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## Environment, Ethics, and the Factory Farm

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# ENVIRONMENT, ETHICS, AND THE FACTORY FARM

DAVID N. CASSUTO\*

Good morning; thanks for having me here. The last time I was in Houston was the day the *Challenger* exploded, so today's a far better day. What are the ethics behind factory farming? What are the ethical implications? Specifically, I'd like to focus on the environmental implications. But I define environmental implications a little differently than a lot of folks because I teach animal law.

One of the things that I say to my students on the very first day of class, in the very first sentence, is that "all law is animal law." The syllabus that I use lays that out. We do criminal law; we do constitutional law; we do civil procedure; and we do administrative law. Animal law is there in all of it. And we could do matrimonial law or we could do real estate law; animal law is in there too. It's certainly in environmental law because animals are part of the environment. We'll talk a little bit more about that later.

First of all, with respect to factory farming, you heard Professor Ortiz talk about confined animal feeding operations (CAFOs). That, of course, wasn't always a characteristic of farming in the United States. The United States was founded on Thomas Jefferson's yeoman idea of the family farm. He wrote about it in the book, *Notes on the State of Virginia*, saying that every man should have enough land to grow enough food to feed his family. We were a nation of farmers, and his idea was basically one of inalienable rights—that everybody should have enough land where they can

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grow enough food to take care of themselves. That concept is a romantic ideal, and it's still part of our notion of ourselves as Americans—that we're a nation of small farmers. Unfortunately, we're not.

Instead, farms have become factories, and the animals raised in those factories are just commodities. That's how they're viewed by the industry, and that's how they are treated by the industry. They are a vehicle through which to make money. The relationship that once existed between people and the animals that they raised has diminished, and of course, this change has all kinds of ethical implications.

I am not trying to draw a happy picture of what it was like to be an animal in the nineteenth century, the eighteenth century, or even the early twentieth century. That might be an interesting discussion on the nature of the relationship between humans and animals and how it has evolved over the centuries, over thousands of years. But the relationship between humans and animals now is vastly, vastly different than even fifty years ago. The relationship between humans and animals in the food production process is basically one of tinkerer and tinkeree.

In other words, the animals are to be produced and then sold. Well, first they are dismembered, and then they are sold. So that's how they are viewed and treated by the industry. For example, in the year 2000, only thirty percent of the 640,000 farms in the U.S. provided pasture for their animals. That's a staggering statistic, and I'm sure the number is lower now. So, where do the animals go? The animals go to these CAFOs. That's where they spend their lives. They spend their lives in very, very tightly confined spaces. They never see the light of day because that's not important to the production process. This is an important thing to think about as we consider the ethical implications of this process.

Another part of the ethical implications of this process relates back to what I told you earlier: environmental law is animal law, and this production process necessarily generates waste. I don't think I'm going to surprise any of you when I say that animals poop and they poop a lot, especially when they have nothing else to do. Most CAFOs are a little smaller than 55,000 animals, but there are some much larger. This particularly large CAFO (55,000 head of cattle) generates more solid waste than the city of Portland, Oregon.

Do you know what happens to the solid waste generated by the city of Portland, Oregon? There are some very complicated sets of law, like the Clean Water Act, that regulate how human waste gets treated, because it's very toxic. We have built sophisticated waste treatment facilities for our waste that are regulated by the aforementioned complicated laws. On the other hand, the waste that comes out of a CAFO is far more toxic than human waste, but where does it go? That waste goes into big sewage

lagoons that sit outside, dry up, and get spread onto fields. The toxins then make their way into the ground water that we drink.

So human waste gets treated like the dickens. Conversely, animal waste doesn't get treated at all—and look at the amount of animal waste that's being generated. What happens is that what was once fertilizer is now toxic waste and that is an issue. I think one of my fellow panelists is going to be talking much more about the strict environmental legal issues. So I'm not going to spend a lot of time on them, but I want to introduce you to some of the things that are generated by these CAFOs, including ammonia, nitrous oxide, volatile organic compounds, hydrogen sulfide, and particulate matter.

All of this is bad and, oddly, underregulated. The legal regime (or absence thereof) has spawned all kinds of litigation, but most of the litigation skirts around the edges of the problem because frankly, the laws don't reach CAFOs in any meaningful kind of way. And that's because of the highly favorable regulatory environment in which industrial agriculture operates in this country.

But the problem is not just waste. It's not really about the waste at all. Emissions are a serious problem, but even if we could fix that, that's like window dressing. This is much more than a pollution problem. I was at a conference in Norway a few months ago. It's a great country—expensive, \$9 for a Diet Coke, but beautiful. Anyway, the conference was called the “Rule of Law for Nature.” It was an international environmental law conference. It was really inspiring.

First of all, it was inspiring that the country of Norway paid thousands of dollars—I don't know the exact amount—to fly academics in from all over the world to have this discussion about whither environmental law. Where should it go? Where is it now? There were some fascinating papers, and I was honored to be a part of it.

Several folks got up and spoke about how there is a need for a categorical imperative for nature and the environment. They proposed that the idea of the environment must be built into any sort of ethical legal discussion. It was really great. I was energized (as I always am) to be in the company of really smart people who are thoughtful and passionate about these issues.

But then, during the break, everybody would head out to the buffet where there were heaping tables of meat and fish that had been factory-farmed. I was a little bit taken aback, but this was one of those rare times where I actually came prepared to address this issue. I got up and I said, “You know, I am really delighted to be here with everybody and to talk about this idea of a categorical imperative for the environment, but it's important for us to think about what we mean when we talk about the

environment. Because nonhuman animals—no matter how you define the environment—are included in that definition. They are the environment, and we need to look at what we've done to the environment."

[Puts up picture of spent hen] I put up this picture and I said, "Look at what we've done to her." This is why we cannot have a discussion about environmental ethics without having a discussion of what we're doing when we eat because we eat a lot. And what we eat matters to how the environment is impacted. It's not just a discussion about the law. It's a discussion about how we live in the world. And this is the kind of thing that we're doing to the world. This is where chickens and pigs spend their entire lives. This is an environmental issue. They are the environment. This is an ethical issue because not only are they the environment, but they are living, sentient, feeling beings who are experiencing what it's like to be in those cages.

And so, when we are talking about factory farming, we are talking about a deliberate indifference to life. We're talking about killing 9 billion animals, which is an underestimate of the amount of animals killed every year in the United States alone, for food. These are animals confined in spaces so small that they can't even turn around. They're stacked in cages by the hundreds of thousands, and so we have to ask ourselves: "What does it mean that we do this?" We have to back up and we have to ask, "What about the rhetoric?" When we say, as we often do, that someone was treated like an animal, what do we mean? We're saying that they treated someone like garbage. That's what we mean so we might as well say they treated a person like garbage. But instead, we say we treated them like an animal, and we never stop to think about what that means. What does it mean to say that you treated someone like an animal? One example which you may have heard is when the Nazis loaded people onto cattle cars and shipped them off to concentration camps. The idea was that they were dehumanizing people. It was a horrible crime against humanity.

What about when we do that to animals? Are we de-animalizing them? I think we are. We are de-animalizing them, and we're turning them into garbage. If it's okay, rhetorically speaking, to treat animals like garbage, then it stands to reason that laws would be of no help. Take the Humane Slaughter Act, for example, which sounds like it should be a good idea. If you're going to slaughter animals, you should do it nicely if that's possible (which is an interesting discussion in and of itself). But we don't even need to go through that discussion because the Humane Slaughter Act excludes poultry, including chickens and turkeys, which comprise some ninety-eight percent of the animals that are slaughtered for food in this country. These animals are not even given legal protection when they're about to die. So

any regulations regarding how animals are killed don't apply to them. You can basically kill them however you want.

There are also state anti-cruelty laws in all fifty states. However, in most states, these laws exclude generally accepted agricultural practices. And what are generally accepted agricultural practices? They are what most industrial agriculture operations do. It has to do with what's the common practice. And what's the common practice? The common practice is the most economically efficient practice. It has nothing whatsoever to do with ethics. It could, but it need not.

So we have a situation where something is excluded from legal protection based on the idea that the market will take care of it. Well, then we are treating the market as (A) a rational actor, and (B) an ethical actor. And in my experience, the market is neither. The market requires some regulation because ethics are not built into the free market. That's not a criticism of the free market. The free market is not designed to be ethical. It's designed to be a free market. Regulations are designed to be ethical, but unfortunately, we don't have any. Trusting the free market to be ethical is like trusting a coin toss to do what's right. The free market is not designed to be ethical; it's designed to be regulated by ethics.

In terms of really describing the absence of ethics, here is my favorite example. We have a law that, at first blush, sounds like it should be somewhat useful. It's called the Twenty-eight Hour Law, and it supposedly regulates the transport of animals. Under this law, you can't transport animals for more than twenty-eight hours without stopping to give them access to food, water, and rest. So, on its face, that sounds like a law that's designed to protect animals.

We don't have time to go into the history of the law, but I would just ask you to consider it this way. Let's phrase that law in the positive. If you can't go more than twenty-eight hours without allowing the animals access to food, water, and rest, that means that you *can go* up to twenty-eight hours without allowing an animal access to food, water, and rest. I would ask you to consider what would happen to you if *you* went twenty-eight straight hours without access to food, water, and rest. Then, think about yourself confined in a cage, on the back of a truck when this is happening. So the idea that the Twenty-eight Hour Law was designed to protect animals is a bald-faced joke, or it would be a joke if it wasn't true.

And to top it off, the law is not even enforced. I think the last enforcement action was in 1960, and the fine was \$500. So where does this take us? Well, as I said earlier, animal law is environmental law. We can't begin to address or deal with the enormous global environmental crisis in which we are ensconced, and from which it's going to be difficult to emerge, until we address the nature of our complicity in the predicament.

We are treating a good chunk of our environment like garbage. That's not the way that you solve an environmental crisis.

For example, in the last twenty minutes since I've been talking to you, two-and-a-half million animals have been slaughtered in the United States, many of them in grotesquely painful ways. This leads to an issue that we don't have much time to talk about right now, and that is the issue of sustainable development, an idea which everybody is very eager to discuss. I go to these environmental conferences all over the world. I read and write about the topic of sustainability all the time. The "Rio Plus 20" revisiting of the 1992 Earth Summit, which took place in Rio this past June, was all about sustainable development—which is a great idea. Although, I'm still waiting for somebody to tell me what sustainable development means. I'm also still waiting for anybody to have a meaningful discussion about sustainable agriculture. What does it mean? Let's break down this concept—sustainable agriculture is agriculture that is sustainable. You have to talk about the term *sustainable* and examine the ethical issues embedded in that. And in order to do that, you have to talk about how you are behaving and how your behavior interacts with those other beings with which we share the planet. That's what a sustainable agriculture practice is—it's one that is good for the planet. This discussion needs to take place and it needs to include an ethical bias.

Environmental law and environmental ethics are interwoven. You can't separate the two because environmental law grew out of environmental ethics. Environmental law in the United States and environmental law in the world are new. Environmental law really began in the United States in the 1960s. It's new—it's younger than some of the people in this room, including me. It is a developing field that grew out of the fact that things like rivers were catching fire in the United States and that DDT was destroying the food chain. Never mind the food chain—it was destroying the web of life.

Rachel Carson wrote this book, which some of you may know, called *Silent Spring* that talked about the impact of pesticides on the ecology of the country. She was excoriated and treated like a hysterical women. In fact, there was a video of a CEO, the head of some pesticide company, pouring DDT into a glass of water and drinking it. He is no longer with us. But people came to agree that this kind of stuff is bad and that we need to regulate it. And that's where environmental law came from.

Most of the environmental laws in this country date from 1969 to 1977. There was a seminal piece written—again, some of you may also know this one—called "The Tragedy of the Commons," written by a man named Garrett Hardin. And Hardin wrote that there is a tragedy, an

Aristotelian tragedy, an unavoidable disaster that you see coming but you can't avoid, with respect to the way we use our environment.

Hardin used the idea of a common pasture where farmers would graze cattle. Everyone grazed their cattle in the commons, and as long as the amount of cattle was within a certain carrying capacity of that commons, everybody was happy. But eventually, one farmer said, "Hey, you know what? I'm going to put another cow on there to graze. Yeah, okay, there's a little less grass for everybody, but I'm still gaining one cow." So he decided the net gain was greater than the net loss. Then the other farmers began to recognize the same thing, and they all started adding cows to their herds. Eventually, the commons couldn't sustain it and collapsed. Yet the logic behind what the farmers did is inexorable. The idea is that as long as the individual net gain exceeds the collective net loss, it is in one's self-interest to do it.

And so the tragedy of the commons steadily increases to the point where the commons degrades. That is a very powerful parable, and a compelling argument in support of regulation. Because if people act in their own self-interest (which is only logical), then the commons—the environment—will degrade. This remains a very powerful and important insight within environmental law and policy.

But I submit to you that this parable misses a very important point. Because yes, the commons, where the cows graze, is important, and yes, it's the environment, and it's degrading. But what about the cattle? The cattle are the environment as well. And when we talk about grazing the cattle on the environment—adding cows and subtracting cows—we're already treating them like fungible commodities, and we are removing them from the equation of what is good and what is not good for the environment. And that's where things get problematic.

So in conclusion, I would ask you to look at industrial agriculture through the lens of one of the founding principles of environmental ethics. Aldo Leopold called it the "Land Ethic." In the essay by the same name, he offers a philosophical basis for an ethical relationship with the environment. He says that "a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow members, and also respect for the community as such." Later he says: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."

And I'll just say this: a factory farm does not preserve the stability, integrity, or beauty of the biotic community. It does precisely the opposite. It is, therefore, wrong. It is wrong on every ethical level, and I will leave you with that thought. Thanks for your attention.



