

INTRODUCTION

THE CONFLICT BETWEEN SPECIES IN AN EVER MORE CROWDED WORLD

By
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As we enter the new millennium some old questions are being asked with a new urgency. And the most urgent of all relates to the ever-growing number of humans in the world. The resources of our planet are finite, and if we, as a species, cannot regulate this uninhibited growth in numbers, what can the outcome be? Already, with our need for living space, food, fuel, clothing, warmth, and with the greedy materialistic desire for more and more possessions quite apart from what is needed to sustain life, a number of other species have been crowded out. Every year there is a little less room for humans as well as for their domestic livestock, dogs, and cats. Every year there is less wilderness, less living space for wild animals and plants. Throughout the long course of evolution, species have been in competition with each other—today this competition has taken on a new dimension. What happens when competing interests conflict? How do we decide who wins? In 1997 rifts opened between environmental groups over whether dolphins are more important than other ocean creatures in the tuna-dolphin netting debate that raged in the U.S. Congress. The interests of human rights and non-human rights clashed when defenders of indigenous peoples' traditional values and groups seeking protection for gray whales fought over the resumption of the Makah Indian Tribe whaling practices in the Pacific Northwest.

From the courtroom, to Capitol Hill, to the international arena, the struggle for animal rights continues (as it does too for human rights). This volume of *Animal Law* examines changes occurring in our world and asks where we are trying to go with our concern for the rights of non-human animals. The stark reality of ever-diminishing resources means that it is important, as never before, to define how we should make ethical deci-

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sions when faced with having to mediate between the rights of humans versus the rights of animals and between the rights of different animal species.

My own long-term study of chimpanzees, along with other studies in the wild and in captivity, has provided information that blurs the line, once believed to be so sharp, between human animals on the one hand and the rest of the animal kingdom on the other. We share more than ninety-eight percent of our DNA with chimpanzees. Our brain, central nervous system, blood, and immune responses are more like those of chimpanzees than of any other living creature. Chimpanzees form close, enduring bonds between family members, show non-verbal communication such as kissing and embracing, and emotions such as happiness, sadness, compassion, hatred, and mental as well as physical suffering. They can plan for the immediate future, use and make tools, and recognize themselves in mirrors. Because of our close evolutionary relationship, I have argued that certain of the fundamental legal rights that we extend to humans should also be extended to chimpanzees and the other great apes.¹ This does not mean that I think such rights should not be extended to other kinds of sentient beings with whom we share this planet.

The argument that non-human animals should be afforded legal rights, based on the fact that differences between them and us are of degree, rather than kind, has been put forward by a great number of animal welfare advocates in the past.² But the very lives (let alone rights) of all animals are threatened by the continuing destruction of ecosystems and consumption of resources by humans. In Africa the natural range of the chimpanzees has been drastically reduced so that they have become locally extinct in a number of countries where once they lived—along with many other animals. In the United Kingdom, the urban sprawl, the multiplicity of roads, the clearing of various types of habitat, and the horrifying use of pesticides have brought many animal species to the brink of extinction. The same is true almost anywhere. Clearly it is important that animal rights advocates think of new strategies including new legal processes that will respect the rights of non-human life forms.

In this volume of *Animal Law*, several authors discuss how the legal rights of humans compete with those of animals. Rick Eichstaedt's article, "Save the Whales" v. "Save the Makah": *The Makah and the Struggle for Native Whaling*, discusses the competing interests of the Makah Indian tribe and the gray whale. The Makah will begin hunting gray whales for the first time in over seventy years in the fall of 1998. Some defenders of indigenous peoples' rights argue that the Makah should be allowed to return to their traditional ceremonial practice. Animal rights groups argue that it is not right to kill even one whale. There are no easy answers in conflicts such as these.

¹ See generally Dr. Jane Goodall & Steven M. Wise, *Are Chimpanzees Entitled to Fundamental Legal Rights?*, 3 ANIMAL L. 61 (1997).

² See, e.g., RICHARD K. MORRIS & MICHAEL W. FOX EDS., *ON THE FIFTH DAY, ANIMAL RIGHTS AND HUMAN ETHICS* (1978); GARY L. FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* (1995).

The legal rights of two animal species may also conflict. For example, should exotic species that are crowding out native species be removed? How? What should be done about our dogs and cats when they clash with wildlife, or with livestock? Across the nation there have been a rash of cases involving dogs and livestock. Robert Bovett and Christopher Eck have combined to write an article discussing state and local dog control laws in the context of an Oregon case where two dogs were sentenced to death because they chased sheep. In addition to providing a valuable insight into how human companions of companion animals can fight these harsh laws in the court system, it should make us consider which animals currently have more legal rights—the livestock or the family pet? The answer might be that neither animal has rights but that the livestock “owner” has more legal rights than the human companion of the unfortunate dogs in this case.

Many people may be familiar with the debate over dolphins in the eastern tropical Pacific Ocean and tuna fishing. Kristin Stewart’s article discusses this unfolding debate and highlights the conflicts between environmental groups over the best course of action to protect dolphins. Fishing nets, designed to catch schools of large yellowfin tuna, caused the death of thousands of dolphins who were swimming above the fish. As a result, the United States unilaterally banned the import of tuna caught using the nets in violation of international trading treaties. The underlying conflicts are many. The alternative methods for harvesting tuna agreed to by the U.S. result in the deaths of thousands of other sea creatures. Who decides which species takes precedence? Some would also argue that the tunas themselves do not deserve to be caught and killed. Short of a total cessation of tuna fishing, one species or another must face the ultimate sacrifice. As expanding human populations continue, policy makers must make difficult choices between species, including the human species.

The push for more legal rights for animals continues. Several of the articles in this volume address head-on the continued struggle to define the legal standing of non-human animals in our society. Steven Wise and Enger McCartney-Smith address the value we place on companion animals. While Christopher Eck and Robert Bovett discuss the status of companion animals in terms of property, Wise argues that if the animal is wrongfully killed or injured, his or her “family” should receive monetary damages in excess of the purchase price of the animal.

In examining the tapestry of interconnectedness, there is an unfortunate link that we should not ignore—violence. In my own chimpanzee research, I found that they are capable of violent attacks on each other, brutality, and even warfare. However, in chimpanzee society, as is the case for most species, acts of violence are typically motivated by basic survival needs. This is not always the case with humans. The incidence of senseless animal abuse is frighteningly prevalent. And there is increasing evidence that such abuse may be related to violent abuse directed towards other humans. There are two areas of concern—for the welfare of the individual animals being abused, and the safety of possible human victims. Charlotte Lacroix addresses this issue, and offers suggestions for identify-

ing and punishing animal abusers as a means of preventing abuse of children and partner adults.

As we move into the 21st Century, we are faced with countless problems, not only those that we have struggled with in the past, and continue to struggle with today, but also new concerns that will arise as humans increasingly lay claim to the land and its resources to the detriment of other animal species or of other individual animals. Yet there are species and individuals with whom, as good stewards, we should be *sharing* the planet. It is fortunate that new evidence increasingly points to the sentience, and sapience of so many other animals. This is becoming more widely known and is resulting in changing attitudes. And, for the animals' sake, it is important that, finally, we are beginning to realize the extent to which wholesale destruction of the natural world so often leads to human as well as animal suffering. Strengthening of the legal system with respect to the protection of animals is another extremely important development that will, hopefully, improve the lot of millions of living beings as we move through the next millennium.