

Law and Veterinary Medicine

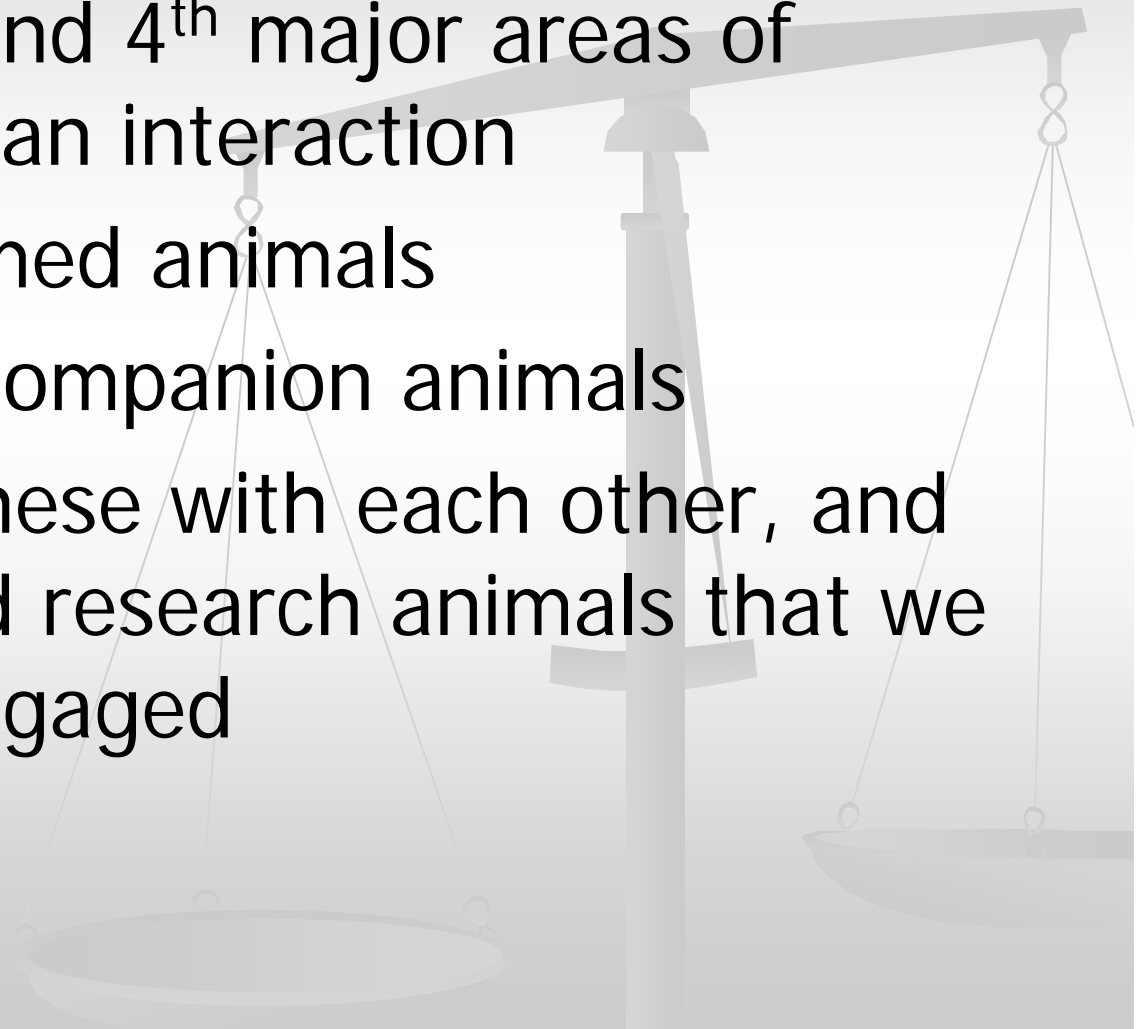


First Hour: Farmed Animals and Law
December 6, 2006

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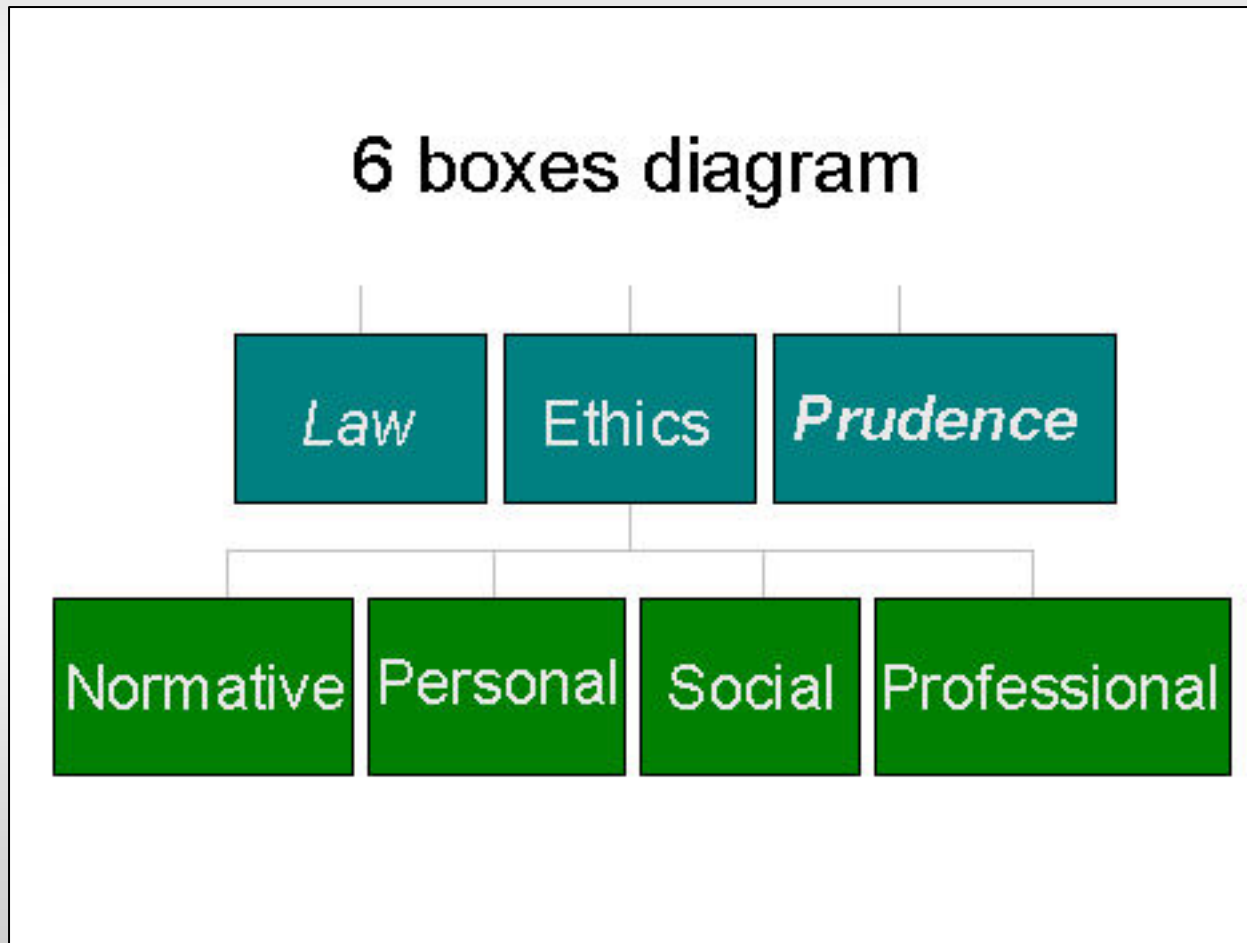
Framing today's issues

- We look at 3rd and 4th major areas of human-nonhuman interaction
- First hour—Farmed animals
- Second hour—Companion animals
- We'll contrast these with each other, and with wildlife and research animals that we have already engaged

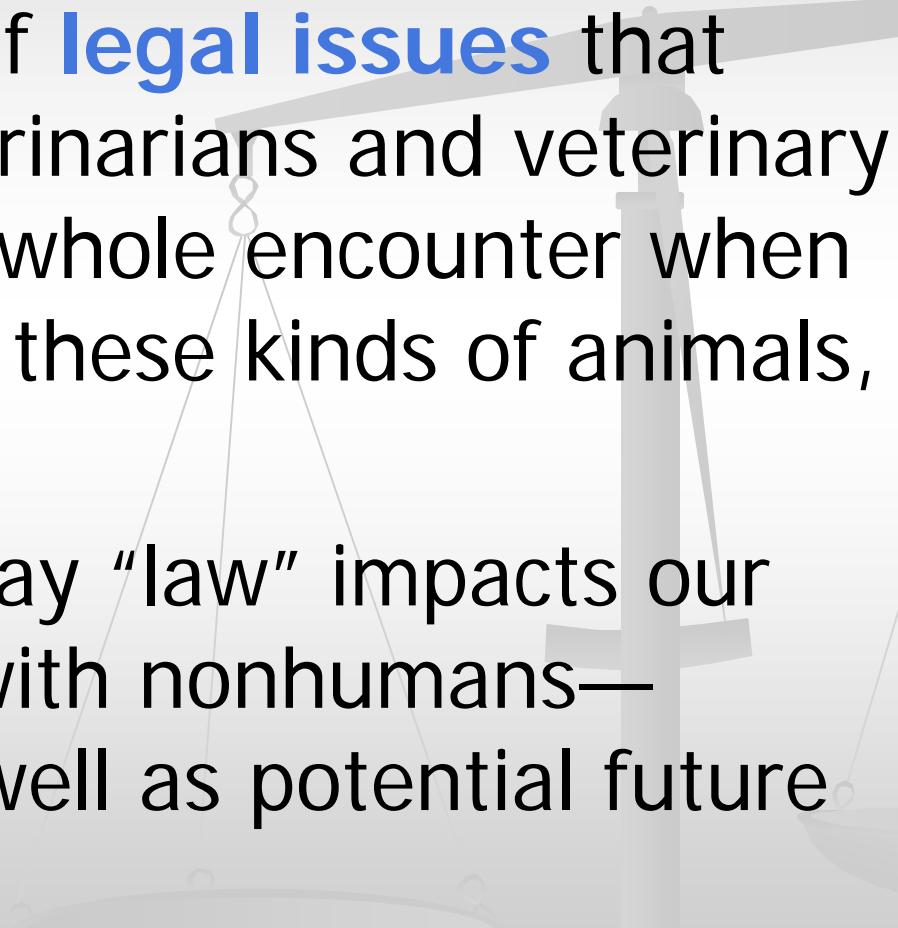


Our discussion in context

6 boxes diagram



Purposes of drawing attention to such contrasts

1. See specifics of **legal issues** that individual veterinarians and veterinary medicine as a whole encounter when they deal with these kinds of animals, and
 2. Sort out the way “law” impacts our relationships with nonhumans—actualities as well as potential future relationships
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Farmed animals ... what's on the horizon of this hot topic?

Market Revolution: Recognizing Animals Intrinsic Values

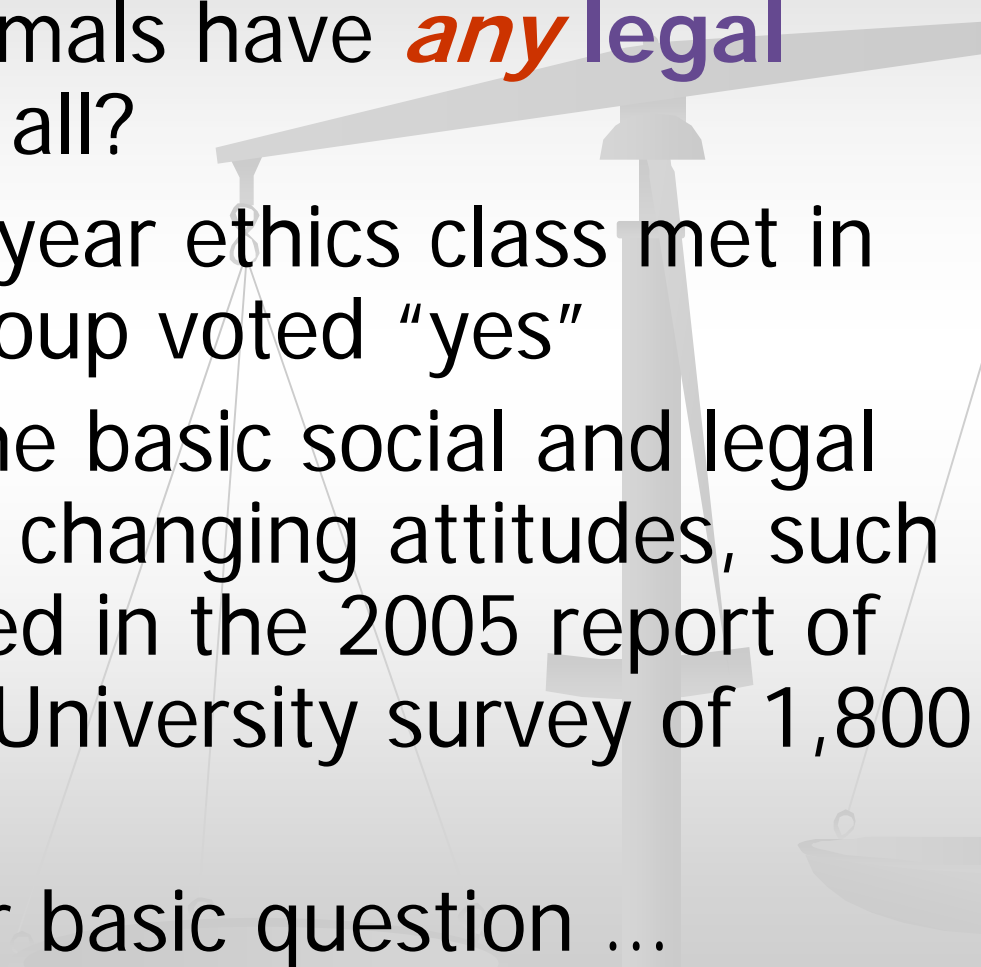
14th Annual Animal Law Conference

Lewis & Clark Law School Portland, Oregon

<http://www.lclark.edu/org/saldf/conference.html>

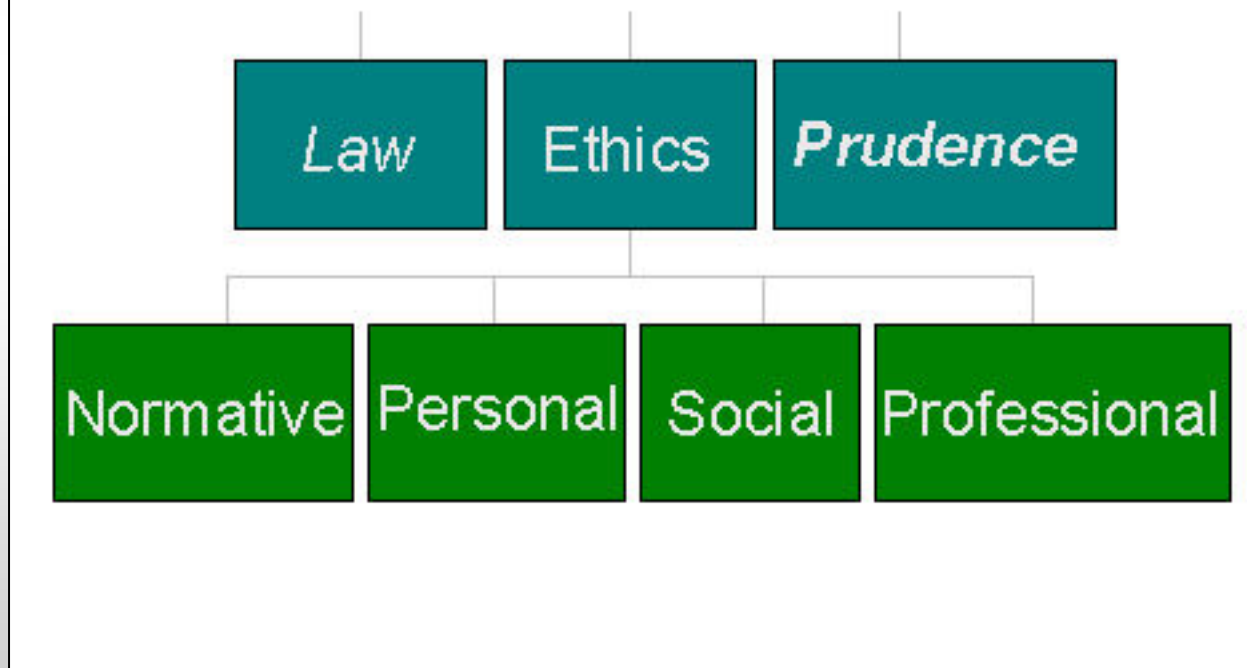


Begin with a simple question

- Should farm animals have *any* legal **protections** at all?
 - When the third-year ethics class met in groups, each group voted “yes”
 - We’ll mention the basic social and legal issues raised by changing attitudes, such as those reflected in the 2005 report of The Ohio State University survey of 1,800 Ohioans ...
 - But first another basic question ...
- 

What kind of protections?

6 boxes diagram



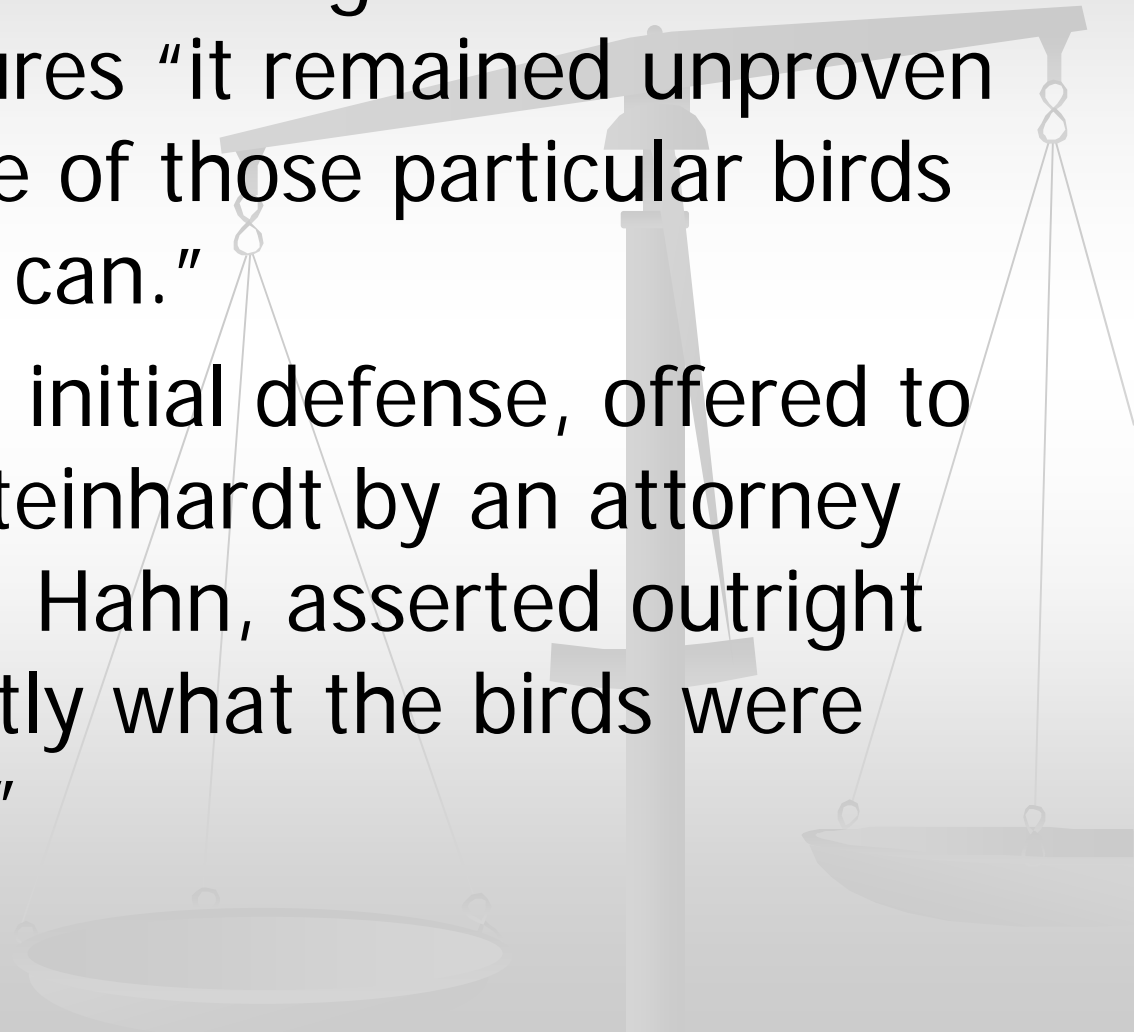
The law box



- Reading #1, "Farmed Animals and the Law"
- "Municipal court case" heard in Warren County, New Jersey, in the fall of 2000
- Poultry company, ISE America, convicted of cruelly discarding live chickens in trash cans
- Conviction appealed and overturned, partly on grounds that the producer had only six employees overseeing 1.2 million laying hens →

The law box

- With each worker tending two hundred thousand creatures “it remained unproven they were aware of those particular birds dying in a trash can.”
- “The company’s initial defense, offered to Judge Joseph Steinhardt by an attorney named Kevin M. Hahn, asserted outright that this is exactly what the birds were anyway—trash:”



The law box

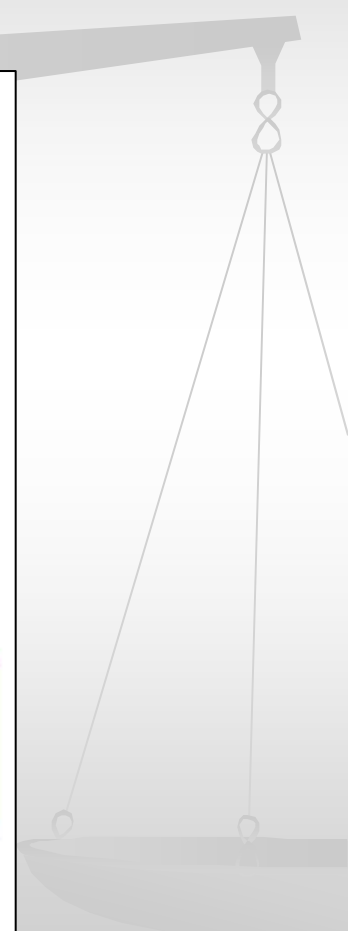
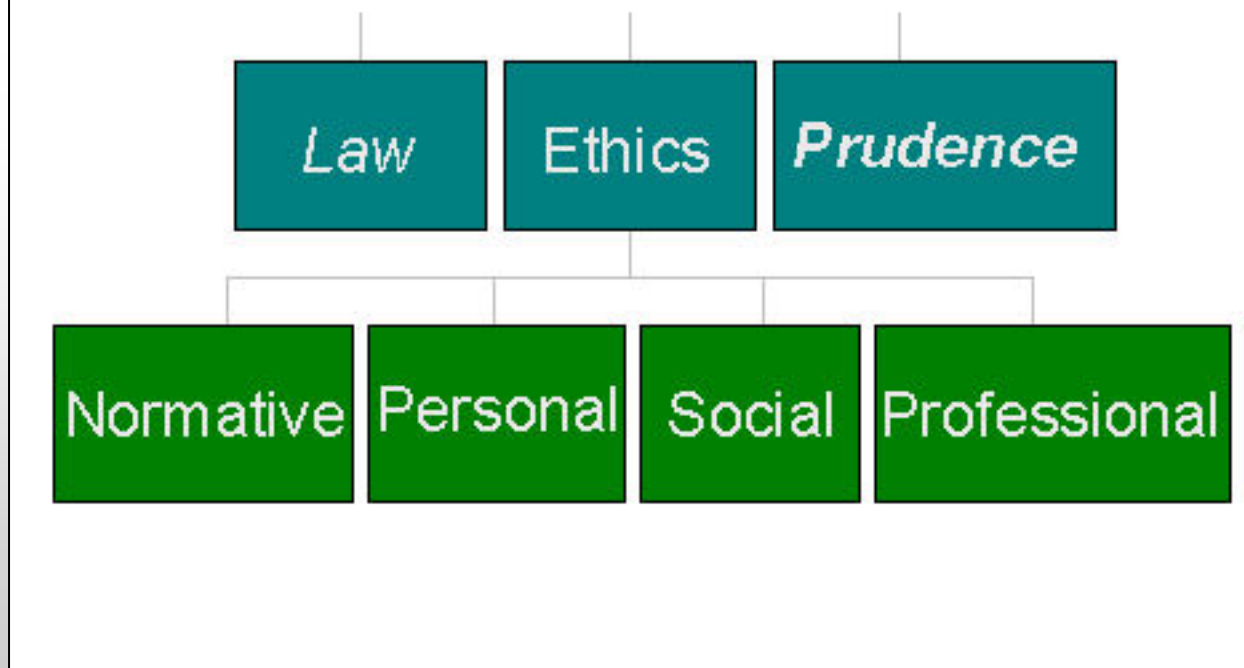
- **Mr. Hahn:** We contend, Your Honor, that clearly my client meets the requirements [of the law]. Clearly it's a commercial farm. And clearly the handling of chickens, and how chickens are discarded, falls into agricultural management practices of my client. And we've had—we've litigated this issue before in this country with respect to my client and how it handles its manure
....

The law box

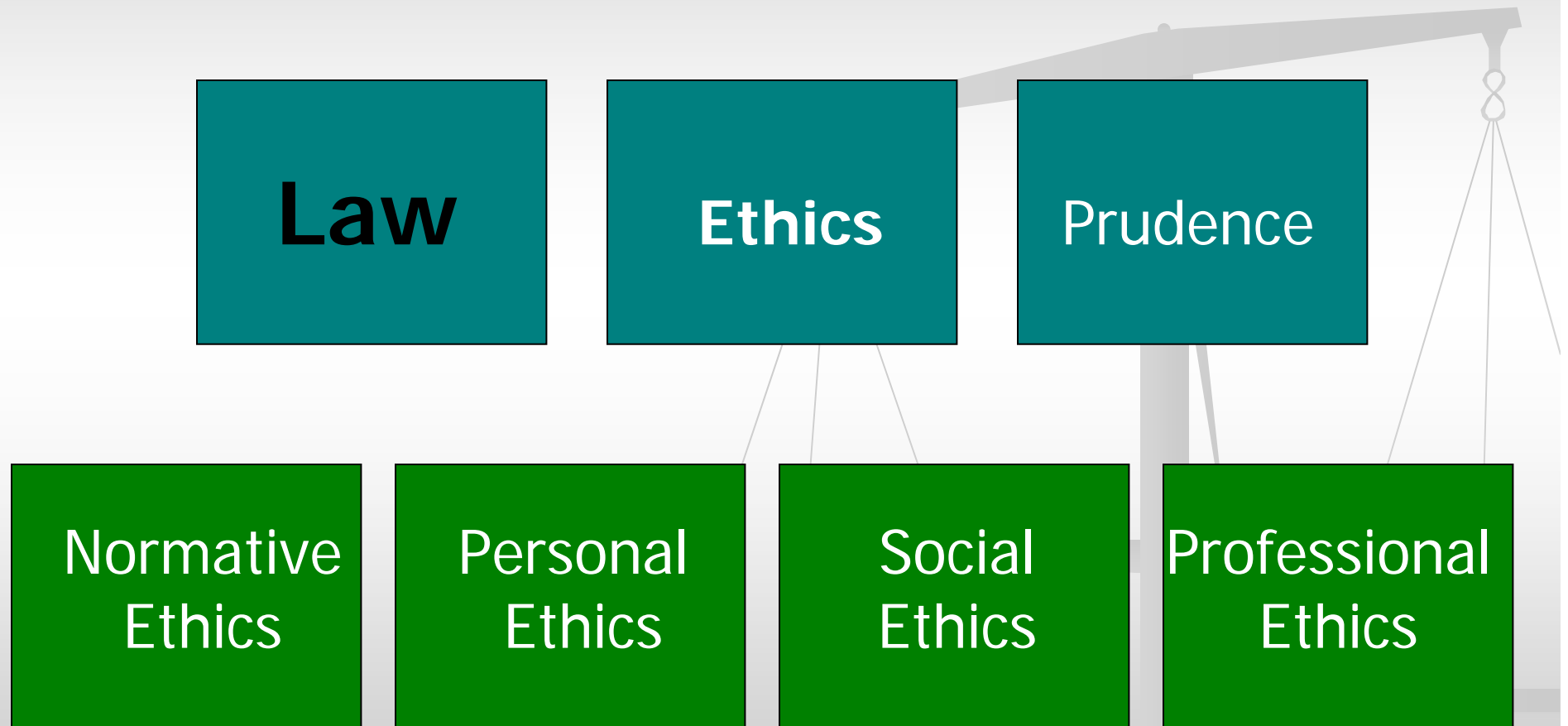
- **The Court:** Isn't there a big distinction between manure and live animals?
- **Mr. Hahn: No, Your Honor.** Because the Right to Farm Act protects us in the operation of our farm and all of the agricultural management practices employed by our firm.
- Translation—the law doesn't protect the chickens' interests, but it does protect other interests ... which ones?

Back to basics— protections for whom, what?

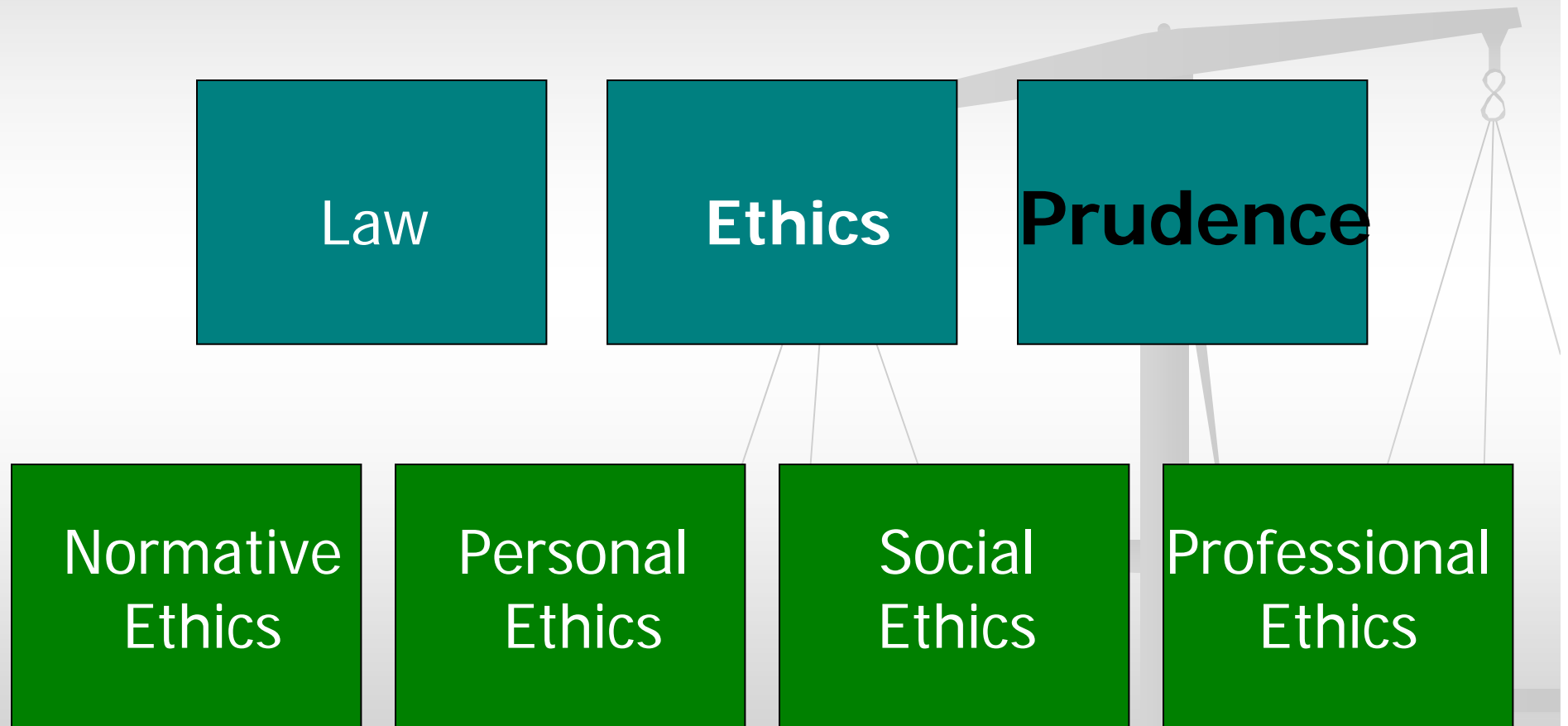
6 boxes diagram



6 boxes

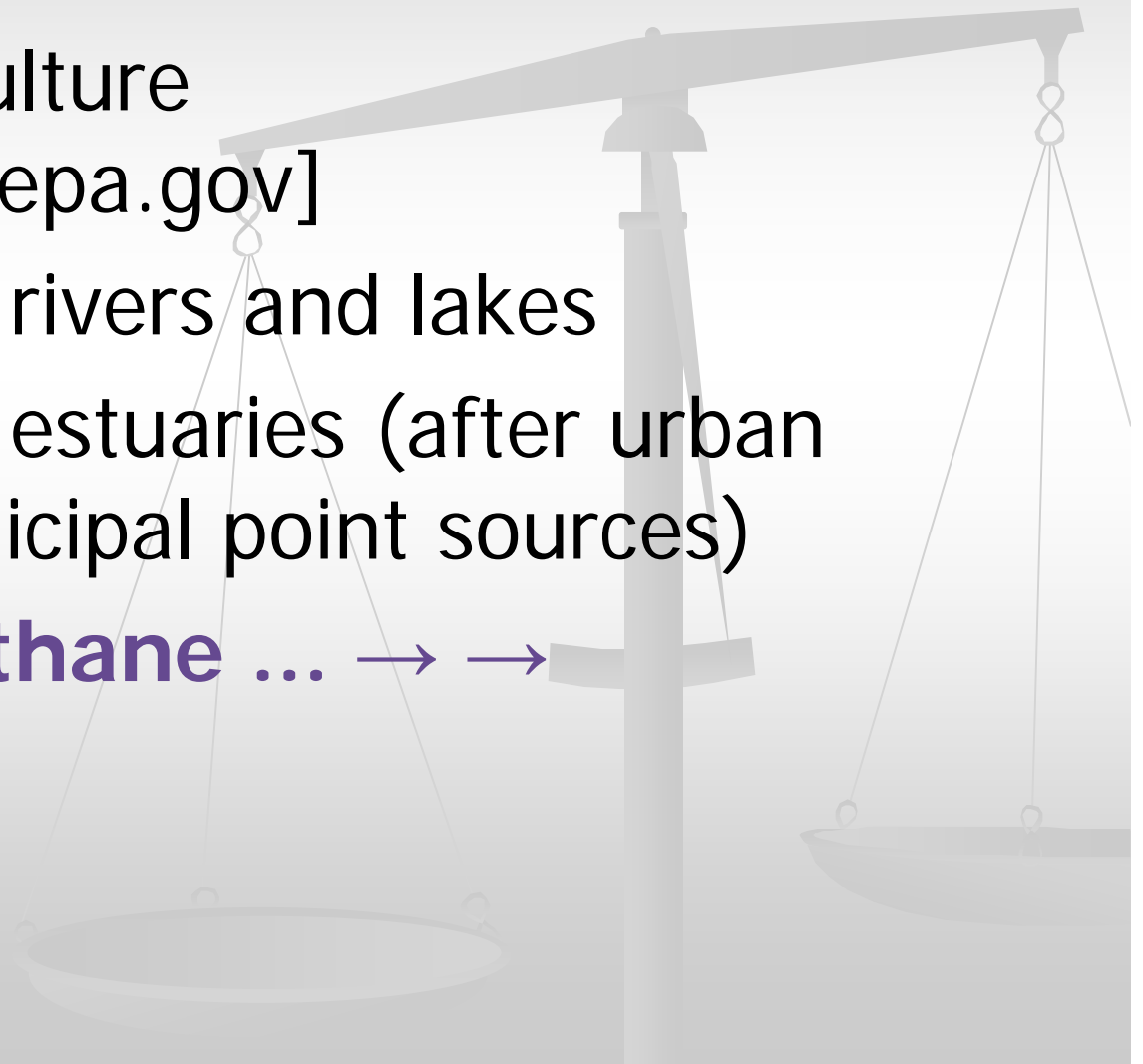


6 boxes



... the environmental issues and public health ...

- Intensive agriculture
[<http://oaspub.epa.gov>]
- #1 pollutant of rivers and lakes
- #3 pollutant of estuaries (after urban runoff and municipal point sources)
- **Source of methane ... → →**



Global “Health”

- **Diet, Energy, and Global Warming**
- **Gidon Eshel and Pamela A. Martin**, Department of the Geophysical Sciences, University of Chicago, *Earth Interactions* 10 (2006), Paper No. 9
- **ABSTRACT:** The energy consumption of animal- and plant-based diets and, more broadly, the range of energetic planetary footprints spanned by reasonable dietary choices are compared. It is **demonstrated that the greenhouse gas emissions of various diets vary by as much as the difference between owning an average sedan versus a sport-utility vehicle under typical driving conditions.** The authors conclude with a brief review of the safety of plant-based diets, and find no reasons for concern.

6 boxes



6 boxes



6 boxes



The Ohio State University Poll— Societal Views

- 92% - important that farm animals are well cared for
- 85% - quality of life for farm animals is important even when used for meat
- 81% agreed that “the well-being of farm animals is just as important as the well-being of pets”
- 75% agreed, “farm animals should be protected from feeling physical pain.”

6 boxes



6 boxes



Law

Ethics

Prudence

Normative
Ethics

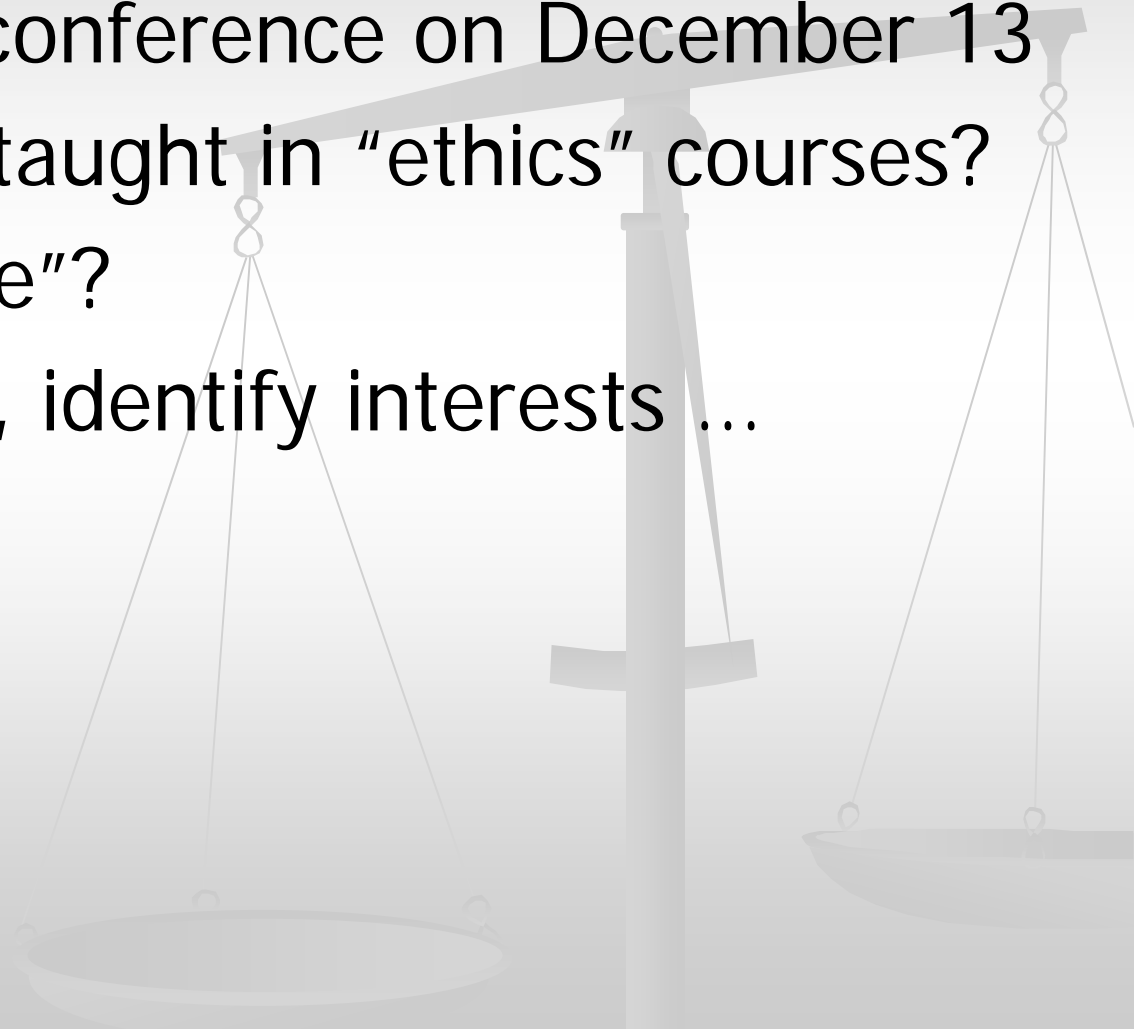
**Personal
Ethics**

Social
Ethics

Professional
Ethics

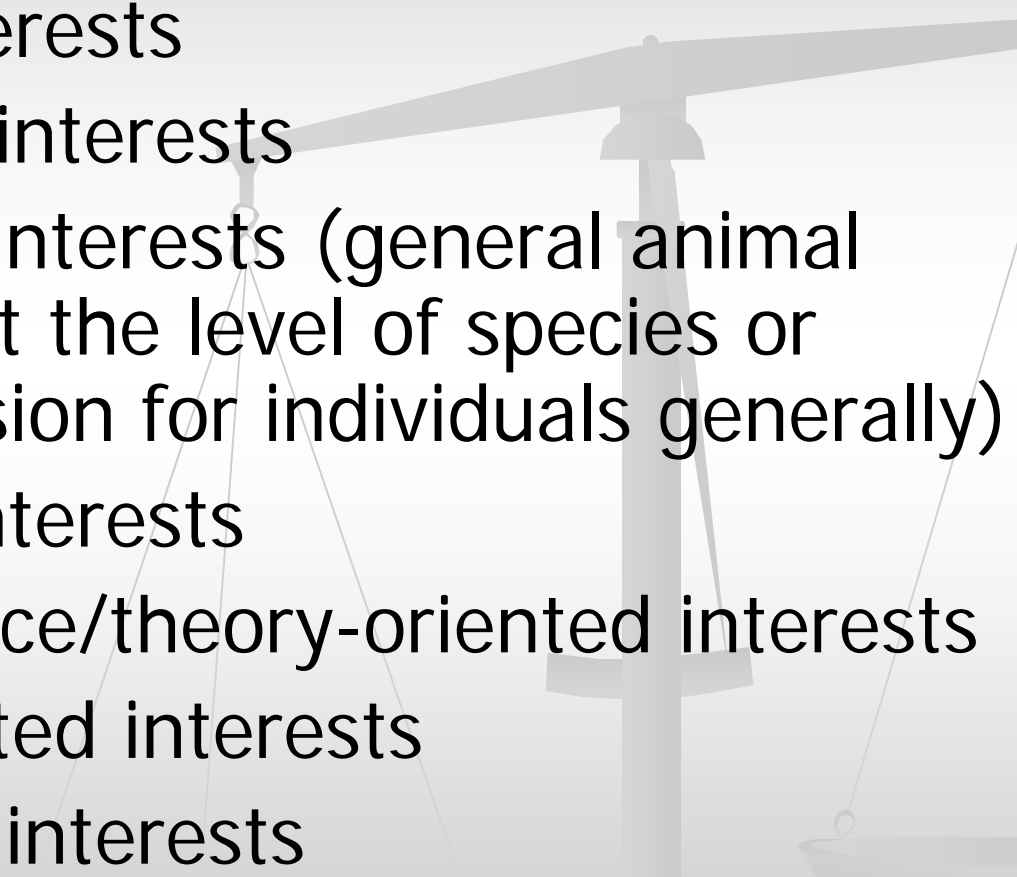
... effort needed to sort complexities

- University-wide conference on December 13
- What should be taught in “ethics” courses?
- “The animal issue”?
- At the very least, identify interests ...



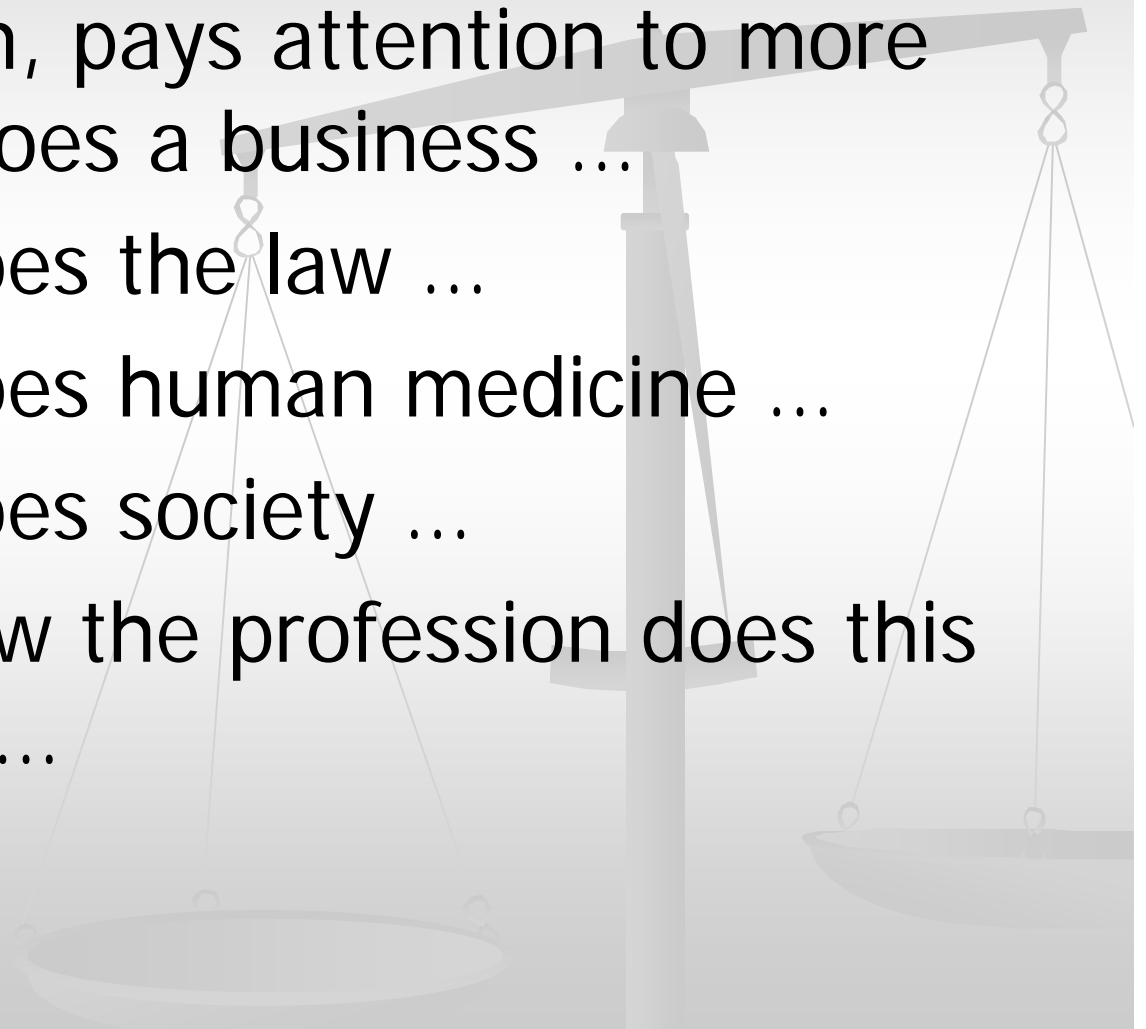
Tannenbaum 1995 SePACKProSo

... interests in vet situation ...

- **S**elf-oriented interests
 - **P**atient-oriented interests
 - **A**nimal-oriented interests (general animal interests, often at the level of species or perhaps compassion for individuals generally)
 - **C**lient-oriented interests
 - **K**nowledge/science/theory-oriented interests
 - **P**rofession-oriented interests
 - **S**ociety-oriented interests
- 

Notice ...

- ... how the veterinary profession, because it is a profession, pays attention to more interests than does a business ...
- ... more than does the law ...
- ... more than does human medicine ...
- ... more than does society ...
- But consider how the profession does this in special ways ...



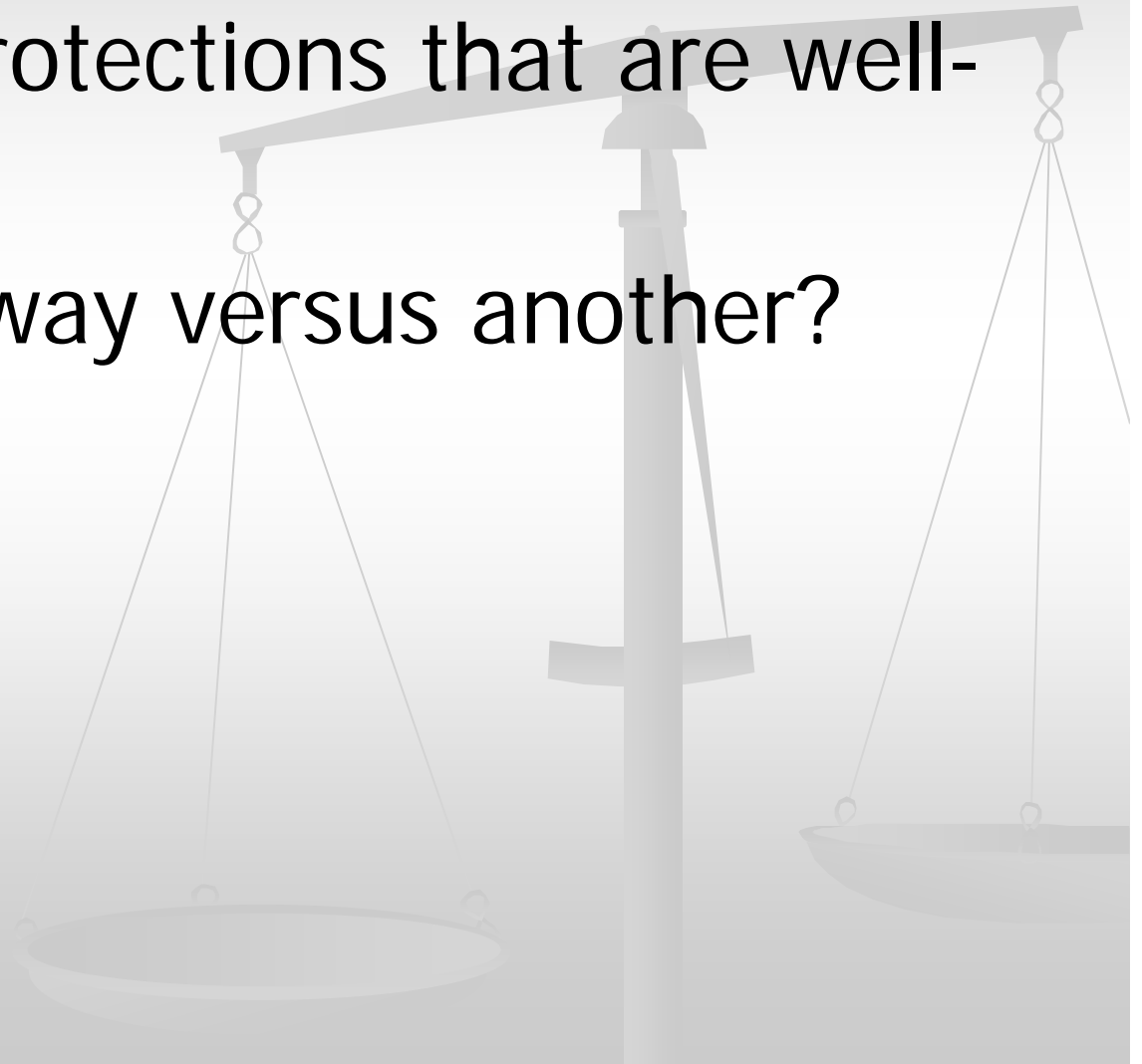
DVM:

The Newsmagazine of Veterinary Medicine

- [Dr. Gail Golab, AVMA assistant director for professional and public affairs, October 1, 2003] "They're doting on their companion animals, taking their feelings and applying them across species."
- **Pigs aren't dogs**, yet people don't understand that so they're equating how their animal lives in the house to how animals live on a farm."

Class opinions?

- Issue—should farm animals have any specific legal protections that are well-enforced?
- Why vote one way versus another?



Increasingly high profile of farm animal issues

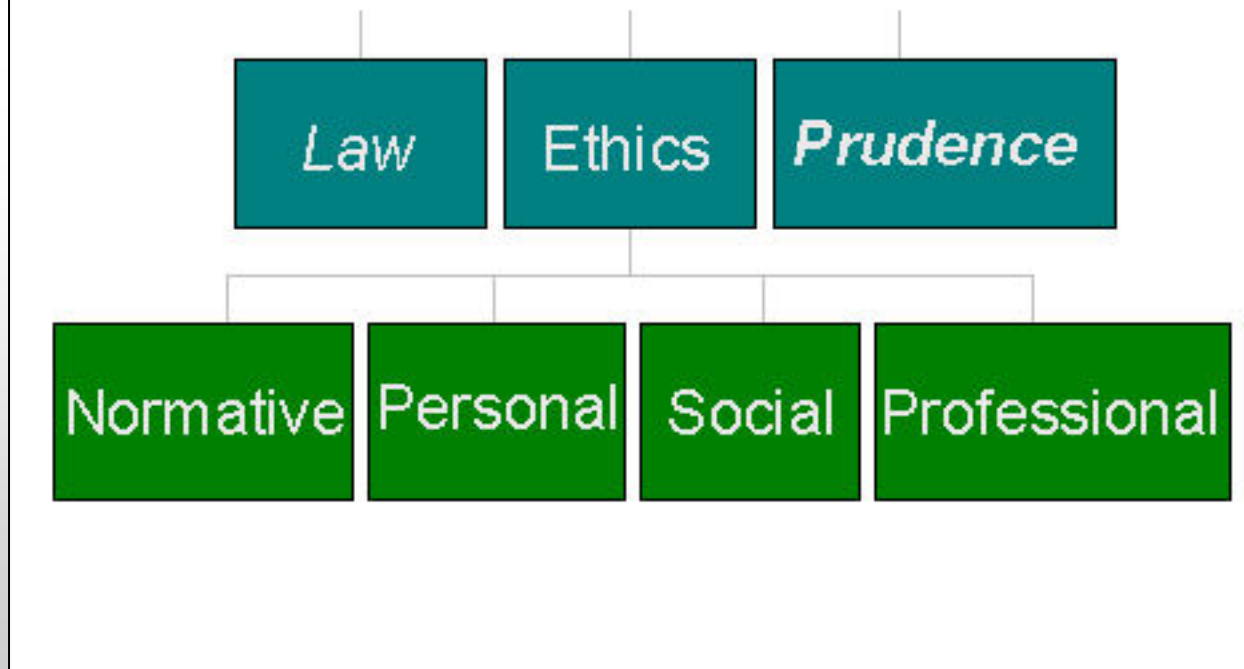
- Sept 2005 JAVMA quotes Rollin re society now seeking greater protection for farm animals
- Reading—June 29, 2006, event of the Friends of Animals Caucus in U.S. Congress focusing on farm animal welfare→

Increasingly high profile of farm animal issues

- “The way a society treats its animals speaks to the core values and priorities of its citizens.
- Recently introduced legislation, H.R. 5557, The Farm Animal Stewardship Act. ...
- **Some species have become our companions**, **some play important roles in sensitive ecosystems**, and **some are raised for food**.
- It is our duty to protect and care for all of these animals.” → 6 boxes...

Where might protections for nonhuman animals emerge?

6 boxes diagram



Our inquiry—What in fact are the **legal** protections?

- Leading analyst David Wolfson begins his presentations on “law and farm animals” by observing “farm animals have *no legal protections*”
- As I show you his argument, ask, **What does Wolfson mean? Are there really no legal protections?**

Wolfson

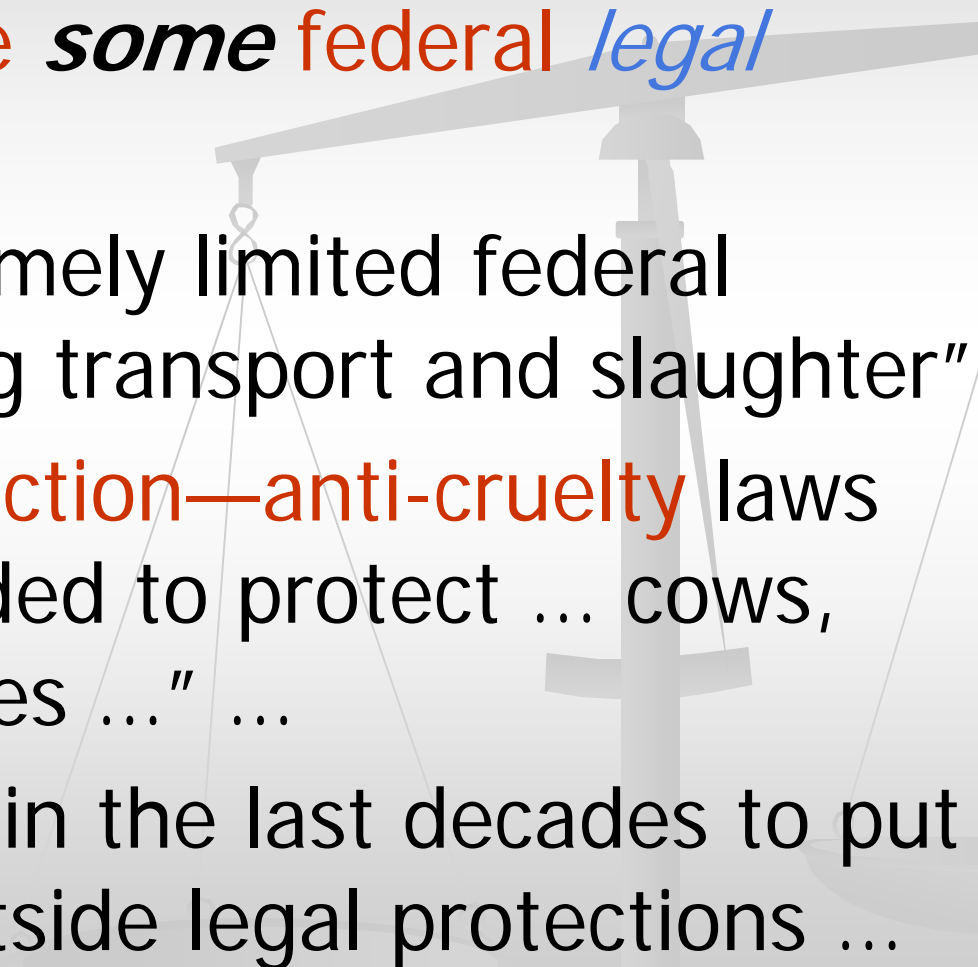
- "... these animals receive absolutely no federal protection while on the farm and extremely limited federal protection during transport and slaughter.



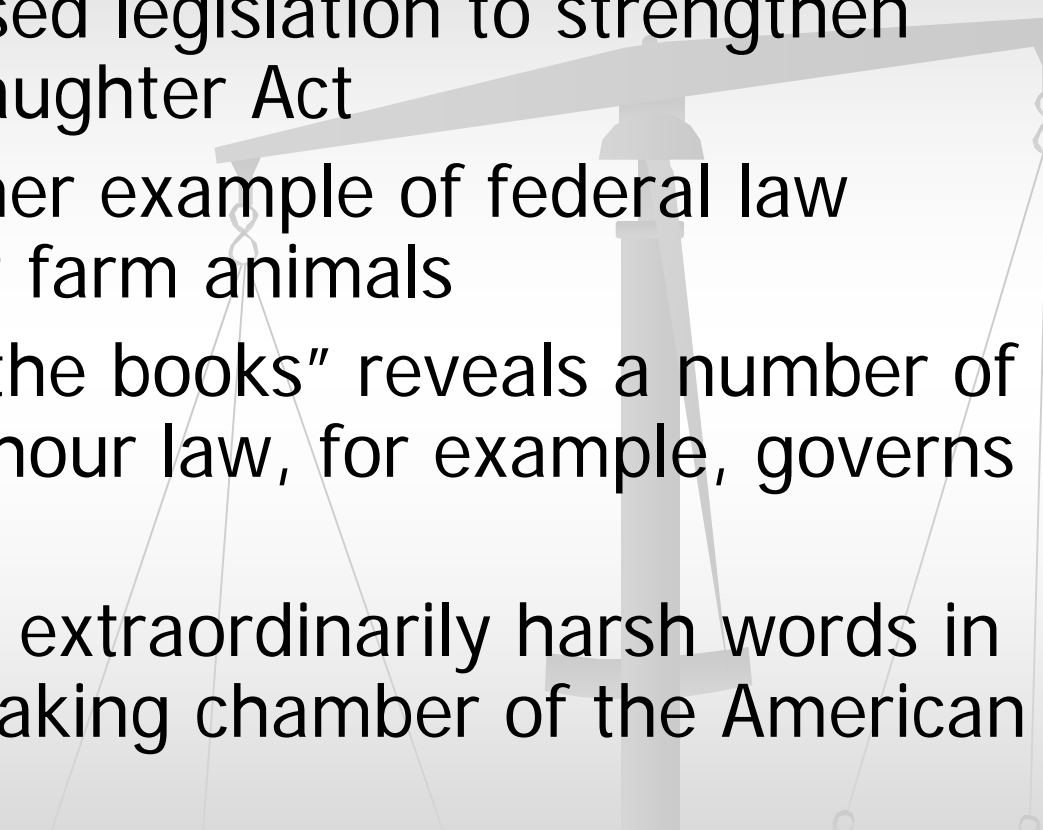
Wolfson

- “[Regarding **state-level protection**, the important anti-cruelty laws] originally intended to protect animals such as cows, sheep, and horses ... **[which are the] sole source of legal protection for such animals on the farm** [have been **amended in the last decades** in ways that] ... place animals raised for food or food production **beyond the law’s reach in the majority of states.**” [Wolfson, David J. 1999. *Beyond the law: agribusiness and the systemic abuse of animals raised for food or food production*. [Watkins Glen, N.Y.]: Farm Sanctuary, at pages 10-11.]

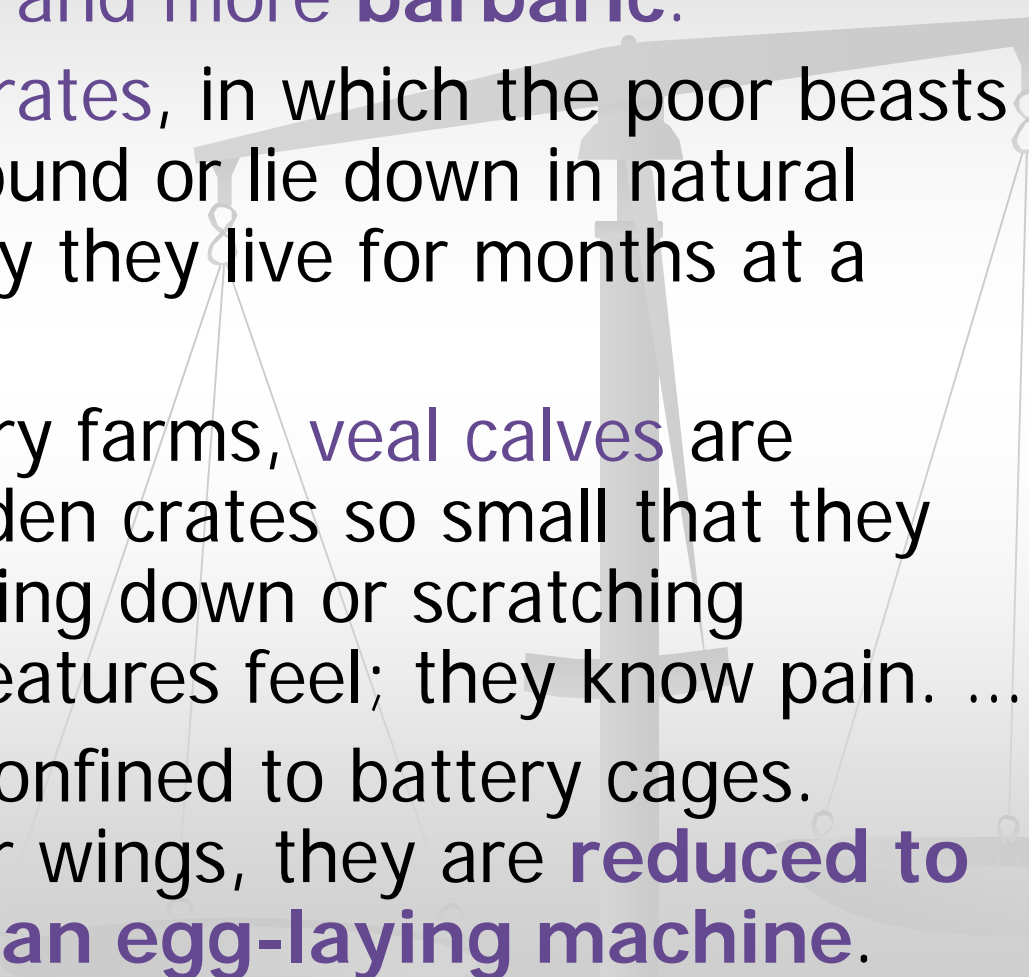
So back to the basic question - What are the legal protections?

- There clearly are **some** federal *legal protections*
 - Federal— “extremely limited federal protection during transport and slaughter”
 - **State-level protection—anti-cruelty** laws “originally intended to protect ... cows, sheep, and horses ...” ...
 - ... but amended in the last decades to put food animals outside legal protections ...
- 

Byrd in the US Senate

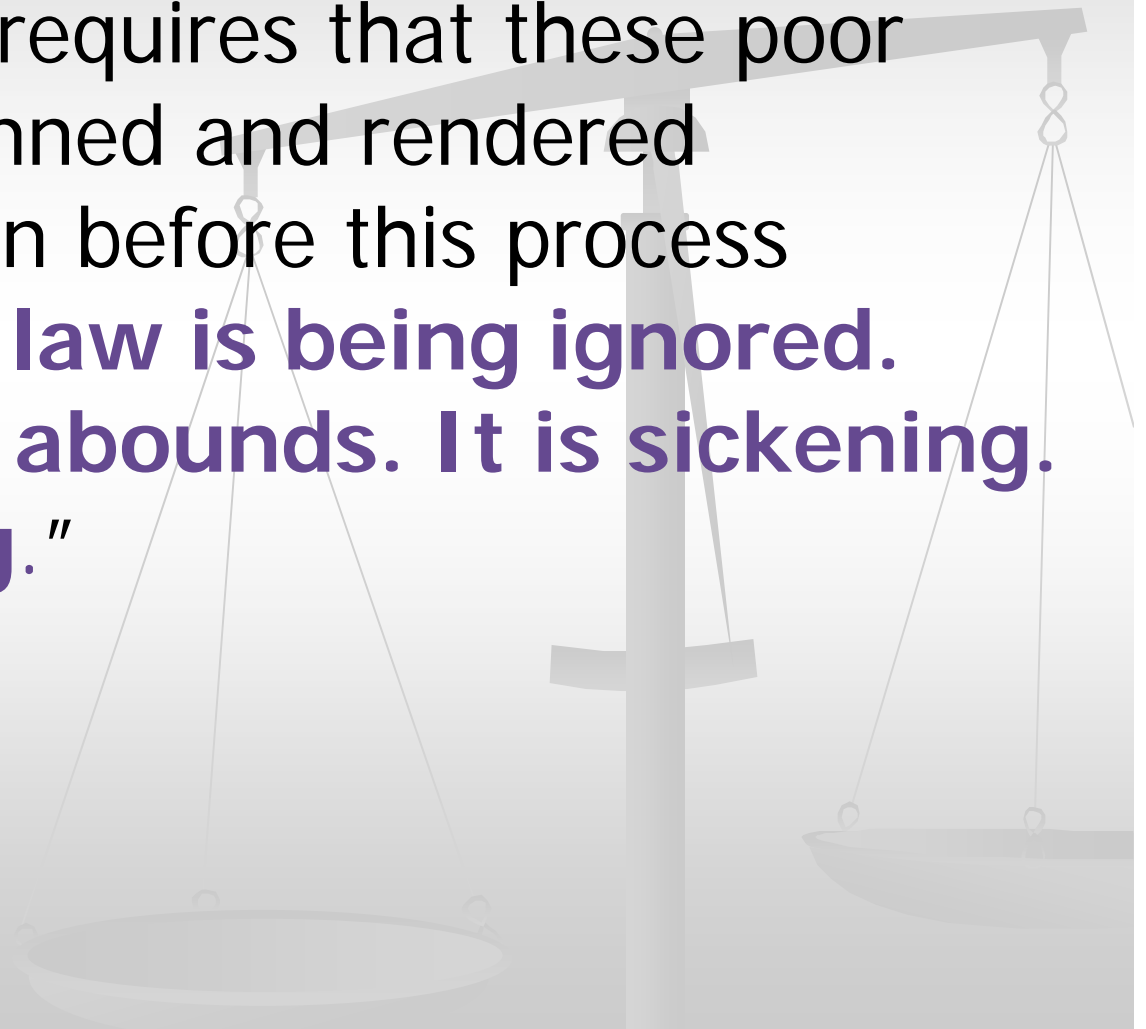
- Senator Robert Byrd (D-WV) July 9, 2001, speech in Senate re proposed legislation to strengthen federal Humane Slaughter Act
 - Background—another example of federal law designed to protect farm animals
 - Review of “law on the books” reveals a number of such laws—the 28 hour law, for example, governs transportation
 - But consider Byrd’s extraordinarily harsh words in the principal law-making chamber of the American government→
- 

... on the floor of the US Senate ...

- “Our inhumane treatment of livestock is becoming widespread and more and more **barbaric**.”
 - ... hogs ... gestation crates, in which the poor beasts are unable to turn around or lie down in natural positions, and this way they live for months at a time.”
 - On profit-driven factory farms, **veal calves** are confined to dark wooden crates so small that they are prevented from lying down or scratching themselves. These creatures feel; they know pain. ...
 - **Egg-laying hens** are confined to battery cages. Unable to spread their wings, they are **reduced to nothing more than an egg-laying machine**.
- 

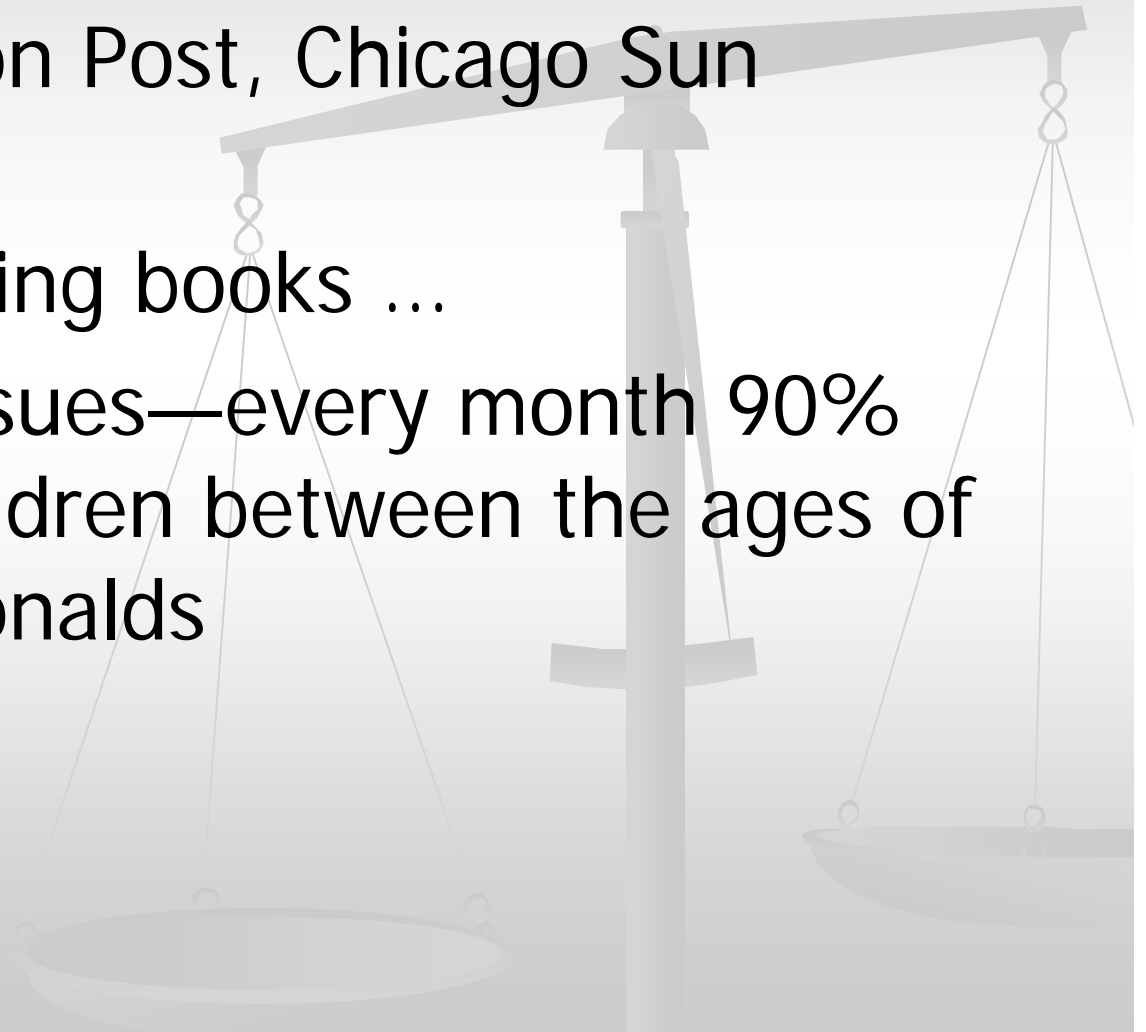
... stunning rhetoric ...

- “The law clearly requires that these poor creatures be stunned and rendered insensitive to pain before this process begins. **Federal law is being ignored. Animal cruelty abounds. It is sickening. It is infuriating.**”

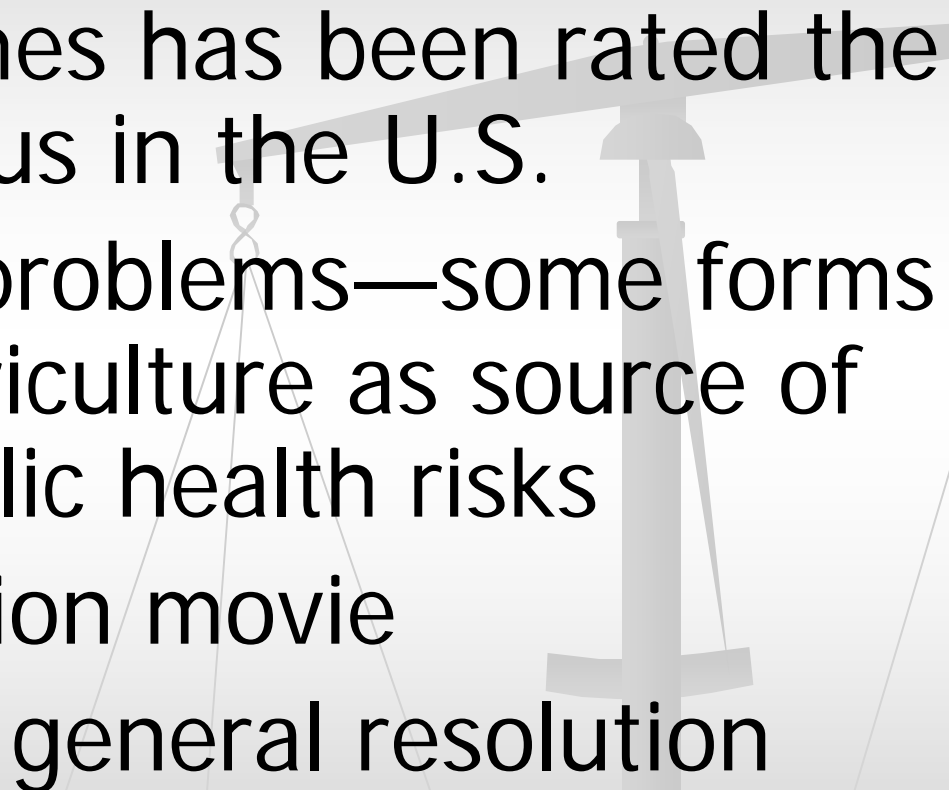


“Ferment”

- A US Senate speech
- NYT, Washington Post, Chicago Sun articles
- Lots of best selling books ...
- Consumption issues—every month 90% of American children between the ages of 3-9 visit a McDonalds



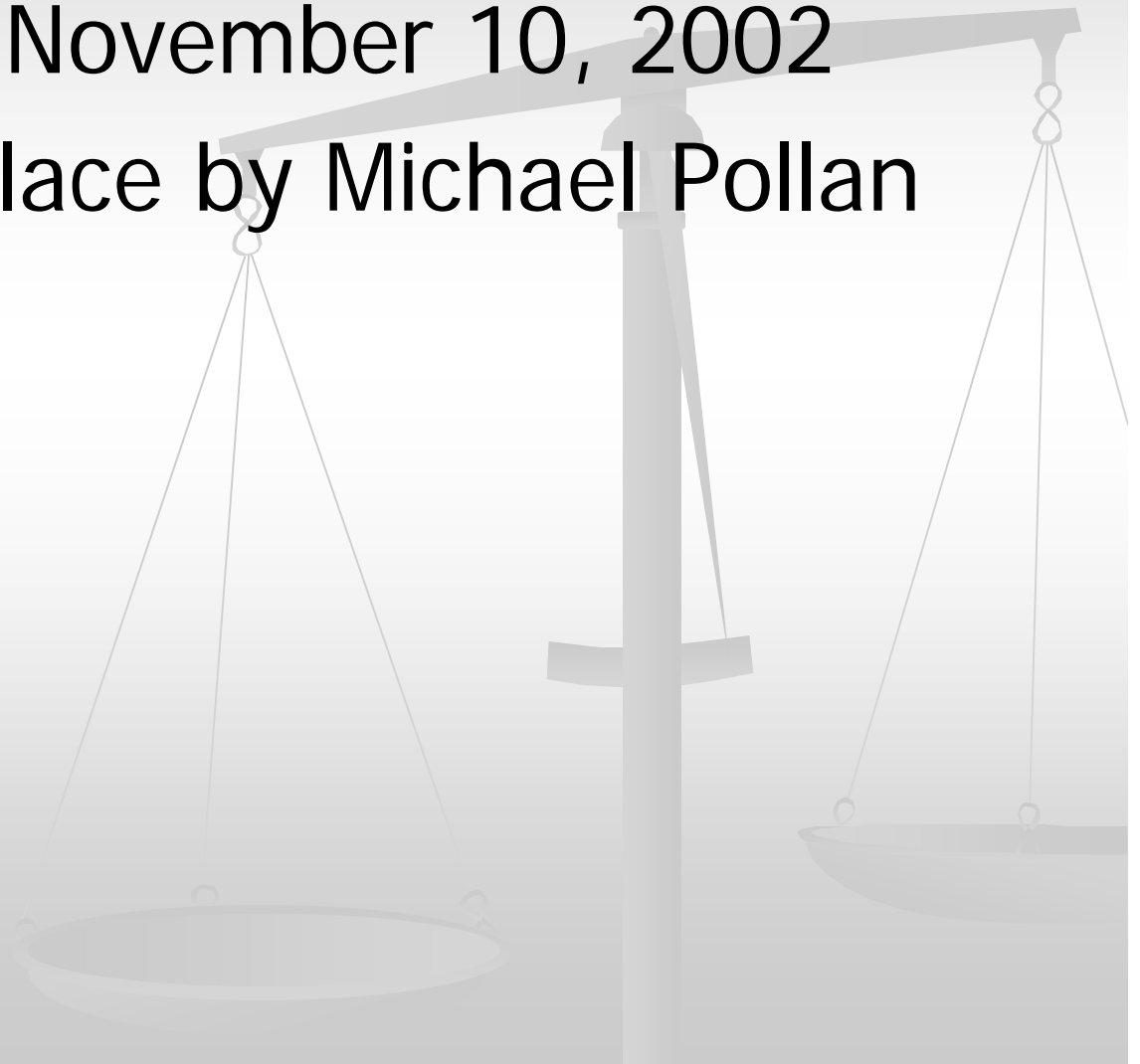
“Ferment”

- Working conditions—slaughter industry at times has been rated the *most* dangerous in the U.S.
 - Environment problems—some forms of modern agriculture as source of important public health risks
 - Fast Food Nation movie
 - Episcopalians’ general resolution
- 

Increasing Public Discussion

NY Times - November 10, 2002

An Animal's Place by Michael Pollan



Quote

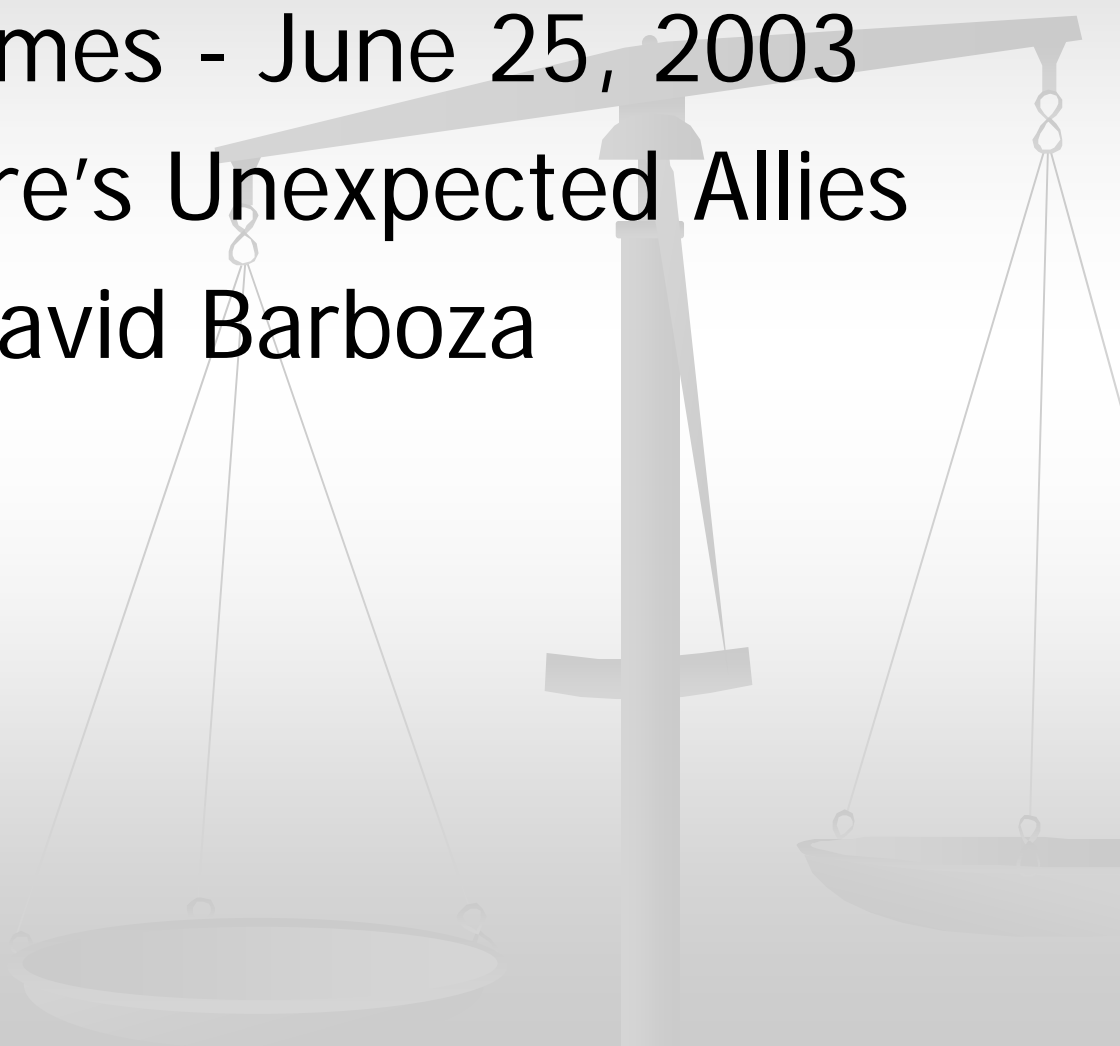
- “The industrialization -- and dehumanization -- of American animal farming is a **relatively new, evitable and local phenomenon**: no other country raises and slaughters its food animals quite as intensively or as brutally as we do.
- **Were the walls of our meat industry to become transparent, literally or even figuratively, we would not long continue to do it this way.”**

Episcopalians join in

- **2003 Resolution, D016: Stewardship: The Protection of Animals from Cruel Treatment**
Resolved, ... responsible care of animals falls within the stewardship of creation;
- *Resolved* ... the Episcopal Church encourage its members to ensure that husbandry methods for captive and domestic animals would **prohibit suffering** in such conditions as puppy mills, and factory-farms;
- *Resolved*, That the Episcopal Church ... identify and **advocate for legislation protecting animals and effective enforcement** measures.

Industry's response

New York Times - June 25, 2003
Animal Welfare's Unexpected Allies
by David Barboza



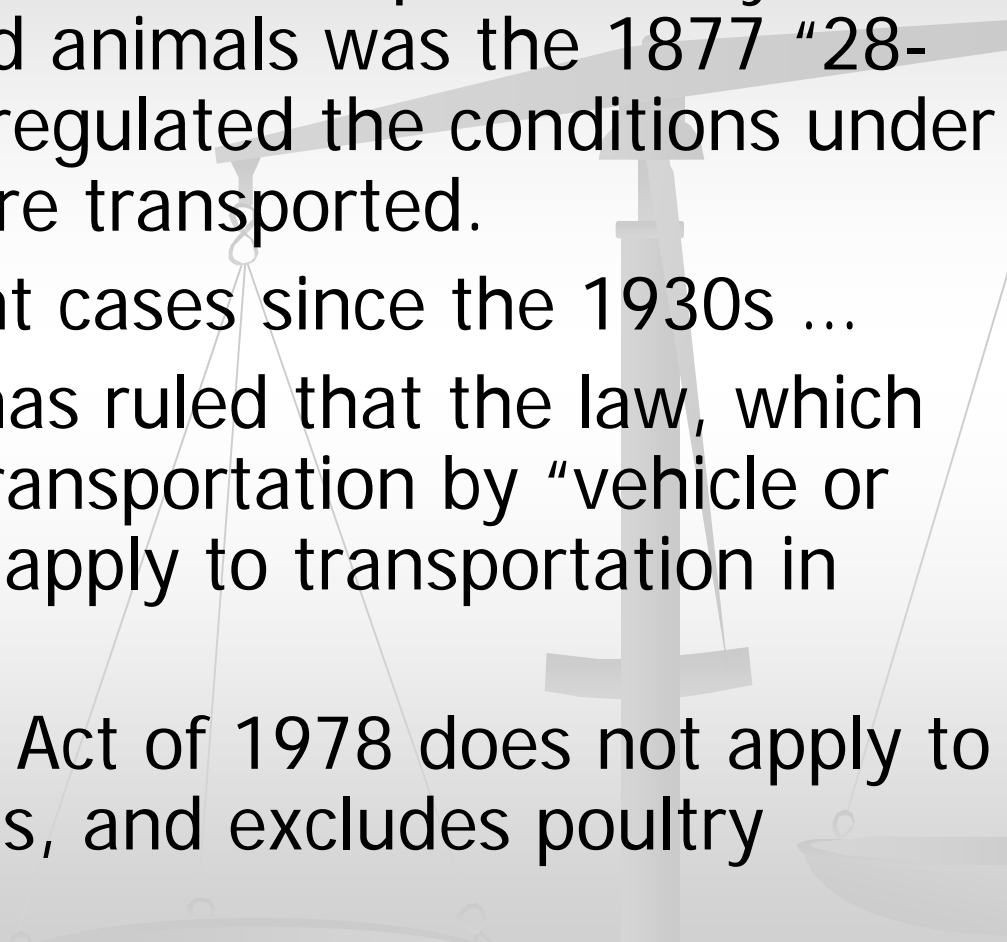
Quote

- “McDonald’s, Burger King, KFC and Wendy’s have all underwritten research and recently hired what are called animal welfare specialists to help them devise new standards aimed at ensuring more humane treatment of the animals destined for their kitchens.
- Industry trade groups are promoting the new rules and conducting audits of livestock producers to assure they are being followed, though some groups express concern about higher costs and other complications.”

Trade Association Response - June 2004

- "WHEREAS, Many of our customers (including McDonald's) are requesting a decrease in antibiotics in animal feed ...
- **"RESOLVED, The Iowa Pork Producers Association urges all producers to voluntarily discontinue the use of all growth-promotant antibiotics in swine finishing rations."**

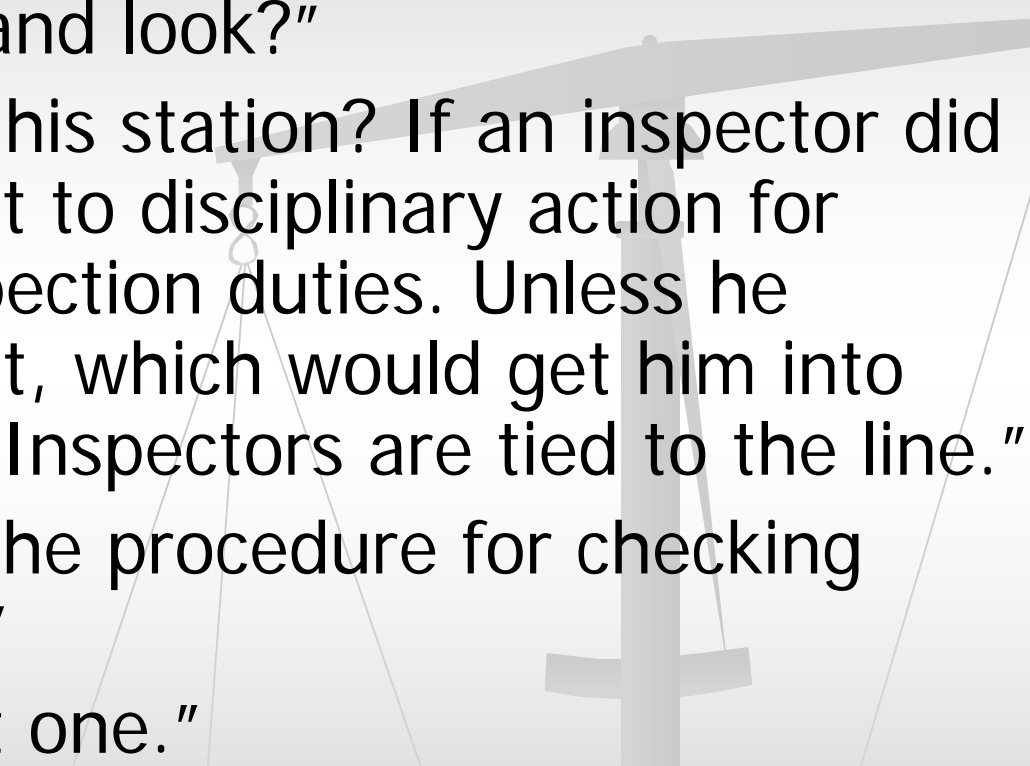
What polarizes debates

- Most powerful protection ever provided by federal law for food animals was the 1877 “28-Hour Law,” which regulated the conditions under which livestock were transported.
 - But no enforcement cases since the 1930s ...
 - ... because USDA has ruled that the law, which says it applies to transportation by “vehicle or vessel,” does NOT apply to transportation in trucks
 - Humane Slaughter Act of 1978 does not apply to all slaughter houses, and excludes poultry entirely
- 

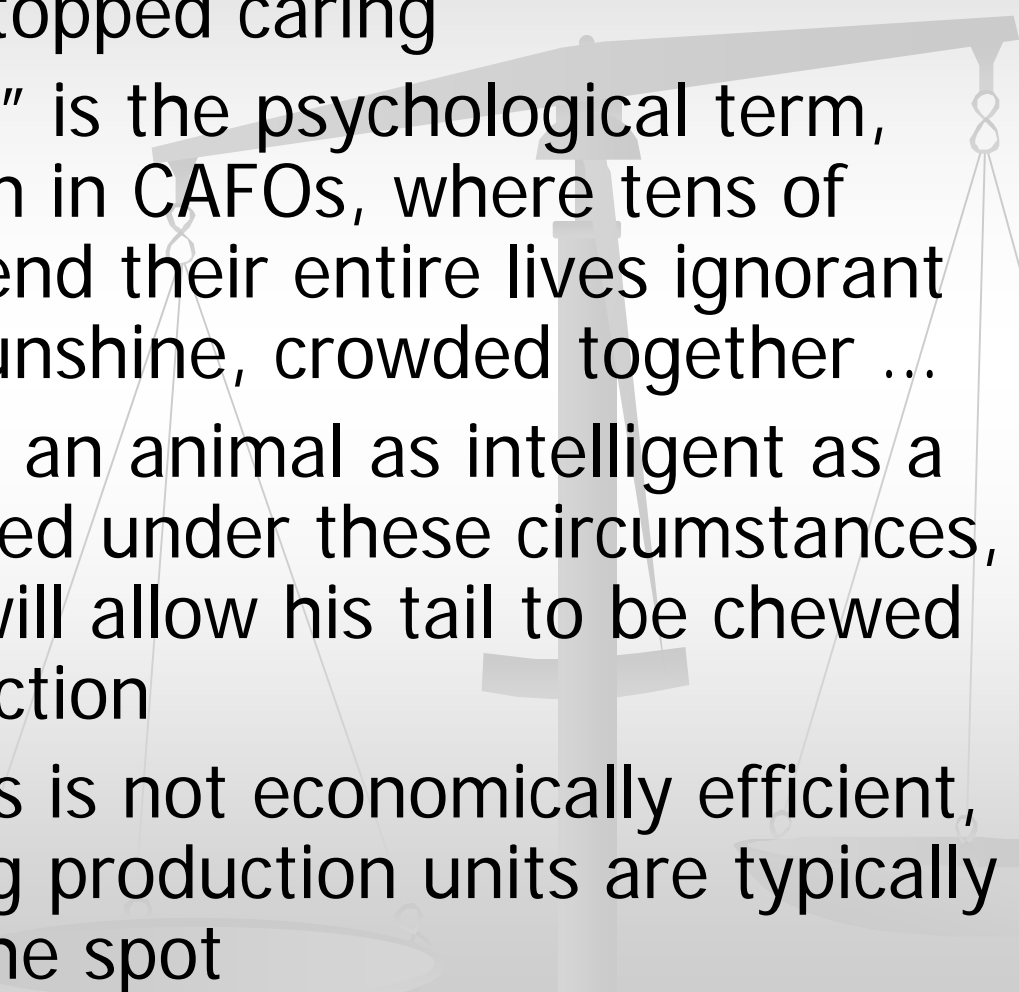
Eisnitz 1998

- Interview of Dave Carney, chairman of the federal meat inspectors' union
- Eisnitz: "But then, if you know that all these violations go on, why don't inspectors do anything about them?"
- Carney: "First of all, the way the plants are physically laid out, meat inspection is way down the line. A lot of times, inspectors can't even see the slaughter area from their stations. It's virtually impossible for them to monitor the slaughter area when they're trying to detect diseases and abnormalities in carcasses that are whizzing by."

Eisnitz 1998

- Eisnitz: "So how often does someone go down to the slaughter area and look?"
 - Carney: "And leave his station? If an inspector did that, he'd be subject to disciplinary action for abandoning his inspection duties. Unless he stopped the line first, which would get him into even more trouble. Inspectors are tied to the line."
 - Eisnitz: "So what's the procedure for checking humane slaughter?"
 - Carney: "There isn't one."
- 

The Omnivore Pollan

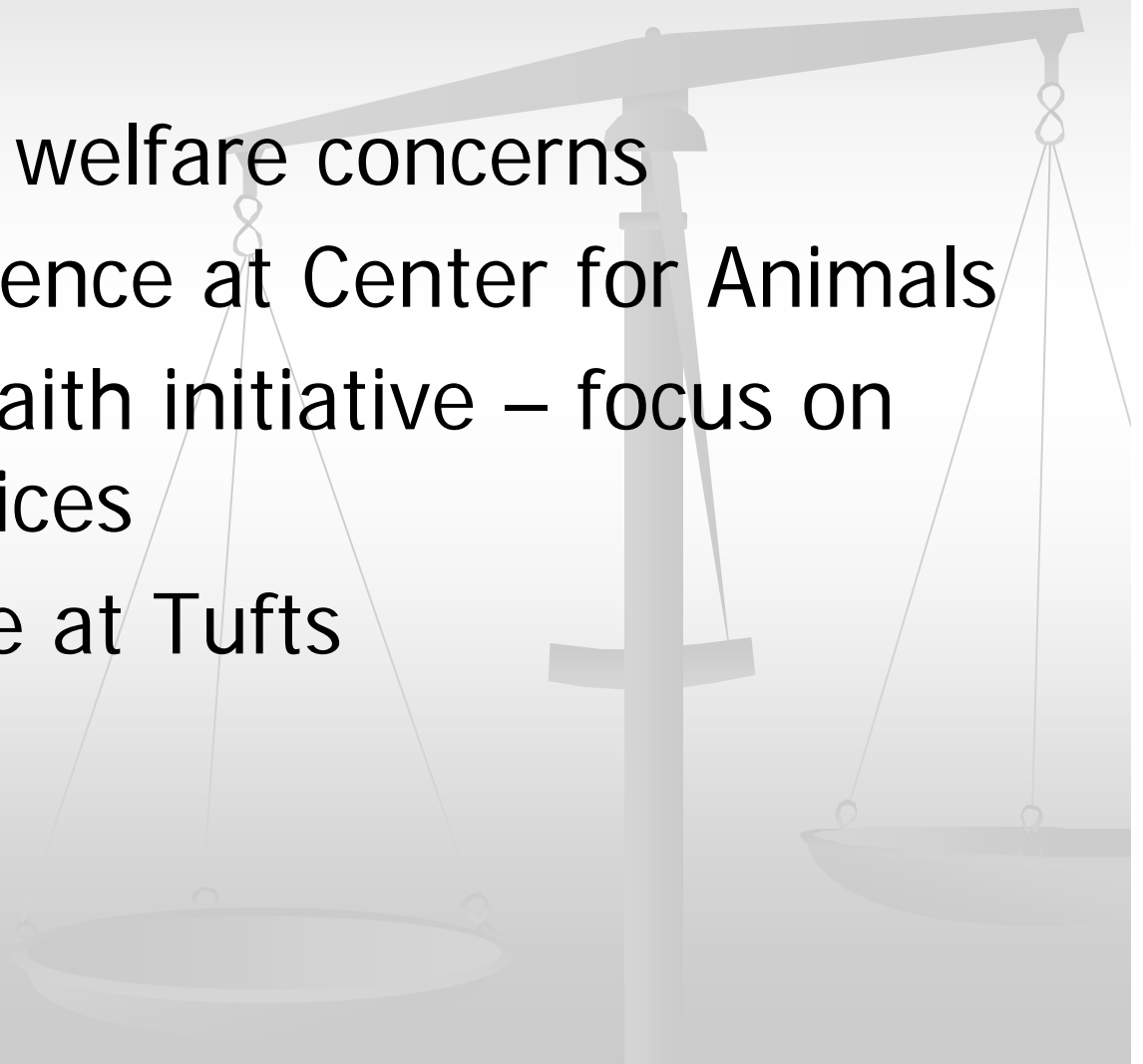
- A normal pig would fight off his molester, but a demoralized pig has stopped caring
 - “Learned helplessness” is the psychological term, and it’s not uncommon in CAFOs, where tens of thousands of hogs spend their entire lives ignorant of earth or straw or sunshine, crowded together ...
 - It’s not surprising that an animal as intelligent as a pig would get depressed under these circumstances, and a depressed pig will allow his tail to be chewed on to the point of infection
 - Since treating sick pigs is not economically efficient, these underperforming production units are typically clubbed to death on the spot
- 

If law in place ... but not enforced ...

- What can a veterinarian do?
- Remember the bitter criticism from Matthew Scully, former special assistant and deputy director of speechwriting to President George W. Bush, who wrote in 2002 about factory farming:
 - “The profound betrayal of veterinary ethics everywhere around us—the sworn obligation of every veterinarian ‘to protect animal health [and] relieve animal suffering.’”
 - “Some skill of a vet comes by every few days to check on the stock.” [*Dominion*, 2002, page 268]

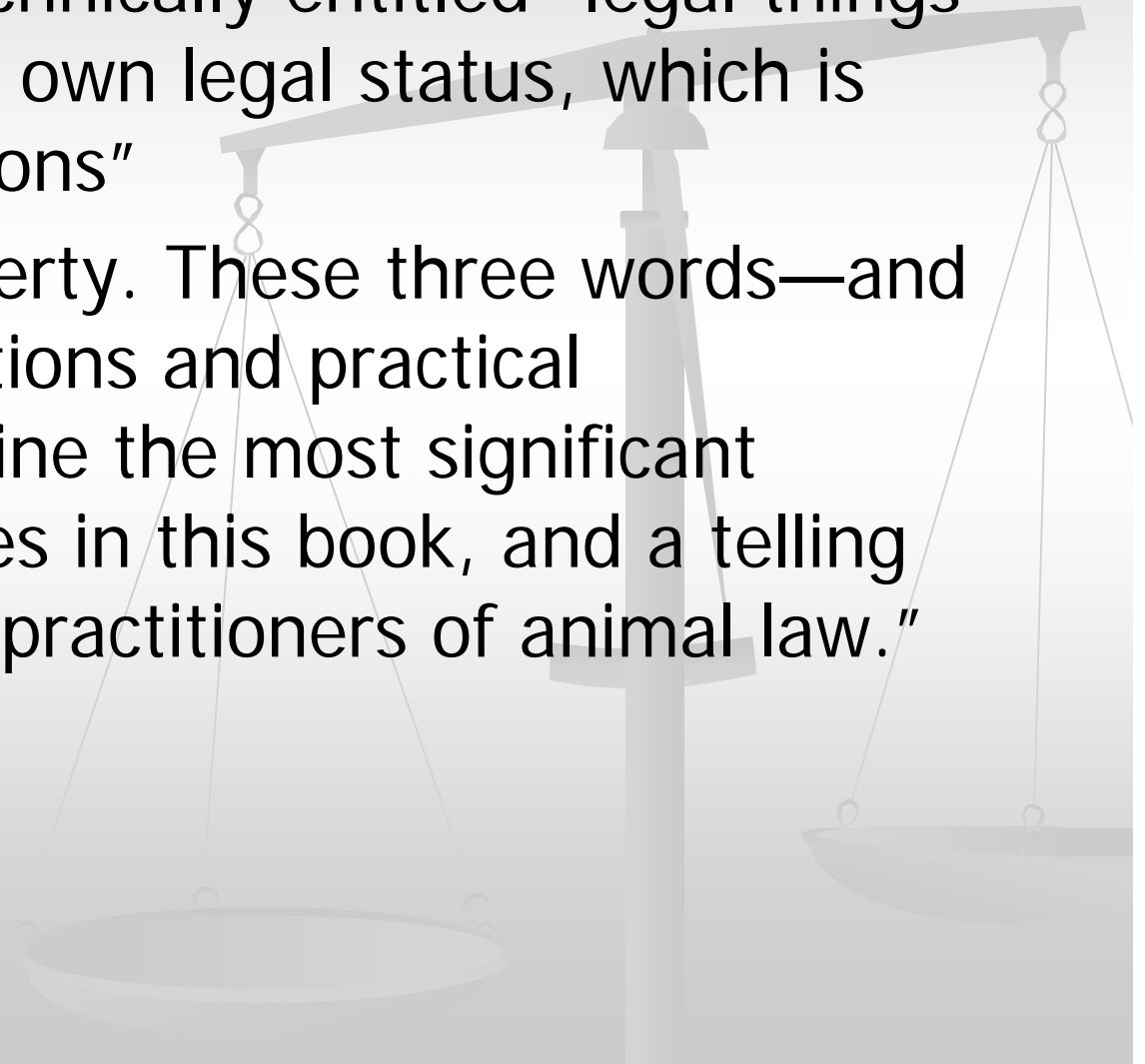
What might un-polarize debates?

- Student ideas?
- Middle ground ... welfare concerns
- April 2007 conference at Center for Animals
- Food, Farming, Faith initiative – focus on sustainable practices
- USDA grants here at Tufts



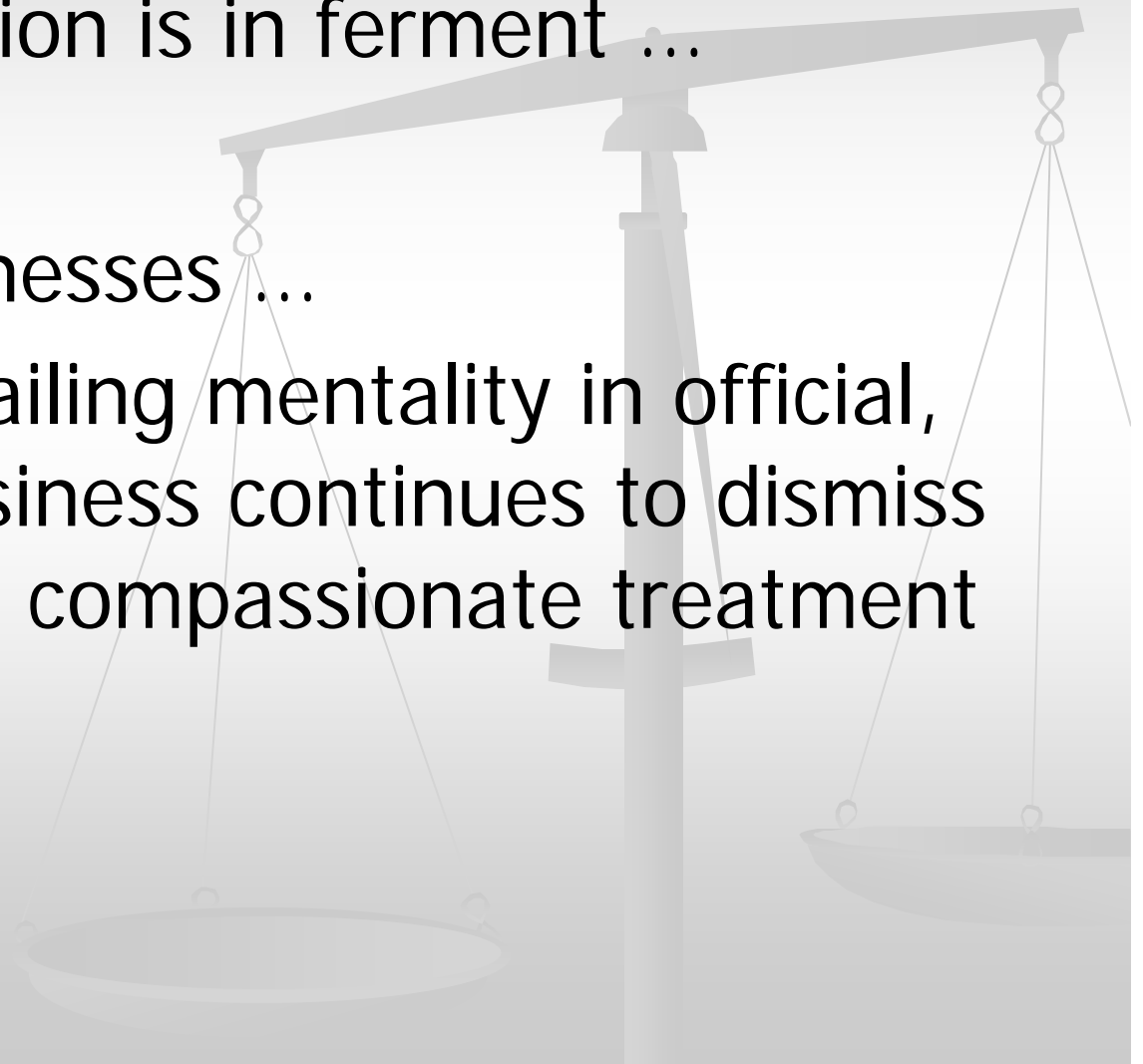
Summary

- Dominant legal concept is that other animals are mere property, technically entitled “legal things” as opposed to our own legal status, which is that of “legal persons”
- “Animals are property. These three words—and their legal implications and practical ramifications—define the most significant doctrines and cases in this book, and a telling reality for current practitioners of animal law.”



Summary

- Especially true of farmed animals
- But social situation is in ferment ...
- ... in society ...
- ... in some businesses ...
- ... even as prevailing mentality in official, government business continues to dismiss questions about compassionate treatment of living beings

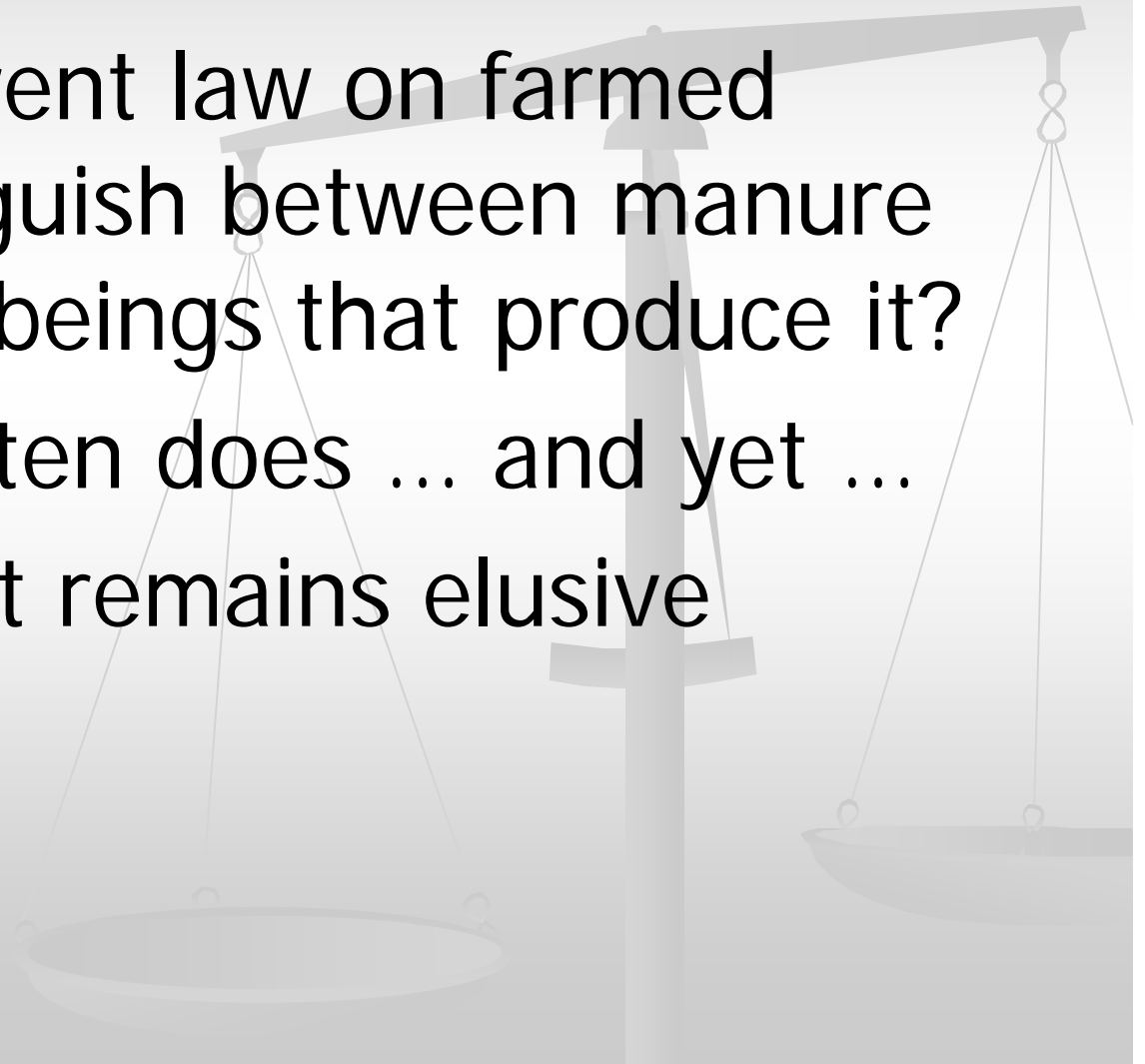


Coming Attractions

- Annual US Farm Bills—see JAVMA July 15, 2006, re AVMA's positions seeking "protection of veterinary interests"
- European laws ...
- Other technical reporting laws in farm matters (which can be considerable for producers) will impact veterinarians when public health concerns arise ...

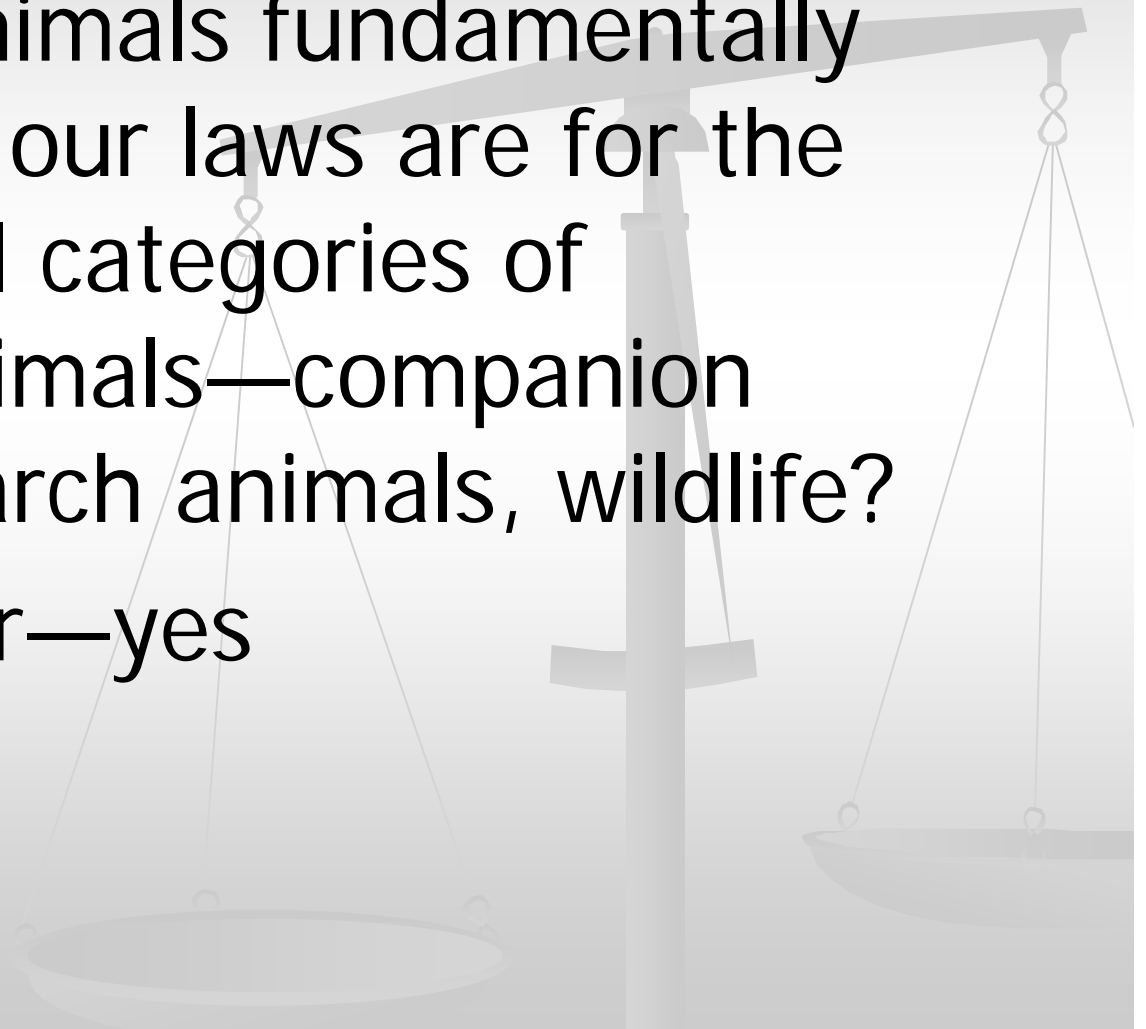
Leave you with two simple questions

- #1—Does current law on farmed animals distinguish between manure and the living beings that produce it?
- Of course it often does ... and yet ...
- ... enforcement remains elusive



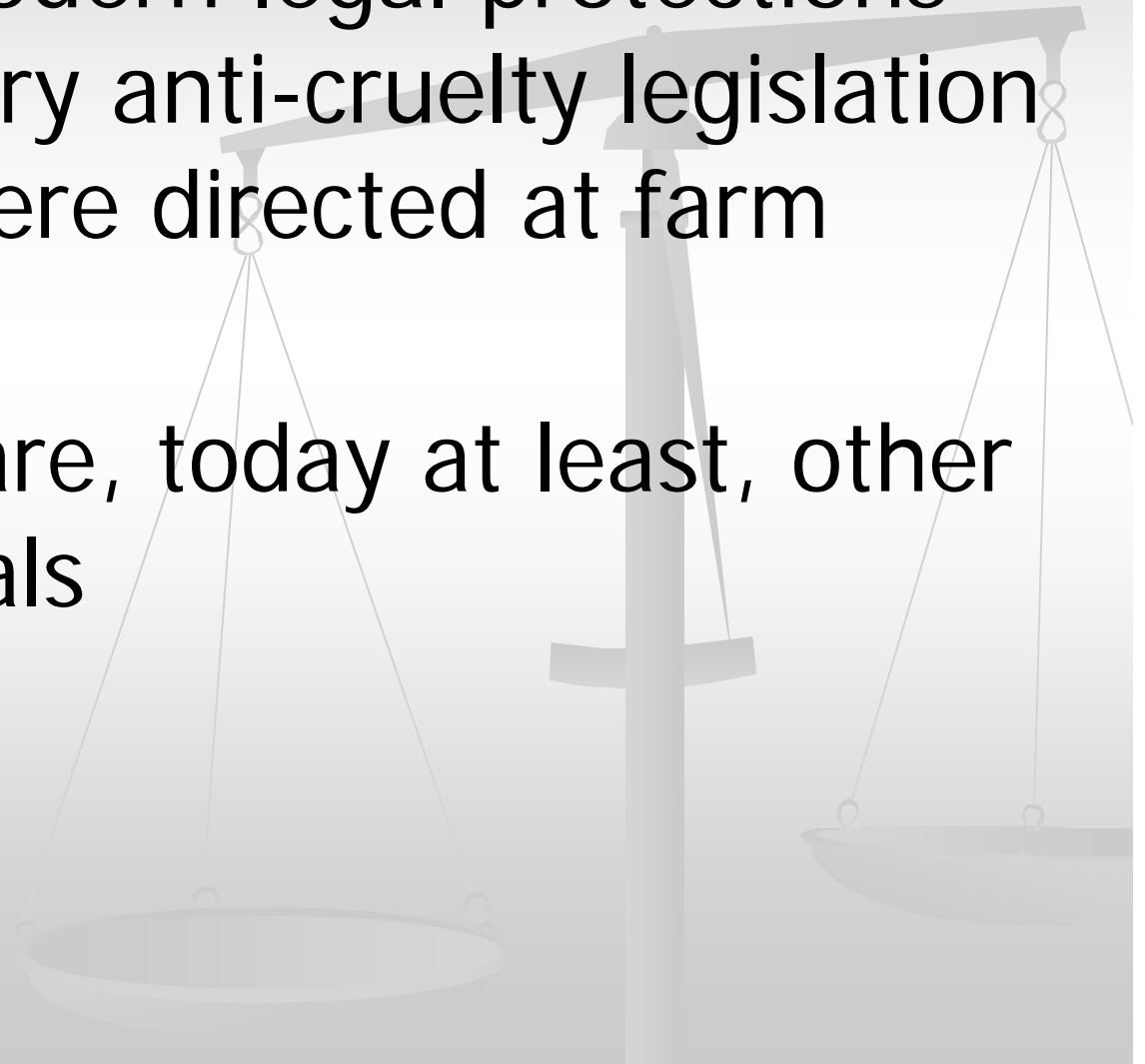
#2

- Are our laws regarding this broad category of animals fundamentally different than our laws are for the other principal categories of nonhuman animals—companion animals, research animals, wildlife?
- Candid answer—yes



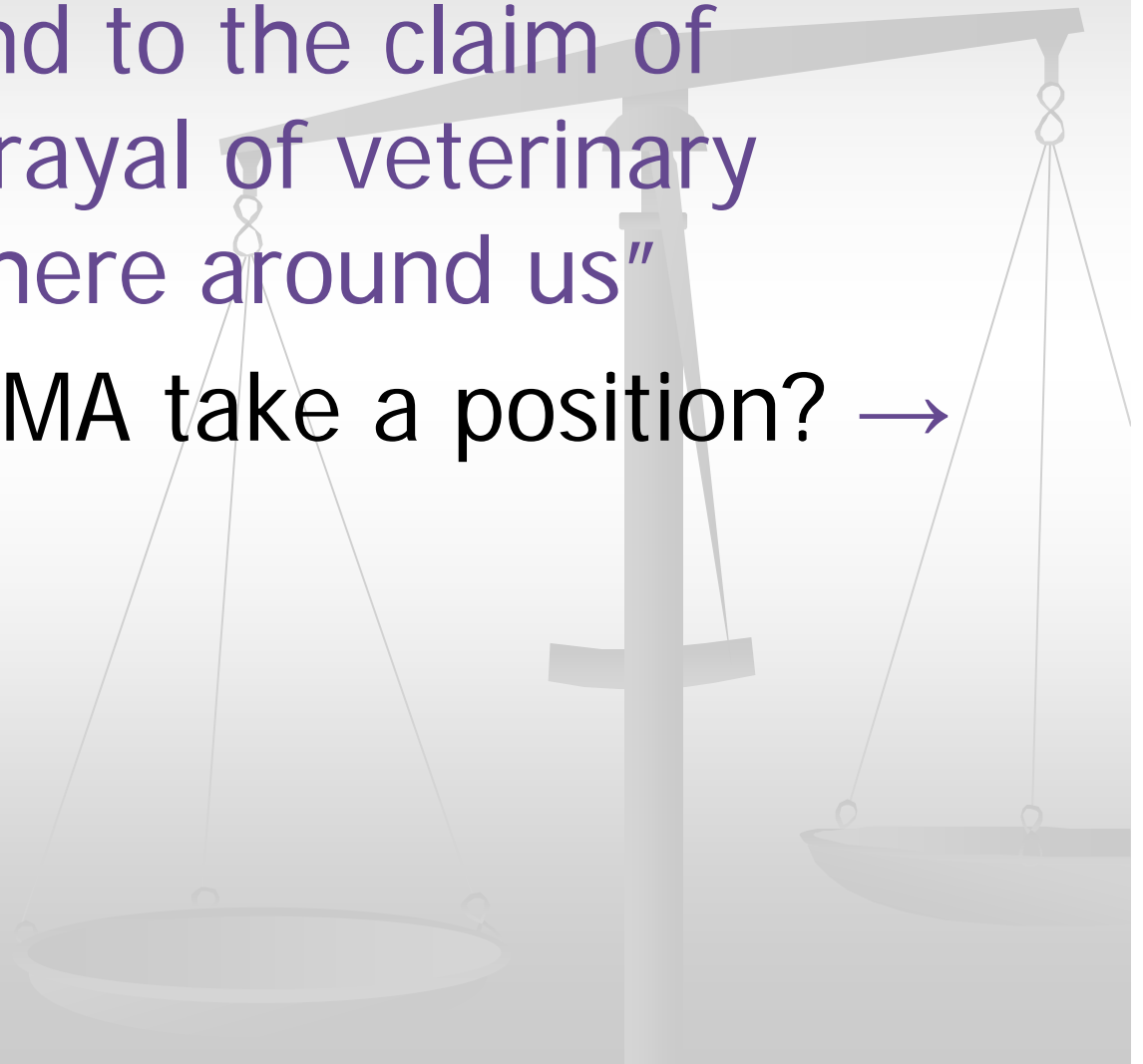
Irony

- The *first* of modern legal protections (in 19th century anti-cruelty legislation in England) were directed at farm animals
- Beneficiaries are, today at least, other kinds of animals



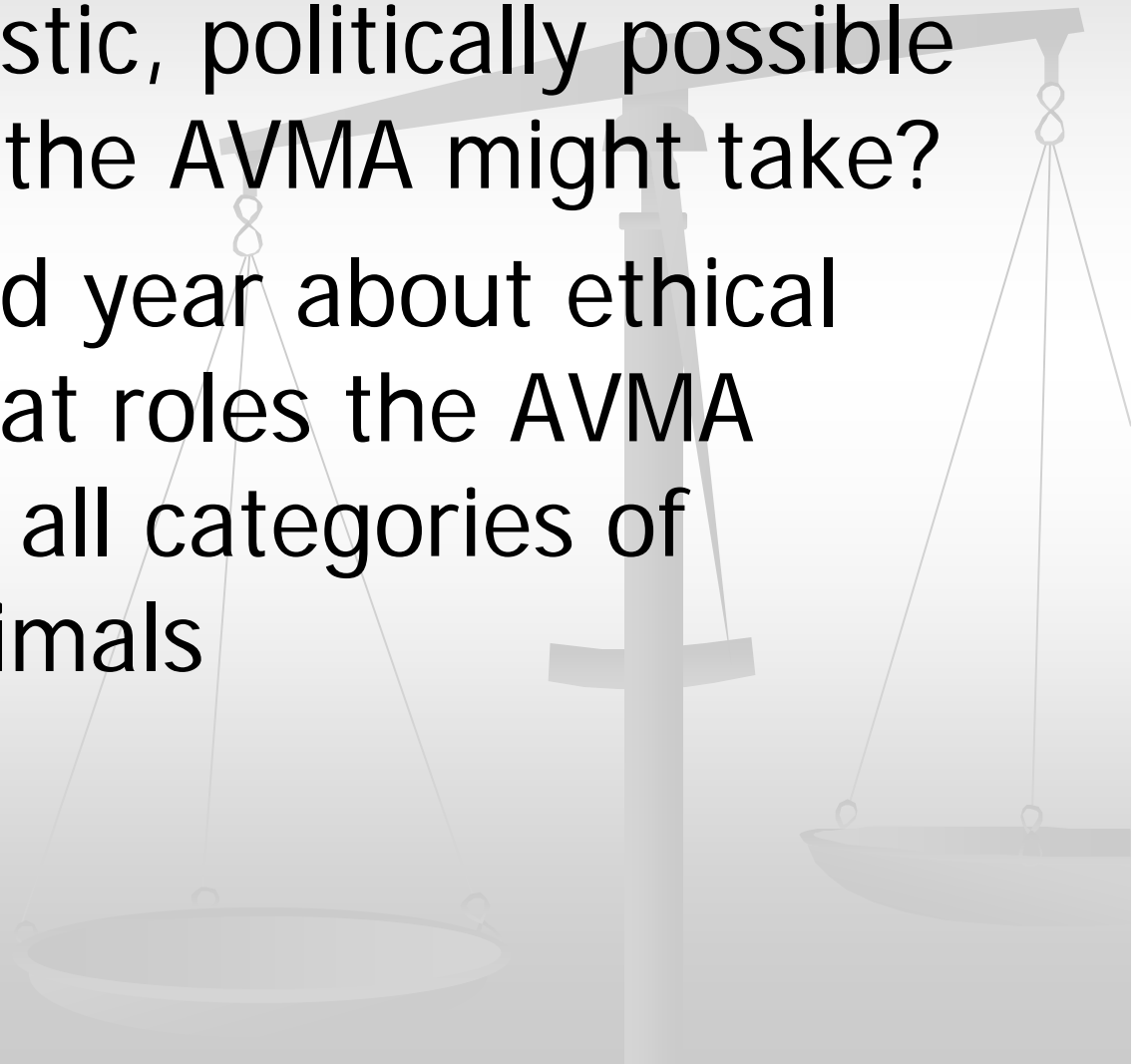
Practical questions

- How to respond to the claim of “profound betrayal of veterinary ethics everywhere around us”
- Should the AVMA take a position? →



The practical question

- What are realistic, politically possible positions that the AVMA might take?
- We talk in third year about ethical issues and what roles the AVMA might take on all categories of nonhuman animals



Next session

Companion Animals

