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GLOBALIZATION AND ANIMAL LAW

**COMPARATIVE LAW,
INTERNATIONAL LAW AND
INTERNATIONAL TRADE**

Thomas G. Kelch

Globalization and Animal Law

Comparative Law, International Law and International Trade

Thomas G. Kelch



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About the Author

Thomas G. Kelch is a Professor of Law at Whittier Law School in Costa Mesa California and is an attorney in the State of California. He has been teaching, writing and speaking on Animal Law issues for more than 15 years. For nine of the past ten summers he has taught a class on International and Comparative Animal Law in either Spain or France in a Whittier Law School Summer Program, and the idea for and a significant amount of what is discussed in this book was developed and planned in preparing that class. Professor Kelch has also taught and acted as an attorney in other areas of the law, including Bankruptcy, Commercial and Corporate Law. Among his publications are a number of articles on Animal Law issues, including: "Animal Experimentation and the First Amendment," 22 Western New England L. Rev. 467 (2001); "The Role of the Rational and the Emotive in a Theory of Animal Rights," 27 Boston College Env. L. Rev. 1 (1999); and "Toward a Non-Property Status for Animals," 6 N.Y.U. Env. L.J. 531 (1998).

Professor Kelch has a B.G.S. degree, with High Distinction, from the University of Michigan, a J.D., Magna Cum Laude, from the University of Michigan Law School, a Masters Degree in Philosophy from the University of California at Irvine and an M.B.A. from the University of Southern California. He also has a seemingly endless stream of rescue animals living with him in Southern California.

Preface and Acknowledgments

I began researching and teaching in the area of international and comparative animal law about ten years ago when I first taught an overseas class on Animal Law at a Whittier Law School summer program in Santander, Spain, and incorporated in it issues relating to EU law, the World Trade Organization, the General Agreement on Tariffs and Trade, the Convention on International Trade in Endangered Species and other international and individual country laws. Since that first class, I have refined both the class and the materials that I use in the class, which I have now taught for the last eight years in Toulouse, France. The idea for this book arose out of teaching this class and the realization that there was really not much written about the subject of international and comparative animal law. While the genesis of the book was my teaching in Europe, the materials presented here are significantly different from those I have ever used in my class and reflect a choice of subjects of particular interest to me and, I hope, to readers.

This is not a casebook. It is not a treatise. It is not meant to provide a complete guide to comparative or international law relating to animals. It is rather meant to provide an introduction to and analysis of what I believe to be some of the more important individual country and international laws relating to the treatment of animals. In the process of analyzing these laws, I provide my thoughts on these laws and on what may be the future of these and related laws. I do not hide the fact that my personal beliefs favor the abolition of the present uses of animals in agriculture, experimentation and entertainment because, frankly, I do not think I could have written the book without revealing at least some of my feelings on these matters. On the other hand, I try to objectively present the contours and boundaries of the laws analyzed, so that those having different views are able without difficulty to develop and draw different conclusions.

In the more than two years that I worked on this book, there have been many individuals and entities that have provided aid and support in accomplishing my task. I first want to thank Whittier Law School for providing financial and other

Preface and Acknowledgments

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Chapter 1

Exploitation

I. A SHORT HISTORY OF THE RELATIONSHIP OF HUMANS AND ANIMALS

A. THE PERSONAL

As the spreading morning sunlight paints the forest floor with shifting patterns of yellow light, muffled footsteps are barely perceptible over the hill; ancient humans have awakened for the hunt. A young doe, alert, but not perceiving the quiet danger slowly cresting the rise, feeds on vegetation on the floor of the woods. Near a high and rocky precipice, she is effectively surrounded as three fur-clad men hoist stone-tipped wooden spears, and with skill honed over hundreds of similar hunts, hurl their weapons at her. Two strike the target, one in the hindquarters, the other in the chest. The doe starts, makes a groaning noise, begins to run, or rather stagger, in retreat, but her escape is short-lived, as she collapses less than 50 yards away on a bed of now bloodied leaves. Nevertheless, this contest between the hunter and hunted often ends in disappointment for the hunter; life is hard, cold, short and brutish for all in this world.

But this was a successful morning in the life of these humans in a hunter-gatherer tribe. Nothing of the doe was wasted; meat for food, skin for clothes and housing, sinew for binding and sewing and bone for tools and fashion accessories. But not without a price. Humans had not yet acquired the arrogance to kill other creatures without at least a twinge of remorse and did not yet view themselves as unique images of God atop a hierarchy, ruling other animals by Divine Right.¹

1. The example here is one that could be drawn from the culture of Native American hunter-gatherers. Precisely what all groups of hunter-gatherer humans believed is unknown. I merely use the model of Native American culture as an example. The premise being developed, the local nature of early human relationships with animals, holds true regardless of the nature of the

Chapter 1

There might even have been dances, prayers, rituals and ceremonies to celebrate the kill, and assuage the spirit of the doe that died on those bloody leaves.²

This was the world of human hunter-gatherer culture. The relationship between humans and animals was one of competition between equals, competition that was necessary in order to eke out sustenance sufficient to continue another day, week, or month; to find enough warmth to see another spring; to garner enough energy to deliver DNA to offspring who will continue the species. The luxury to conceptualize, analyze and categorize the creatures of the world in a ladder of moral supremacy where humans look down derisively on their animal ancestors did not yet exist.

In this culture, humans did not see themselves as anything other than animals, like the doe, the bear, the fish and the quail. They did not conceive of themselves as rulers of the natural world atop a hierarchy ordained by God, but as participants in the world with other animals that had skills and powers that they lacked.³ They saw in other animals powerful spirits to be appeased so that they could continue to successfully exploit those animals. Perhaps what they really saw were pieces of themselves imprinted in their DNA from their animal predecessors.

At this point in human history, the relationship between animals and humans was personal. The hunter and the hunted were eye-to-eye. The victory of the hunter or the hunted was a personal tragedy or triumph for either one or the other. The bounty of success for the human was shared only among kin and tribe, those who could also look into the eyes of the doe. The kill was food, clothing and adornment. There was a closeness in the relationship between animals and humans so that our utilization of animals was something that we daily witnessed and touched. There was no distance, no separation, no alienation. Instead there was an intimate and personal connection, founded on desperate necessity.

Assuming that it is accurate, as is now generally accepted, that *homo sapiens* emerged about 200,000 years ago,⁴ about 95% of human history looks something like this picture of a very personal relationship between animals and humans. But this changed.

culture's beliefs. In regard to the relationship between animals and humans in Native American culture: see David S. Johnston, *The Native American Plight: Protection and Preservation of Sacred Sites*, 8 WIDENER L. SYMP. J. 443, 447–48 (2002); Rennard Strickland, *Implementing the National Policy of Understanding, Preserving, and Safeguarding the Heritage of Indian Peoples and Native Hawaiians: Human Rights, Sacred Objects, and Cultural Patrimony*, 24 ARIZ. ST. L. J. 175, 181–82 (1992); Anastasia P. Winslow, *Sacred Standards: Honoring the Establishment Clause in Protecting Native American Sacred Sites*, 38 ARIZ. L. REV. 1291, 1297–98 (1996); J.J. Finkelstein, *The Ox that Gored*, 71 TRANS. OF AMER. PHIL. SOC. 5, 52–54 (1981).

2. For discussions of the spiritual nature of the relationship between humans and animals in Native American cultures, see generally COLIN G. CALLOWAY, *ONE VAST WINTER COUNT* 36–37 (2003); Winslow, *supra* note 1, at 1296–98.
3. See Johnston, *supra* note 1, at 448–49 (stating that Native Americans saw animals as superior to humans); Rod Preece and Lorna Chamberlain, *ANIMAL WELFARE & HUMAN VALUES* 10 (Wilfrid Laurier University Press 1993) (hereinafter “Preece and Chamberlain”) (discussing how hunter gatherers felt themselves to be an intrinsic part of nature).
4. FREDERICK L. COOLIDGE & THOMAS WYNN, *THE RISE OF HOMO SAPIENS* 244, 247 (2009).

B. THE LOCAL

Humans are not unintelligent creatures. At some point, humans came to understand that the hunter-gatherer lifestyle was not a particularly efficient one. Perhaps there was another way. As humans came together in larger numbers, they began to kidnap and hold prisoner the wild adversaries they had formerly pursued in a gamble with low odds. In confinement, animals could be easily subdued, slaughtered and molded to the purposes of their human captors. Thus, some 9,000 to 12,000 years ago, the movement toward an agrarian society began, as humans traded their spears for spades and abandoned the hunt for the homestead.⁵

The din of the agricultural village's market began early, as did the hunt. There were sheep, chickens and goats galore shuffling in a mixture of dust and excrement. These animals were not the alert and fiery-eyed wild animals that the hunter-gatherer knew, but new breeds intentionally shaped to cooperate with their new human masters. The hungry no longer stepped silently into the wilds to find succor, but found it through trade with experts in raising and sculpting formerly wild animals into creatures both robust in physical characteristics and pliable in temperament.

There were those who created tools; those who wove; those who protected us from hostile attack; those who raised food and those who prepared it for sale. One large step forward from the hunt had been achieved; now there was trade. The struggle to eat was no longer a battle with a mysterious and wily denizen of the forest, but a struggle to acquire the economic value that could be traded for sustenance and even more. The question now became—what can I create that the shepherd and farmer will so value that I can trade it for a sheep, a goat, or a chicken?

Although in the chaos of the market one might still take dinner home alive, it was not the same as in hunter-gatherer days. Dinner was docile, it was ripe to be taken by a simple knife stroke to the throat; it was not the alert and circumspect animal that so often eluded us in the past. We created the earliest form of robot, a biological machine crafted to satisfy human desires. The animals humans used no longer had to be pursued, perhaps for days, over the top of that hill. Now they were delivered. They could be transported from village to village; herded, driven, channeled, and steered to the market to satisfy the weaver, the tool-maker and the grocer. Eventually animals were even given legal status; unfortunately for them, it was the status of property.⁶

In this culture, unless I was the farmer, I was now at least once removed from the animals that my body converted to muscle, bone and blood. My meals and

5. JULIET CLUTTON-BROCK, *A NATURAL HISTORY OF DOMESTICATED MAMMALS* 26 (2d ed. Cambridge U. Press 1999) (using a 9,000-year figure for domestication of animals); Preece and Chamberlain, *supra* note 3, at 7 (stating that cultivation of the soil began about 12,000 years ago).

6. See STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* 23–34 (Perseus Publg. 2001). As Wise describes, Near Eastern, Mesopotamian and Israelite law provided for the ownership of animals. In addition, Cuneiform tablets speak of ownership of numerous types of domesticated animals.

clothes might come from animals similar to those the hunter-gatherer chased, but the chase was no longer mine. The animals might be brought to me from some miles away, raised in the bucolic countryside by a jolly, toothless man that I did not know very well. But I did know him. He was local. But the personal relationship between the consumer and the consumed was largely gone; it was now a matter of commerce. It was local commerce; the animals did not travel too far; but it was commerce nonetheless.⁷

C. THE GLOBAL

Now the smell is a blend of diesel fumes, cow defecation and urine. The sounds are a mixture of terrified bovine groans, the slow wearing of rubber tires on concrete and the roar of an internal combustion engine burning the remnants of ancient forests. Today, animals, animal products and everything else can be trucked, sent by rail, or flown over long distances in short periods of time. Animals no longer just travel from village to village, but from country to country. Animal products, as a result of modern technologies of food preservation, can be kept and transported around the world and remain fresh. We can have *foie gras* from France, caviar from Russia, Kobe beef from Japan and more.

But the march of modern technology has not stopped at improvements in the transport of food products. As there was an industrial revolution, which changed the manufacture of industrial and consumer products, so has there been a similar revolution in the use of animals. As the industrial factory became the engine for the production of non-food products, another kind of factory was created to satisfy human desires for animal products—the “factory farm.” The idea is the same as for any other factory: economies of scale can produce products in the most economically efficient manner possible. So we now have chicken farms housing as many as 125,000 hens⁸ and feedlots for cattle with as many as 100,000 animals,⁹ all of which is done in the smallest possible amount of space. As an example of the factory nature of modern agriculture, consider this description of the lot of pigs that are factory-farmed for their flesh:

In some ways the lot of intensively farmed pigs—or hogs as they are known in the farming world—is the worst of all. For pigs are highly intelligent—at least as intelligent as dogs, sometimes more so. For example, a pig named Hamlet is able to move a cursor (designed for use

7. As an example, see the discussion of the closer relationship between humans and animals in Germanic culture prior to the 1930s, in Isobel Leybold-Johnson, *Lawyer Lends His Voice to the Animals* (Jan. 25, 2009), <http://www.swissinfo.ch/eng/Lawyerlendshisvoicetotheanimals.html?cid=979670>.

8. Karen Davis, *The Battery Hen: Her Life is Not for the Birds*, <http://www.all-creatures.org/articles/egg-battery.html> (last visited May 21, 2010).

9. PBS Frontline, *Interview with Michael Pollan*, <http://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/pollan.html> (last visited Apr. 30, 2010).