

Searching for the Animal of Animal Ethics

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Translating the bioethical animal into a legal animal for animal welfare legislation

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Abstract

Contemporary animal welfare legislation continues to assess animal welfare primarily in terms of an animal's ability to experience "pain and suffering". Therefore, definitions of "animal" from bioethics, and other disciplines, that incorporate clear and measurable criteria for assessment of pain and suffering, will in turn facilitate translation of those criteria into legal definitions.

Recent regional and state animal welfare law initiatives indicate that states are increasingly adopting legislation that acknowledges greater responsibility in respect of animal welfare. Contemporary animal welfare law reflects foundational notions of dominion, and the legal status of animals as property. This paper illustrates that the existence and content of modern animal welfare legislation arguably shifts traditional notions of property law inasmuch as it limits what an owner can do with personal property. Furthermore, animal welfare legislation is evidence that the law recognizes a difference between animate and inanimate objects. While issues regarding animals have been dealt with under various legal headings, Animal Law is a developing separate discipline within law. At a general level Animal Law may be interpreted as issues of law

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that deal with an animal²; that take into account the unique nature of animals, and additionally affect the relationship between humans and animals. Animal Law consequently incorporates all issues of animal welfare³.

Central to animal welfare legislation, and thereby central to all use of animals, is the legal definition of “animal”. While theology, philosophy and science have been key influences on the development of the human-animal relationship, this paper will illustrate that the way different societies use animals is ultimately a reflection of each jurisdiction’s legal definition of an animal. This paper critically examines this variety of legal definitions of “animal”, and considers the differing outcomes and conflicts that have resulted regarding the use and protection of animals in society, research and agriculture. This paper will illustrate that legislation assesses animal welfare primarily in terms of an animal’s ability to experience “pain and suffering”. Therefore, definitions of “animal” from science and ethics that incorporate clear and measurable indicators for assessment of pain and suffering will in turn facilitate translation of those definitions into law. Failure to do so may result in legal inconsistency which may in turn result in delays to progress in animal welfare initiatives.

² While legal definitions of “animal” vary between jurisdictions, the definition of animal used in this paper is congruent with the definition “animal” in section 1.1 of the Animal Welfare Act 2006 (England) which defines an animal as being “a vertebrate other than man”.

³ In this paper, the term “animal welfare” is used in a manner which is synonymous with Joel Feinbergs definition of animal welfare as “duties *regarding* animals” distinguished from animal rights as “duties *to* animals”. Feinberg, J, “The Rights of Animals and Unborn Generations”, in Blackstone, W, *Philosophy and Environmental Crisis*, 1974, Athens, Georgia: University of Georgia Press.