



Essential Readings in Environmental Law
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ANIMAL LAW

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OVERVIEW OF KEY SCHOLARSHIP

1. Cassuto, D. N., *The CAFO Hothouse: Climate Change, Industrial Agriculture and the Law*, Animals & Society Institute (2010).
2. Favre, D. S., *Integrating Animal Interests Into Our Legal System*, 10 Animal L. 87 (2004).
3. Tannenbaum, J., *What is Animal Law?* 61 Clev. St. L. Rev. 891(2013), <http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=3123&context=clevstlrev>.
4. Tischler, J., *History of Animal Law, Part I (1972-1987)*, 1 Stan. J. Animal L. & Pol'y 1 (2008), <http://sjalp.stanford.edu/pdfs/Tischler.pdf>
5. Tischler, J., *A Brief History of Animal Law, Part II (1985-2011)*, 5 Stan. J. Animal L.& Pol'y 27 (2012).
6. Lovvorn, J. R., *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Theory As A Basis for Legal Reform*. 12 Animal L. 133 (2005), https://www.animallaw.info/sites/default/files/lralvol12_2_p133.pdf
7. Francione, G.L., *Animal Rights and Animal Welfare*, 48 Rutgers L. Rev 397 (1996).
8. Wise, S. M., *The Legal Thinghood of Nonhuman Animals*, 23 B.C. Env'tl. Aff. L. Rev. 471 (1996)
9. Anderson, J., *Protection for the Powerless: Political Economy History for the Animal Welfare Movement*, 4 Stan. J., Animal L & Pol'y 1 (2011).
10. Lovvorn, J. R. and Perry, N.V., *California Proposition 2: A Watershed Moment for Animal Law*, 15 Animal L. 149 (2008).
11. Cohen, C., *Do Animals Have Rights?*, 7 Ethics and Behavior 103 (1997).
12. Luke, B., *Justice, Caring, and Animal Liberation*, 8 Between the Species 100 (1992).

Background

All law is Animal Law. It includes Property Law, Constitutional Law, Environmental Law, Civil Procedure, Tort, Criminal Law, Matrimonial Law, and the list goes on. Any statute, regulation,

case, or proceeding where the unique nature of nonhuman animals forms an issue for decision is animal law. Animal Law also sits on the cutting edge of philosophy, as societies and courts debate whether to include animals in the moral community (i.e. are they legal “persons”?).

Note that I did not mention the question of whether animals have “rights” as such. For purposes of the law, a right is a legally enforceable claim; Animals have those. For example, domestic animals have the right not to be mistreated; endangered species have the right to habitat; most agricultural animals have the right to a swift death, and so on. The question of rights, from a legal perspective, is not whether animals have them, but whether the rights they have are sufficient. The broader question of whether animals are members of the moral community is a question of norms and ethics. The law will, as it always has, adapt to shifting normative landscapes. The texts listed here are by no means an exhaustive list, nor even a particularly representative overview. They rather offer a means of egress into an emerging field of law whose importance will only grow with the passage of time.

1. ***The CAFO Hothouse: Climate Change, Industrial Agriculture and the Law*** by **D. Cassuto** tackles the question why there is little regulation on industrial livestock operations even though they are one of the biggest contributors to greenhouse gas emissions? Starting with a historical look at the development of agribusiness, the paper goes on to discuss the range of climate change impacts, and concludes with suggestions and solutions to these problems.
2. **D. Favre’s** article, ***Integrating Animal Interests Into Our Legal System***, examines the issues and obstacles that have hindered animals’ ability to obtain legal rights. Instead of advocating for the elimination of property status of animals, the article focuses on the use of state courts and legislation as the proper avenue of advancing the interests of animals.
3. As the title of **J. Tannenbaum’s** ***What is Animal Law?*** suggests, this article focuses on the difficulty that lawyers, activists, and commentators have had defining what exactly “animal law” is. The article goes on to give a detailed history of the development from “laws relating to animals” to the two main ways that animal law is generally defined today. Tannenbaum then goes to discuss why the advocacy orientated definition has garnered more support than what he calls the descriptive definition of animal law. Lastly, he explains how the advocacy definition is flawed.
4. In ***History of Animal Law, Part I (1972-1987)***, **J. Tischler** provides a detailed summary on the first animal law cases, organizations, and statutes that were established between 1972-1987. The article also gives insight on the development of animal law as a legal discipline and decision making tool of the leaders of the animal rights movement.

5. *A Brief History of Animal Law, Part II (1985- 2011)* by **J. Tischler** is a continuation of her previous paper noted above. Tischler discusses the progress that the animal law movement has made since 1985 and the institutionalization of the teaching of animal law.
6. In *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Theory As A Basis for Legal Reform*, **J. Lovvorn** gives a sobering account of the difficulties faced when trying to close the gap between public opinion favoring stronger animal welfare controls and the enactment of such policy. Rejecting the animal rights theory promoted by the likes of **G. Francione** and others as idealistic, **J. Lovvorn** argues that real change occurs by seeking reform that improves the condition and protection of animals.
7. *Animal Rights and Animal Welfare* by **G. Francione** explores the history and differences between the modern animal welfare theory and the animal rights theory that has emerged in the animal rights movement. **G. Francione** argues that the welfarist reform has not led to the abolition of animal exploitation due to ideological and structural flaws that maintain animals as property. Accordingly, Francione offers five criteria of the animal rights theory, which if followed, will help lead to the gradual reduction of property status.
8. **S. Wise's** *The Legal Thinghood of Nonhuman Animals* addresses two main topics. The first is an examination of the history of the "legal thinghood" paradigm, which he uses to refer to an entity that does not have the capacity for legal rights. The second is how the "legal thinghood" concept has entered and persisted in western common law. He concludes by arguing that this legal rule needs to be re-examined in light of new scientific and legal developments.
9. In *California Proposition 2: A Watershed Movement for Animal Law*, **J. Lovvorn** and **N. Perry** discuss the events and circumstances that led to California voters passing Proposition 2, which was a first among laws designed to address battery cages and the confinement of farm animals. As **J. Lovvorn** and **N. Perry** argue, the enactment of Proposition 2 showed a markedly big shift in public opinion and attitudes towards farm animals, and that the strategy and devices used can be applied in the future battles.
10. **H. Cohen** in *The Animal Welfare Act* summarizes the *Animal Welfare Act*. Starting from the originally enacted statute in 1966, the article goes to explain the subsequent amendments and how they came to be. Lastly, the article concludes with the failures of the Act to protect farm animals and almost all animals used in research.

11. In **Do Animals Have Rights?**, **C. Cohen** argues that animals cannot possess rights, which is properly understood as a claim or potential claim that one party may exercise against another. These rights arise and are enforced in community of moral agents, a community that is inherently human. Animals, according to **C. Cohen**, live in a world where the concept of right and wrong does not exist; they cannot make or respond to moral claims and therefore cannot have rights.
12. In the article, *Justice, Caring, and Liberation*, **B. Luke** argues that **Tom Regan**'s and **Peter Singer**'s Justice-based arguments for animal liberation fail. Rather, Luke argues that humans are motivated ethically to help animals because there is a caring animal-human bond—people sympathize when they hear and/or see what is happening to animals in slaughterhouses and animal testing laboratories.

FURTHER READINGS

1. Regan, T., *The Case for Animal Rights* (Berkeley: University of California Press, 1983)
2. Singer, P., *Animal Liberation* (HarperCollins, 2001)
3. Bryant, T. L., Huss, R. J., and Cassuto, D.N., *Animal Law and the Courts: A Reader* (West Academic, 2008).
4. Frasch, P. D. et al., *Animal Law in a Nutshell* (West Academic, 2011).
5. Sunstein, C. R. and Nussbaum, M. C. eds., *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004)
6. Wise, S. M., *Rattling the Cage: Toward Legal Rights for Animals* (Basic Books, 2000)
7. Francione, G. L., *Animals, Property & the Law* (Temple University Press, 1995)