Ethics and Animal Welfare Law
Who Decides?
What do we mean by “The Ethics of Animal Welfare”?
What are “Ethics”? 

• Ethics are moral principles that govern a person's behavior (personal ethics) or how an activity is conducted (societal ethics).

• Ethics are not about what we could do... but rather about what we should do.

• Ethics are driven by societal values. If enough of us agree, we codify our sense of what we should (or shouldn’t) do into law.
  
  • Examples: we should honor agreements, we should obey traffic signals, we should not sell defective products, we should not harm other people

• How society believes we should treat animals has driven the evolution of animal law for centuries.
Mutual Dependence ("The Ancient Contract")

• When we were primarily an agricultural society, our relationship with animals was one of mutual dependence. As we domesticated animals, we provided food and shelter in exchange for either their labor (e.g. horses, dogs) or their production value as livestock. In other words, “You eat well if we eat well.”
As we became an increasingly industrialized society, concern about the physical treatment of workers (especially children) became an issue. This spilled over into concern about the treatment of working horses in the cities.

The first animal cruelty statutes were enacted in the early 1800s, which criminalized intentional acts of commission such as “overdriving, overloading, torturing, or unjustifiably injuring” an animal.
By the middle of this century, many American families begin to keep animals as pets. These animals were recognized for certain intangible contributions to the family (guarding the house, teaching responsibility to children, etc), and people began to be concerned about the living conditions, not just physical treatment, of animals.

This is reflected legislatively in statutes prohibiting animal neglect, or *acts of omission*, such as “failure to provide adequate food, water, and shelter.”
Ethics → Animal Law Today

• Today, the average American is 4 generations removed from an agricultural lifestyle and the majority have never made physical contact with a non-companion animal. Over 75% of American households have pets.

  • Deeply personal connections with animals are recognized for their therapeutic value across our lifespan - from children with special needs to trauma victims to lonely seniors.

  • The emotional importance of the “human-animal bond” is increasingly recognized.
Ethics → Animal Law Today

• Our society’s relationship to animals is primarily one of “emotional companionship.” Animals are members of the family, and because of their perceived emotional or child-like purity, are often seen as deserving of special protection and nurturing.

• Increasing use of legal constructs that mirror those seen in human relationships – pet trusts, pet guardianships, pet protective orders, pet custody battles, etc.
Animal Law Today

• This emotional connection drives the current state of animal law in the United States. How society thinks we should treat animals – our ethical stance – is reflected in statutorily-required duties of care.

• The evolution of the ethical treatment of animals:
  • Ethical treatment means animal cruelty should be illegal (1800s)
  • Ethical treatment means animal neglect should be illegal (1900s)

• If ethical treatment means we should ensure animal welfare, should failure to do so should be illegal?
What Is Welfare?
Who Decides?
The Majority View

• What is the majority view of our ethical responsibility to animals?

• Nearly 95% of participants in a survey conducted by the American Humane Association said they are “very concerned” about the welfare of animals.

• Caring about animal welfare is part of the “ethical consumerism” trend, which reflects consumers’ desires to seek products & services that help them fulfill their social responsibilities.

  o Source: Markets Insider TrendSights Analysis Aug. 1, 2017
The “Five Freedoms” of Animal Welfare

• Freedom from hunger or thirst
  • Freedom from discomfort
  • Freedom from pain, injury or disease
• Freedom to express (most) normal behavior
  • Freedom from fear and distress
What is “Animal Welfare”?

Notice that all three of those statements include a component of emotional well-being.

• Animal welfare means how an animal is **coping** with the conditions in which it lives.

• An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behavior, and if it is **not suffering from unpleasant states** such as pain, fear, and distress.

• Animal welfare refers to the state of the animal... Protecting an animal's welfare means providing for its physical and **mental** needs.
Population Statistics –

• Let’s measure a simple variable in a population, such as height.

• If we measure a large enough sample of the adult population and then plot our results on a chart, the result will look like what we all learned to call a “bell curve.”

• Most people fit under the curve. Some people will be taller, and some people will be shorter.
What is the Majority View?

- If we measure and plot a social variable (like an opinion) in a population, we’ll see results that look something like this:

![Graph showing a bell curve with some people on extreme sides and most people in the middle.]

- *Most* people believe we have an ethical responsibility to (i.e. we *should*) protect animals’ welfare.
How *Could* We Frame Our Relationship to Animals?

<table>
<thead>
<tr>
<th>Animal Exploitation</th>
<th>Animal Use</th>
<th>Animal Protection</th>
<th>Animal Rights</th>
<th>Animal Liberation</th>
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<tr>
<td>• Animals may be used or killed for any human purpose</td>
<td>• Racing</td>
<td>• Animals’ emotional well-being (welfare) must be protected</td>
<td>• Animals have intrinsic rights on par with people</td>
<td>• Animals are not to be kept by people as companions or otherwise</td>
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<tr>
<td>• Cock fighting</td>
<td>• Rodeo/Shows</td>
<td>• Pets</td>
<td>• Animals must not be eaten or used in sport, research or commercial purposes</td>
<td>• People have a duty to liberate captive animals</td>
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<td>• Dog fighting</td>
<td>• Livestock</td>
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<td>• Bull fighting</td>
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<td>• Horse tripping</td>
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<td>• Zoos</td>
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How *Should* We Frame Our Relationship to Animals?

**Animal Use**
- Animals may be used commercially

**Animal Exploitation**
- Animals may be used or killed for any human purpose

**Animal Rights**
- Animals have intrinsic rights on par with people

**Animal Liberation**
- Animals are not to be kept by people as companions or otherwise

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**Some people**
- Animals’ emotional well-being (welfare) must be protected

**Most people**
- **Animal Protection**
Animal Welfare Experts?

• Veterinarians expect/want to be seen as the experts on animal welfare, but there are two problems:

  1. Although often looked to as experts on *companion* animal welfare, the profession sometimes suffers from a *credibility gap* in the context of commercial animal use.

  2. *Science* and *emotion* aren’t always compatible
Credibility Gap

• In a 2010 survey, consumers were asked:

  "Which group is the most credible source of information about the welfare of food animals?"

  1. Humane Society of the United States
  2. People for the Ethical Treatment of Animals
  3. Veterinarians
  4. Farmers/Ranchers

• Why?
  • 1 + 2 represent the views of “most people”
  • 3 + 4 represent “some people” – and those people have skin in the game. “Most people” do not derive income from animals.
Science and Emotion Aren’t Always Compatible

• “Most people” feel emotional about animals, so simple messages resonate more deeply than scientific arguments.

Never underestimate the power of one word.
“Most People” Understand Emotion

• Most people look to veterinarians as experts in areas where they have no experience, such as physiology or medications, but the same is *not* true of emotions and emotional well-being.

• Whether they’re well-versed in science or not, “most people” (including us) have enough everyday experience with emotions and emotional well-being that we don’t seek expert opinion.

• We may need a veterinarian to tell us what’s wrong with this horse, physically. But we don’t need a veterinarian to tell us this horse is unhappy.
Welfare - Who Decides?

• Animal welfare decisions are social decisions, not scientific ones.

• Science can be used to measure risk of injury (and we do this well!), but science cannot determine what level of risk is acceptable. That is a question of social ethics, not veterinary research.

• If “most people” believe something is wrong, science is unlikely to change that perception. (Example: 2 year old racing)

• Whether we should have horse racing at all will ultimately be determined by “most people.”

• “Most people” believe we have an ethical responsibility to protect and ensure the welfare of animals. Animals’ emotional well-being is paramount.
The Racing Industry

- The racing industry is in an ever-diminishing minority position because its business is firmly grounded in the animal use model, not the majority’s animal protection model.

- The racing industry suffers from an additional credibility gap because it derives income from animals, a concept foreign to “most people.”
The Racing Industry

• At the same time... as we seek to expand our fan base, we constantly and publicly highlight our emotional connection to our equine athletes.

• This is racing’s Big Conundrum: along with a marketable emotional connection comes an increased duty of care or ethical responsibility – one which “most people” see as akin to that shown to children.

• As a result, efforts to “educate” about things “most people” would never do to members of their own family (use of the riding crop, race day medication administration) are non-starters.
## Racing’s Big Conundrum

<table>
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<tr>
<th>Tweet</th>
<th>Likes</th>
<th>Retweets</th>
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<tr>
<td><img src="https://via.placeholder.com/150" alt="Twitter" /> <strong>Matt Hegarty @DRFHegarty • Apr 18</strong>&lt;br&gt;A BR's Miller says horseracing has &quot;a really weird capital, and that's the cult of personality surrounding the equine athletes.&quot;</td>
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<td><img src="https://via.placeholder.com/150" alt="Twitter" /> <strong>Matt Hegarty @DRFHegarty • Apr 18</strong>&lt;br&gt;Miller: “Give people the knowledge that these horses are loved, and that they are available, and that brings people out.”</td>
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<td>6</td>
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<tr>
<td><img src="https://via.placeholder.com/150" alt="Twitter" /> <strong>Matt Hegarty @DRFHegarty • Apr 18</strong>&lt;br&gt;Counter-observation: Horses are very easy to love, so that also makes it very hard for people to tolerate misuse, abuse, or bad outcomes.</td>
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<td>2</td>
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Are We Asking the Wrong Question?

• A number of years ago, pork producers were testifying to a commission charged with looking at swine welfare. A representative emphasized the trade association’s desire that any recommendations from the commission be based on ‘sound science.’

• One of the country’s pre-eminent animal welfare experts responded, “If we on the Commission were asking the question of how to raise swine in confinement, science could certainly answer that question for us. But that is not the question the Commission, or society, is asking. What we are asking is, *ought* we raise swine in confinement? And to this question, science is not relevant.”
Are We Asking the Wrong Question?

• When it comes to use of the riding crop, for example, we in the industry are asking ourselves an entirely different question than society is asking - and society is what will put consumer pressure on our gaming partners and constituent pressure on our legislatures to re-purpose development funds.

• While we ask whether the right answer is "three strikes, four strikes, one stride, two stride" or something else that sounds like it's straight out of a Dr. Seuss book, society is asking why we are hitting horses at all, especially since one of our common responses to welfare concerns is that our equine athletes love to run.
“When viewers switch on to racing, perhaps for the first time, they are often puzzled, to say the least, to see someone doing something to a horse that, were it any other animal or any other situation, would be grounds for arrest.”

- Greg Wood, The Guardian
Animal Cruelty statute

(1) “A person is guilty of cruelty to animals in the second degree when except as authorized by law he intentionally or wantonly:

[insert enumerated activities here]

(2) “Nothing in this section shall apply...

(e) For purposes relating to sporting activities, including but not limited to horse racing at organized races and training for organized races...”
Our Industry is Built on Exceptions

• States prohibit gambling. Constitutional amendments and enabling statutes create express exceptions for pari-mutuel wagering.

• The Interstate Horseracing Act permits interstate simulcast wagering, if certain conditions are met, even though “Congress finds that the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders.”

• UIGEA excludes “any activity that is allowed under the Interstate Horseracing Act of 1978” from its definition of unlawful internet gambling.

• Even PASPA contains an express exception to the applicability of its sports betting prohibitions for “pari-mutuel animal racing.”
Where Are We Headed?
The Business of Animal Welfare

- “Businesses and professions must stay in accord with social ethics or risk losing their autonomy” (or their customers).
  - Bernie Rollin (and me)

- Because of the intensely emotional component of the animal welfare paradigm, concerns about welfare are generally accompanied by a strongly-felt need to do something/take action.
The Unpleasant Process of Change

• A typical animal welfare concern life cycle goes something like this:

  1) Concern is expressed privately to responsible institution or industry and the complaint is dismissed or the response is not adequate.

  2) Complainant starts a grassroots/social media campaign, recruits allies, and waits.

  3) A precipitating event occurs and the complainant and allies make it a headline, furthering support for their cause.

  4) Consumer boycott, ballot initiative, or proposed legislation ensue.

  5) Responsible institution or industry is forced to respond.
Consumer Boycott

• People’s emotional connection to animals is a powerful driver of consumer behavior.

• Super Bowl commercials
  • In 13 of the last 15 years, ads featuring animals have won viewer’s choice awards

• Top 5 grossing movies of 2016:
  2. Finding Dory ($1.027 billion)
  3. Zootopia ($1.023 billion)
  4. Jungle Book ($966 million)
  5. The Secret Life of Pets ($875.4 million)
Responsible institution or industry is *forced* to respond.

- Eliminate the use of animals altogether (elephants, killer whales)
- Adjust its standard practices

  • In 2015, Wal-Mart/Sam’s Club announced it would ask suppliers across its entire supply chain to implement animal welfare standards.
  
  • A statement on the corporate website, which persists to this day:

  *Humane Treatment of Farm Animals:* Walmart is committed to offering affordable products in a way that is sustainable for people and the planet. Walmart believes that animals should be treated humanely throughout their lives. As part of its animal welfare position statement, Walmart will not tolerate animal abuse, supports the globally recognized “Five Freedoms” of animal welfare, and is committed to working with supply chain partners to implement practices consistent with the Five Freedoms.
Ballot Initiatives

PROP 2 PASSES!
It’s an historic day for farm animals in California.

YES ON 3
PREVENT ANIMAL CRUELTY
Share to say you’re voting YES on Question 3!
Legislation

• The greyhound industry
  • Since 2010: 5 states have passed legislation outlawing greyhound racing, and 1 has permitted enabling statute to sunset.

• Pari-mutuel dog racing now operating in only 6 states.

• Since 2001, 30 tracks in North American have closed.

Source: www.grey2kusa.org
Responsible institution or industry is *forced* to respond.

- Legislation: The greyhound industry

- 2016 Iowa decouples greyhound racing from racino operations and Council Bluffs closes, leaving one track.

- 2017 West Virginia bill would have decoupled dog racing from expanded gaming.

- Senator quoted as saying “If you folks in the [horse] racing industry don’t think you’re next, you’re living in a cave.”

*Source: www.grey2kusa.org*
So What Do We Do?
First, we need to accept reality.

- We need to understand that, because we derive income from animals, we are the ones in the minority here.

- Minority views that dismiss or deride the majority view typically find themselves on the losing end of both public and legislative debate.

- “If you dislike change, you’re going to dislike irrelevance even more.” - Gen. Eric Shinseki

- “Move with the cheese.”
  - Dr. Spencer Johnson
Next, We Need to Take a Step Back.

- We need to be mindful that we don’t equate concerns about the welfare of our equine athletes with accusations that we don’t care.

- Because working in racing is often an all-consuming, year-round lifestyle, it’s really, really difficult to not take questions about how we care for our horses personally.

We need to understand the questions being asked.

The question is NOT: “Do we love our horses?”
The questions that are being asked are:

1) Should animals be used commercially at all?
   Assuming the answer is “yes”:
   2) Do the existing husbandry, training, and veterinary practices of a given animal use industry maximize welfare?

In other words:
• Are we fulfilling the duty of care society demands regarding meeting both the physical and mental needs of our horses?
• Do our horses do what they do because they want to? Or because they fear pain or punishment?
• Are our horses happy? Is their emotional well-being a priority for us?
Next, we need to recognize where we are in the process.

- If the answer to any of the above questions is “No”:

  Consumer boycott, ballot initiative, or proposed legislation ensue.

- Strategies currently in play:
  - Consumer pressure to boycott casinos with live racing
  - Ballot initiatives
  - Constituent pressure to re-purpose development funds
  - Constituent pressure to decouple gaming from racing
Next, we need to recognize where we are in the process.

• Some animal entertainment industries have eliminated certain animals from their business model or shut down altogether as a result of consumer pressure and local legislation.

• Food animal producers have had to amend some of their existing animal husbandry practices as a result of consumer pressure and ballot initiative.

• The dog racing industry has been dramatically curtailed as a result of ballot initiative and legislation.
Next, we need to recognize where we are in the process.

Petitioning Lieutenant Governor Gavin Newsom (Lieutenant Governor) and 7 others

Outlaw Horse Racing In California

Sign this petition

49,066 supporters
4 needed to reach 50,000

First name
Last name
Email
United States
We need to listen and respond.

- We need to listen to what concerns people most and *respond*, rather than dismiss. Then we need to re-examine some of our existing practices.

- This is not just a regulatory issue – writing new rules and amending existing rules only goes so far.

- While science and sensible regulation are important, the industry relies heavily on its thousands of dedicated caregivers to provide for the emotional well-being of the equine athletes we love. That’s an important part of our story, which needs to be validated and retold.
Together, we must hold each other accountable for putting the horse first in everything we do.

Because when we do right by the horse, all the rest follows.