OXFORD
UNIVERSITY PRESS

2010

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Published by Oxford University Press, Inc.
198 Madison Avenue, New York, New York 10016

www.oup.com

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Library of Congress Cataloging-in-Publication Data
Waldau, Paul.
Animal rights : what everyone needs to know / Paul Waldau.
p. cm.
Includes index.
ISBN 978-0-19-973997-4; 978-0-19-973996-7 (pbk.)
1. Animal rights.
I. Title.
HV4708.W35 2010
179'.3—dc22 2010011035

1 3 5 7 9 8 6 4 2

Printed in the United States of America
on acid-free paper

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LAWS

As one of humans' most significant institutions, legal systems have impacted greatly the ways in which humans deal with other living beings. There are several different kinds of legal systems around the world, and while most of the discussion here focuses on the legal tradition known generally as the common law tradition, the general principles discussed also apply to other major legal traditions such as the civil law traditions, Islamic law, and indigenous legal traditions.

The style of legal system that has come to be known as "common law" originated in England. It is an approach to law making that gives great deference to custom and general principles as they are embodied in cases decided by judges—these cases serve as precedent and are applied to situations not covered by laws that a legislature has passed. Common law systems are found in a wide range of countries, including Australia, Brunei, Canada, Ghana, Hong Kong, India, Ireland, Kenya, Malaysia, New Zealand, Pakistan, Singapore, South Africa, Sri Lanka, Tanzania, and the United States.

The common law tradition has been a pioneer in the use of "rights" as a legal way of thinking. Since legal systems are the place where *legal* rights are worked out, discussions about animal rights, whether of the moral or legal sort, go much better when the status of nonhumans under law is clearly understood. It is also important to recognize that today there is

a vibrant field called "animal law", in which the present status and future possibilities of animal protection are being thoroughly discussed.

What is the (traditional) law on animals?

Traditionally, law has treated animals outside our species as mere property of humans. The earliest law codes, such as the Babylonian Code of Hammurabi from about 1750 B.C.E., recognize some domesticated animals as valuable property. The English word "pecuniary" (pertaining to money) derives from the Latin word *pecu* (cattle or flock). Another key word in the common law tradition learned by every first-year law student is "chattel", which is related to the word "cattle" and means an item of personal property that is movable.

Although it was cattle that provided an influential model for development of legal ideas of what could and could not be property (inanimate things also provided a model for the property idea), it was not merely domesticated animals that could be owned. The Code of Justinian, an extremely influential systematization of Roman law from the sixth century C.E., provides explicitly, "Wild beasts, birds, fish and all animals, which live either in the sea, the air, or the earth, so soon as they are taken by anyone, immediately become by the law of nations the property of the captor."

This approach to other living beings impacts us to this day. The American jurist Oliver Wendell Holmes, Jr., in his 1881 book *The Common Law* observed, "So far as concerns the influence of Roman law upon our own,... the evidence of it is to be found in every book which has been written for the last five hundred years." The tradition by which law subordinates all nonhuman animals to human interests impacts not only today's legal systems but also many other areas of society. For example, throughout industrialized societies the subordination of nonhumans to humans has become a principal way of thinking about humans' relationship to the other-than-human world.

Along with various religious ideas about the importance of humans, law has promoted a general tendency to broad generalizations about humans' superior status in the world, such that people today assume that it is "natural" that any and all nonhuman animals are rightly reduced to property owned by individual humans or by the rulers of the state generally. This tendency to subordinate the natural world is not news to anyone today, and the aggressiveness and arrogance of this approach in legal systems are matched by the long history of some powerful humans treating other, less powerful *humans* as personal property that could be owned.

There are many reasons, then, that the majority of people today share the idea that nonhuman animals, whether valued as livestock or as wild resources to be captured, naturally fall into the property category. This is one reason today's legal systems characteristically claim to protect all members of the human species within their jurisdiction (the realities are often not so beautiful), while protections for nonhuman animals, when they exist, are of a different category altogether.

Yet, as noted at any number of points in this book, talk about moral and legal protections for some nonhuman animals is now common. Many readers will know that, historically, some nonhuman animals were offered protections in the part of law known generally as criminal law and more specifically as anticruelty protections. But this kind of protection for the animals themselves is, *within the law*, a relatively new development that began in the nineteenth century. The courts that over centuries developed the common law tradition did not develop any rules regarding prohibition of cruelty to other living beings. This is partly because anticruelty prohibitions already were nurtured by other institutions and value systems, such as religious communities. Further, a basic assumption of the law during the early period of the common law tradition was that other living beings were intended for humans' use. Anticruelty protections were aimed, on the whole, at deviant individuals, not at society-wide practices and values. If a practice was cruel but

was widespread within a society, there was no chance that the anticruelty provisions would be invoked.

Another peculiarity can be found in the way in which philosophers who addressed the nature of these cruelty-sensitive rules explained the rules' purpose. Thomas Aquinas and Immanuel Kant, two of the western tradition's most significant philosophers, offered explanations of anticruelty guidelines that focused on the benefits for *humans* that this kind of protection brought. They reasoned that the justification for anticruelty provisions was that an individual human who hurt nonhumans might then go on to hurt the really important beings, namely, humans. Nonetheless, most common people assumed in the past, as they do today, that anticruelty protections were for the sake of the nonhumans, not humans.

The upshot of these legal and philosophical traditions has generally been that society plays down the protections that legal systems offer to nonhumans of any kind. This is one reason that most of the past writing about cruelty to other-than-human animals comes not from people focusing on law but from religious figures. When law-inspired writers do mention other animals, the overwhelming focus is on property issues involving human interests. The interests of the nonhuman animals themselves are almost always invisible.

There are some peculiar traditions in which nonhuman animals were tried before courts—these are wonderfully summarized in a 1906 book by E. P. Evans with the revealing title, *The Criminal Prosecution and Capital Punishment of Animals: The Lost History of Europe's Animal Trials.* But as a general matter, the presence of nonhuman animals in law discussions is that of mere property, not sentient subjects capable of relationship or suffering or intelligence.

A number of judges and legal commentators, though, have broken through to the commonsense proposition that nonhuman animals might themselves be worthy of legal protections. In 1888, the Supreme Court of the State of Mississippi suggested as it ruled on an anticruelty statute, "This statute is

for the benefit of animals, as creatures capable of feeling and suffering, and it was intended to protect them from cruelty, without reference to their being property, or to the damages which might thereby be occasioned to their owners."

Some of the most famous commentators on law have also observed that anticruelty protections are rightly thought of as for the animals. John Chipman Gray of Harvard wrote in his 1921 *The Nature and Sources of the Law* that "certain acts of cruelty . . . may be forbidden, at least conceivably, for the sake of the creatures themselves."

But even if some the best known commentators thought of the suffering of other-than-human animals as morally important, the overwhelming majority of legal commentators by the end of the nineteenth century followed the tradition of discussing animals as *mere* property. This explains why the first comprehensive treatise on law and animals in the common law tradition published in the United States treats other living beings solely as property. John Ingham's 1900 volume *The Law of Animals* included a subtitle that mentions "rights", but this is a clear reference to humans' rights: "A Treatise on Property in Animals Wild and Domestic and the Rights and Responsibilities Arising Therefrom." This treatise contains virtually nothing about the various ways in which legal systems can be used to protect nonhuman animals as valuable beings *in and of themselves.*

But values changed dramatically in the following century. Exactly 100 years after Ingham published his book, a group of lawyers published the first edition of the casebook *Animal Law.* The editors of this new casebook clearly employed a radically different approach to law. Rather than focusing merely on property law, they considered the wide range of ways in which legal systems' underlying principles and other features, such as enforcement realities, impact the living beings around us. The editors included wide-ranging materials on both legal and moral rights for other animals, as well as information about the link between violence against humans and violence against animals.

No one who encountered this new casebook could doubt that the editors had concerns that were, colloquially speaking, "pro-animal" and on the "animal rights" side of the continuum. While the questions and comments are mostly about companion animals, the editors clearly reflect the diversity of early twenty-first-century discussion about other animals.

What is happening today in "animal law"?

One can best see the profound changes that are taking place in this general area by considering what is happening in four specific categories—legal education, litigation in courts, legislation by government bodies, and enforcement of the existing laws.

Legal Education

"Animal law" has become a distinct field in the last decade, and the history of this development is striking. When Harvard Law School adopted its first animal law course in 2000 as a result of petitions signed by scores of students year after year, the American legal education establishment took notice, even though fewer than a dozen American law schools then offered such a course. By the year 2002, more than 40 of the almost 200 law schools accredited by the American Bar Association offered such a course. As of spring 2010, the number of American law schools offering at least one animal law course will exceed 130. This tenfold increase within a decade has been driven by student requests.

Litigation

In some societies, but in particular in the United States, there has been a venerable tradition of using courts to test approaches to social change since the nineteenth century. Feminists, civil rights activists, and environmentalists have pioneered a variety

of approaches. Animal protectionists have tried for decades to use any number of the different aspects of this extremely important law-making feature of courts.

What makes litigation an attractive option are two important features of courts. First, the common law legal systems offer a wide range of citizens access to judges who are powerful decision makers and, at least nominally, are committed to following important principles like justice and equality. Second, it is the legal system that often holds certain oppressions in place, a feature that makes *legal* challenges possible and often reasonable.

The goals of litigation involving animals have been quite diverse, ranging from, on the one hand, simply getting a matter heard by a judge to, on the other hand, attempts to force abolition of widespread practices. In general, the goal of these diverse challenges is to test what is possible through courts for the purpose of creating awareness and eventually stopping the harms that some humans do as a matter of course to nonhuman animals.

There are many hurdles to litigation-based attempts to alter existing laws and traditions that adversely impact nonhuman animals. For example, when it comes to suing on behalf of nonhuman animals, as a practical matter only lawyers are integrally involved in this kind of litigation because licensing requirements and other technicalities create barriers in courts for nonlawyers. But even though litigation is technically challenging, this is an approach where lawyers speak to lawyers about ideals like justice, equity, dignity, and freedom.

The details of litigation all over the world are too complex to describe in anything shorter than a multivolume encyclopedia. In summary, it can be said that there have already been many challenges on behalf of many different animals. A few judges have ruled that certain animals have "rights", but it remains generally true that rights-based language in courts is only just beginning to be explored (an example is mentioned in chapter 6).

The following story introduces key elements that play out in litigation, and also offers insights into why challenges to the property status of nonhuman animals is a central issue. Since humans are the owners of those animals held to be legal property, challenging the property status of animals means challenging rights held by humans. But the attitudes and realities that drive the following story make it possible to imagine why this is important to so many today. This story comes out of the state of New Jersey in the United States, where there is little legal protection for the vast majority of farm animals. This passage, which is drawn from Scully's *Dominion*, portrays well the dismissive attitude toward other living beings that can prevail in law.

> Just how bereft of human feeling that entire industry has become was clear at a municipal court case heard in Warren County, New Jersey, in the fall of 2000. A poultry company . . . was convicted of cruelly discarding live chickens in trash cans. The conviction was appealed and overturned, partly on the grounds that [the corporate owner] . . . had only six employees overseeing 1.2 million laying hens, and with workers each left to tend two hundred thousand creatures it remained unproven they were aware of those particular birds dying in a trash can. The company's initial defense . . . asserted outright that this is exactly what the birds were anyway—trash:
>
> ATTORNEY TO THE JUDGE: We contend, Your Honor, that clearly my client meets the requirements [of the law]. Clearly it's a commercial farm. And clearly the handling of chickens, and how chickens are discarded, falls into agricultural management practices of my client. And . . . we've litigated this issue before in this county with respect to my client and how it handles its manure. . . .
>
> JUDGE: Isn't there a big distinction between manure and live animals?

ATTORNEY: No, Your Honor. Because the Right to Farm Act protects us in the operation of our farm and all of the agricultural management practices employed by our firm.

The legal conclusion drawn by this lawyer reveals poignantly how decidedly a modern industrialized society can, through its laws, deny the simplest of realities that all of us know to be true. It also reveals that, under the version of "animal law" that prevails for production animals, the status "legal thing", reducing living beings to mere resources, can be cruel beyond our imagination. Most people would hold that discarding live chickens without moral qualm, or that referring to them as the equivalent of manure, runs *completely* counter to our cultural heritage in favor of compassion for living beings.

What much contemporary litigation regarding animals represents, as do demands for animal law courses and political attempts to change practices through letter writing and any number of other techniques, is a challenge to those who ignore the most basic anticruelty considerations. Simply said, production processes that treat other living beings as mere property are controversial enough to engender both concern and social activism. Lawyers' use of litigation to challenge such harms thus reflects core *moral* values sitting at the heart of animal rights concerns.

Litigation is more than just reaction to radical subordination of other animals. Many filed lawsuits attempt preemptive changes and even abolition. But by and large the general phenomenon of using courts is meant to shine light on problems. The hope is to use the existing power of courts to, in one way or another, reinstate our human cultures' long-standing commitment to the central importance of compassion and anticruelty values.

Litigation-based approaches to problems have their limits for a variety of reasons. Judges often respond that if they intervene in a problem, they will usurp the law-making role of elected legislatures. But litigation, which has had a high profile

in the first 30 years of the animal law movement, will likely continue to be used regularly in those legal systems which permit this form of challenge.

Legislation

Around the world today, legislation is the primary vehicle of animal law, even in the United States legal system, where court-based challenges have been extremely important in animal protection and many other social movements. In general, legislation in nation after nation reflects the ferment described in this book.

Sometimes, proposed legislation builds on existing protections, as in India where the nation's founding document itself (which became effective in 1948) calls out the importance of animal protection. In a section titled "Fundamental Duties", the Constitution of India states plainly, "It shall be the duty of every citizen of India . . . to have compassion for living creatures." Animal laws in India are common, as can bess seen in the sheer size of the volume *Animal Laws of India* edited by two leaders of the Indian animal protection movement described in chapter 10.

Constitution-level provisions are important because constitutions are a kind of super-legislation providing the foundation on which all subsequent legislation and litigation are based. Amending a constitution to include other-than-human animals is, then, a very significant act. In the summer of 2002, Germany became the first country in the European Union to guarantee constitution-level protection to any nonhuman animals when that nation's constitution was amended to include the words "and the animals" in Section 20A, which now provides: "[t]he State, in a spirit of responsibility for future generations, also protects the natural living conditions and the animals within the framework of the constitutional rules through the legislation and as provided by the laws through the executive power and the administration of justice."

Because not all nation states have constitutions, and because it is still rare in industrialized nations that animal protection is a topic explicitly dealt with at this high level, specific legislation has long played the central role in what a society will do via its legal system for other-than-human animals. Today, thousands of legislative proposals are made, and hundreds pass each year.

It is also significant that legislation can be enacted in ways that do not involve a vote by the elected legislative body. This has been particularly significant in the United States, where voters are often permitted within specific states to vote directly on "ballot measures" or "popular initiatives." Between 1940 and 1990, there were only a half-dozen such initiatives on animal issues. But since 1990, there have been in the range of 50 animal-related initiatives of this kind. Many involved hunting issues, but the high-profile success of three farm animal initiatives passed through the efforts of animal protection organizations in the last decade suggests that the food animal issue is now on the political map in the United States. The most significant of these initiatives was in California, the most populous American state. In 2008, by a large majority (63+%) California voters passed an initiative banning certain housing practices for egg-laying chickens, veal calves, and pregnant sows.

An interesting example of how the term "rights" is used even in legal circles was published a year after this election. The November 2009 edition of the *California Bar Journal*, the official publication of the state's lawyer association, included a front-page story in which the chief justice of the California Supreme Court attempted to deride the election results by alluding to another ballot vote that prohibited same-sex marriages: "Chickens gained valuable rights in California on the same day that gay men and lesbians lost them." Importantly, the successful animal protection legislation involved *no specific legal rights* for the farm animals which are its subjects. This judge's comment reflects how common it is to speak generically of "rights", even when the legal protections put into place

fall far short of specific legal rights. This is the traditional sense of the word "rights" invoked by many people when they refer to "animal rights."

Another legislation-based approach involves a government agency issuing detailed administrative regulations that control humans' interactions with other living beings. These are commonly used in hunting, handling, or importation of wildlife, development of land that impacts environmental issues, and research using animals.

Yet another legislative approach is to create administrative advocacy for nonhuman animals. A creative use of such an arrangement appears in Switzerland's Canton of Zurich, where the local government employs a lawyer to take the role of advocating on behalf of nonhuman animals themselves.

The enactment of laws or regulations is only a first step in a very complex process. For a variety of reasons, in many countries there are laws "on the books", as the saying goes[1], which are not enforced. For this reason, the next section deals with the realities of enforcement, for these speak unerringly about what a society's real public policy is.

Enforcement

Laws "on the books"[2] may seem impressive, but they can be made ineffective by dishonest or questionable interpretations, and also by simple lack of enforcement. So a critical issue in animal rights discussions is administration or enforcement of laws.

Lack of enforcement takes many different forms. For example, as a practical matter, when prosecutors are asked to prosecute juveniles who have treated shelter animals cruelly, or even killed them, such prosecutors often have chosen not to try the juveniles because there is no political will to spend taxpayer dollars for this priority. Another form of lack of enforcement is the subterfuge mentioned in chapter 2 by which regulators in the United States charged with enforcing a federal

law governing research animal protections chose arbitrarily[3] to exclude rats, mice, and birds. Lack of enforcement can also become a reality for fiscal reasons—there exist in a number of countries today, for example, any number of animal protection mandates, like humane education requirements, that are unfunded and thus unrealized.

The fact that laws "on the books" are not enforced is important because those seeking effective enforcement of existing laws have at times been labeled "animal rights advocates", even though they seek no change in the formal law but only action on laws already approved.

What is the role of legal rights in "animal rights" debates?

Legal rights can play a distinctive role in animal protection for a number of reasons. First, legal rights are characteristically *specific*, because a legislature or judge in a court has had to create them. When they are created, legal rights are given some sort of definition or description so that those who must enforce them have an idea of what the lawmakers intended when creating the legal right at issue. This also means that legal rights are usually defined in a specific place that ordinary citizens can access when trying to figure out what and who existing laws protect.

Second, legal rights are usually held by someone or something. It is common to think of legal rights as held by individuals, but corporations and other collections of individuals can be the holder of legal rights.

Third, legal rights are widely believed to be the highest form of legal protection. This is not always true in actual practice for two reasons. Legal rights are not as absolute as some claim—they can be, and sometimes are, overridden by the government. (We all agree, for example, that it is acceptable to curtail the free speech rights of those tempted to yell "Fire!" in a crowded theater.) In addition, other legal protections can in some instances be even more effective than individual rights—if a society outlaws ownership of, say, chimpanzees, this legal tool

can be far more effective at curtailing problems than giving a captive chimpanzee a right to be free from cruelty.

It is the psychological and political value of granting an individual "rights" that makes legal rights for animals so valuable. When a group of beings is so recognized, they have arrived in terms of not only legal protections but also political, social, and ethical protections. In this sense, legal rights are extremely important because they reinforce moral versions of animal rights.

The attempt to use the legal rights tool for the purpose of protecting some favored beings *outside the human species* is, in one sense, natural enough, given that this tool is so important in modern political systems. But a full assessment of the role of specific legal rights for nonhuman animals must be supplemented with a realistic appraisal of some practical problems.

First, despite the importance of legal rights, talk about these high level protections is, as suggested in chapter 3, undisciplined and vague. This is why, among legal scholars, there is no consensus on what rights mean for humans. Further, on the question of whether *existing* legal protections for animals already in place grant "legal rights" to animals, there is no agreement (this is discussed further in chapter 6).

Second, as the discussion above on enforcement problems makes clear, the political will does not always exist to enforce specific protections, including "rights", that are "on the books." Third, the granting of legal rights and other forms of legal protection to a new group usually involves some loss of power and privilege for someone. In the same way that giving women legal rights curtailed men's legal rights to dominate women, giving legal protections to some nonhuman animals will curtail at least some human privileges now in place. Examples are given in chapter 6 about the risk of job losses, for some change is unavoidable.

Importantly, though, even if it is not always clear what problems the granting of legal rights will involve, this remains an altogether powerful and popular tool. For those cases where

there is a treasured class of animals that many in human society insist receive the maximum protection available under law, there will be attempt after attempt to get lawmakers to grant specific legal rights to these treasured beings.

What is the significance of the "rights versus welfare" debate?

One of the principal ways of talking about animal protection contrasts an "animal rights" approach with an approach called "animal welfare." This common "rights *versus* welfare" dualism has limited value because the contrast can be misleading for a variety reasons.

One reason the dualism misleads is that, as we have seen, "animal rights" has meant a variety of things. The term still is used widely in its original sense of moral protections for certain animals, including compassion and respect for life. Concern for "welfare" or the well-being of individuals is an integral part of this original, morals-driven approach to animal *rights.* The dualism "rights *versus* welfare" promotes only a minor sense of animal welfare, even as it ignores the far more substantial idea of welfare that has long been a key element in morals-based protections for nonhuman animals. The more substantial idea of welfare involves the animals' freedom from harms like captivity and pain, as well as the freedom to move around. When any of these important freedoms is violated, as it so often is when the minor sense of "animal welfare" prevails, there is very little true "welfare" that is being proposed. Thus, drawing a sharp contrast along the lines of "rights *versus* welfare" contradicts the original meaning of "animal rights", which in *every* respect holds concern for the welfare of individual animals to be of the utmost importance.

A second way in which the "rights *versus* welfare" dualism tends to mislead is related—many people today use the idea of "animal welfare" to preserve human domination over certain animals. Some advocates of human superiority have rationalized humans' domination over other living beings by

focusing on attempts to ameliorate in minor ways the terrible conditions that such domination creates for animals. Such rationalizations lead some to think that when we concede minor welfare improvements to farm animals or research animals, our domination of these animals is "gentler" or "less harsh", and thus ethically adequate. This version of "animal welfare" leads with the suggestion "let's improve their welfare" *but at the same time* maintains the right of humans to total domination as we do experiments on them or use them for food or resources.

Upon examination, then, many calls for "animal welfare reform" are fundamentally inconsistent with the original sense of "animal welfare" that takes seriously the claim that animals matter in and of themselves. Welfare provisions used to soften humans' sense of guilt are, at best, watered-down versions of the original insight that respecting an animal's welfare is an important goal. Many contemporary calls for "welfare improvements" fall far short of the husbandry contract described in chapter 2; they also are far less significant than the rules that were developed for religious slaughter briefly described in chapter 6.

When "animal welfare" comes to mean primarily that tough conditions for the animal are made better in some minor respect, with no mention at all of the original, major sense of "animal welfare", the meaning of the word "welfare" has been stretched so dramatically that is misleads. Everyone thus needs to know that "animal welfare" is sometimes used in this strained way by those who are overwhelmingly driven by *human* interests. When narrow and clearly minor changes in practice that amount to very little change in the life of the animals involved are called "welfare improvements", such a claim obscures and confuses, thus harming listeners' ability to make informed moral choices.

Despite such tensions in its use, the habit of referring to "animal welfare" remains widespread. Two reasons for the term's popularity are political in nature. First, surely the

animals subjected to unrelenting harms and an inevitable death would vote to have their situation ameliorated even in minor ways. This fact leads some people to support even minor welfare reforms. But when talk of "animal welfare" remains exclusively focused on talk of bigger cages, of animals in confinement being allowed to turn around or merely stretch their limbs, the result may be political advantage for those who use animals, because the claim that "animal welfare" is being advanced through such minor concessions is used to blunt criticism of the overall harshness, even cruelty, of the profound domination still exercised over captive animals.

Clarity about "animal welfare" and "improvements" requires that we factor in what conditions and harms still prevail *after* the "welfare improvements" are in place. The absence of frank discussion of such realities is one reason some critics have repudiated what they call the "welfarist" position. These critics see minor concessions as political cover for continued human domination that on a daily basis harms the animals so terribly that "welfare" is not a term that would normally come to mind.

A second sense in which strategies focusing on "animal welfare" are political in nature is more positive. Contemporary political realities (described in chapter 7) have often been so unfavorable to nonhuman animals that, in the short term, only minor welfare reforms, not abolition-like reforms, are possible. This has meant that activists dedicated to eliminating harms have recognized that they can only get to their goal one step at a time. Some activists have thus reasoned that they *must* get as much done now as possible, which as a political reality means accepting welfare "improvements" of the kind that the captive animals themselves would likely favor. Such activists may in no way acquiesce in the right of humans to total domination of the animals whose welfare is slightly improved; instead, such activists often vow to continue work toward a next step that amounts to change of a kind that would fit truer senses of "animal welfare."

There is a substantial debate in the animal rights community over whether incremental change strategies are effective. Historical examples from the antislavery, women's suffrage, and civil rights movements suggest strongly that incremental changes can, over time, play a critical role in creating fundamental social change. But this road is by no means an easy one, for those who wish to create fundamental change take a number of risks by seeking only partial, incremental changes. The greatest of these risks is the possibility that incremental changes will lock harmful practices permanently into place. Much more work needs to be done to assess whether those confined by political realities to achieving only minor "welfare improvements" help or hurt oppressed groups. It remains the conclusion of many animal rights advocates that even if the implementation of welfare changes leaves animals in very harsh circumstances, this strategy creates political awareness that can be mobilized in the future for far more effective protections and even abolition of the harms that are being done. Some even suggest that this "welfare first" approach can lead ultimately to protections that are in the nature of true legal rights.

Thus, although the "rights *versus* welfare" debate can mislead if it is not nuanced, true concerns for animal welfare remain part of the political landscape of today's animal rights movement, even though they are complicated and potentially risky. The diminishment of harm, which incremental changes seek, is one of the most important of all ethical principles, and some version of it is found in every ethical system humans have created. But when achieving a reduction in harm is minor and does not relieve the source of oppression, there is obviously reason for continuing concern. The risk will always remain that a compromise leaving fundamental harms in place not only affirms the morality of the underlying practice but *strengthens* the right to harm. This is a serious risk in industrialized societies where calls for "welfare" have characteristically been about animals used as mere resources.

The dualism "rights *versus* welfare" tends to prevail in countries where private property rights are politically so popular that people and businesses can cite them as controlling and thereby obscure the moral issues arising out of domination of other living beings. Such a strategy keeps existing privileges over other animals intact because it relies on a very distorted and impoverished notion of "welfare." Elsewhere, "animal welfare" is a more robust concept along the lines of true moral protections for other animals because the latter matter in and of themselves.

What is possible under today's developing animal law?

Even among traditional commentators who assert that there is nothing at all wrong with *human-centered* law, one finds recognition that legal systems can protect other living beings. This recognition goes beyond anticruelty protections discussed in this chapter. Gray observed in his 1921 volume, "It is quite conceivable, however, that there may have been, or indeed, may still be, systems of Law in which animals have legal rights, for instance, cats in ancient Egypt, or white elephants in Siam."

Because human societies long ago reached the conclusion that our relationships with other living beings raise inevitable ethical issues, it is understandable that people today call upon our legal systems' different tools, including specific legal rights, to shield those nonhuman individuals that we elect to protect. Further, if we deem it the ethical thing to do, we can put in place very high-level protections for some nonhuman animals, such as granting them the status of "legal persons." There is no logical contradiction in using the law in this way, for even though the elegant scholar Gray viewed such an option as not right for his time, he honestly observed in his 1921 treatise, "animals may conceivably be legal persons."

The ongoing maturation of animal law and the emergence of animal studies (discussed in chapter 8) help everyone to recognize that we have inherited a wide range of possibilities from

the many cultures that have for thousands of years considered the importance of animal protection. Because we can now be candid that our own species' record on treating other living beings, including humans, is mixed, we are in the position to go forward with law, education, science, and ethics in creative ways. We can call out how strained many claims are in the present polarized environment where nonhuman animals' status is discussed. Those who repudiate animal rights in any form because they assert that humans alone deserve moral protections miss the benefits which animal protection has often brought to the human community.

One goal of the modern animal studies field discussed in chapter 8 is use of critical thinking skills not only in the field but in education broadly. John Harris in his essay included in the 1971 book *Animals, Man and Morals: An Enquiry into the Maltreatment of Non-Humans* challenged those who consider traditional and contemporary reasoning about the human/nonhuman divide to avoid mere rationalization to justify existing practices, greed, blind habit, and self-aggrandizement. Nonetheless, it is hard to deny that such rationalizations remain a principal element of the polarized debate over both moral and legal versions of animal rights.

The fact that humans have created flexible legal systems suitable to protecting not only humans but nonhumans as well suggests that the future is likely to be one in which there are many calls to use an array of the available tools to craft meaningful animal protection of many different kinds. Societies are already using legislative means in a variety of ways, such as outlawing ownership of specific animals as a way to preclude insensitive humans from doing harm to those animals. Other legal tools can also be used to create *fundamental, effective legal protections.* Even the concept of property ownership can be shaped in ways that create *fundamental legal protections* for the owned beings—owners can be given duties of care that match or even outweigh their privileges. There is nothing whatsoever absolute in the notion of property rights that requires that

owners have complete power over their property. Every society now regulates property use in a variety of ways, such as zoning rules governing how owners use land. Anticruelty laws operate as limitations on dog or cat owners (one cannot, for example, beat one's dog with a baseball bat).

The key is that legal tools are flexible, and with the appropriate grassroots support reasonable policies for ownership responsibilities can be developed. This flexibility sets the stage for an intriguing question for our entire society today—what will the *future* of laws regarding nonhuman animals be?

Two facts will impact greatly what happens. One is already in place—dramatic change has taken place within the last century and begun to open minds to the multiple meanings of animal rights. The second fact deals with the pace of change—that pace is now, if anything, increasing, but where the changes will lead us is up to us as individuals, for *we* guide our governments, corporations, cultures, and thus our species as a whole. So the obvious question is, what shape will we give laws affecting nonhuman animals in the coming years?

The general possibilities are not yet known, although these are considered in the final section of this book. Such considerations beg the question of whether law is the *leading* element in attitudes toward animals, or in fact is a secondary element that takes its cue from changes in social attitudes regarding certain categories of animals, such as companion animals.

Is it likely that law, lawyers, and legislation will lead our societies in changes regarding the status of animals?

In the different legal systems around the world, there are respected traditions of legal philosophers, judges, and lawyers leading important discussions on social values and proposed changes in society. Since animal law is without question one of the leading areas of both the animal protection movement and the burgeoning educational movement known as animal studies, it is important to focus on what roles law and societies'

judges and lawyers might play regarding the status of other-than-human animals.

Throughout this book, there are references to the fact that many other segments of human society—businesses, non-profits, the veterinary profession, religious communities, educational institutions, veterinarians, scientific studies—will have input that will make future legal changes possible or impossible. One answer to the question of whether lawyers will lead all of us is that judges, lawyers, and legal philosophers will surely be in the front ranks of the movement going forward. It is not likely, however, that this group will have all of the insights needed to direct other groups as our society deals with the living beings outside our species.

As to who might also be in the front ranks as our societies go forward on animal protection, one group of contributors is likely to be critical thinkers, including philosophers, policy analysts, and those who study multiple cultures, for these individuals will have insights into what options are now being used around the world. In addition, those who study the wide variety of ways other-than-human animals are being engaged in sciences, the arts, and our humanities fields will be needed.

There are features of the newly emerged field of animal law that suggest that law is but one contributor among others as we go forward. Animal law is gaining prominence in legal education and in lawyer organizations, and this trend constitutes what might be thought of as the first wave of animal law. The second wave is only now reaching the shore as graduates of the hundreds of animal law courses take their place in the ranks of lawyers, organization leaders, government regulators, and business leaders. The second wave of animal law will be more interdisciplinary, for insights into the future must come from the broader society as we engage the human/animal intersection in countless different ways. Answers to questions about which beings deserve justice come not only from law and lawyers but equally from ethics, religion, conscience, social

debate, and much more. The end product of this debate is then, hopefully, reflected in the laws enacted.

Already, individual lawyers and philosophers of law—a good example is Steven M. Wise, described in chapter 10—have shown how flexible and capable the legal system can be *if* one uses basics commitments already in place in legal systems to justice, fairness, ethics, and scientific expertise. Given our capacious human imagination, those who go forward from this point into second- and third-wave animal law will stand on the shoulders of such people but will no doubt see much further and better as our societies talk together over the next decades about what we would like to do with humans' abilities to care about animals of all kinds.

This brief discussion of which areas of our rich human societies must be involved in animal rights opens up the questions of the following sections regarding political and social realities today.

Animal rights are the belief that animals have a right to be free of human use and exploitation, but there is a great deal of confusion about what that means. Animal rights are not about putting animals above humans or giving animals the same rights as humans. Also, animal rights are very different from animal welfare. To most animal rights activists, animal rights are grounded in a rejection of speciesism and the knowledge that animals have sentience (the ability to suffer). Although animal rights and animal welfare are related ideas, they are not interchangeable. Animal welfare activists are concerned only that a person treats an animal in a humane way.Â Celebrities who have backed animal rights include Paul McCartney, Ellen DeGeneres, Betty White, Bernadette Peters, Alicia Keys and Whoopi Goldberg. These and additional famous individuals often contribute to the cause financially. Some support living creatures through video or print campaigns, or by taking part in protests or events. Animal rights, also known as animal liberation, is the idea that the most basic interests of non-human animals should be afforded the same consideration as the similar interests of human beings.Â 1.4.2 1824: Society for the Prevention of Cruelty to Animals. 1.4.3 1866, 1985: American SPCA, Frances Power Cobbe. 1.4.4 1824: Development of the concept of animal rights. 1.4.5 1839: Schopenhauer. 1.4.6 1894: Henry Salt and an "epistemological breakthrough". 1.4.7 Late 1890s: Opposition to anthropomorphism.