

**Animals and the Law**  
**2191.03A Fall Term 2009**  
**Vaughan Black**

This seminar examines legal issues pertaining to non-human animals. It is concerned with how such entities have been conceptualized by the law and with how they should be. Should animals be viewed as objects (property), as legal subjects (rights holders) or as something else altogether? This debate will provide the context for examining animal protection legislation, both federal and provincial, and current issues relating to animals. These include animal cruelty (including such specific topics as experimentation on non-humans, treatment of farmed animals and hunting), endangered species legislation, standing in animal welfare/rights litigation and the impact of trade legislation on the welfare of animals.

**Instructor:** Vaughan Black, room 419, 494-1011, [vaughan.black@dal.ca](mailto:vaughan.black@dal.ca)

**Office Hours:** Tuesdays 3:00 – 4:00 and by appointment. Or just drop by.

**Meeting Times:** Mondays, 4:30 to 6:30 in Room 309

**Materials:** Handouts. There's nothing to buy.

**Evaluation:** There are three components to evaluation for this course: a class participation mark, an oral presentation and of course the major paper.

**Class participation: 10%** There is not much to say here. You should do the readings and come to class prepared to discuss them and issues arising from them

**Oral presentation: 15%.** All students must give an in-class oral presentation. There will be one presentation a week, starting with the class on January 29. There will be a sign-up sheet and a list of subjects. The subjects of the presentations are persons who through their writings have had an effect on thinking and opinion about the treatment of non-human animals. The goal of these presentations is to summarize for the class the gist of the writer's argument, thesis or philosophy, and to offer some commentary on it. The presentations will thus generally involve preparing by reading a couple of articles, or perhaps part of a book written by the person in question, relating a summary of that reading to the class and offering some critique. Presentations should generally take 20 minutes, followed by 10 or 15 minutes of discussion and questions. A list of the names appears later in this syllabus and a sign-up sheet will be made available.

**Major paper: 75%** You must submit a paper topic to me by Friday, Oct. 23. The deadline for submission of papers is 3:30 p.m. on the last day of exams: Tuesday, Dec. 22. Take note of the Major Paper Guidelines set out at pp. 47-49 of the Calendar. Among other things, those Guidelines set out the criteria by which major papers must be assessed. Those are the standards according to which your paper will be graded.

At the end of this syllabus is a list of possible essay topics. These are intended merely as illustrations as the sorts of things that might make a good essay topic for this course. You are, of course, welcome to select one of these topics, but you are encouraged to consider making up one of your own. It is permissible to incorporate the subject of your class presentation into your paper, but there is no requirement to do so.

I encourage you to meet with me at least once during the course of writing your paper so that we can discuss its progress, and I also encourage you to give me a draft of the paper while it is a work in progress so that I can offer my comments on it.

Plagiarism. All students in this course must read

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in
  - the law school regulations (available in hard copy from the Associate Dean's office and online at [http://law.dal.ca/Current\\_Students](http://law.dal.ca/Current_Students)) or
  - the First Year Handbook (provided to all first-year students and available from Assistant Dean's Office).

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Professor Dianne Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see her. Students seeking special accommodation with regard to any aspect of evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and in any event no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff. Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on students' academic progress.

Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations. Changes may include but are not limited to adjustments to course assignments, changes to the dates of exams, arrangements for alternative evaluations for students affected by H1N1 influenza virus, modification of marks awarded for participation and adjustments to attendance policies. Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

Here is the list of names for the in-class oral presentations. You must pick one. After you pick one, come to me and I will supply you with additional information and direction, and perhaps with the reading material you will need to consult. You are encouraged to meet with me at least once in advance of your class presentation to discuss your reading and preparation.

Peter Singer: Princeton philosophy professor Peter Singer's 1975 book, *Animal Liberation* is the single most influential work in the modern animal welfare movement. Singer is a utilitarian and spells out what he regards as the preference utilitarian argument for human treatment of non-humans.

Tom Regan: Next to Singer's *Animal Liberation*, Tom Regan's 1983 book *The Case for Animal Rights* is the most influential work in the modern animal rights movement. Regan's focus on rights makes his analysis particularly important for the law and lawyers.

Gary Francione: Unlike most of the other persons in this list, Francione is a law professor and his work has a clear legal focus. His work, especially his book *Animals, Property and the Law*, is best known for his claim that it is the status of non-humans as property that is the principal barrier to legal change that would improve their circumstances.

Martha Nussbaum: Like Gary Francione, Martha Nussbaum is a law professor. She has written numerous books on a range of legal issues. Recently she has turned her attention to non-human animals. Her 2006 book *Frontiers of Justice: Disability, Nationality, Species Membership* deals with the failure of mainstream legal/political theory to come to grips with non-humans and offers her prescription for changing that.

Matthew Scully: A former speech writer for George W. Bush, Scully published a well-written book that deals with animal welfare from an explicitly Christian point of view: *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*. Examination of his argument raises the larger question of what, if anything, the Abrahamic religions have to contribute to the animals debate.

Carol Adams: This writer comes at the animal question from a feminist point of view. Starting with her 1991 book *The Sexual Politics of Meat*, Adams has drawn

links between exploitation of women and exploitation of non-humans. She has also been critical of the male orientation of writers such as Peter Singer.

Lewis Petrinovich: Relatively few writers willingly accept and defend the label “speciesist”, but Petrinovich is one. Drawing on arguments from sociobiology and evolutionary behaviouralism, his 1999 book *Darwinian Dominion: Animal Welfare and Human Interests* is his most elaborate justification for speciesism.

John A. Livingston: Livingston is the only Canadian on the list. Drawing on deep ecology, his 1994 book *Rogue Primate* playfully raises a host of interesting issues about the animal question, generally in a way that is distrustful of attempts to deal with animals through the lens of traditional morality.

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### Sample Essay Topics

Damages for loss of companion animals. The assessment of damages for loss of wrongfully killed pets raises interesting issues with respect to how such animals are conceived of and valued by the law. In addition, there are other possible paper topics related to tort malpractice claims against veterinarians.

No-pets provisions in condominiums and apartments (or alternatively, in public housing): See the Ontario case of *Staub*.

Research on animals. Around two million non-human animals are used and killed in research (medical, industrial, scientific) in Canada every year. Canada is one of few industrialized western countries that has no generally applicable legislation regulating the use of animals in research. There are many issues to be explored here, including those related to the administration of the current self-policing regime.

The right to hunt. In recent years three Canadian provinces have brought in legislation proclaiming a general “right to hunt”, and there was a bill before the Parliament of Canada to the same effect. The origins, explanations and implications for such statutes are worthy of examination.

Reform of the animal cruelty provisions in the *Criminal Code*. There has been a lot of activity on this front over the past decade. In 2008 Parliament finally amended the *Code*'s provision on animal cruelty, but only in a minor way and initiatives to undertake a more substantive alteration in the law remain.

Custody of companion animals in matrimonial breakdown. Should animals be treated purely as property, or is it appropriate to consider the best interests of the non-human, as is done for child custody? May support payments be ordered in favour of non-humans?

Chimeras. Federal legislation, the *Assisted Human Reproduction Act* outlaws attempts to create hybrids between human and non-human animals. That is, although it is legal to attempt to create a cross between a chimpanzee with a gorilla, it is now illegal to attempt to hybridize either with a human. The origins, justification and implications of such legislation are worthy of exploration.

Legal rights for non-humans. Canadian law has not been receptive to granting rights to non-human animals. Some other legal regimes, however, have taken tentative steps in that direction. What are the pros and cons of granting rights to non-human beings?

Product Labeling. The advantages and disadvantages of labeling (mandatory or otherwise) of “cruelty free” products. Note the dismissed false advertising complaint under the *Competition Act* against Kentucky Fried Chicken of Canada.

Canned hunts. In the 1990s a number of Canadian provinces witnessed the growth of “game farms”, confined areas of private land where persons could pay a fee for the right to enter and shoot an animal.

Will directives to kill companion animals. Wishart directed that when he died his horses should be shot, but in a case reported at (1992) 129 N.B.R. (2d) 397 the New Brunswick court held that enforcing such a provision would violate public policy.

Tort liability of owners of non-human animals.

Patenting of non-human life forms. The Supreme Court of Canada rejected an application to patent the so-called Harvard Mouse. Other legal systems, including that of the United States and Japan, have been prepared to grant such patents. (There is room for lots of twists here – for instance, an essay on the patentability of cloned extinct animals.)

Control and banning of certain breeds of dogs. Some Canadian municipalities have sought to limit the ownership of some kinds of canines (pit bull terriers, for example) on the grounds of dangerousness. (Another area in which municipalities have been active has been the banning of the use of animals – or at least of certain animals – in circuses.)

Domestic violence, child abuse and animal abuse. Studies have suggested links between abuse of non-human animals and abuse of humans. This raises a number of interesting legal questions that might be explored. For instance, should a person’s history of cruelty to animals count against him in a child custody dispute, or is such a history relevant to the question of whether child protection authorities should intervene to apprehend a child at risk?

Xenotransplantation.

History of provincial anti-animal-cruelty legislation in Nova Scotia (or any province, or the federal legislation).

Bestiality. Criminal prohibitions against sexual contact between humans and non-humans (interspecies rape) are widespread, longstanding but infrequently invoked. They raise a host of fascinating issues, especially since the crime itself is not defined.

The post 9/11 war on terror may encompass certain groups of animal activists; the implications of recent anti-terror legislation on the animal rights movement.

Vegan and vegetarian meal options in prisons, hospitals, mental institutions, etc. See *Maurice v. Canada* (Fed. Ct. 2002) dealing with freedom of conscience, and other proceedings under provincial human rights legislation.

Legal regulation of trapping. See the recent changes to the trapping regulations in Nova Scotia's *Wildlife Act*.

Humane education: the right not to harm animals in the course of getting an education. *E.g.*, should schools be permitted to give failing grades to students who refuse to dissect frogs in biology class, or must they (by law) provide a humane alternative?

Constitutional authority over non-humans. Is federalism good for animals?

Privacy rights of abattoirs: see the decision of the High Court of Australia in *Australian Broadcasting Corporation v. Lenah Game Meats Pty.* (2001), 185 A.L.R. 1.

Regulation of the practice of veterinary medicine, including sub-issues such as veterinarians' obligations of confidentiality.

Pet trusts in wills. Leona Helmsley left her pet Maltese an inheritance of \$US12 million, though legal proceedings reduced the final gift. The validity and administration of testamentary pet trusts raises a number of issues. There have been calls for legislation to address concerns arising from such provisions in wills.

Labeling of living animals. As far back as Hammurabi's Code there is evidence of laws dealing with labeling of non-humans. Today animals are branded, tagged, tattooed, collared, rigged with transponders and implanted with chips – sometimes pursuant to legal requirements.