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Foreword

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FOREWORD

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“All law is animal law.” Every year on the first day of the semester, I say this to my students. Animal law is property law (according to the law, animals are, after all, property); tort law (who can sue for animal abuse and why?); agricultural law (when and how can we use and consume animals?); constitutional law (is animal sacrifice protected religious expression?); matrimonial law (who gets the dog in the divorce?); and the list goes on. Animals’ roles within these disciplines implicate issues of personal autonomy as well as the role of our species in the ecosystem. For these reasons as well as many others, animal law is environmental law as well. And, of course, animal law includes profound issues of jurisprudence and civil rights. It compels us to examine the nature of our relationship to other beings and the obligations we have toward them, both as individuals and as a society. These too are environmental issues.

This overlap between animal law and environmental law arises because the two disciplines are fundamentally linked. One cannot talk about the environment without also discussing the nonhuman sentient beings that populate it. Indeed, as I shall discuss shortly, one of the most vexing issues for me— as a scholar working in both fields—involves my ongoing attempt to address the historical tension between the two disciplines. This volume of the PACE ENVIRONMENTAL LAW REVIEW (PELR) marks

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an important step on the path toward resolving those tensions and moving environmental law forward. That path will not always be smooth, nor will it be obstacle-free. A short anecdote will illustrate what I mean.

A few years ago, I attended an international conference dedicated to charting a course forward for environmental law. I heard many outstanding presentations discussing, among other things, how to create a categorical imperative for nature, how to recognize legal rights for nature, and many other important topics. Then, during the breaks, participants decamped to tables piled high with the flesh of animals who had been factory-farmed and slaughtered with little or no thought to their role in nature or their rights within it.

When it came my turn to speak, I introduced my talk (which was about industrial agriculture and environmental ethics) by noting how inspired I was to hear people I admire make such powerful cases for environmental protection. But, I noted, it is important to think about what we mean when we talk about the environment. Because nonhuman animals, no matter how you define environment, must be included in that definition.

Protecting the environment, I argued, involves first looking critically at what we have done to it. I then put up a picture of a spent hen—her feathers eaten away by the urine and feces of the hens in the cages above, her exposed skin covered with sores—lying discarded and barely alive on the garbage pile where she had been tossed for disposal. “We need to look,” I said, “at what we have done to *her*.” My point was that while the pollution, climate impacts, and habitat loss resulting from animal abuse, are crucial environmental problems, *so too is the abuse itself*. Even if we mitigated the pollution, we would still be doing enormous harm to the environment. After my talk, many people approached me to express their agreement and solidarity. For most of them, however, their next stop after me was the food table, where members of the environment lay mutilated and dead.

These types of stories (and they are common) are not just about animals; they are about us—about how we live in the world and the norms and laws that govern our interactions with the nonhuman environment. Their complexity makes animal law both interesting and vitally urgent. From the wild animals

threatened by habitat disruption, hunting, pollution, etc., to abused or abandoned pets, to the laboratory animals who are infected, mutilated and isolated, to the billions of animals in agriculture whose journey from factory to plate involves torments that would tax the imagination of a sadist, the plight of animals is dismal and worsening. Consequently, the need for a legal regime that effectively protects nonhumans has never been more dire. However, addressing this need will involve some tough sledding.

For example, is it ethical to experiment on animals if it furthers our knowledge of human epidemiology? When, if ever, does the suffering of an animal trump the human quest for knowledge? Similarly, is it ethical to consume animals if other sustenance is available? Why is it acceptable to buy, sell, forcibly impregnate, confine, and kill sentient beings whose ability to suffer is scientifically documented and beyond cavil?

On the other hand, if animals are indeed members of the moral community, does that make all human use of animals unethical? How can a human/animal relationship not involve use? Are not all animals in relationship with each other and are humans not animals? Do not some of those relationships involve consumption? And what role does the law play in defining acceptable uses and proscribing others? Who determines what constitutes exploitation and how should such behavior be regulated? How do we manage our relationship to animals living in the wild? All of these questions – and many others – are culturally as well as historically contextual.

The articles in this volume represent an important step forward in the consideration of these issues. All of them bear careful reading, rereading, and discussion. In addition, the very fact of their appearance in PELR is itself worthy of significant follow-up discussion. No environmental law journal has ever before published an issue focusing on animal law. The editors of PELR are to be congratulated and, more importantly, emulated. Thanks to this kind of groundbreaking work, I believe we can soon expect to see animal law regularly included in environmental law journals (and vice-versa). PELR has always been a thought leader in the field and it should surprise no one to see that trend continue. This volume represents a courageous

and important step forward for environmental law and for animals. I commend it to you with gratitude and pride.