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Twenty Years and Change

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INTRODUCTION

TWENTY YEARS AND CHANGE

By
David Favre*

This Introduction provides an overview of the evolution of animal law over the past twenty years, demonstrating how changes in the law, social awareness, and legal education have directly affected this field. This Introduction describes both the positive and negative changes that have taken place, from the banning of dogfighting and cockfighting by federal law and some state laws; a spread in voter-adopted legislation providing for the protection of agricultural animals; and movements to reduce the use of chimpanzees in animal research; to the limitations of the Animal Welfare Act; changes in the United States Department of Agriculture (USDA) policy lifting the ban on USDA inspection of horsemeat; discrimination of certain breeds of dogs through breed-specific legislation; and the weakening of a number of federal laws providing protection to wildlife. This Introduction also provides an overview of case law, discussing attempts to achieve standing for animals and differing approaches in calculating damages for harm to pets. With respect to legal institutions, there has been an increasing presence of animal law sections within the American Bar Association and state bar associations. Animal law has also expanded within legal education. This is evidenced by the emergence of animal law conferences, publications in animal-focused law reviews and textbooks, animal law courses at prestigious law schools, and full-time professors specializing in the area of animal law.

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* © David Favre is a professor of law at Michigan State University College of Law. Twenty years ago, he was asked to write an introduction for the first volume of *Animal Law*. In over more than thirty years of scholarship, he has written a number of articles and books about a wide assortment of animal issues.

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I. INTRODUCTION

This twentieth anniversary edition of *Animal Law Review* creates an appropriate space for a little reflection and perspective. In the world of animal law, twenty years is a long time and many things have changed—most for the better, but not all. Those individuals actively engaged in seeking changes in law for animals feel the frustrations of slow progress, reversals, and small victories on a daily basis. However, in the longer view, real progress on behalf of animals has occurred in the United States (U.S.), and this past progress supports a projection of future positive changes as well. This author wrote the introduction to the first volume of this groundbreaking law review, and has been an active scholar since then, riding the roller coaster of animal law’s successes and failures.

This Introduction will not review the contents of twenty years of publication by this esteemed journal, but will consider change and events in our broader community. This Introduction will touch upon changing social awareness in the U.S., changes in legal education, and some changes in the laws themselves. This topic could easily fill a book, but that will be for another time. This Introduction will simply review events in order to trigger the memories of those readers old enough to have been aware of the events over the past twenty years, or to illuminate the path of the past for younger readers.

There are a number of primary drivers of change in our society. First, as the human family has downsized and splintered with fewer children, the companion animal population has increased.¹ Within many families, the emotional and social importance of the companion animal has become enhanced. This new status and personal connection with companion animals has supported an increasingly large political base of support for changing laws.

¹ Compare Am. Veterinary Med. Assn. (AVMA), *Market Research Statistics—U.S. Pet Ownership 2001*, <http://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership-2001.aspx> [<http://perma.cc/0yabQL2gm2h>] (2001) (accessed Nov. 17, 2013) with AVMA, *Market Research Statistics—U.S. Pet Ownership 2007*, <http://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership-2007.aspx> [<http://perma.cc/F9JC-EB4W>] (2007) (accessed Nov. 17, 2013) (indicating that the percentage of U.S. households owning dogs, cats, and horses increased during this six year period); see also Jonathan V. Last, *What to Expect When No One’s Expecting: America’s Coming Demographic Disaster 2* (Encounter Bks. 2013) (discussing the steady increase of U.S. households owning and spending more money on pets, and noting that “[t]oday[,] American pets now outnumber American children by more than four to one”).

Second, public awareness of animal issues and abuses has been significantly enhanced by decades of campaigns by all the national animal advocacy organizations. This awareness has supported increased membership in national groups, which in turn has raised more financial resources to engage in campaigns. For example, consider the state-level ballot initiatives to enhance the welfare of confined farm animals adopted in a number of states over the past decade, through the efforts of a number of national and local animal organizations.² Twenty years ago, no one would have predicted that after a string of ballot victories, the Humane Society of the United States (HSUS) and the United Egg Producers would support a federal compromise bill for egg-laying chickens, which became a proposed law in Congress but has not yet passed.³

Third, a significant driver of change has been the increasing number of lawyers who dedicate time and effort to deal with animal issues. State bar associations now have animal law sections, as does the American Bar Association.⁴ Since the early 1990s, national groups have hired increasing numbers of lawyers who grow more sophisticated every year in their pursuit of protection and rights for animals. Legal education has seen an explosion of interest and energy, particularly at Lewis & Clark Law School, which is discussed in Part V(B). The number of lawyers engaged in animal issues is slowly growing around the world.

While the primary focus of this Introduction is on the U.S., the world at large cannot be ignored as we are all much more interconnected than we were twenty years ago. Few could have predicted in the early 1990s the role that China has come to play in many animal issues. Their growing population and wealth⁵ has increased demand for

² See Cynthia Allen & Rebecca F. Wisch, Animal Leg. & Historical Ctr., *State Chart of Initiatives and Referendums*, <http://www.animallaw.info/articles/ddusstateinitiativechart2.htm> [<http://perma.cc/0hDHv2zoNir>] (updated 2009) (accessed Nov. 17, 2013) (showing a partial list of state animal law referendums).

³ Press Release, Humane Socy. of the U.S., *HSUS, Egg Industry Agree to Promote Federal Standards for Hens* (July 7, 2011) (available at http://www.humanesociety.org/news/press_releases/2011/07/egg_agreement.html [<http://perma.cc/0UPrPXaZtNE>] (accessed Nov. 17, 2013)).

⁴ See *infra* pt. V(A) (discussing the formation of animal law sections within state bar associations and the American Bar Association).

⁵ See Ronald Trostle & Ralph Seeley, U.S. Dept. of Agric., Econ. Research Serv., *Developing Countries Dominate World Demand for Agricultural Products*, <http://www.ers.usda.gov/amber-waves/2013-august/developing-countries-dominate-world-demand-for-agricultural-products.aspx> [<http://perma.cc/0fmovyqHjUi>] (Aug. 5, 2013) (“China and India are expected to remain among the world’s fastest growing economies . . .”); WorldWatch Inst., *The State of Consumption Today*, <http://www.worldwatch.org/node/810> (updated Nov. 15, 2013) (accessed Nov. 17, 2013) (discussing consumer growth in China).

both wildlife⁶ and agricultural animal products.⁷ Wildlife products include shark fins, elephant ivory, and tiger products.⁸ The same increase in population and wealth has supported more commercial meat consumption.⁹ In 2013, a Chinese firm began the process of purchasing Smithfield Foods, Inc., a U.S. firm that is one of the largest pork producers in the world.¹⁰ However, China has yet to adopt a national anti-cruelty law addressing protections for the welfare of agricultural animals.¹¹

On the other side of the world, the member states of the European Union (EU) have been long concerned with the practice of killing baby seals for their skin.¹² In 2009, the EU adopted a new regulation on the issue, which prohibits the sale of seal products anywhere in the EU.¹³

⁶ Jodi Peterson, *Made in the American West, Consumed in China*, High Country News (June 7, 2013) (available at <http://www.hcn.org/wotr/made-in-the-american-west-consumed-in-china> [<http://perma.cc/0mzTBSF6K6G>] (accessed Nov. 17, 2013)) (“China has become the world’s largest market for wildlife products . . .”).

⁷ Zhangyue Zhou et al., *Food Consumption Trends in China*, 39–43 (April 2012) (available at http://www.daff.gov.au/_data/assets/pdf_file/0006/2259123/food-consumption-trends-in-china-v2.pdf [<http://perma.cc/0Z2wf8t8bem>] (accessed Nov. 17, 2013)).

⁸ Emmarie Huetteman, *In a Message to Poachers, U.S. to Destroy Its Ivory*, N.Y. Times A14 (Nov. 5, 2013) (available at <http://www.nytimes.com/2013/11/06/us/in-a-message-to-poachers-us-to-destroy-its-ivory.html> [<http://perma.cc/05n426U9btT>] (accessed Nov. 17, 2013)) (“The United States is the second-largest consumer, behind China, of illegal animal products like elephant ivory, rhinoceros horn and tiger bone.”); David Smith, *Chinese Appetite for Shark Fin Soup Devastating Mozambique Coastline*, The Guardian (Feb. 14, 2013) (available at <http://www.theguardian.com/world/2013/feb/14/chinese-shark-fin-soup-mozambique> [<http://perma.cc/0TJQCq9DiuQ>] (accessed Nov. 17, 2013)); *but see* Simon Denyer, *In China, Victory for Wildlife Conservation as Citizens Persuaded to Give Up Shark Fin Soup*, Wash. Post (Oct. 19, 2013) (available at <http://wapo.st/15StT9n> [<http://perma.cc/Q8SU-L5YZ>] (accessed Nov. 17, 2013)) (discussing the decreasing demand for shark fins).

⁹ *Food for 9 Billion: Satisfying China’s Growing Demand for Meat*, TV Broad. (PBS Nov. 13, 2012) (available at http://www.pbs.org/newshour/bb/world/july-dec12/china_11-13.html [<http://perma.cc/F59V-E8WL>] (accessed Nov. 22, 2013)).

¹⁰ Ken Bensinger & Tiffany Hsu, *Chinese Firm to Buy Pork Producer Smithfield Foods*, L.A. Times (May 29, 2013) (available at <http://articles.latimes.com/2013/may/29/business/la-fi-smithfield-china-20130530> [<http://perma.cc/0FyqmSVTemZ>] (accessed Nov. 17, 2013)).

¹¹ *See* Michael Charles Tobias, *Animal Rights in China*, Forbes (Nov. 2, 2012) (available at <http://www.forbes.com/sites/michaeltobias/2012/11/02/animal-rights-in-china> [<http://perma.cc/0HnivaFiJc>] (accessed Nov. 17, 2013)) (interview with Dr. Peter Li, who notes, “Chinese authorities are not motivated to tackle the problem of animal cruelty for fear that economic growth would be slowed down[.]” and that “this . . . explains why China does not have animal welfare laws or anti-cruelty laws.”).

¹² *See e.g.* Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived therefrom, OJ L 91/30–31 (1983) (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1983:091:0030:0031:EN:PDF> [<http://perma.cc/0yrxJDc3mE5>] (accessed Nov. 17, 2013)) (noting that as of 1983, several member states already had voluntary or statutory measures in place to restrict the importation or marketing of seal pup skins).

¹³ Council Regulation 1007/2009 on trade in seal products, OJ L 286/36–39 (2009) (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:286:0036:0039:EN:PDF> [<http://perma.cc/0q2VR9qdNJE>] (accessed Nov. 17, 2013)).

What is most striking about this directive is that the first sentence of the regulation is clearly written from an animal welfare perspective, and not from a conservation or environmental perspective.¹⁴

Finally, the ultimate global issue, atmospheric warming, is placing many animals and their habitat at risk, from penguins to polar bears.¹⁵

II. CHANGING LANDSCAPE

Social changes arise on an individual basis and through shared public events. The cumulative effect of individual changes can produce social changes of attitude. Whether we, as a society, should protect endangered species, was a question for the 1970s.¹⁶ Whether we should allow the promotion and use of cigarettes has been a forty-year-old question.¹⁷ What should we think about dogfighting? While dogfighting was first outlawed in New York in 1867, the issue did not have broad social visibility.¹⁸ But in 2007, the troubles of Michael Vick, a highly paid professional football player, brought national attention to this issue.¹⁹ The details of the treatment and fate of the dogs used in

¹⁴ *Id.* (“Seals are sentient beings that can experience pain, distress, fear and other forms of suffering.”).

¹⁵ See Nat. Resources Def. Council, *The Consequences of Global Warming on Wildlife*, <http://www.nrdc.org/globalwarming/fcons/fcons3.asp> [<http://perma.cc/0m2nccvShDY>] (accessed Nov. 17, 2013) (“Some polar bears are drowning because they have to swim longer distances to reach ice floes. . . . Over the past [twenty-five] years, some Antarctic penguin populations have shrunk by 33[%] due to declines in winter sea-ice habitat.”).

¹⁶ See Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2006) (Congress passed the Endangered Species Act in 1973, finding it “to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species . . .”).

¹⁷ See CNN, *A Brief History of Tobacco*, <http://www.cnn.com/US/9705/tobacco/history> [<http://perma.cc/02jtoHDffSj>] (accessed Nov. 17, 2013) (“In 1965, Congress passed the Federal Cigarette Labeling and Advertising Act requiring the surgeon general’s warnings on all cigarette packages. In 1971, all broadcast advertising was banned. In 1990, smoking was banned on [interstate buses and domestic airlines]. . . . And in 1995, President Clinton announced the Food and Drug Administration’s plans to regulate tobacco, especially sales and advertising aimed at minors.”).

¹⁸ N.Y. Rev. Stat. ch. 375, §§ 1–10 (1867) (prohibition on animal fighting now codified at N.Y. AGM Law § 351 (Consol. 2012)); see Mark Derr, *A Dog’s History of America: How Our Best Friend Explored, Conquered, and Settled a Continent* 97 (N. Point Press 2004) (noting that legal dogfighting continued elsewhere in the U.S. for decades after New York’s ban on dogfighting in 1867); Rhonda D. Evans & Craig J. Forsyth, *The Social Milieu of Dogmen and Dogfights*, 19 *Deviant Behavior* 51, 52 (1998) (explaining that efforts to ban dogfighting in New York in the 1860s actually contributed to the spread of dogfighting and it was not until the 1970s that “the next serious attempt to stop dogfighting” occurred).

¹⁹ See Indictment, *U.S. v. Peace*, http://www.animallaw.info/cases/cas_pdf/vick_in_dictment.pdf [<http://perma.cc/0UfctGyh2bS>] (E.D. Va. Jul. 17, 2007) (No. 3:07CR274) (accessed Nov. 17, 2013) (Vick’s indictment for “conspiracy to travel in interstate commerce in aid of unlawful activities and to sponsor a dog in an animal fighting venture”); Animal Leg. Def. Fund, *Animal Fighting Case Study: Michael Vick*, <http://aldf.org/resources/laws-cases/animal-fighting-case-study-michael-vick> [<http://perma.cc/0UBrPH>]

the crime were brought before the entire nation in the world of sports and the broader public.²⁰

So today, not only is dogfighting a crime, but mere attendance at a fight is criminalized by a number of state laws.²¹ At the federal level, the law is more narrowly drawn to focus upon those who sponsor, exhibit, or are in direct contact with the dogs used in fighting.²² On the coattails of this shunning of dogfighting, cockfighting finally reached the position of illegality in all states as well.²³ But while the social consciousness and the laws are very clear about the illegality of dogfighting, it continues to exist as an underground culture.²⁴ Dogfighting has been a stubborn practice to eliminate, as it has been absorbed into broader social problems such as urban gang activity.²⁵

Changes have also occurred in the realm of exotic animals, due to a number of events. In 2009, a pet chimpanzee mutilated the face of a human neighbor.²⁶ In 2011, an exotic animal owner in Ohio let fifty

dHnH7] (updated Jan. 2011) (accessed Nov. 17, 2013) (discussing the details of Vick's conviction and the national media attention surrounding the case).

²⁰ See *Another Chance for Vick's Dogs*, Multimedia Video Clip (N.Y. Times Feb. 2, 2008) (available at http://www.nytimes.com/interactive/2008/02/01/sports/20080202_VICK_AUDIOSS.html?ref=dogfighting (accessed Nov. 17, 2013)) (showing the dogs rescued from Michael Vick and placed at Best Friends Animal Sanctuary); Wayne Pacelle, A Humane Nation Blog, *More Thoughts on Michael Vick*, <http://hsus.typepad.com/wayne/2009/05/vick-dogfighting.html> [<http://perma.cc/0bWBZH8Q9RD>] (May 21, 2009) (accessed Nov. 17, 2013) ("But the case against Michael Vick dragged some other horrible dogfighting practices, like the violent culling of poor-performing dogs, into the light of day. These shocking practices fanned the ire of the public about what Vick and the other ringleaders at Bad Newz Kennels did.").

²¹ See e.g. Mich. Comp. Laws Serv. § 750.49(2)(f) (Lexis 2012) (making attendance at a dogfight illegal).

²² 7 U.S.C. § 2156(a)–(b) (2012) (making it unlawful to "knowingly sponsor or exhibit an animal in an animal fighting venture" and "knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture").

²³ In March of 2007, New Mexico made cockfighting illegal. N.M. Stat. Ann. § 30-18-9 (West 2013). In 2008, Louisiana became the last state to outlaw cockfighting. La. Rev. Stat. Ann. § 102.23 (2012); Russell McCulley, *Louisiana to Be Last State to Ban Cockfighting*, Reuters (June 28, 2007) (available at <http://www.reuters.com/article/2007/06/28/us-louisiana-cockfighting-idUSN2729513120070628> [<http://perma.cc/0eutMg37Hg2>] (accessed Nov. 17, 2013)).

²⁴ See Hanna Gibson, Animal Leg. & Historical Ctr., *Dog Fighting Detailed Discussion* pts. III–IV, <http://www.animallaw.info/articles/ddusdogfighting.htm> [<http://perma.cc/0rKjkiGkBS0>] (2005) (accessed Nov. 17, 2013) (describing the scope and culture of dogfighting); Maria A. Iliopoulou & Rene P. Rosenbaum, *Understanding Blood Sports*, 9 J. Animal & Nat. Resources L. 125, 126–29 (2013) (reviewing the factors that support illegal fighting of animals).

²⁵ See Francesca Ortiz, *Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws*, 3 Stan. J. Animal L. & Policy 1, 19 (2010) (finding gang activity as a factor in the establishment and perpetuation of dog fighting that persists in most urban areas in the U.S.).

²⁶ Edgar Sandoval & Rich Schapiro, *Charla Nash Lost Eyes, Nose and Jaw in Chimpanzee Attack*, N.Y. Daily News (Feb. 19, 2009) (available at <http://www.nydailynews.com/news/charla-nash-lost-eyes-nose-jaw-chimpanzee-attack-article-1.365935> [<http://perma.cc/0io9HNMa22m>] (accessed Nov. 17, 2013)).

large animals, such as tigers and bears, out of their cages and then killed himself.²⁷ The broader social judgment following these acts was confirmation that chimpanzees and other exotic and dangerous animals should not be in private ownership. Laws seeking to eliminate this state of affairs have been adopted to preclude private ownership.²⁸

One of the most complex and difficult animal issues to approach is the use of animals in scientific research. No federal law precludes any species of animal from use by science. But a possible change is coming from within the scientific community, and not as the result of changing law. For chimpanzees, the end of their use in scientific research may be realized in the near term, because of recommendations within the federal establishment at the National Institutes of Health.²⁹ This is a prime example of how changing social attitudes can result in better outcomes for animals.

III. ENTRENCHED LANDSCAPES

Of course, positive change for animals has not occurred everywhere. Not everyone believes animals deserve our attention and concern. Significant economic interests often resist change, manifesting as political power. For example, consider the Laboratory Animal Welfare Act (AWA),³⁰ our limited national law for animal protection originally passed in 1966. To this day, agricultural animals are specifically excluded under the definition of “animal.”³¹ Research animals received enhanced protections with the 1985 amendments,³² but in 2002, under the leadership of Senator Jesse Helms, rats, mice, and birds were specifically excluded from the AWA’s coverage.³³ With one or two modest improvements in the animal fighting section, there have been no major additional protections for domestic animals by amendment to the AWA since 1986.³⁴

²⁷ L.A. Times, Nation Now Blog, *Dangerous Exotic Animals Deliberately Freed in Ohio, Officials Say*, <http://latimesblogs.latimes.com/nationnow/2011/10/ohio-game-farm-large-animals-released-.html> [<http://perma.cc/0WbD3extjE8>] (Oct. 19, 2011) (accessed Nov. 17, 2013).

²⁸ See e.g. Ohio Rev. Code Ann. § 935.01 (West 2012) (“No person shall possess a dangerous wild animal on or after January 1, 2014.”).

²⁹ See Natl. Inst. of Health, *NIH to Reduce Significantly the Use of Chimpanzees in Research*, <http://www.nih.gov/news/health/jun2013/od-26.htm> [<http://perma.cc/0AoDP1kG6kQl>] (June 26, 2013) (accessed Nov. 17, 2013) (calling for significant reduction in the use of chimpanzees in NIH-funded biomedical research).

³⁰ Laboratory Animal Welfare Act of 1966, 7 U.S.C. §§ 2131–2159 (2012).

³¹ *Id.* at § 2132(g).

³² Pub. L. No. 99-198, § 1752, 99 Stat. 1645 (1985) (amending 7 U.S.C. § 2143).

³³ Pub. L. No. 107-171, § 10301, 116 Stat. 491 (2002); see generally David S. Favre, *Animal Law: Welfare, Interests, and Rights* 350–55 (2d ed., Wolters Kluwer 2011) (discussing the advantages and disadvantages of the 2002 AWA).

³⁴ Pub. L. No. 107-171, § 10302, 116 Stat. 491–92 (2002) (amending 7 U.S.C. § 2156); Pub. L. No. 110-22, 121 Stat. 88 (2007) (amending 7 U.S.C. § 2156); Pub. L. No. 110-246, § 14207, 122 Stat. 2223–24 (2008) (amending 7 U.S.C. § 2156).

IV. LANDSCAPES IN FERMENT

An example of an issue in ongoing ferment is the slaughter of horses for human consumption. Twenty years ago, at least three slaughterhouses processed horsemeat for export to other countries, but in 2007 they began closing one by one.³⁵ The federal budget for the U.S. Department of Agriculture (USDA) had a provision since 2006, which said that federal meat inspectors could not inspect horsemeat, thus stopping legal sale of horsemeat.³⁶ More recently, the ban was dropped by Congress, and in 2013, a plant in New Mexico received a permit from the USDA to proceed with horse slaughtering.³⁷ However, as of November 2013, the plant has not opened. The use of horsemeat for human consumption is opposed by many organizations,³⁸ so the controversy will, without a doubt, continue into the next decade.

The treatment of agricultural animals in the U.S. is another area that has been receiving considerable attention. While the state legislatures seem unwilling to balance the corporate interest of profit against the welfare of pigs and chickens by the adoption of protective legislation, more recently the adoption of law by voter referendum has shifted the law toward protecting animal welfare. In the fall of 2008, California voters adopted Proposition 2,³⁹ which outlaws the keeping of chicken, veal calves, and pigs in small confinement areas, although the implementation date is put off until 2015.⁴⁰ Similar legislation was adopted in Michigan in 2009 under the threat of voter referendum.⁴¹ The public is directly deciding what is socially unacceptable, and keeping laying hens in small battery cages for their entire life has been

³⁵ Jennifer Kopecko, Animal Leg. & Historical Ctr., *Detailed Discussion of Horse Slaughter for Human Consumption* pt. III(C), http://www.animallaw.info/articles/ddus_horseslaughter.htm [<http://perma.cc/0WSg5JRD2k>] (2013) (accessed Nov. 17, 2013).

³⁶ *Id.* at pt. IV(B).

³⁷ U.S. Dept. of Agric., *Equine Slaughter*, 15 FSIS Constituent Update 1 (June 28, 2013) (available at http://www.fsis.usda.gov/horses/Const_Update_062813.pdf [<http://perma.cc/0iEhg6w8Xfk>] (accessed Nov. 17, 2013)).

³⁸ See generally Wild for Life Found. Equine Protec. Program, *Facts That Refute the 7 Most Common Myths about Horse Slaughter* (available at http://www.savingamericas_horses.org/WFLF's_Facts_that_Refute_the_7_Most_Common_Myths_about_Horse_Slaughter.pdf [<http://perma.cc/0TrD7ox64En>] (accessed Nov. 17, 2013)) (noting that "[t]he majority of equine industry and community members oppose horse slaughter" (emphasis omitted)).

³⁹ Cal. Health & Safety Code § 25990 (2008). Within some but not all states of the U.S., a proposal can become the law of the state by direct vote of the people of the state. See John B. Anderson & Nancy C. Ciampa, *Ballot Initiatives: Recommendations for Change*, 71 Fla. B.J. 71, 71 (1997) ("Twenty-three other states [besides Florida] also provide for some type of initiative and referendum process . . ."). In California, such proposals are called propositions. This proposition was number two only because it was the second one listed on the ballot for the voters of the state in that specific election.

⁴⁰ Carla Hall & Jerry Hirsch, *Prop. 2 Unlikely to Hike Egg Prices*, L.A. Times (Nov. 6, 2008) (available at <http://articles.latimes.com/2008/nov/06/business/fi-farm6> [<http://perma.cc/0kVxcdYyeHQ>] (accessed Nov. 17, 2013)) ("Californians voted resoundingly to free about 20 million egg-laying hens of tiny cages . . . [by] passing Proposition 2 . . .").

⁴¹ Mich. Comp. Laws § 287.746 (2012).

considered unacceptable every time the issue has been taken to the public. However, this is just one of many welfare issues concerning agricultural animals, so the debate shall continue.

Additionally, breed specific legislation, primarily where pit bulls are singled out for special restrictive or prohibitive status, is another issue in ferment.⁴² Arising out of the fear of harm by pit bulls, there have been bans and restrictions on ownership at the local and state level. As most courts have allowed such legislation to stand against an assortment of constitutional challenges, it is a continuing political controversy in the legislative branch.⁴³ One aspect of this controversy that is particularly troubling is the imprecision in identifying exactly which dogs fall under these laws. Very few people—police included—can identify a “pit bull” from other short-haired, broad-chested breeds.⁴⁴ This leads to uncertainty in the general population and the risk of arbitrary enforcement by police or neighbors. Social consensus on this issue has not yet been realized.

An important issue still seeking a new resolution is that of how to award damages for harm to pets. The common law rule that damages are determined by a subtraction of the fair market value of the property after the harm from the fair market value before the harm simply does not seem adequate to many pet owners. This is particularly true when the “property” in question is their beloved companion animal with whom they have real emotional attachments, but which may have no market value whatsoever.⁴⁵ Over the past twenty years, a number of lawsuits have been filed seeking to establish a new measure of damages. While some lower courts have allowed new categories of damages, over the past decade every state supreme court that has considered the issue has declined to create a new category of damages.⁴⁶ The best that these courts have done is to provide for reasona-

⁴² Safia Gray Hussain, Student Author, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 *Fordham L. Rev.* 2847, 2848–52 (2006) (discussing breed-specific legislation, how “extensive media coverage of serious pit bull attacks has resulted in public fear of these dogs in particular” and that “the lack of finite standards . . . mak[es] it difficult to determine whether a particular dog should be categorized as a pit bull”); see generally Bad Rap, *Breed Specific Legislation*, <http://www.badrap.org/breed-discrimination> [<http://perma.cc/0bWiiJV4n7m>] (accessed Nov. 17, 2013) (discussing the recent belief that select breeds are “born bad,” how this perception has resulted in laws banning pit bulls, and that that these bans have applied to dogs with large heads, muscular bodies, and short fur—regardless of their genetic makeup).

⁴³ See e.g. *Toledo v. Tellings*, 871 N.E.2d 1152, 1158–59 (Ohio 2007) (holding that state and city laws did not violate the procedural or substantive due process rights or the equal protection rights of pit bull owners).

⁴⁴ See e.g. *Pick the Pit*, <http://www.pickthepit.com> [<http://perma.cc/0DwzD4tbPxY>] (accessed Nov. 17, 2013) (an interactive site where viewers are encouraged to test their ability to identify pit bulls).

⁴⁵ Favre, *supra* n. 33, at 128. For a full discussion of damages for harm to pets, see *id.* at 123–51.

⁴⁶ For example, in 2013, the Supreme Court of Texas considered a petitioner’s appeal from the court of appeals’ decision holding that a dog owner may recover intangible

ble veterinary cost.⁴⁷ While the legislative route is open as a method of producing new laws for damages, it has proven politically difficult, with commercial interests often in opposition. Kentucky and Illinois have adopted such legislation.⁴⁸ Perhaps it will take another twenty years before this change can be fully realized.

One important goal of attorneys seeking legal rights for animals has been to allow animals to be plaintiffs in lawsuits.⁴⁹ While this author has argued that animals already possess some legal rights in very limited cases, animals have not yet achieved personhood status.⁵⁰ One positive sign for the future came in a 2004 case about dolphins and whales, where an attorney sought plaintiff rights for a class of marine mammals. The Ninth Circuit disallowed the claim, but did provide some positive language for future actions.⁵¹ In 2012, People for the Ethical Treatment of Animals (PETA) sought plaintiff standing for a killer whale at Sea World, but the court dismissed the case.⁵²

loss of companionship damages in the form of intrinsic or sentimental value property damages. The Supreme Court reversed that decision, ruling that dogs are ordinary property, with damages limited to market value, and noneconomic damages based in relational attachment are not permitted. *Strickland v. Medlen*, 397 S.W.3d 184, 198 (Tex. 2013).

⁴⁷ See e.g. *Burgess v. Shampooch Pet Indus., Inc.*, 131 P.3d 1248 (Kan. App. 2006). *Burgess* presented an issue as to the proper measure of damages recoverable for injury to a pet dog. The plaintiff's pet, a 13-year-old dog of negligible market value, suffered a dislocated hip after being groomed at defendant's business. *Id.* at 1249. The appellate court found that the award of damages based on the veterinary bills was proper where the bills were not disputed and represented an easily ascertainable measure. *Id.* at 1252. The court held that when an injured pet dog with no discernible market value is restored to its previous health, the measure of damages may include, but is not limited to, the reasonable and customary cost of necessary veterinary care and treatment. *Id.* For a summary of damage cases in all the states, see Marcella S. Roukas, *Determining the Value of Companion Animals in Wrongful Harm or Death Claims: A Survey of U.S. Decisions and an Argument for the Authorization to Recover for Loss of Companionship in Such Cases*, Animal Leg. & Historical Ctr., http://www.animallaw.info/articles/ddus50statesurvey_companion_animals.htm [<http://perma.cc/0Q9nqisHiPo>] (updated 2011) (accessed Nov. 17, 2013).

⁴⁸ Tennessee was the first state to adopt legislation for animal damages. See Tenn. Code Ann. § 44-17-403 (Lexis 2007) (with a cap of \$5,000 for noneconomic damages). Kentucky provides for recovery of noneconomic damages. Ky. Rev. Stat. Ann § 411.182 (Lexis 2005); *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. App. 2001). Illinois allows damages for emotional distress without limitation and exemplary damages of not more than \$25,000 when appropriate. 510 Ill. Comp. Stat. § 70/16.3 (West 2004).

⁴⁹ Steven M. Wise, *Legal Personhood and the Nonhuman Rights Project*, 17 Animal L. 1, 11 (2010).

⁵⁰ David Favre, *Living Property: A New Status for Animals within the Legal System*, 93 Marq. L. Rev. 1021, 1024 (2010); Joyce Tischler, *A Brief History of Animal Law, Part II (1985–2011)*, 5 Stan. J. Animal L. & Policy 27, 39 (2012).

⁵¹ *Cetacean Community v. Bush*, 386 F.3d 1169, 1176 (9th Cir. 2004) (“But we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents.”).

⁵² *Tilikum v. Sea World Parks & Ent., Inc.*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012).

After more than five years of development, Steven Wise and the Nonhuman Rights Project filed their first case in December 2013.⁵³ Their goal is to have a court acknowledge the legal personhood of an animal, that is, that a particular animal has the capacity to hold some legal right.⁵⁴ So the next twenty years may be more fruitful for this critical issue than the past twenty years have been.

V. LEGAL INSTITUTIONS

A critical measurement of the advancement of the animal movement is observable by considering the changes that occur within our legal institutions, and over the past twenty years significant change has occurred. The animal movement had almost zero visibility within legal institutions in the early 1990s, but it can be found many different places today.

A. *Formal Institutions*

Raising legal policy issues about animals at meetings of attorneys (bar associations) twenty years ago was not taken seriously by the legal establishment. Initial inroads in this portion of the legal world occurred with the creation of recognized committees within state bar associations (usually denoted as an animal law section or committee).⁵⁵ The first such event happened in Michigan in 1995, when the State Bar of Michigan accepted the application of a group of attorneys to form an Animal Law Section.⁵⁶ Also during the 1990s, the Bar Association of the City of New York had a long-standing animal committee, which sponsored a number of important conferences over the years.⁵⁷ The importance of these sections is that they are a critical educational

⁵³ Press Release, Nonhuman Rights Project, *First-Ever Lawsuits Filed on Behalf of Captive Chimpanzees to Demand Courts Grant Them Right to Bodily Liberty* (Dec. 2, 2013) (available at <http://www.nonhumanrightsproject.org/wp-content/uploads/2013/11/NhRP-Press-Release-Dec-2-2013.pdf> (accessed Dec. 30, 2013)).

⁵⁴ Michael Mountain, Nonhuman Rights Project, *Appeals Court Sides with Ringling Circus*, <http://www.nonhumanrightsproject.org/2011/11/04/appeals-court-sides-with-ringling-circus> [<http://perma.cc/0yAMnzMdBmG>] (Nov. 4, 2011) (accessed Nov. 17, 2013) (“The Nonhuman Rights Project is focusing on establishing legal personhood for such nonhuman animals as elephants. Success will open the door to basic legal rights for these animals and ensure they will have their day in court.”).

⁵⁵ In the U.S., lawyers are organized at the state level, not the national level. There are fifty or more bar associations across the country, at least one per state. For a list, see Animal Leg. Def. Fund, *Bar Association Animal Legal Section and Committees*, <http://aldf.org/resources/law-professional-law-student-resources/law-professionals/bar-association-animal-law-sections-and-committees> [<http://perma.cc/0YvJB1HscBF>] (updated Sept. 10, 2013) (accessed Nov. 17, 2013).

⁵⁶ St. B. of Mich., Animal L. Sec., *Membership Form: Section No: 32* (Nov. 2012) (available at <http://www.michbar.org/animal/pdfs/join.pdf> [<http://perma.cc/0Z1J6a7AFza>] (accessed Nov. 17, 2013)).

⁵⁷ Interview by Maddie’s Fund with Jane Hoffman, Pres., Mayor’s Alliance for NYC’s Animals (2003) (available at http://www.maddiesfund.org/Maddies_Institute/Articles/In_the_Beginning_Jane_Hoffman.html [<http://perma.cc/0e1mYzjuj9>] (accessed Nov. 17, 2013)).

catalyst for practicing attorneys, as almost all of them hold educational conferences at least once a year. Their efforts within the formal associations of lawyers are building credibility about the seriousness of the issues and the professionalism of the advocates among the larger group of attorneys who do not have personal interests in animal issues. While a hard count is difficult to obtain, over twenty state bar associations and a dozen regional associations have organized animal law committees.⁵⁸

A few years after formal organization began at the state level, an animal law committee was realized at the national level within the premiere national association of attorneys, the American Bar Association (ABA). Through considerable effort by a few individuals, an animal law committee within the Tort Trial and Insurance Practice Section (TIPS) of the ABA was approved in the fall of 2004.⁵⁹ This committee has been very active within the ABA.⁶⁰ Its presence will hopefully foster further acceptance of animal issues within the broader bar activities, such as conferences, books, and legislative proposals.

B. Legal Education

At approximately the same time as the initiation of *Animal Law Review*, at the same school, Lewis & Clark Law School, an overlapping group of law students formed the first Student Animal Legal Defense Fund (SALDF) chapter.⁶¹ As with *Animal Law Review*, initial financial and staff support for SALDFs were provided by the Animal Legal Defense Fund (ALDF). The SALDF group at Lewis & Clark Law School began an annual Animal Law Conference, which has become an important annual national conference.⁶² This period also marked the beginning of a growing presence within legal education.

⁵⁸ Animal Leg. Def. Fund, *supra* n. 55.

⁵⁹ Barbara J. Gislason, *Minneapolis Animal Law Attorney: Accomplishments*, <http://www.gislason-law.com/Animal-Law/Animal-Law-Accomplishments.shtml> [<http://perma.cc/SU28-5A8R>] (accessed Nov. 17, 2013) (“On October 9, 2004, Barbara brought animal law to the American Bar Association (ABA).”). Barbara J. Gislason was the first chair of the Committee. Anna Stolley Persky, *Law of the Jungle: ABA Pushes for Model Act Setting Standards for Treatment of Pets in Disasters*, *ABA J. Mag.*, http://abajournal.com/mobile/mag_article/law_of_the_jungle_aba_pushes_for_model_act_setting_standards_for_treatment [<http://perma.cc/0eogwBzuyZH>] (Oct. 2012) (accessed Nov. 17, 2013). Press Release, Animal Leg. Def. Fund, *ALDF Founder Joyce Tischler Honored for Advancement of Animal Law* (July 29, 2009) (available at <http://aldf.org/press-room/press-release/aldf-founder-joyce-tischler-honored-for-advancement-of-animal-law> [<http://perma.cc/0s4QjcU67dg>] (accessed Nov. 17, 2013)); *see generally* Am. B. Assn., Tort Tr. & Ins. Pract. Sec., *Who We Are*, <http://apps.americanbar.org/dch/committee.cfm?com=IL201050> [<http://perma.cc/0tyCHN7iMUj>] (accessed Nov. 17, 2013) (describing its mission to “address all issues concerning the intersection of animals and the law to create a paradigm shift resulting in a just world for all”) [hereinafter ABA/TIPS, *Who We Are*]. In August of 2005, they presented their first program within ABA’s annual meeting.

⁶⁰ ABA/TIPS, *supra* n. 59.

⁶¹ Tischler, *supra* n. 50, at 37–38, 39.

⁶² *See* Lewis & Clark Law School, *The Animal Law Conference*, http://www.lclark.edu/law/student_groups/student_animal_legal_defense_fund/animal_law_conference

Publications of articles in law reviews are critical to the development of scholarly thought on public issues. It was almost a decade before the next animal law journal came into existence, the *Journal of Animal and Natural Resource Law* at Michigan State University.⁶³ There are now several online law journals for animals in the U.S.⁶⁴ Additionally, there are now journals in Brazil and Finland.⁶⁵

Besides the publication of scholarly articles, another important measure of progress is the teaching of animal law within law schools. While a few courses on animal law were taught in the 1980s and early 1990s, it was introduction of the course to Harvard Law School in 2000 that served as a landmark event. There are two aspects of this occurrence that are important to note. First, it was taught by Steven Wise, past president of the ALDF and activist attorney, as an adjunct professor,⁶⁶ not by one of the tenured professors at Harvard.⁶⁷ An outsider to academia was appointed to open the door within academia. As of 2013, there is a much broader group of both full-time professors and adjuncts teaching in the law schools across the country. The number of full-time professors with a focus on animal law has grown sufficiently to support the creation of an animal section within the American Association of Law Schools.⁶⁸

Second, the occurrence of the class at Harvard gave legitimacy—in the broad readership of the *New York Times*—to the issue that had not previously been considered. An article in the newspaper about the

[<http://perma.cc/0z8yPgY79Ri>] (accessed Nov. 17, 2013) (discussing the history of the Animal Law Conference, including past conferences and the 2013 conference).

⁶³ The first volume of the *Journal of Animal and Natural Resource Law* was published in 2005. For more information on the journal, see Animal Leg. & Historical Ctr., *Journal of Animal Law*, <http://www.animallaw.info/policy/pojouranimlawinfo.htm> [<http://perma.cc/0kHCFWKR65C>] (accessed Nov. 17, 2013).

⁶⁴ This includes the *Stanford Journal of Animal Law & Policy* and the *Journal of Animal & Environmental Law* at the University of Louisville Brandeis School of Law.

⁶⁵ These journals are the *Revista Brasileira de Direito Animal* (Brazilian Animal Rights Journal) and the *Global Journal of Animal Law* produced by the Åbo Akademi University Department of Law, Finland. For a list of animal law journals, see Animal Leg. & Historical Ctr., *Journal Collections*, http://www.animallaw.info/policy/pojournals_pub.htm [<http://perma.cc/0yx5T7DjjTE>] (accessed Nov. 17, 2013).

⁶⁶ An adjunct professor teaches only part time, is usually underpaid, and is not an academic appointment that has any responsibility for the policy of a law school. See Gary Rhoades, CNN, *Adjunct Professors Are the New Working Poor*, <http://www.cnn.com/2013/09/24/opinion/rhoades-adjunct-faculty> [<http://perma.cc/0yTChbT6fqT>] (Sept. 25, 2013) (accessed Nov. 17, 2013) (explaining that adjunct professors are often paid low wages and receive no health or retirement benefits). While Harvard Law School still does not have a full-time professor to teach the course, many other law schools do now have full-time professors teaching the course.

⁶⁷ Kirsten G. Studlien, *HLS to Offer Animal Rights Course*, *The Harvard Crimson* (July 9, 1999) (available at <http://www.thecrimson.com/article/1999/7/9/hls-to-offer-animal-rights-course> [<http://perma.cc/02Pc68NaMFZ>] (accessed Nov. 17, 2013)).

⁶⁸ See Assn. of Am.L. Sch., *Section on Animal Law*, http://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=25b753df-26c8-4544-8e8b-36ac82e63e2e [<http://perma.cc/0KigqMEBvCa>] (accessed Nov. 17, 2013) (providing a list of animal law professors at various law schools).

course and the animal rights movement resulted in a cascade of press coverage about the animal movement generally and possible legal changes specifically.⁶⁹

When Steven Wise taught at Harvard, he had to use his own materials, and before a wider teaching of the topic could occur, it was necessary to create a national textbook. As most individuals do not have the ability or time to put together an entire semester's worth of teaching materials, published materials are essential before courses can be widely taught. For deans and faculty to approve the creation and teaching of new courses, it is very helpful to be able to show a national textbook that defines the scope and nature of the course by its chapter headings. As might be expected, pioneer teachers, who were and are still adjunct professors at various law schools, wrote the first book published in 2000.⁷⁰ It should be noted that the demand for the course within a law school most often arose not from the deans or faculty of the various schools, but from the law students. In 2008, this author published the second textbook on animal law with the legal publishing house, Aspen Press.⁷¹

Increasing student demand, the publishing of textbooks, and the availability of attorneys already active in the movement to teach the course have created a significant increase in the number of law schools offering a course in animal law over the past fifteen years. Omitting the intervening details, consider the scope of the interests today, as measured by both the number of law schools that are offering the course and the number of law schools where students have self-organized to promote animal issues. The best count is kept by the ALDF and is available on their website.⁷² In the fall of 2013, the site listed over 140 law schools offering the course, and even more law schools with student SALDF chapters.⁷³

⁶⁹ William Glaberson, *Legal Pioneers Seek to Raise Lowly Status of Animals*, N.Y. Times (Aug. 18, 1999) (available at <http://www.nytimes.com/1999/08/18/us/legal-pioneers-seek-to-raise-lowly-status-of-animals.html?pagewanted=all> [<http://perma.cc/0BEShwRDGxH>] (accessed Nov. 17, 2013)). For months after that article, the office of ALDF received phone calls from the press around the country asking questions about "this animal rights stuff."

⁷⁰ Pamela Frasch, Sonia S. Waisman, Bruce A. Wagman, and Scott Beckstead drafted the book, *Animal Law* (Carolina Academic Press 2000). By conscious decision, the book focused on classic legal issues like damages, torts, standing, and property law, rather than legal rights for animals, which was perhaps too radical for law faculties to accept. It is now in its 4th edition. Pamela Frasch has since joined academia full time at Lewis & Clark Law School.

⁷¹ Favre, *supra* n. 33. Additional teaching materials include, Tammie L. Bryant et al., *Animal Law and the Courts: A Reader* (Thompson/West 2008); and *Animal Rights: Current Debates and New Directions* (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford U. Press, Inc. 2004).

⁷² Animal Leg. Def. Fund, *Animal Law Courses*, <http://aldf.org/resources/law-professional-law-student-resources/law-students-saldf-chapters/animal-law-courses> [<http://perma.cc/0MwFYTq3vgs>] (accessed Nov. 17, 2013).

⁷³ *Id.* (listing a total of 147 law schools in the U.S. and Canada with animal law course offerings).

As another important step in the building up within academia, Lewis & Clark Law School has created the first program to offer a Master's of Law in animal law, under the umbrella of their Center for Animal Law Studies.⁷⁴ It should also be noted that while most law schools offer a single course in animal law and occasionally two courses, Lewis & Clark offers over a dozen every year.⁷⁵

While this Introduction's focus is primarily on the U.S., it should be noted that the teaching of animal law is slowly expanding around the world. In the summer of 2014, there will be a global conference with professors attending and speaking from all over the world, including Australia, Spain, Portugal, Brazil, South Africa, the U.S., Canada, Kazakhstan, and China.⁷⁶ The three major universities with animal programs are co-sponsoring the event: Lewis & Clark Law School, Michigan State University College of Law, and the Universitat Autònoma de Barcelona of Spain (who will host the conference).⁷⁷ This should provide a strong boost for the development of animal law on a global basis over the next twenty years.

C. *The Practice of Animal Law*

A limited number of individual attorneys in large urban cities have found a way to generate income with the practice of animal law. Adam Karp of Washington State is one of the earliest such individuals.⁷⁸ There are a wide variety of issues that come before practicing attorneys, including: "The city just took my dog to the pound for biting someone and they said they were going to kill it tomorrow"; "My neighbor just shot my cat when it jumped our fence"; "I want to leave some money for my two adorable cats"; and "They sold me a sick dog, it died thirty days after we got it." Many attorneys provide help to animal owners with limited or no attorney fees charged (pro bono). As the animals have no money, and many animal owners have limited financial resources, this difficulty in income generation is not expected to change in the foreseeable future.

⁷⁴ For details about the program, see Lewis & Clark Law School, *Center for Animal Law Studies*, http://law.lclark.edu/centers/animal_law_studies [<http://perma.cc/0krRPD2htQy>] (accessed Nov. 17, 2013).

⁷⁵ Ctr. for Animal Law Studies, *General Animal Law Courses*, http://law.lclark.edu/centers/animal_law_studies/curriculum/course_descriptions/general [<http://perma.cc/0JNV23X323R>] (accessed Nov. 17, 2013) (providing a list of animal law courses offered at Lewis & Clark Law School).

⁷⁶ Animal Leg. & Historical Ctr., *2014 II Global Animal Law Conference*, <http://animallaw.info/policy/poanimallawconf2014.htm> [<http://perma.cc/0Y9hzo4Y2Qu>] (accessed Nov. 17, 2013).

⁷⁷ *Id.*

⁷⁸ The Animal Law Offices of Adam P. Karp, <http://www.animal-lawyer.com> [<http://perma.cc/0HvAjbvqmD9>] (accessed Nov. 17, 2013). For a referral page that gives the names of attorneys around the country practicing animal law, see *id.* at <http://www.animal-lawyer.com/html/referrals.html> [<http://perma.cc/0ogzJeJzrXR>] (accessed Nov. 17, 2013).

Attorneys can also practice animal law on the broader plane of public policy as an employee of a nonprofit organization. ALDF has a long practice of hiring attorneys to carry out litigation and projects. Other national organizations, such as the Humane Society of the U.S. and the American Society for the Prevention of Cruelty to Animals, now hire attorneys to deal not just with private matters, but to file impact litigation on behalf of animals and to lobby for new laws at the national and state level.⁷⁹ Perhaps forty attorneys are so engaged now in the U.S. on a full-time salary basis. In the experience of this author, no other country in the world has as many private attorneys dealing with animal issues.

D. Prosecutors and Judges

While considerable progress has been made within the world of law schools and attorney organizations, judge and prosecutor organizations do not yet reflect the same degree of change. As by the nature of their positions, these individuals must consider a wide variety of human issues; therefore, there is less room for animal issues or for those who specialize in animal issues. There is no organized training for judges on animal issues. It is only in the last few years that training of prosecutors has proceeded on a systemic basis with the help of organizations such as the National District Attorneys Association.⁸⁰ Over the past decade, some of the larger prosecutor offices in big cities have allowed a few individuals to specialize in animal cruelty cases. When judges finally recognize animal issues as a serious part of the law, then a major milestone will be reached. This should be one of the goals for the next twenty years: outreach to judicial organizations.

VI. COURT OPINIONS

In the past twenty years, many lawsuits have been filed on behalf of animals, both criminal and civil, at the state and federal level. A few are mentioned here to give a sense of the diversity of the opinions.

One goal of the attorneys within animal law has been to obtain standing for humans to sue at the federal level, particularly under the Animal Welfare Act (AWA). As animal organizations are not normally licensees of the federal agencies, and do not typically have economic interest in regulatory efforts, normal standing arguments do not sup-

⁷⁹ For examples of legal matters addressed by ALDF, the American Society for the Prevention of Cruelty to Animals, and the Humane Society of the U.S., see their respective websites: Animal Leg. Def. Fund, <http://www.aldf.org> [<http://perma.cc/0a1b72nhdPw>] (accessed Nov. 17, 2013); Am. Socy. for the Prevention of Cruelty to Animals, <http://www.aspc.org> [<http://perma.cc/0wj86AgjueF>] (accessed Nov. 17, 2013); Humane Socy. of the U.S., <http://www.humanesociety.org> [<http://perma.cc/0Ci5Qmq5sb>] (accessed Nov. 17, 2013).

⁸⁰ See Natl. Dist. Attys. Assn., *National Center for Prosecution of Animal Abuse*, http://www.ndaa.org/animal_abuse_home.html [<http://perma.cc/0ScyShtk9sS>] (accessed Nov. 17, 2013) (describing the Center's program, which educates and trains prosecutors for animal cruelty and neglect cases).

port standing claims in federal lawsuits. Between 1991 and 1998, the Animal Legal Defense Fund (ALDF) brought a sequence of two federal lawsuits that resulted in the D.C. Court of Appeals holding that one of the plaintiffs, an observer of a particular chimpanzee at a zoo, had standing to question the underlying regulations of the U.S. Department of Agriculture (USDA) about the sufficiency of the federal regulations.⁸¹ Standing was based upon the aesthetic interests of the individual plaintiff in seeing animals in a positive physical setting: “Mr. Jurnove has made clear that he has an aesthetic interest in seeing exotic animals living in a nurturing habitat.”⁸² This conceptualization of standing supported another plaintiff in a civil case under the federal Endangered Species Act (ESA).⁸³

In 2010, the U.S. Supreme Court heard appeal of a criminal case concerning the distribution of dogfighting videos.⁸⁴ This involved a difficult First Amendment issue which resulted in the Court, with an 8–1 vote, striking down the federal law which prohibited depictions of animal cruelty, and had been passed to primarily control the Internet distribution of “crush” videos.⁸⁵ Notwithstanding a thoughtful dissenting opinion by Justice Alito, the majority held that protection of animals was not a compelling state interest so as to justify the intrusion upon the First Amendment rights of the defendant. The words of the opinion suggest that animal protection issues are not yet perceived as important by these Justices.

Perhaps the most litigated public policy issue at the state level focused on the appropriate measure of damages to the owners of animals who have been harmed by the acts of another.⁸⁶ While a number of lower court opinions have allowed damages beyond the traditional measures of the common law, in the past decade every state supreme court that has considered the issue has refused to change the common law rules,⁸⁷ always with the caveat that if change is sought, it must be taken by the legislature, not the courts.

⁸¹ *Animal Leg. Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 445 (1998) (en banc). The plaintiff visited a zoo a number of times where a chimpanzee was kept in solitary confinement; the plaintiff claimed the conditions violated the AWA. *Id.* at 429–30.

⁸² *Id.* at 432.

⁸³ *Am. Socy. for Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 317 F.3d 334 (D.C. 2003). In this case, the plaintiffs’ claim was that the training methods used by the circus on elephants constituted a violation of the federal ESA, for causing harm to a listed endangered animal. *Id.* at 335. After a full trial, the judge found that the former elephant trainer did have the required interests in the animals to support a claim of Article III standing. *Id.* at 338.

⁸⁴ *U.S. v. Stevens*, 559 U.S. 460 (2010).

⁸⁵ *Id.* at 482; see 18 U.S.C. § 48 (2012) (amended by Pub. L. No. 111-294, 124 Stat. 3177 (2010), which Congress adopted following this Supreme Court opinion) (making it illegal to create or distribute a recording which depicts one or more living animals “intentionally crushed, burned, drowned, suffocated, impaled”).

⁸⁶ See *supra* nn. 45–48 and accompanying text (discussing issues underlying the calculation of damages for harm to pets).

⁸⁷ See e.g. *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269, 1273–74 (Vt. 2009) (finding plaintiff failed to demonstrate a compelling public policy reason to expand the common

VII. WILDLIFE

Wildlife has received special attention and protection over the past forty years as an element under the umbrella of the environmental movement. But over the past decade or so there has been very little new legislation on behalf of wildlife.

For wildlife in the U.S., the picture is mixed. Trapping and sport hunting laws dealing with wildlife have not seen any significant change. No major changes in the legislation for wildlife protection have occurred, with the venerable Endangered Species Act (ESA) reaching the mature age of forty in 2013.⁸⁸ It continues to be a significant tool for protection of wildlife and their habitat, but does not deal with welfare issues.

Some weakening of the laws has occurred recently. Amendments to the Migratory Bird Treaty Act in 2004 removed protection for non-native birds.⁸⁹ A 2004 amendment to the Wild Horses and Burros Act⁹⁰ has made it easier to get older, unwanted horses off the range land of the western U.S.⁹¹ In 2004, provisions were added to the ESA and the Marine Mammal Protection Act (MMPA) reducing the burden on the U.S. Department of Defense in complying with these laws, when noncompliance is necessary for the national defense of the country.⁹²

Outside the ESA, those who see wildlife as a “problem” continue to have strong voices. For example, under the ESA, the wolf was reintroduced in Yellowstone National Park in 1995.⁹³ The program was such a great success that the expanding population of wolves re-inhabited much of their original range.⁹⁴ The wolves were so successful in increasing their population that after a number of legal battles, they

law); *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 187 (Va. 2006) (concluding that “such an award would amount to a sweeping change in the law of damages, a subject properly left to legislative considerations”). For a comprehensive list of cases considering the issue of damages, see *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013).

⁸⁸ 16 U.S.C. §§ 1531–1544 (2012) (enacted 1973).

⁸⁹ Pub. L. No. 108-447, § 143, 118 Stat. 3071 (2004) (codified at 16 U.S.C. § 703); Rebecca F. Wisch, *Overview of the Migratory Bird Treaty Reform Act*, Animal Leg. & Historical Ctr., <http://www.animallaw.info/articles/ovusmbtra2004.htm> [<http://perma.cc/0i78TpRyrRM>] (2005) (accessed Nov. 17, 2013).

⁹⁰ 16 U.S.C. §§ 1331–1340 (2012).

⁹¹ Pub. L. No. 108-447, § 142, 118 Stat. 3070–71 (2004) (codified at 16 U.S.C. § 1333) (allowing the Bureau of Land Management to humanely capture wild burros and horses).

⁹² See generally National Defense Authorization Act, Pub. L. No. 108-136, 117 Stat. 1392 (2003) (amending several provisions of the ESA and the MMPA); see also J.D. Hodges, *2004 Legislative Review*, 11 Animal L. 325, 327–34 (2005) (discussing changes to the ESA and the MMPA by the National Defense Authorization Act).

⁹³ Yellowstone Natl. Park, *Wolves*, <http://www.yellowstonenationalpark.com/wolves.html> [<http://perma.cc/0upUSSNF7rH>] (accessed Nov. 17, 2013).

⁹⁴ *Id.*; see also Catherine J. Archibald, *The Recovery of the Gray Wolf under the Endangered Species Act*, <http://www.animallaw.info/articles/ddusgraywolf.htm> [<http://perma.cc/06ApEmf9atW>] (2005) (accessed Nov. 17, 2013) (discussing the reintroduction of western Canadian gray wolves into Yellowstone Park in 1995); see generally Natl. Park Serv., *Wolves of Yellowstone*, <http://www.nps.gov/yell/naturescience/wolves.htm>

have been delisted—meaning no longer listed as endangered or threatened—at the federal level. In many states, laws were quickly adopted permitting the hunting of wolves that, a year before, had full federal protection.⁹⁵

Internationally, wildlife seems to be at increased risk every year. For example, consider the plight of elephants and rhinos—“Given the current rate of poaching, children from West or Central Africa will one day speak of elephants and rhinoceros as we speak of mammoths: as magnificent creatures belonging to the past.”⁹⁶ The legal system does not seem to have an answer to the increasing demands for wildlife products such as ivory and rhino horn by an increasing number of humans.

VIII. CONCLUSION

The past twenty years have been a time of significant change. Organizations have spent millions of dollars to help animals and to change attitudes and the law. Like the changing of a course for a very large ship, it takes time and space to realize change. Animals are so entwined in our everyday world by habit and tradition that it is difficult to take apart each thread to conduct a critical analysis. But more and more are doing so. The next twenty years will be as unpredictable as the past twenty years have been, but this author is optimistic that on balance, the animals will be more respected and more protected in 2034. Certainly, *Animal Law* will be around discussing the issues of the day, and with a bit of luck, this author will be around to contribute to the Introduction for Volume 40.

[<http://perma.cc/0YG4GEQaCaA>] (accessed Nov. 17, 2013) (discussing the estimated population of the wolves of Yellowstone since their reintroduction in 1995).

⁹⁵ For an example of wolf hunting regulations, see Minn. Dept. of Nat. Resources, *Wolf Hunting*, <http://www.dnr.state.mn.us/hunting/wolf/index.html> [<http://perma.cc/0EfiHriQNPG>] (accessed Nov. 17, 2013).

⁹⁶ Irina Bokova & John Scanlon, UNESCO World Heritage Ctr., *Wildlife Crime Is Robbing the Future of Africa—Jeune Afrique*, <http://whc.unesco.org/en/news/1063> (July 30, 2013) (accessed Nov. 17, 2013).

