

TEN YEARS OF ANIMAL LAW AT LEWIS & CLARK LAW SCHOOL

By
Nancy V. Perry¹

In 1993, three hundred and ten years after Thomas Tryon published what is believed to be the first English language work employing the term “rights” in a discussion of the “violence and oppression” of society’s treatment of animals,² the students at Lewis & Clark Law School founded the first student chapter of the Animal Legal Defense Fund, and hosted the first Animal Law Conference. In the decade that followed, the fundamental ethical principle underlying Tryon’s condemnation of his seventeenth century contemporaries—that animals have the same fundamental right to legal protection from “violence and oppression” as everyone else—has enjoyed an unprecedented renaissance in the United States, and has spawned a compelling and propitious new field of law virtually unheard of in the preceding decade.

Yet Tryon’s work is far from over. Thus, while the concept that animals are entitled to legal protection is now a well-known, and increasingly accepted, legal proposition that has attracted support and scholarly exploration by some of the country’s greatest legal minds, we are still far from the day when Tryon’s plea for all creatures to be protected from “violence and oppression” is incorporated into our societal institutions and consistently applied in our daily lives.

It requires no rhetorical license to say that Lewis & Clark Law School is the very epicenter of the movement to explore and develop the legal means to answer the solitary thesis that Tryon nailed to the door of our society more than three-hundred years ago. *Animal Law* debuted in 1995 as the first and only journal of its kind in the world, and since that time *Animal Law* has chronicled these developments, leaving in its wake a trail of shattered assumptions about the appropriate legal status of animals in our society. Despite its inauspicious

¹ Director of Government Affairs for the Humane Society of the United States; Professorial Lecturer in Law, George Washington University Law School. J.D. 1995, Lewis & Clark Law School; Co-founder, Student Animal Legal Defense Fund Chapter, Annual Animal Law Conference. This introduction is a summary and extension of remarks presented in the keynote address for the 10th Annual Animal Law Conference at Lewis & Clark Law School.

² Dr. Bernard Oreste Unti, *The Quality of Mercy: Organized Animal Protection in the United States 1866–1930* 22–23, n. 16 (unpublished Ph.D. dissertation, American Univ. 2002) (discussing Tryon’s early criticisms of “the brutality of man’s treatment of animals,” as well as his “recommended abstention from foods that ‘cannot be procured without violence and oppression,’” which is believed to be the basis for Benjamin Franklin’s adherence to a vegetarian diet for many years).

beginnings,³ *Animal Law* has become a unique, valuable, and challenging forum for all views regarding legal protection for animals. Over the years, the journal has attracted the interest of some of the greatest legal minds and most significant political thinkers of this century, who have contributed some of the most provocative and creative works on animal law that have ever been published.

Even a cursory glance at the previous eight volumes of *Animal Law* reveals the significance of this publication and the caliber of its contributors, which have included Senator Mark Hatfield, Representatives Elizabeth Furse and Earl Blumenauer, Secretary of the Interior Bruce Babbitt, Professor Marc Bekoff, Dr. Jane Goodall, and prominent legal scholars Laurence Tribe and Paul Waldau. *Animal Law* has considered questions of law related to many types of animals, and explored topics ranging from the philosophical underpinning of American jurisprudence to an examination of laws related to the genetic engineering of domestic animals. In addition to *Animal Law*, the National Center for Animal Law—which was created to promote legal education for animal advocacy and to help secure animal law's place in legal academia—is the most recent example of Lewis & Clark Law School's continuing commitment to the development of animal law in the United States.⁴

The sheer breadth of issues *Animal Law* addressed in past volumes reveals the depth of animal law as a field of study, as well as the law review staff's success in not limiting the journal's focus to any single topic, controversy, or point of view. Thus, articles discussing wildlife or the connection between environmental law and the protection of individual animals are as common as articles reviewing the plight of domestic animals.⁵ Likewise, works exploring moral philosophy and age-old debates between a utilitarian framework or a rights-based viewpoint are just as prominent as articles discussing the First Amendment and its application to hunter harassment laws and food

³ Law students started *Animal Law* with no formal or financial support from Lewis & Clark Law School, preparing the first several volumes entirely as volunteers with funding from the Animal Legal Defense Fund. In these years, *Animal Law* was published through the sheer determination and extraordinary efforts of students like Benjamin Allen, Matt Howard, Jim Goldstein, Lee Friedman, Starla Dill, Gerald Pederson, Kathleen Heimerl, Coby Dolan, Alex Gnoske, Laura Ireland and many others. Richard Katz of the Animal Legal Defense Fund was an extraordinary inspiration and solid support for these students.

⁴ The National Center for Animal Law was founded in 2001. Laura Ireland, former Editor In Chief for *Animal Law*, serves as the Center's Director, overseeing a variety of projects to support and develop the field of animal law.

⁵ See e.g. Eric Glitzenstein & John Fritschie, *The Forest Service's Bait and Switch: A Case Study on Bear Baiting and The Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice Within the National Forests*, 1 *Animal L.* 47 (1995); Craig Ian Scheiner, *Statutes With Four Legs to Stand On?: An Examination of "Cruelty To Police Dog" Laws*, 5 *Animal L.* 177 (1999).

activism, including the infamous McLibel litigation.⁶ *Animal Law* has explored particular campaigns such as the elimination of tax-supported wildlife slaughter and the Navy's use of dolphins,⁷ as well as state anti-cruelty codes, the link between animal cruelty and violence against humans, the need for animal forfeiture laws, and the ever-present problems of enforcement.⁸

Animal Law also has been at the forefront of cutting edge issues such as the recovery of emotional distress damages for the loss of companion animals and the legal recognition of the rights of great apes and chimpanzees.⁹ The journal has exposed the bleak truth about the American legal system's total ignorance of the plight of animals used in agriculture, which serves as a sobering reminder of the long road ahead for an inconceivably large group of animals subject to a level of institutionalized "violence and oppression" that even Tryon's seventeenth century contemporaries would no doubt find shocking and reprehensible.¹⁰ The diversity of issues found within the animal law field is readily apparent in past volumes, where the question, "what is animal law?" is answered in many different ways by dozens of gifted lawyers, professors, and activists.

The latest volume of *Animal Law* builds on past conversation about animal law and goes even further. Jen Girgen looks at the historic practice of putting animals on trial, arguing that modern society still punishes animals in a similar fashion. Stepping forward to some of the most recent legislative efforts to protect animals, Dena M. Jones and Sheila Hughes Rodriguez review the use of the citizen initiative process to enact laws banning animal trapping. Sandra Tozzini spins the tale of horse tail law, describing the various illegal mutilations that remain stubbornly popular today. In a discussion of society's attempt to deal with animal abuse perpetrated by children by utilizing character education as a method to instill compassion, Lydia Antoncic wrestles with larger societal questions often absent from traditional legal scholarship. Elaine T. Byszewski provides a traditional survey of wrongful death cases and resulting damage awards, offering a unique and promising "investment" theory for future litigation. Jennifer Rack-

⁶ See e.g. Howard Lyman, *Free Speech, Animal Law, and Food Activism*, 5 *Animal L. i* (1999); David Wolfson, *McLibel*, 5 *Animal L.* 21 (1999).

⁷ See David Hoch & Will Carrington Heath, *Tracking the ADC: Ranchers' Boon, Taxpayers' Burden, Wildlife's Bane*, 3 *Animal L.* 163 (1997); Andrea Vitalich, *Honorable Discharge: PAWS v. Department of the Navy*, 1 *Animal L.* 133 (1995).

⁸ See e.g. Pamela D. Frasch, et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 *Animal L.* 69 (1999); Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 *Animal L.* 81 (1999); Amy Breyer, *Asset Forfeiture and Animal Cruelty: Making One of the Most Powerful Tools in the Law Work for the Most Powerless Members of Society*, 6 *Animal L.* 203 (2000).

⁹ See e.g. Dr. Jane Goodall & Steven M. Wise, *Are Chimpanzees Entitled to Fundamental Legal Rights?* 3 *Animal L.* 61 (1997); Rowan Taylor, *A Step at a Time: New Zealand's Progress Toward Hominid Rights*, 7 *Animal L.* 35 (2001).

¹⁰ See David Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 *Animal L.* 123 (1996).

straw discusses the effects of prosecutorial discretion on animal cruelty enforcement, and suggests the efficacy of a “self-help” approach to fostering enforcement. Finally, Denee DeLuigi examines potential legal arguments for litigation related to police aggression and violence against companion animals.

Book reviews in this issue demonstrate other trends in animal law. Shennie Patel reviews Matthew Scully’s acclaimed *Dominion*, a book that has shaken awake a population of conservatives and religious thinkers who had previously dismissed animals as being outside their circle of compassion. Also, Michael Tobias’s review of *Minding Animals: Awareness, Emotions, and Heart* by Dr. Marc Bekoff offers a fascinating glimpse of the complex and unknown inner world of animals.

As mentioned above, this groundbreaking scholarship has triggered the exponential growth of animal law as discrete field of study within the legal community. There are now more than forty student chapters promoting animal law and two dozen animal law classes being taught at law schools around the country.¹¹ Six state bar associations have animal law sections with another five expected to form in the near future.¹² There are now also five regional animal law bar associations.¹³ Major newspapers and national news magazines have run prominent front-cover articles on the new field of animal law.¹⁴ In the three centuries between Tryon’s nascent discussion of animal “rights” and the founding of *Animal Law* in 1994, only fifteen states had enacted felony animal cruelty laws.¹⁵ Today, one short decade later, forty-one states and the District of Columbia all carry felony penalties for acts of animal cruelty.¹⁶ Thus, despite the quasi-property, quasi-being status of animals in the eyes of the law, the legislative and political landscape is shifting toward a greater recognition of the need to provide animals with concrete legal protections. There is no question that the field of animal law is here to stay, and it also holds the promise of a tidal wave of interest, development, and progress in the near future.

For over a century, law students have arrived at law school with fresh, optimistic hopes of using their legal education to make the world a better place for the poor, to enforce the inalienable civil rights of individuals, to protect the natural environment, and to promote a host of

¹¹ See Animal Legal Defense Fund, <<http://www.aldf.org/associations.asp?sect=REsources/>> (accessed May 4, 2003).

¹² *Id.*

¹³ *Id.*

¹⁴ See e.g. Richard A. Epstein, *The Next Rights Revolution?* 44 National Review (Nov. 8, 1999); Dan Vergano, *A Better Life: Dogs Unleash Sociability*, USA Today D6 (Feb. 14, 2000); Cass R. Sunstein, *The Chimps’ Day in Court*, The New York Times Book Review 26 (Feb. 20, 2000).

¹⁵ See Steve Ann Chambers, *Animal Cruelty Legislation: The Pasado Law and Its Legacy*, 2 Animal L. 193 (1996).

¹⁶ In March 2003, Kentucky became the 41st state to enact felony cruelty legislation.

other worthy social causes. Today, for the first time, many students seek a legal education specifically with the hope of using their legal training to eliminate the widespread “violence and oppression” of animals. The first months of any law school experience are grueling, and often leach the lifeblood of such hopes from even the most idealistic students. The stress, financial burdens, emphasis on conservative legal values, and lack of supportive infrastructure has deterred more than a few potential animal lawyers from fulfilling their ambition to use their legal education to help make the world a more compassionate place for all creatures. If we do nothing else, we must ensure that this new generation of advocates is supported, encouraged, and given the analytical tools to develop, implement, and sustain long-term legal strategies to help animals.

Despite the drastic improvements in the scholarship and the heightened awareness of animal law as a legitimate field of study, the challenges facing these new advocates are substantial. Ironically, those in the business of animal protection—the very people most repelled by cruelty and the suffering of animals—must immerse themselves in the sordid details of societies’ unspeakable treatment of animals, and become absolute experts on the nature, type, and details of such suffering. The institutions seeking to profit from these practices are intimidating to engage, possessing financial resources to exhaust the most energetic public interest attorneys and clients in a long-term battle. Over a period of time, the temptation to withdraw from any investment in this area of law and to turn away from the painful truth can be overwhelming.

The poetic words of Terry Tempest Williams, sharing lessons from the natural world, provide invaluable perspective for the young (and old) animal lawyer:

I think of my own stream of desires, how cautious I have become with love. It is a vulnerable enterprise to feel deeply and I may not survive my affections. André Breton says, ‘Hardly anyone dares to face with open eyes the great delights of love.’

If I choose not to become attached to nouns—a person, place, or thing—then when I refuse an intimate’s love or hoard my spirit, when a known landscape is bought, sold, and developed, chained or grazed to a stubble, or a hawk is shot and hung by its feet on a barbed-wire fence, my heart cannot be broken because I never risked giving it away.

But what kind of impoverishment is this to withhold emotion, to restrain our passionate nature in the face of a generous life just to appease our fears? A man or woman whose mind reins in the heart when the body sings desperately for connection can only expect more isolation and greater ecological disease. Our lack of intimacy with each other is in direct proportion to our lack of intimacy with the land. We have taken our love inside and abandoned the wild.

Audre Lorde tells us, 'We have been raised to fear the yes within ourselves. . .our deepest cravings. And the fear of our deepest cravings keeps them suspect, keeps us docile and loyal and obedient, and leads us to settle for or accept many facets of our own oppression.'

The two herons who flew over me have now landed downriver. I do not believe they are fearful of love. I do not believe their decisions are based on a terror of loss. They are not docile, loyal, or obedient. They are engaged in a rich, biological context, completely present. They are feathered Buddhas casting blue shadows on the snow, fishing on the shortest day of the year.¹⁷

Animal advocates must heed Ms. Williams' words and press forward with the business of promoting the connection of things, so the entire animal community may someday inherit the protections currently available only to a tiny minority. Exposing others to the realities of animal abuse and suffering, especially a those determined not to listen in many instances, is a daunting task. It is, however, a vitally important one for our own sake, for the animals for whom change cannot come fast enough, and, particularly, for those who must still be convinced. It is clear enough why this connection between living things must be understood in our society in order to aid the animals who wait in cages, in feedlots, in laboratories, and in killing fields. Yet, Ms. Williams' discussion of the "ecological disease" of those who remain disconnected from the land and the animal world also highlights how the field of animal law can offer a form of healing for all the animals on this earth, human or nonhuman, and reminds us not to settle for our own oppression, nor for the oppression of others.

¹⁷ Terry Tempest Williams, *An Unspoken Hunger* 63–64 (Pantheon 1994).