

Animal Law – International Imperative

Public International Law

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Introduction

People say the power of the law is to fight for those who cannot or choose not to fight for themselves, to protect the weak and powerless, and strive for justice in our ever changing society. Society has from time to time developed to a point where it is able to give more rights to those who otherwise would have none. This is one of those times.

Every day there are countless atrocities which go unnoticed by a public which is unconcerned with the plight of animals. This is mainly because cruel treatment is seen as necessary in order to feed our population, and that there is nothing that can be done if cheap meat and meat products is to be found in local grocery stores. Most people associate those who promote the humane treatment of animals, both during life and at slaughter as left winged, radical socialist Nazis, bent at raising the level of protections of animals above that of humans. While some groups do advocate equality of animals and people, most groups merely look for the minimum level of humane protocols to be adapted. This is not an American problem, but a world wide issue which must be addressed before humans can come to terms with how they treat other living beings.

First, we can address the current status of animals, which, while improving, is not sufficient for the moral condition that our society is placed in. In the United States, the laws are found to be inadequately enforced and narrow. The European Union has taken proactive protective measures to address the issues which exist in the United State and which did exist in Europe prior to their latest convention. In China and Asia, there is still

Dave Stout
Public International Law

limited protection for any animals, and the cultural issues which surround the societies are unlikely to change swiftly.

Second, this paper will show which current treaties are working. There are working protections for endangered animals which regulate the sale and trade of species through international lines. This is a good framework for the future, but we can also address the limitations of the current treaty.

Next we can address the moral implications and scientific reasons for needs protections for animals. These findings will show that it now that we must start legislating or run into a moral gray area. Finally, a case study on the economic impact of humane treatment will be affect the business of farming.

We are at a time and a crossroads where we need to make a decision on how we are going to treat an upcoming class of beings in our society. Those beings are our animal brothers and sisters, and they share our pain an unnecessary bounty. Currently we are undergoing a scientific and moral revolution where for the first time since society began we will undertake the effort of providing minimal protections to those of a different species on an international scale.

Dave Stout
Public International Law

Background

United States

The United States has some of the most unfriendly laws to farm animals in the 1st world. The reality is that animals, both companion and farm, really on relegated laws of the individual fifty states that make up the union for protections.

This is quickly changing, with the power of the internet and the realization that many people are trading children for pets or at the very least seeing that companion animals are evolving into part of the family.¹ There are trends which show that more people are providing better care for their companion animals and demanding better care from society. With new media outlets being able to reach broad audiences, the message that animals welfare is becoming more and more important. Society is changing to recognize these needs. Yet, there are still many issues within the United States.

Companion Animals

Companion animals in the United States are protected under state law. Accordingly, there are 50 different standards. There is a underlying duty of care to those animals which are brought out of the wild and into the living room, but it varies from state to state and district to district. There are varying definitions of what adequate care is depending on the state and jurisdiction. There are also varying levels of punishment and rehabilitation

¹ Marvin B. Sussman, "*Pets and the family*", Routledge Press, (January 1, 1985) p 6

which also vary from state to state. In 2008, the Animal Legal Defense Fund released its report² on animal protection laws within the United States. As expected there are many discrepancies in the laws, and in general, some states will protect animals³ at a higher level, while some do little to offer protection.⁴

As a comparison, in South Dakota, it is considered very acceptable to leave your companion animals outside the entire year⁵ while the same practice is uncommon and more likely cruel⁶ in southern California. It would be considered inhumane for that to happen while perfectly fine, all within the same country.

What is developing is the legal relationships that exist between animals and their keepers. Trust law has developed to a point where a majority⁷ of states have allowed the existence of trusts where the beneficiary is a companion animals. This would have been unheard of thirty years ago, and similar legal instruments were ruled to be void gifts⁸ in trust without the protection of the new state laws.⁹

A new problem that is developing in the United States is how to deal with couples who

2 2008 State Animal Protection Law Rankings

3 id.

4 id.

5 SD ST § 40-1-1 - 43-39-12.1

6 CA PENAL § 597t

7 http://www.professorbeyer.com/Articles/Animal_Statutes.htm (43 States)

8 Russell v. Quinn. 69 Cal. 2 d. 200, 215 (1968).

9 An Introduction to Pet in Wills and Pet Euthanasia, Suzette Daniels, Michigan State University - Detroit College of Law 2004, available at:
http://www.animallaw.info/articles/arusdanielssuzette2004.htm#_edn5
(last accessed November 30, 2009)

divorce or separate. The animals have been traditionally been treated as property, and are unitized in manors no different than haggling for houses. This practice puts the best interest of the animals well being in jeopardy.

Farm Animals

As with companion animals, farm animals have little protection outside of the mash up of state laws. Currently, there is only protection for the slaughtering¹⁰ of beef cattle and swine. The Humane Slaughter Act¹¹ regulates the way and manor in which farm animals are killed within the United States. This Act provides that the slaughter of animals must be done in a humane and quick manor, before any further processing can be done. It does regulate poultry production and has explicitly exempted¹² the ritual slaughter which is prevalent in the Jewish faith.

As for before the slaughter, there are no federal laws which protect farm animals in the United States. Currently they are still protected under state law requirements for humane treatment, but these laws are routinely unenforced but for the most egregious violations of common decency. In 2009, a local supplier of milk for Land O Lakes was investigated¹³ and found to be tormenting the cows on the dairy farm. They were lacking in basic shelter, had limited or no access to water, and substandard food.¹⁴ As far as the

¹⁰ 7 U.S.C.A. § 1901 - 1907

¹¹ *id.*

¹² 7 U.S.C.A. § 1906

¹³ Undercover Investigation Reveals Cows Suffer for Land O'Lakes, Peta.org, <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=2515>, (last accessed November 15, 2009)

¹⁴ *id.*

cruelty would continue, the farmhands often used their own pocketknives to stab cows.

Cow #729 went down in a deep slurry of urine and feces. The farm's owner stated that the cow was suffering from clostridium—a bacterial infection from which recovery, even with treatment, is rare, but he refused to put the cow out of her misery.¹⁵

While charges were filed¹⁶ in this case, it takes an extreme amount of investigation in order to prosecute individuals responsible for these acts.

This happens on hog farms and chicken plants as well. Workers are often frustrated and take out these frustrations by abusing the animals in which they are caring. Animals have been hung to death, tattooed for recreational purposes, and sprayed in the face with paint. The purpose of these acts which are committed by employees on factory farms is nothing more than recreational and to fight the boredom in their own lives. Animals on these farms are treated as if they are no better than machines, often times, worse than machines. While these are extreme practices which are certainly the exception and not the rule, there is no internal policing within the industries and it does not seem like these practices are going to be controlled through de minimus measures.¹⁷

¹⁵ Undercover Investigation Reveals Cows Suffer for Land O'Lakes, Peta.org, <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=2515&formPg=explanation> (last accessed November 15, 2009)

¹⁶ *id.*

¹⁷ See generally: *DEATH ON A FACTORY FARM*. (Home Box Office 2009) Working Dog Productions (Original Airing March 16, 2009; Local Airing : November 20, 2009) (TV Documentary)

Europe

Farm Animals

What Europe has done is implement its protections on a national level through a convention treaty on animal cruelty. This prevents the mishmash of laws and protections that are available in the states.¹⁸

Animal Welfare on the Farm is treated in much the same way that Europe treats companion animals. There are statutory protections¹⁹ in place which demand humane treatment for farm animals. Humane treatment is also broadly defined within the convention as anything which can cause suffering.²⁰ Humane treatment in all cases is mandatory. This includes providing fresh water and food, but also allowing for traditional methods of exercise and socialization for the farm animals²¹. This type of protection keeps the large levels of corporate farming which are typical in the United States away from the mainland of Europe.

Europe has reached a time in its society where it does value even its farm stock. The European convention on animal welfare covers more than just the slaughter, but provides specific protection during the life cycle of a farm animal.²²

18 European Convention for the Protection of Animals Kept for Farming Purposes, Council of Europe October 9, 1978

19 *id.*

20 *id.* at article 1

21 *id.* at article 4

22 *Norwegian Animal Law - on it's way to rightfulness for animals?*, Animal Legal and Historical Web

Some members of the European Union has also went above and beyond the convention to also increased the standard of living for poultry. Poultry produced in the United Kingdom must meet stricter guidelines on how they raised their hens, including larger cage sizes and reduced number of birds per house.²³ These are all steps in a more humane direction.

Companion Animals

Companion animals are found in the same convention on cruelty.²⁴ Generally speaking, any owner who takes dominion over an animal has certain standards that they must meet. These are simple standards such a shelter, welfare, food water and veterinary care. The requirements of veterinary care is a little unique for such a broad convention, as it would generally be covered under a general welfare provision but in this case is texturally in the treaty. These rules are strikingly similar to those which are proposed for International adoption by the committee convention.

The same sorts of interests affecting companion animals in the United States are affecting animals in Europe as well. The treatment of animals in a divorce or death is still a point of contention among Europeans. No text was stated in the convention and its is currently left up to member states if animals can be beneficiaries after death.

Center, Live Kleveland Karlsrud, (2004)

23 *Detailed Discussion of the Offences of Cruelty to Domestic and Captive Animals* , Alan Bates, Michigan State University - Detroit College of Law, (2002)

24 European Convention for the Protection of Animals Kept for Farming Purposes, Council of Europe October 9, 1978

Asia

Asia has few protections of either farm or companion animals, and as a society sees animals as a nuisance or a valuable piece of production. It is not surprising since the lack of human rights is also prevalent throughout most of continental Asia. Despite the issues surrounding the lack of respect for all life, China specifically has been making some progress towards strengthening and creating domestic law regarding animals.²⁵

A dog culling in China has happened on three known and separate occasions, which stray and companion animals were drug out to the street and beaten to death with sticks and clubs. The reason was the potential spread of a canine rabies, which is still prevalent in that area.²⁶

In Korea, there seems to be a culture norm which allows for the torture of animals used in meat production. What is ethnocentric shocking, is the animal they use for their meat is dog. While this may seem unusual, it really is no different from raising and eating cattle or pork for their meat. What is different is that Koreans prefer a stringy and dryer meat, which means they see it as necessity to torture animals before death in order to release chemicals into the body to change the composition of the meat. This is done by killing an animal with blow torches and breaking legs with steel traps prior to death. This is

²⁵ See generally *Traditional Chinese Culture Poses Difficulty For New Animal Welfare Laws*, Song Wei, Animal Legal & Historical Center (2004)

²⁶ *supra*

common²⁷ practice and is done in the back areas of the common market.

What is interesting is the difference in areas in similar cultures. In Taiwan, the country has adopted comprehensive animal protection legislation²⁸ preventing the cruelty to animals both in a companion model and a farm model. This sets up a basic and minimum level of protection for animals in Taiwan. It also seems to mirror the current proposed international convention issues.²⁹

International Cooperation to Protect Endangered Animals From Profit – CITES

The only³⁰ current broad multi-government³¹ agreement to protect nonhuman animals³² is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)³³. CITES was adopted under United Nations mandate Since it's ratification by the original ten countries³⁴ on March 3, 1973³⁵, there are now 175 parties³⁶ to this convention, making it “one of the most successful international responses to the

27 *Dog meat, a delicacy in Mizoram*, The Hindu, (Monday, Dec 20, 2004)

28 Taiwan Animal Protection Act, (November 4, 1998) (available at <http://eng.coa.gov.tw/content.php?catid=8998>)

29 *id.*

30 *See generally*: CITES.org, *What is CITES?*, <http://www.cites.org/eng/disc/what.shtml> (last accessed November 11, 2009)(While there do exist many broad international whaling treaties, CITES provides massive multilateral government buy-in and a exhaustive procedure for treaty administration)

31 CITES.org, *Chronological List of Parties*, <http://www.cites.org/eng/disc/parties/chronolo.shtml> (last accessed November 11, 2009)

32 *CITES also have endangered flora in its mandate, broadening its scope beyond the scope of this paper*

33 Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 03, 1973) UNTS I-14537

34 CITES.org, *Chronological List of Parties*, <http://www.cites.org/eng/disc/parties/chronolo.shtml> (last accessed November 11, 2009)

35 *id.*

36 *id.*

worldwide threat of wildlife extinction.”³⁷

CITES works by regulating the trade of distinct classes³⁸ of animals and providing different levels of protection to them based on how much protection they need for survival³⁹. Any individual who imports, exports in any form is covered by a licensing system which provides that the conventions terms are being followed. Since the dealings must be international in nature, it does not provide protection for domestic dealings with endangered, and especially non endangered species.⁴⁰ CITES provides a framework⁴¹ to be built on by each country, which still has to adopt domestic legislation. CITES is funded through the ongoing operations of the Secretariat and through a specialized trust fund.⁴²

Appendix I⁴³ includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II⁴⁴ includes species not immediately threatened with extinction, but where trade must be regulated in order to

37 35 Hitch, n. 22, at 175 (citing Simon Lyster, *International Wildlife Law* 240 (Grotius 1985))

38 Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra*, appendix I-III

39 CITES.org, *How CITES works*, <http://www.cites.org/eng/disc/how.shtml> (last accessed November 11, 2009) (last accessed October 02, 2009)

40 But for domestic law which does regulate trade of species outside of the International sphere.

41 *How CITES works, supra*.

42 CITES.org, *How is CITES funded?*, <http://www.cites.org/eng/disc/fund.shtml> (last accessed November 14 2009)

(The core administrative costs of the Secretariat, the Conference of the Parties and its subsidiary bodies, the Standing Committee and the other permanent committees, are financed from the CITES Trust Fund. This Trust Fund is replenished from contributions from the Parties to the Convention based on the United Nations scale of assessment, adjusted to take account of the fact that not all members of the United Nations are Parties to the Convention.)

43 Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra*, appendix I

44 *id.* at appendix II

prevent overuse^{45 46 47}. Appendix III⁴⁸ contains species that are protected in at least one country and are in need of protection under the convention, any country can request international protection to supplement its domestic law.

CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system. Each Party to the Convention must designate one or more agencies⁴⁹ to handle the domestic license of import⁵⁰ and export⁵¹ of animals which are covered in the various appendices.⁵²

The problems with this model are that it is economic in nature, limiting its reach to those who trade in those of endangered species. It has no effect on those people who do not profit from the demise of the animals on this lists, such as indigenous tribes⁵³. Having groups exempt from the convention detracts from its overall reach and execution and creates a political pulley in which to destroy the intent of the convention.

45 *id.*

46 *Id.* at appendix IV

47 Sam B. Edwards III, *Legal Trade in African Elephant Ivory: Buy Ivory to Save the Elephant?*, 7 Animal L. 119, 129 (2001)

48 Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra*, appendix III

49 Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 03, 1973) UNTS I-14537

50 CITES.org, *How CITES works*, <http://www.cites.org/eng/disc/how.shtml> (last accessed November 11, 2009) (last accessed October 02, 2009)

51 *id.*

52 *id.*

53 Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra*, appendix III

Another large limitation of this convention is that it only deals within a specific subgroup, that of endangered animals.⁵⁴ From an economic standpoint, animals which have commercial value are going to be bred and will never fall within the provisions of the convention. This is a major limitation and something that cannot be addressed within the current convention body. A new treaty which deals with the protection and all animals would need to be drafted in order to properly serve the needs of all groups. The flaw behind this idea should be obvious, that when an animal is scarce, it is going to be protected to the point of non scarcity, only to be removed from the protection list, and finally going to be scarce once again as it is no longer under the protection of the Convention.

CITES is a large step in the right direction, but with its limitations in scope, it is not enough to rest on for the protection of animals throughout the world. There are many steps which still need to be taken which do not limit protection based on the scarcity and instead based on the developing beliefs of the many peoples of the world.

Why Protect Animals?

Legal Status

A large question that remains unanswered in any context, domestic, or international is when should animals be protected by laws and to what extent should they retain more

⁵⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora, *id.*

rights than just property. Currently we rely on basic property rights⁵⁵ for the protection of animals from third parties, and trespass actions against personal property. This is a wholly insufficient model to work from for living beings that need to be protected by the law.

What this does not address is how to deal with owner related abuses against their property. Owners can abuse their animals and if the animal is merely property that are no repercussions. The animal can be deprived of the comforts of living, or be relegated to being a beast of burden. While our culture has deemed this their role, it is a position which, without regulation, is being more and more immoral.⁵⁶

Animals, at the very basic need to be treated with a respect for life that is basic to our society, domesticity and internationally. The idea that animals are intelligent and sentient is not new.⁵⁷ Currently we use animals in ways which show that they are more than mere vessels, but that of thinking and feeling beings, capable of complex thoughts and emotions.⁵⁸

There are new studies which show that companion animals are reflecting intelligence which needs to be protected more so than it is currently. A study on the intelligence of dogs show that the animals are on par with that of humans of two and one half years

55 SDCL 9-29-12

56 *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule* 33 PEPP. L. REV. 224 at 227-273 (2006)

57 *The Spirit of Ancient Egypt*, Ruiz, Ana. New York; Algora Publishing, (2001)

58 "Study: Cows Excel At Selecting Leaders," Jennifer Viegas, Discovery News (December 22 2005)

old.⁵⁹ If true⁶⁰, this means that our companion dogs are at the same intelligence levels as our toddlers. This is an amazing level of intelligence for animals with no basic level of protections against their owner. This is also true for other animals in which we utilize for their production value.⁶¹

The story of Koko⁶² the gorilla who can communicate with sign language is still in societies mind as a reflection that there is something more than just a simple being, but one with thoughts and emotions. A non human who has the ability to communicate⁶³ is not something of science fiction, but is present in our society today.⁶⁴ A non human who has the ability to form sentences, communicate using sign language in the order of over a thousand terms of vocabulary, and understand spoken English of near two thousand words⁶⁵ is a real threat to those who consider animals just shells of existence. The questions are paramount to how we move forward in our legal relationships with our animals around the planet.

However, is it even necessary that our animals are showing more and more complex intelligence for them to be afforded protections? As a point of contention, when one

59 Dogs as Smart as 2-year-old Kids, Jeanna Bryner, LiveScience.com,

<http://www.livescience.com/animals/090808-smart-dogs.html>, (last accessed November 17, 2009)

60 While scientifically founded, the author full recognizes that these studies may not be as accurate.

61 Rosamund Young, *The Secret Lives of Cows*, Farming Books and Videos, Ltd: United Kingdom, 2003, p. 5.

62 Koko: A Talking Gorilla, New Yorker Films (Film, 1978) (English subtitles)

63 Wise, Steven M. (2003). *Drawing the Line: Science and the Case for Animal Rights*. Basic Books. pp. 216

64 Koko, *id.*

65 *Developments in Primatology: Progress and Prospects, All Apes Great and Small*, Biruté M. F. Galdikas, Nancy Erickson Briggs, Lori K. Sheeran, Gary L. Shapiro and Jane Goodall, Springer US at chapter 11 (2002)

species utilizes the work and effort⁶⁶, and of course the emotional comfort⁶⁷ of another species, the trade off should be that the second species is rewarded in some way for its contributions to the firsts society. This, in our Americanized market idealized system, would be seen as necessary for a functional quid pro quo system. What benefits are currently afforded to the farm animals who cannot hold their heads up during life when there is a clear benefit to those who would survive on the protein provided by the loss of life? The answer is the moral gray area which is trying to be addressed by the proposed conventions and legal community.

Of course, there are those who would argue we have no duty to protect those who cannot protect themselves, or that we are the arbiters of what protections should be laid upon them. While it is true that we are arbiters, it cannot be true that we have no duty to protect animals. The argument is made that society is more than just the survival of those who can flourish, but about the survival of those who cannot without the benefits derived from societal protections. In this case, those who derive a benefit from animals in a non wild form should be willing to offer up an exchange to the animals. This is the basic foundation of the social contract.⁶⁸

As a society, we have extended rights to those with none or few since the beginning. We

66 *id.*

67 Animal-assisted therapy — magic or medicine? - Volume 49, Issue 4, Pages 275-280 (October 2000) - Journal of Psychosomatic Research.

68 See generally *The Leviathan*, Thomas Hobbes, 1651 - <http://www.gutenberg.org/etext/3207> (While the social contract discussed in this essay was clearly and solely about man, the concept of a social contract for more than man is an evolving trend)

have seen changing views which helped create the political reactions necessary to do these things. At this time, we know that animals are sentient⁶⁹ and intelligent⁷⁰ and we must be willing to afford the most basic and minimum protections to them, even if they are merely farm stock and not just companion animals.

⁶⁹ The changing concept of animal sentience, Ian J.H. Duncan ,Department of Animal and Poultry Science, University of Guelph, Guelph, Ont., Canada (May 18, 2006)

⁷⁰ *id.*

Current Problems

United State Domestic Law

The examples of what can and does happen when there are inadequate legal protections are plentiful, and the pain and suffering by the owners of those who had no real protection

In *Brown v Mulberg*⁷¹, a uniformed officer received a call of a dog on the loose and responded to the call. After arriving on the scene, the officer found the dog, who has large and distinct collars and tags, was outside of the yard and fence of its owner. The dog was approached the officer with no aggression and stopped before in the immediate area of the officer. The officer drew his side arm and after repeated oral notifications that the dog was owned, the officer shot the animal three times in the chest. The officer was relying on an old and antiquated state law which gave him the power to terminate any stray animal or animal which may pose a danger to others. The officer was not punished by the justice system and no civil action could be brought to remedy this wrong. This type of callous act is one which cannot be undone and the law should reflect the finality of the situation.

Even with laws and statutes in place in United States, there are still many crimes which take place which are not prosecuted because of the lack of resources. Crimes against animals are given less weight and priority at the public coffers which helps create a tacit

⁷¹ *Brown v Mulberg*, 269 F.3d 205 (U.S. 2001)

acceptance that the crimes are okay in moderation. Animal cruelty, generally does not lead to effective prosecution. In October of 2009⁷² a man who had drug his companion pit bull dog behind his bike until the point of death was acquitted by a jury. This is despite the copious amounts of evidence which was presented at trial.⁷³ These are the types of happenings that are shocking the conscience of many people. There is a need for stronger and broader laws which will help a jury bring people who are violating such basic societal values to justice.

International Issues

The problems do not stop in the United States. In China, there is still routine stray dog culling which are legal and not only sanctioned by the Chinese government, but also performed by the same government. This does not stop with stray animals in China, in June of 2009⁷⁴ there were more than 37,00 dogs killed in the streets, with their bodies piled up in the streets during the middle of the day. Families and their children were quickly trying to get their animals inside as death wagons made their way through down. It was a sight that most people would be appalled to have heard of, let alone for those who witnessed the event. Any dog found on the street, stray or not, identification or not, was killed in a horrific showing of force by the northern Chinese government. The official reason for this culling was to contain a rabies⁷⁵ outbreak, but many groups contend that not only was it not necessary, it was not effective⁷⁶. This is not an isolated

72 "Dog Dragged to Death From Bicycle" Animal Legal Defesne Fund, <http://www.aldf.org/article.php?id=892> (last accessed November 11, 2009)

73 *id.*

74 <http://www.telegraph.co.uk/news/worldnews/asia/china/5557831/China-carries-out-mass-dog-cull-37000-animals-clubbed-to-death-to-contain-rabies.html>

75 *id.*

76 *id.*

incident⁷⁷ either, but is seen as a way to control the spread of disease among animals.

The problem with this is clear and obvious: you cannot compensate the loss of companion animals through monetary means and more that you could. Even more, the value of an animal is determined by a market rate⁷⁸, and has no real underpinnings in the real value of the life that was lost – this would be similar to a house fire.

⁷⁷ See generally: Traditional Chinese Culture & Animals, Professor Song Wei, International Animal Law Conference, April 2-4 2004, San Diego, CA, US
(<http://www.animallaw.info/nonus/articles/arcnweiculturalatt2005.htm>)

⁷⁸ *Mulberg, supra*

Proposed Treaties and International Cooperation

Convention

There is strong policy, with both moral and economic ramifications⁷⁹ of not recognizing a minimum standard and doing so within a reasonable time frame. The world community is becoming outraged⁸⁰ at the practices of industry and sportsmen, the lack of respect that owners have for their own animals, and the mash-up of domestic laws which currently govern the legal status of animals.

The International Convention for the Protection of Animals is a proposed treaty which will be seen as a umbrella treaty for signatory nations in regards to the broad range of animal issues.⁸¹ It was first drafted in 1988 but continues to be debated today and as of yet has not been enacted by any country. There are many nations involved in the treaty drafting and the drafter hope to propose the treaty to a general body soon.

The convention address three principles which are core to animals law. Humans and animals coexist.⁸² Because of that fact, and the evolutionary⁸³ ties between humans and animals, humans should take the moral step and act with the obligation they have to protect and act responsibly toward animals. The treaty also makes the statement that life

⁷⁹ *supra*

⁸⁰ *id.*

⁸¹ <http://www.animallaw.info/treaties/itconfprotanimal.htm>

⁸² Proposed Convention, *supra*, at article 1 § 1

⁸³ *(The debate of the principles rages – partly because of the religious contentions implied in the treaty framework)*

has innate value⁸⁴. While even true, the treaty recognizes that this does not mean that animals should not be killed, only that that no animal should be killed through cruel acts or have unnecessary suffering. Finally, the main contention of the proposed treaty is that when humans have control of the animals (non wild), they should take on the positive obligation of providing appropriate care and well being.

While the ideals of the treaty seem clear enough, the largest debates is how to carry out those ideals without changing national and international culture and giving away more rights than we give away to our own peoples⁸⁵. This, of all, seems a like false choice, in that we must address all inadequacies of some before we address the injustice of all.

The proposed treaty would look to limit or minimize the impact that captured or killing wildlife would take place. This would mean that wildlife should not be tortured if they are killed, and that killing of animals should be done to minimize the effects of the total populations. In addition, the treaty would look to establish ways to keep wildlife habitat from becoming concrete parking lots, and there should be applicable scientific data which shows the impact towards wildlife before expansion by humans should take place. There is a general provision which says that captive wildlife should be treated humanely while in captivity and that approach protections should be in place.

Companion animals should have protections which protect against against cruelty and

⁸⁴ *Proposed Convention*, supra

⁸⁵ *id.*

that their owners are required to provide support for the animals they take in. Most United States and European law already reflect these types of provisions.

What is challenging, is that the proposed treaty would require the humane treatment of farm animals throughout their life, and not just at the slaughterhouse⁸⁶ This is a large issue of contention as most countries see this provision as a way to control the economic well being of the nations involved.

Animal research is also covered, but again only with the limited framework of protection of cruelty, which would still be a domestic definition.

The effect of this treaty, while minimum in nature is that it would finally give a voice to those who have been unrepresented at date. Animals would have an inkling of protection, and indeed it would be a first step to a more robust treaty which hammers out international definitions which go outside of the domestic cultural norms of the various countries involved.

But this isn't anything new, countries have always relied on personal norms to justify their actions internationally. This has been the case for minority rights, women rights, and children rights – it will certainly be the case for raising animals 'rights' issues.

⁸⁶ *supra*.

Companion Animal Protocol

There is also a proposed protocol which deals specifically with companion animals. This protocol⁸⁷, while narrow in scope, would mandate minimum levels of treatment of companion animals, including providing adequate levels of protection from the environment, and sufficient levels of food and water. There would also be guidelines for what types of animals should not be seen as companion animals, and that in those cases, companion animals should also not be given away as gifts or as awards. This would prevent the goldfish being given as a prize at a carnival to those who are not willing and able to take on the responsibility of caring for that animal.

There is also language which would help promote the responsible reproduction of companion animals. Finding a balance between stock breeding practices typical in the United States and Europe, and the more humane policy of outlawing the breeding of companion animals is still within the framework and open for debate. Animal shelters provide a more humane option caring for and selecting companion animals for individual and families.

What should be noted is that the companion animal protocol is founded directly within the three fundamental principles of the proposed convention. It is a standing principle that when humans bring an animal out of the wild we assume the affirmative and positive

⁸⁷ *Convention for the Protection of Animals, id. at article 5*

obligation to care for that animal. We are now the care giver and should be held to a higher standard than had we not taken on that responsibility.

Case Study: Poultry Farming

What can be done to stop abuses in the international farming industry? We know the difference of the of the European and American models⁸⁸, but which one is more humane and what is the economic cost of the models.

The European convention has outlawed practices which cause undue pain and suffering of farm animals and create a set of procedures which help fight abuses in the industry. What this has lead to is the use of carbon dioxide sequestration, or controlled atmosphere slaughtering.⁸⁹

The American model provides that poultry is slaughtered by general mechanical means, which include using a blade to strike the neck and render the animals terminated. This is the industrialized version of using a straight blade to decapitate an animal that was used by farmers. The problem, from a humane treatment perspective of the American model is that some broilers are not killed by the blade and proceed through the rest of the process fully alive and conscious.⁹⁰ This, by most standards, would violate any new convention, and most old conventions of what is cruel treatment toward an animal.

88 *supra*

89 *Controlled atmosphere stunning of poultry*, T Hoen and J Lankhaar, *Poultry Science*, Vol 78, Issue 2, p287-289 (1999)

90 *id.*

The problem that the industry faces is how to burden the cost of using a different method. There is also a cultural connection to the current American method, as it is similar to that used by family farms less than 75 years ago in production of poultry.

The economics of the situation are simply in favour of the European model. Currently, there are less accidents using the European method as the broilers are not alive to fight the workers who hang the birds on the racks. This leads to a more productive workforce.⁹¹

The American industry is plagued with workers compensation, and injury reports. This is costly, as workers compensation and mandatory time off decrease the productivity of the line and reduce the number of birds processed, or require temporary works to replace those with injuries.⁹² An understated side issue in the poultry issues in the United States is the use of less than documented workers who ignore the injury in fear of being deported. These practices have left US poultry farms able to continue to abuse not only their animals, but their workers.

91 Remote monitoring of electroencephalogram, electrocardiogram, and behavior during controlled atmosphere stunning in broilers: Implications for welfare, A. M. L. Coenen, J. Lankhaar, J. C. Lowe, and D. E. F. McKeegan, , Poultry Science Association (2008)

92 *id.*

Conclusion

There is only one conclusion that our society can draw from the information that is readily available. As soon as possible we must start recognizing animals as representatives and companions in our lives. There needs to be humane minimum standards for all animals under our dominion, proper raising of and slaughter of herd animals, and an elevated level of care for those who have been deemed companion animals.

While some countries have strong domestic law which protects the welfare of animals, not all countries do. It is imperative that legislation is continually proposed and even when adopted, the standard be carefully reviewed from time to time.

There is no other way to address the global issue than a global treaty. Even respecting the differences in cultures, a specific minimum standard of care, both for companion animals and especially for farm animals should be adopted. Without these measures, the countless crimes being committed against these victims, and the treatment towards them, will continue to be brushed under the rug.

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