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Introduction

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INTRODUCTION

ANITA L. ALLEN-CASTELLITTO*

Where do non-human animals fit into the moral universe? They are not proper moral agents, rational persons held morally responsible for their conduct. But they are proper moral patients. They are sentient creatures capable of suffering, whose well-being is increasingly in human hands, and whose treatment by humans reflects deeply on human character and ethical values.

Given animals' ethical significance, what role should the law have in fostering animal welfare—or for that matter, animal rights or animal liberation? To what extent should our relationships with animals as sources of food, drugs, clothing, furniture, entertainment, companionship, work and research subjects be regulated by state and federal law?

The University of Pennsylvania is an apt institution to sponsor a journal devoted to these important questions of policy and morals, for it has had to confront concerns about the well-being of animals the hard way. Twenty years ago, Penn was the scene of controversial experiments on primates. Investigating the potentially tragic outcomes for humans affected by head injuries, Penn researchers deliberately subjected unanesthetized primates to skull trauma.

People for the Ethical Treatment of Animals (PETA) labeled the Penn primate experiments inhumane. PETA activists broke into a campus lab and stole a videotape of the experiments. The graphic videotape was televised and, as a result, the University's Head Injury Center lost favor with the public and federal funding. Penn quickly stopped testing on primates and set up an institutional review board to monitor all subsequent animal research. According to Dr. Tracey K. McIntosh, today the University's

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Head Injury Center adheres to “the highest standards of animal welfare.”¹

The University of Pennsylvania Law School is proud to welcome the inaugural volume of the *Journal of Animal Law and Ethics*. A diverse group of distinguished and emerging scholars have contributed to this exciting first volume.

In his Article, noted animal rights theorist and lawyer Professor Gary Francione of Rutgers University School of Law-Newark takes up the core question of membership in the moral community. He argues that sentience alone, rather than human-like cognitive capacities, is sufficient for full membership in the moral community. The animal welfare movement, he argues, has failed to recognize this.

But what is “animal welfare,” really? The practical meaning of “animal welfare” is explored in an essay by Dr. Robert Garner, a political philosopher from the University of Leicester in Great Britain. He argues that to speak of “animal welfare” is to strike a compromise between according animals the full moral standing of human beings and according them no moral standing at all. While the middle way Dr. Garner defends may not pass ideal philosophical muster, he believes it is a useful political stance for securing policies that protect animals from the most wanton, egregious harms in a world of die-hard speciesists.

Taking off from the premises that higher animals are indeed part of the moral community and that animal welfare policies are necessary, Professor Ani Satz of Emory Law School boldly argues for a conception of animal welfare that is close to what Mr. Garner might consider an impractically radical call for animal rights. Professor Satz urges a “nondiscrimination paradigm for animal welfare similar to the paradigms applied to other oppressed groups, including the disabled.” When deciding how to treat animals, like monkeys, sheep, cows or pigs, she contends that policy-makers should think about whether they have good reasons to treat animals differently from humans with similar characteristics.

Further pursuing the meaning of animal welfare, University of Arizona Law Professor Darian M. Ibrahim attacks anticruelty statutes as inadequate and ineffective protectors of animals. The problem, he argues, is that anticruelty statutes call for humane treatment, but do not prevent people from exploiting animals. We are still allowed to commercially farm animals for food industries, hunt for sport, and use animals in research. All of this is exploitation, Ibrahim believes, that by its very nature requires tremendous

¹ Jon Caroulis, *Brain Injury: A Silent Epidemic*, <http://www.upenn.edu/pennew/researchatpenn/article.php?452&hlt> (last visited May 2, 2006).

suffering and makes humane treatment impossible. Until the law moves beyond the “humane exploitation” paradigm, animals will be mistreated.

And animals may be mistreated, even when they are prized exhibits at zoos and zoological parks around the world. In his Article, Aaron Kornfield tells the story of the unhappy fate of elephants at the San Francisco Zoo, who died because their artificial habitat was woefully inadequate to their needs. Kornfield concludes that the day of the zoo as a place to see “exotic animals” has come and gone: we should know better. Rather than attempt to maintain animals out of their natural habit in foreign lands in accordance with harmfully utilitarian zoo accreditation standards, zoos would do better, he argues, to offer the public a close look at regionally indigenous species for which they could adequately care.

Collette L. Adkins Gicse shows that nonhuman primates, like the elephants Kornfield describes, are often poorly cared for by their caretakers and are ill-served by existing animal welfare laws governing research. Even provisions of the Animal Welfare Act enacted in the wake of PETA’s disclosures of Penn’s head-injury research, “Improved Standards for Laboratory Animals Act of 1985,” fall short, she argues. Mounting evidence of the true psychological needs of highly intelligent chimpanzees and other nonhuman primates renders current standards for caring for captive apes, chimps and monkeys obsolete.

If animal welfare doesn’t grab you, what about human welfare? How does it feel to spend your workday killing chickens or harvesting duck livers? How does it feel to have someone maliciously kill your pet?

UCLA Law Professor Taimie Bryant assesses the impact on food industry workers of witnessing and participating in violence against animals destined for the dinner table. Convinced that animal slaughter threatens the psychological health and moral well-being of humans exposed to it, Professor Bryant forcefully argues for what she calls “collaborative advocacy” between animal welfare and human welfare advocates.

Professor William A. Reppy, Jr. of Duke Law School addresses a legal issue that goes to the heart of the human-animal companion relationship: whether a person who intentionally kills another’s pet should be liable for both the market value of the pet and for punitive damages for the emotional pain and suffering caused to the pet’s owner. Reppy looks at recent case law to address the competing tendencies to treat animals like mere property or as companions whose loss can lead to grief and pain the law ought to recognize.

Together, the Articles and Comment in this volume provide readers a vivid, stimulating introduction to the ethics and law of animals. I look

forward to what future issues will bring. All of the contributors to this volume share a strong belief that animals merit special protection. There are no articles by avid hunters, researchers dependent upon animal subjects, or chicken producers. The friendly consensus of volume one must inevitably yield to debates and disagreements among contributors of radically different viewpoints in future volumes. The world is indeed divided between people who see no harm in using animals to serve human ends and those who would protect them as fellow travelers. This journal is committed to a scholarly airing of all sides.