

CONFERENCE

THE ANIMAL WELFARE ACT AT FIFTY CONFERENCE AT HARVARD LAW SCHOOL

INTRODUCTION

By
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Britain first enacted a law governing the use of animals for experimentation in 1876. Nearly a century later, on August 24, 1966, President Lyndon B. Johnson signed the Laboratory Animal Welfare Act into law. Initially narrow in scope, in 1970 the law was significantly expanded and renamed the Animal Welfare Act (AWA or Act). It has been further expanded over the years, and today is supposed to ensure the human care and treatment of more than 2.5 million animals held at nearly 11,000 locations where they are used for exhibition, experimentation, and the pet trade. Enforcement of the AWA has long been criticized as inadequate to fulfill this purpose, including in a series of audits by the U.S. Department of Agriculture's (USDA) Office of Inspector General, the oversight body for the agency responsible for implementing the AWA.

In December 2016, the Harvard Law School Animal Law & Policy Program, with support from the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics and the Harvard Food Law and Policy Clinic, hosted *The Animal Welfare Act at Fifty*. The two-day conference convened three dozen experts to assess the first fifty years of the Act and consider recommendations for the future. Approximately 250 people attended the conference, which included nine panels. Presenters included representatives from academia, government, industry, and nonprofit organizations.

This special issue of *Animal Law* presents edited and annotated transcripts from five of the *Animal Welfare Act at Fifty* conference panels: *Welfare Standards Under the AWA*, *AWA Interaction with Other Laws*, *Excluded Animals*, *AWA-Related Litigation and Other Efforts*, and *AWA Enforcement*.

The AWA directs the USDA to promulgate minimum welfare standards, and compliance with these standards is then assessed through agency inspections. *Welfare Standards Under the AWA* discusses the standards that the USDA has adopted pursuant to this mandate, including the agency's heavy reliance on performance standards and the challenges that reliance has presented, as well as efforts to strengthen regulatory standards for commercial dog breeders, marine mammal exhibitors, and exhibitors of infant exotic animals.

Although the AWA is the primary federal law governing animals in the United States, it overlaps with a host of other laws, both state and federal. *AWA Interaction with Other Laws* examines the interplay between the AWA and state cruelty laws, dispelling the myth that the former preempts the latter, and between the AWA and Endangered Species Act, dispelling the misconception that the two laws cannot be applied concurrently to captive wildlife.

Although it regulates more than 2.5 million animals, the AWA excludes far more animals than it covers. *Excluded Animals* delves into some of the AWA's most notable exclusions and their implications, including the exclusion of all animals raised for food and fiber—by far the vast majority of animals with whom humans interact; the exclusion of rats, mice, and birds used for research; and the exclusion of cold-blooded animals, with special attention to aquatic animals.

AWA-Related Litigation and Other Efforts details legal efforts to improve implementation of the Act over the years and the challenges those efforts have faced, including obstacles to judicial review. It concludes with a call to develop a strategy to add a citizen suit provision to the AWA in order to enhance enforcement.

Finally, *AWA Enforcement* addresses enforcement of the AWA by both the USDA and the Department of Justice. It details the USDA's heavy reliance on warnings and discounted penalties to enforce the Act and the frequent failure of those methods to deter violations, and the Department of Justice's recent efforts to take a more active role in AWA enforcement.

Each of these panels presents critical perspectives on the AWA from experts with many years of experience with the Act. They contain thoughtful analysis and carefully considered recommendations for enhancing the implementation of a law that, although now more than a half-century old, has never been vigorously enforced.

This issue goes to print at a time that appears to be the nadir of AWA enforcement, with the USDA bringing fewer enforcement actions than ever before and refusing to disclose information about AWA enforcement that it routinely posted on its website for many years.

These panels are meant to be just the beginning of conversations that are now more important than ever about how we can better meet Congress's aim of ensuring the humane care and treatment of animals under the AWA. I sincerely hope that this issue inspires further dialogue, and, most importantly, action.