With Best Friends Like Us Who Needs Enemies? The Phenomenon of the Puppy Mill, the Failure of Legal Regimes to Manage It, and the Positive Prospects of Animal Rights

Adam J. Fumarola

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The pressures for pethood are greater than ever before. There is tremendous ambivalence about our species' impact on the rest of the living world, which translates into dominance tempered by affection. There are, in other words, more people now who want to be benevolent dictators. In addition, now the vast majority of society enjoys powers and privileges formerly held by a tiny elite, and they, too, want to demonstrate their new godlike position in the hierarchy of being. Thus, the human population is in a frenzy for pets, more pets, exotic pets, and purebred pets. Pet shops proliferate, as do the puppy-mills and the backyard breeders.¹

"For at least four decades puppy mills have been one of the most shameful embarrassments of the dog world."² The term "puppy mill" is "a postwar American coinage, used to denote commercial breeding operations that mass-produce supposedly pedigreed dogs for sale in pet shops across the nation."³ Estimates from the Humane Society place puppy mills as almost the exclusive suppliers of the roughly half-million puppies sold every year at America's pet stores.⁴ Mostly located in Kansas, Missouri, Nebraska, Iowa, Oklahoma, and Arkansas, there are an estimated 5000 puppy mills in this country.⁵ Against a backdrop of ethical considerations,⁶ this paper will attempt to develop the evolution of the canine by plotting the course of domestication from its initial inception, aiding in hunting and agriculture, to the current trends of breed manipulation motivated in

¹ JIM MASON, AN UNNATURAL ORDER; UNCOVERING THE ROOTS OF OUR DOMINATION OF NATURE AND EACH OTHER, 259 (1993).
⁴ See SHOOK, supra note 2, at 56.
⁵ Id.
⁶ See discussion infra Part I.
part by both consumer demand and the "show" mentality. It is this current trend that will springboard the topic into a discussion of methods of breeding utilized to support the market which supplies, through the "puppy mill," the consuming public with its coveted, albeit unhealthy, purebred animals. This paper will then examine the legal methods currently being utilized in an attempt to curtail, and in some cases eliminate, the atrocities caused by puppy mills by addressing each one and demonstrating its ineffectiveness in application. Finally, I intend to make a case for animal rights as a practical alternative to the current utilization of traditional legal theory.

I. A Taste of Ethics

In an effort to better understand the existence of puppy mills, as well as the effectiveness of methods employed to ameliorate the problems they pose, it is necessary to have a basic comprehension of the ethical considerations involved in pet ownership, and in specific, purebred pethood. Pets are an American standard. In any given year Americans spend more on pet food, in addition to veterinary care, leashes, flea powder, and other animal accessories, than on baby food. In 1997, 58.2 million American households owned one or more companion animals, with the largest percentage, 31.6, owning dogs. This percentage roughly translates into a population of almost
60 million domestically owned dogs, by far the largest amount of any
domesticated animal.\textsuperscript{13}

The most commonly hailed notion underlying pet ownership
is the expectation of unconditional love and companionship.\textsuperscript{14} Yet it
has been theorized that the conscious issues surrounding the
ownership and domestication of animals involve a somewhat
perverted notion of human "stewardship."\textsuperscript{15} The stewardship concept
finds its roots in the notion that we, as humans, are God's stewards
and therefore have the duty to prune, trim, weed, breed, castrate and
herd.\textsuperscript{16} Alternatively stated, 'lower' forms of life require continual
godly/manly management.\textsuperscript{17} It would, however, be sanctimonious to
think that this is the conceptual framework from which most breeders
work. More conceivable is that a breeder is simply providing the
consumer with a loyal and loving companion. It has, however, been
argued that even the simple and seemingly innocuous act of breeding
and domestication subconsciously serve as outlets for the exertion of
dominance over lesser creatures.\textsuperscript{18}

Interwoven into this desire for physical domination are
concepts of purity exercised through the control and manipulation of
breed, blood, and species. As a means to this end, breeders, as well as
consumers, demand that the "human-made race of animal must have
no taint or corruption of genes that might have come from wild or
mixed 'stock'."\textsuperscript{19} Blood lines are maintained by only breeding those
dogs that have the "quality" characteristics/standards set by the
breeding establishment.\textsuperscript{20} The similarities between this notion of

\begin{itemize}
\item Id.
\item See generally Shook, supra note 2, at 15-25 (chapter one of Shook's book
discusses the love and companionship derived from the ownership of one of his
dogs).
\item See MASON, supra note 1, at 210-68.
\item See id.
\item MASON, supra note 1, at 217.
\item See MASON, supra note 1, at 210-68.
\item MASON, supra note 1, at 218.
\item See discussion infra pp. 5-7.
\end{itemize}
breed purity and the notion of ethnocentrism and eugenics, which has plagued humans since the dawn of civilization, is uncanny.

II. From the Beginning

Some archeologists have concluded that dogs were first domesticated approximately 10,000 to 20,000 years ago. By utilizing genetic information, however, scientists have recently discovered that dogs may have been domesticated as early as 100,000 years ago. This latest study also ruled out as the ancestor of the dog all other canine species except the wolf. It has been hypothesized that wolves probably took up with ancient hunter-gathers and traveled the world alongside these packs of humans. It has further been theorized that domestication, as well as selective breeding, occurred once society turned agrarian and needed their companions to herd, guard and maybe even hunt.

The history of man’s relationship with the canid species has evolved over time but has always maintained two essential functions, companionship and performance. Selective breeding for these two purposes was the main element in early domestication. "The human propensity for manipulating the environment may have been impetus

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22 *Id.* (citing study done by Robert K. Wayne from the University of California, Los Angeles).
23 *Id.*
24 *Id.*
25 *Id.*
26 See generally MARY ELIZABETH THURSTON, THE LOST HISTORY OF THE CANINE RACE; OUR 15,000 YEAR LOVE AFFAIR WITH DOGS (Andrews and McMeel 1996) (general discussion of the history of dogs and their role in human society); see also MARION SCHWARTZ, A HISTORY OF DOGS IN THE EARLY AMERICAS, (Yale University Press 1997) (Marion dialogues the inception of the use of dogs in America for hunting, hauling and herding, as well as, the role that dogs played in both the religion and art of Native Americans).
enough to cultivate prehistoric dogs as "tools" for hunting." The traditional practices used by Native Americans in breeding employed periodic outcrossings with wolves and a simple criterion for eliminating unsuitable animals. Certain tribes, like the Hidatsa, would give away or kill puppies they did not want based on their affinity for snapping at people or killing other dogs. When maturity was reached the dogs would be subjected to more practical criteria such as the ability to guard flocks and flush out game, "or just a willingness to serve as "hot blankets" on cold nights." Such formalities resulted "in a loose rule of thumb by which some dogs received preferential treatment in the form of food, shelter, or affection." Whatever the process utilized by early breeders when selecting desirable traits, such as speed, strength, or companionship, it is evident that the ultimate goal was obtaining functional utility, with little emphasis on physical appearance.

III. Breeding and the Purebred Today

Originally, selection would have been based on little more than toleration of man's company; whereby those which would co-operate most readily were selected. As time passed and the business of keeping body and soul together did not entirely occupy man... he began to allow himself the luxury of selecting dogs whose appearance pleased him."

27 THURSTON, supra note 26, at 7.

28 It was believed that these periodic breedings with wolves would enhance the strength and endurance of the animal while maintaining the desired amiable traits.

29 Thurston, supra note 26, at 9.

30 Id. at 10.

31 Id.

This trend has produced two main camps of breeding, both with differing motivations and tactics for achieving their goal of reproduction of the canine species. First, there are those who breed dogs with the intention of improving and enhancing the breed, and who are often referred to as "hobby breeders." At this stage it is important to point out that the term, "hobby breeder", is relatively broad and essentially encompasses three distinct subgroups of breeders. There are those who are motivated solely by the perpetuation of a healthy well tempered dog that will ultimately make some would-be pet owner an enjoyable companion. Because my paper does not focus on this type of breeder, any use of the term "hobby breeder" hereinafter discussed does not include or pertain to this subsection. The motivation of a second subgroup of hobby breeders is not as altruistic; from time to time the activities of this group are addressed in this paper. These breeders produce most of the show dogs, insisting on their "right to produce dogs that catch a judge's eye." Such insistence has produced dogs that while visually pleasing, on occasion, have crippling and often fatal physical genetic deficiencies. It is important to remember that while these animals typically are show dogs, there is only so much room in the world of show, leaving the rest to be sold to the average pet-owning consumer. A third subgroup of hobby breeders breeds dogs for performance in

34 Interview with Kathy Cauly (Feb. 26, 1999).
35 Shook, supra note 2, at 50.
36 Id. at 34-45 & 67-81 (The German Shepherd has been selectively bred for sloped haunches which give the appearance of readiness to attack, but result in chronic hip dysplasia.); see also Cohen, supra note 9, at 71 (Certain characteristics of the Bulldog, like the large head, have been exaggerated so that the puppies have to be born by cesarean section.)
what are commonly designated as "field trials." These dogs are highly adept at performing those tasks that make up their respective breed competitions, such as retrieval, speed, or endurance. While training for competition such animals rarely have human interaction, which on occasion results in a dog that is too high strung to make a decent companion.

IV. The Puppy Mill

In contrast to "hobby breeders," commercial breeders are the focal point of this paper. It is these individuals who breed dogs simply as a means of profit, resulting in genetically and physically deficient animals who, often times, are malnourished and reared in unsanitary conditions. It is under this last category of breeders that puppy mills, and puppy millers, fall. "By common definition, a puppy mill is a business whose sole product is puppies. . . ." There is, however, a much more acute definition that brings to light the atrocities and horrors that make up this recent American phenomenon. It is the first hand observation of a more atrocious puppy mill that provides the best method for visualizing and appreciating the conditions under which breeding is conducted within the confines of these establishments.

The grounds of the puppy mill are a mess. . . . Everywhere you look, you see trash -- rusted cars, dog

37 Id. at 51.
38 Id.
39 Id. (Shook also notes that while these field trial dogs are competitive within their specific competition tasks, they are often inept at performing tasks outside the performance arena, like hunting).
crates, bags of feces, mounds of feces . . . and empty food and water bowls. . . . [K]ennels have plenty of dogs in them, but no food and water. They are filthy from one end to another; the concrete is covered with excrement. . . . One of the barns is a place of death; there are dead dogs here, some only skeletons, some so badly decayed that only hair and skeletal forms remain. . . . [D]ogs are emaciated. . . . They live in filth. . . . Because of the filth, there are flies; most of the dogs have missing pieces of ears, eaten away by flies. . . . Multiple dogs in one kennel results in continual fighting, injury, and death. . . . Puppies are in kennels with several dogs. These uncles and aunts, brother and sisters attack, maim, and sometimes kill. . . . A mother dog with babies gets no special pre- or post-natal care -- no extra food, no extra space. At this mill a mother dog is found in a shed with a litter of pups. The windows and doors are shut, there is no water, and it is 98 degrees. Two of the pups are dead. Elsewhere, other mothers are dead, leaving their pups to their own devices for survival. . . . There is no veterinary care here; there is very little human care or contact.42

42 Id. (This is an actual account of a “kennel” visited by members of a rescue group. The puppy mill from which the depiction is based was eventually raided and the dogs were given veterinary care and placed in homes.). Another poignantly detailed description of a puppy mill can be found in Shook’s book; “Dams and sires are bred nonstop from the age of six months to five to six years of age. When females have been bred to literal exhaustion, they are often killed. Reports from the ASPCA describe how mother’s dead bodies are sometimes fed to surviving dogs. Puppies born at puppy mills are often shipped during infancy, four weeks of age. Shipping methods employ tightly packed containers where suffocation is commonplace.” Shook, supra note 2, at 56-58.
Initially, it was the United States government that set the stage for the puppy mill. After World War II, when conventional crops failed, American farmers sought alternate means of making money. In response, the United States Department of Agriculture began promoting the raising of dogs as a crop. As the supply of dogs began to grow, so too did the number of retail pet stores. As eventually would happen, the demand for pets skyrocketed and the retail store became the predominant distributor of puppy mill animals, as well as, one of the most popular methods for obtaining a pet. The ASPCA estimates that approximately half a million puppies are sold annually by pet stores.

The end result of bad breeding and poor care is an unhealthy, and often behaviorally erratic, animal. Due to the puppy mill breeders' failure to select out propensity for disease, and often times because of the purposeful selection in of hereditary traits such as the sloped hips of the German Shepherd, puppy mill dogs are prone to countless infirmities. Simultaneously, because these puppies have been so badly treated during critical developmental periods they may develop behavioral problems as adult dogs such as chronic nervousness or aggression. Unfortunately for the consumer, most

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44 Id.
45 Id.
46 See SHOOK, supra note 2, at 56. There are currently an estimated 5000 puppy mills in the United States producing hundreds upon thousand of dogs a year.
47 Id.
48 See discussion infra pp. 9-12 (reasons why the retail store is so attractive to the pet consuming public).
49 See SHOOK, supra note 2, at 56.
50 See generally SHOOK, supra note 2, at 67-81. Certain hereditary problems are synonymous with specific breeds, such as hip dysplasia in the St. Bernard and Bullmastiff and eye problems in the Retriever (curly or smooth coated).
51 See Cohen, supra note 11, at 69.
puppies are cute, cuddly, and friendly and these undesirable behavioral traits are not apparent until the puppy has matured into a dog.\textsuperscript{52}

In 1997 the Humane Society of the United States estimated that ninety percent of the animals sold in pet stores come from a puppy mill.\textsuperscript{53} "Gimmicks" are often used to make a sale.\textsuperscript{54} Why then, in light of all the problems that pet store, a.k.a. puppy mill, animals present, as well as the bad press that both have recently received, does the consumer continue to frequent this establishment and purchase these "tainted commodities?" If the puppies are in fact considered nothing more than a product, then it can be argued that pet stores encourage impulse buying in the same manner as many other retail establishments. "Pet store owners/employees are all trained in the art of selling and being friendly."\textsuperscript{55} While pet shops place cute puppies behind a window and encourage customers to hold them,\textsuperscript{56} "[m]ost employees/owners know little or nothing about the [dogs] they are selling except for a short pamphlet about the breed...and even then, "add-libbing" is an art form."\textsuperscript{57} It is this type of atmosphere that perpetuates impulse buying, a mentality that only stands to benefit the pet store and boost sales.

What makes pet store puppies even more attractive is that often times the purchase price will be lower than that charged by reputable "hobby breeders."\textsuperscript{58} Pet stores are also attractive because,

\textsuperscript{52} See id.
\textsuperscript{53} Janet Pearson, Helpless Dogs are Grist for the Puppy Mill, TULSA WORLD, Nov. 9, 1997, at G1. In this article Ms. Pearson points out the importance of remembering that some pet stores, "refuse to do business with puppy mills and provide adoption assistance for shelters and rescue organizations." Id.
\textsuperscript{55} Id.
\textsuperscript{56} See id.
\textsuperscript{57} Id.
\textsuperscript{58} Dan Herbeck, Vacco Suit Accuses Store of Selling Diseased Animals, BUFFALO NEWS, Sept. 23, 1998, at A1. Pet Store dogs purchased by customers of Noah's Pets II were charged anywhere from $59 to $100. Most purebred dogs from
given their desire to make a sale, they are unconcerned about the prospective home that a customer will provide for their pet. A good sign of a reputable breeder is one who is concerned for their puppy’s future and welfare. The breeder will ask questions about the consumer, concerned over whether or not the buyer’s lifestyle is compatible with the breed’s character. If unsure whether such compatibility exists, such breeders will be reluctant to sell their dog and may even refuse to do so.\(^9\) It is, therefore, much more attractive for a consumer to do business with a pet store and not be plagued by the high price tags and possible rejection associated with a reputable breeder.

Probably the most convincing argument concerning the consumer’s willingness to overlook the prospective problems, and hidden atrocities, of puppy mill dogs is the stamp of approval that most pure bred dogs at pet stores have from the American Kennel Club (AKC).\(^6\) The AKC is the largest breed club in America.\(^6\) The organization sets the breeding standards on physical appearance and registers purebred dogs in an effort to advance their health and welfare.\(^6\) American fascination with the purebred can be traced to the arguments laid out in the section of this paper regarding purity of breed.\(^6\) Seemingly, AKC registration provides proof of purity.\(^6\)

This, however, is not entirely true. AKC papers are in fact no guarantee of health or temperament or even that the puppy is a good reputable, local breeders don’t sell for any lower that $200, and are often well above $500. While the savings are not enormous, one can envision the bargain hungry consumer choosing a pet store over a reputable breeder for this exact reason.

\(^59\) SHOOK, supra note 2, at 95; see also Kato, supra note 54, at <http://members.aol.com/KARENKATO/petstore.html>.

\(^60\) See COHEN, supra note 11, at 69-70.

\(^61\) See SHOOK, supra note 2, at 58-89.

\(^62\) SHOOK, supra note 2, at 58-89. Other, smaller breed clubs do exist, such as the Australian Shepherd Club of America.

\(^63\) See discussion supra pp. 2-3.

\(^64\) See SHOOK, supra note 2, at 58-89.
PUPPY MILL

representative of its breed. When asked what the association’s response would be to someone who wanted to register a, "blind, deaf, dysplastic [canine hip displacement], three legged purebred puppy with green fur," AKC President William F. Stifel stated simply, "AKC unfortunately does not mean quality."

It has been argued that the AKC condones puppy mills because of the large amount of money that can be made through registering dogs. In 1990, the AKC grossed over $20 million, 73% of which came from registration fees. Six years later, registrations made the Club over $26 million. In 1987 estimates of puppy mill dog AKC registration ranged anywhere from a third to a half of all registrations. Whatever the reason, it is safe to assume that because the nation’s dog business revolves around purebred credentials from the AKC, the organization could certainly flex its muscle and have an impact on the problem. However, it would be short sighted to assume that an abrupt change in AKC policy would completely eradicate the inhumanity of commercial breeding, for those who heartlessly capitalize on breeding would find a way to continue such behavior. However, surely the AKC could "make life more miserable than they are for irresponsible breeders, particularly puppy millers."

V. What Steps Have Been Taken in Response to the Puppy Mill

The legal structure that has developed, or that can be creatively utilized, attacks the puppy mill problem from two distinct

65 See COHEN, supra note 11, at 69.
66 SHOOK, supra note 2, at 52 (quoting PARADE magazine).
67 See SHOOK, supra note 2, at 57. Registration can be purchased for $7 for individual dogs and $15 for litters. Id.
68 Id. at 58.
70 SHOOK, supra note 2, at 58 (quoting from PARADE and ATLANTIC respectively).
71 Id. at 60 (quoting New York dog trainer Robin Kovary).
angles. First, there are laws that attempt to eliminate, or at the very least monitor and regulate, the source of the product. Federal legislation embodied in the Animal Welfare Act of 1970,\textsuperscript{72} as well as implementing regulations,\textsuperscript{73} govern the transportation, sale and handling of certain animals. Puppy mills, however, are also subject to state nuisance laws,\textsuperscript{74} local zoning ordinances,\textsuperscript{75} and of course state animal cruelty laws.\textsuperscript{76} These laws work on the expectation that by the regulation of the source, the institution will either effectively reform or collapse under the weight of costs associated with attempting to do so.

Second, there are laws aimed at the distributor. State animal dealer laws regulate not only day to day operations, but provide remedy to the consumer if it can be shown that the merchant sold a "defective" dog.\textsuperscript{77} Similarly, Courts have held that under certain circumstances, sale of a diseased puppy could be considered breach of express warranty either under a state uniform commercial code,\textsuperscript{78} or products liability law.\textsuperscript{79} The hope is that by holding the dealer responsible for the quality of their product and compensating the consumer where merchandise is "faulty," the distributor will be forced to pay greater attention to the health of the puppy. In turn, this heightened watchfulness can be expected to affect the choices made

\textsuperscript{72} See 7 U.S.C. § 2131.
\textsuperscript{73} See 9 C.F.R. § 3.1-3.12.
\textsuperscript{74} See M.S. Galinsky, \textit{Keeping Dogs as Enjoinable Nuisance}, 11 A.L.R.3d 1399 (1967).
by distributors when purchasing puppies for resale, ultimately reducing the number of puppies purchased from puppy mills.

A. Regulating the Source

1. The Animal Welfare Act

The Animal Welfare Act is designed to regulate, through the licensing of breeders, large scale commercial breeding of dogs. It was the finding of Congress that those animals regulated under this act were, "either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof," and that regulation of such was, "necessary to prevent and eliminate such burdens upon such commerce." Congress further found that it was, "essential to regulate the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or persons or organizations engaged in using them for sale as pets or for any such purpose or use," in order to insure that animals, including dogs, "intended for use as pets [were] provided humane care and treatment." The legislation requires individuals who deal in animals covered by the Act to obtain a license from the Secretary of Agriculture. Congress stipulates that such a license is not to be granted unless the dealer can demonstrate compliance with regulations set by the Secretary. Such regulations are established pursuant to congressional directives setting out minimum requirements for housing, feeding, watering, shelter, veterinary care, and exercise. The Department of Agriculture, which is empowered to monitor compliance with these standards, is charged with making regular inspections and even

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81 Id.
82 7 U.S.C § 2131(1) (1998). The term “dog” is defined by the Code to include those used for, “hunting, security, or breeding.” 7 U.S.C. § 2132(g).
83 7 U.S.C § 2133.
84 Id.
authorized to impose fines for interference with such.  

In the event of a suspected violation the Act provides for suspension of the operators license and possible permanent revocation pursuant to a hearing.  

Violators may also be subject to civil penalties of up to $2500 for each violation, with every day counting separately. Additional violations can be criminally liable for either a maximum sentence of one year, a $2500 fine, or both. Appeals from final orders of this nature are within the exclusive jurisdiction of the United States Court of Appeals.

While the Welfare Act, like much congressional legislation, establishes some noble directives, it is the regulations implemented by the Secretary that truly affect the operation of a puppy mill. These regulations require individuals involved in the business of dealing in animals to obtain a permit from the government. Generally speaking, once permitted to operate, breeders are required to provide animals with sanitary housing facilities free from hazardous and unsafe conditions. Specifically, the regulations set out minimum criteria for both indoor and outdoor housing facilities by establishing construction standards for the housing units, including temperature, ventilation, and lighting requirements. Likewise, the regulations set minimum requisites for exercising.

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87 See 7. U.S.C. § 2149(a). Such permits are granted by the Secretary of Agriculture pursuant to 9 C.F.R. § 3.1.
89 See 7 U.S.C. § 2149(d).
90 See 7. U.S.C § 2149(e).
94 9 C.F.R. § 3.3 (1998).
96 See supra notes 84-85 and accompanying text.
97 See 9 C.F.R. § 3.8.
grouping, feeding, watering, and sanitation. These regulations are supplemented with requirements for veterinary care and facility direction.

Since the economic basis for a successful puppy mill is low overhead and exploitative measures one might assume that proper enforcement of the regulations would eliminate puppy mills by denying breeders the ability to operate commercial facilities that are anything but humane. Unfortunately, such is not the case. Even though the United States Department of Agriculture ("USDA") has inspectors all over the country, and was the logical choice as the enforcement agency because of its previous expertise in livestock, the agency has been lax in exacting compliance from commercial breeders. In addition, the problem endures because licensed breeders often ignore regulatory requirements and, due to the impracticality of accounting for every single breeder in any given state, unlicensed breeders continue to exist. Operating conditions, therefore, frequently never meet federal standards. Martha Armstrong, of the Humane Society of the United States, has been quoted as saying, "[o]n any given day, half the breeders would meet federal standards that day, [and] half never meet the standards."

To a certain extent the regulations themselves permit some substandard operation. Section 2.1 permits any breeder who grosses less than five hundred dollars in animal sales, maintains three or fewer breeding females, or sells less than twenty five dogs in a given

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98 See 9 C.F.R. § 3.7 (Examples of compatible grouping are that females in heat may not be grouped with males and cats and dogs may not be housed together).
99 See 9 C.F.R. § 3.9.
100 See 9 C.F.R. § 3.10.
101 See 9 C.F.R. § 3.11.
103 Pearson, supra note 53.
104 Id. Oklahoma alone has more than 350 licensed breeders.
105 Id.
year to operate without a permit. While it would seem unlikely that anyone would bother with a business that grosses less than five hundred dollars per year, it is easy to imagine a "disreputable" breeder failing to make accurate reports of their revenue, the number of dogs sold annually, or even the number of breeding females.

Even when a particular violation is uncovered, the penalty is often minimal when compared to the operational profit margin of a mill. Such penalization is therefore ineffective at truly dissuading operators from engaging in the targeted conduct. A perfect example comes from a case in Nebraska where a licensed kennel was charged with forty-one violations of the Animal Welfare Act, ranging from delivery of dogs less than eight weeks old to failure to maintain adequate records. Ultimately, the kennel was penalized with a twelve thousand-dollar fine and a ninety-day suspension of license. While at first glance this punishment might appear substantial, it is important to note that at the time the case was brought the kennel’s gross annual income was over one million dollars. It is not difficult, therefore, to imagine the kennel paying the fine, waiting out the ninety days, and continuing operation without sustaining and real loss. While one could argue that these violations are not of the grievous nature under which some mills, such as the example illustrated above, have been found to operate, it is partly this type of mentality that is responsible for the perpetuation of the industry.

This case sets damaging precedence and sends the unfavorable message to such operators that because the victim of the inhumanity is an animal, the bar for what is truly an abomination is set so high that punishment for anything but the most heinous abomination

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107 See Cox v. United States Dep’t of Agric., 925 F.2d 1102 (8th Cir. 1991).
108 See id. at 1104.
109 See id. at 1103.
110 Id.
111 See generally Smith, supra notes 41-2 (accompanying text provides example of more heinous methods of operation).
results in a simple slap on the wrist. Why should the sale of dogs too young to be separated from their mother not be so unlawful that the punishment for such puts the operator out of business, rather than simply be a thorn in their side? By setting the bar so high, it is the very human principals of the aforementioned stewardship ideal, which permit us to exploit animal resources for the benefit of humans. And it is ultimately the height of the bar that prevents effective regulation. Only when people are truly in fear of serious adverse consequences can regulation through punishment hope to deter conduct of this nature.

2. Private Nuisance

Generally speaking, the keeping of a dog, or many dogs for that matter, is not considered a nuisance and is often encouraged by society to promote companionship and well being. However, owning a dog "may amount to an enjoinable nuisance where it interferes with the peace, quiet, and normal enjoyment to which a person is entitled in the use of his home, or where the keeping of dogs results in the impairment of the monetary value of nearby homes either through the undesirability of living near barking dogs or through property damage inflicted by the animals." Often, where these aggravations have reached extreme levels, courts have been willing to grant equitable relief enjoining the owner from keeping the nuisance, or dog. Where commercial kennels are located in residential areas, residents have been able to obtain an injunction simply by providing evidence that noise and odor emanated from kennel, without ever establishing

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113 See discussion supra text pp. 2-4.
that such annoyances where of nuisance proportions.\textsuperscript{116} Numerous state courts have concluded that it is unnecessary for any persons living in a residential area to be subjected to the noise created by a large number of dogs and that the existence of such was sufficient grounds for issuing an injunction.\textsuperscript{117}

While there are multiple defenses to a nuisance action, most courts have been reluctant to hold for the breeder/kennel and more willing to side with the plaintiff. One such defense is that the keeping of dogs represents a legal business and a source of income to the defendant.\textsuperscript{118} A business, however, regardless of its legal nature, can become a private nuisance when its activities cause bother or injury to the person or property of at least one individual. In such a case, the offensive use should be relocated to a place where the activities will not cause annoyance to innocent people.\textsuperscript{119} Some kennels have also tried to argue that under certain circumstances the plaintiff bringing the action moved adjacent to the alleged nuisance and that the breeder should therefore be protected as having established its use first.\textsuperscript{120} However, courts have readily held that a defendant’s priority of location, or the complainant’s "coming to" the nuisance, is not a defense in an action to restrain that nuisance.\textsuperscript{121} One of the few times when courts have been sympathetic to the plight of the kennel is when a particular breeder has made, or is willing to make, efforts to


\textsuperscript{117} See 690 S.O.2d 1341, 1343 (Mo. Ct. App. 1997).

\textsuperscript{118} See Miller v. Coleman, 97 S.E.2d 313 (1957); see also Nichols v. Simpson, 308 S.W.2d 613 (Tex. Civ. App. 1957).

\textsuperscript{119} See Coleman, 97 S.E.2d at 315.

\textsuperscript{120} See Ensign v. Walls, 34 N.W.2d 549 (1948); see also Robertson v. Shipp, 50 So.2d 699 (La. App. 1951), Ryan v. La. Soc’y for Prevention of Cruelty to Animals, 62 So.2d 296 (La. App. 1953) (both Robertson and Ryan deal with a dog-training operation and a dog pound, respectively, rather than puppy mills).

\textsuperscript{121} Id.; see also 58 AM. JUR. Nuisances § 440 (1989) (for general discussion on defense of “coming to a nuisance”).
minimize the disturbance. Where it can be shown, however, that the nuisance has not been diminished, an injunction will most likely be granted, regardless of the kennel’s mitigation efforts.

No doubt many puppy mills can create an enjoinable nuisance; as alluded to earlier in the paper, the sheer number of dogs, coupled with the conditions under which they are kept, should be sufficient to establish the nuisance factors previously described. Initially then, one would think that nuisance law can effectively manage puppy mills by either enjoining operations that can’t afford to reform or reforming those who can. A plaintiff in a nuisance action, however, must not only demonstrate the prospect of reasonable use and enjoyment, but must also establish an injury in fact, that because of the conduct complained of he or she has been unable to reasonably enjoy their property. Since many puppy mills are located far away from residential areas, there are few residents close enough to be truly affected. Thus, while on multiple occasions injunctions have been granted to plaintiffs who did not live in immediate vicinity of a kennel, it is easy to imagine that a puppy mill located in a completely uninhabited area would be immune from even the most imaginative of nuisance claims.

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122 See DeLongpre v. Carroll, 50 N.W.2d 132 (1951) (finding that the virulent effect of a kennel was offset by the owner's installation of a gas incinerator for the discarding of refuse).

123 See Rachlin v. Drath, 132 N.W.2d 581 (1965) (finding that plaintiff sufficiently demonstrated that despite defendant's mitigation efforts, the nuisance had not been abated, and therefore injunction was in order).

124 See Wilms v. Hand, 226 P.2d 728 (1951) (noting that aggravation from barking could be heard from one thousand feet away); see also Robertson v. Ship, 50 So.2d 699 (1951) (noting that complainants lived two hundred and fifty feet from the closest dog pen).

125 See Robertson, 50 So.2d at 703-04 (deciding that while those plaintiff's who lived within a quarter of a mile from the kennel were justified in bringing nuisance claim, those people who lived more than one quarter of a mile had no basis for complaint).
3. Local Zoning Laws

The location of a puppy mill is the decisive factor in the ability to bring a nuisance claim. Consequently, keeping dogs in one neighborhood may be an enjoinable nuisance, while in another it may be normal use of the land. However, what is and is not considered "normal" use of land is often prescribed by zoning law. "A basic purpose of zoning is to ensure an orderly physical development of the city, borough, township or other community by confining particular uses of property to certain defined areas." A zoning ordinance, classifying an area as residential, commercial, or even agricultural, may or may not permit certain property to be used for the "keeping" of dogs. In order to rule that a breeder has violated a zoning ordinance two elements must be established. First, it is necessary to find that the ordinance does in fact prohibit the activity in question, namely the operation of a kennel. Some courts, by strictly interpreting the language of local zoning law, have easily made such a determination. For example, a court in Wisconsin held that, "the absence of commercial breeding as a permitted or conditional use in a nonexclusive agricultural district, demonstrates that the county board meant not to allow commercial dog breeding facilities in exclusive agricultural districts." Once it has been established that a use is prohibited, it is next necessary to ascertain whether the defendant is in fact carrying on the prohibited activity. Evidence to support such a finding includes past actions, such as holding

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127 See Hume v. Bldg. Inspector of Westford, 243 N.E.2d 189 (Mass. 1969) (finding that defendant was operating a commercial kennel in a residentially zoned area where such was not permitted); see also Mathews v. City of Jennings, 978 S.W.2d 212 (Mo. Ct. App. 1998).
129 Schroeder, 1998 W.L. 668421 at *1.
130 See id.
oneself out as a commercial breeder, or including dog expenses as a business tax deduction.\textsuperscript{131}

It is not necessary for a plaintiff to establish that a kennel is a nuisance in order to enforce zoning law.\textsuperscript{132} One would think, therefore, that where commercial breeding is not permitted under the zoning law, regardless of its impact, or lack thereof, on community members, eliminating puppy mills would simply be a matter of demonstrating the elements. Unfortunately, the matter is not so cut and dry. More often than not, zoning ordinances allow an individual to apply for a permit to conduct an activity that would otherwise be prohibited.\textsuperscript{133} Various Zoning boards have exercised a wide range of discretion in deciding whether or not to grant such a permit.\textsuperscript{134} In making this determination a Board is required to consider the effect of the "non-conforming" use on both residential use and enjoyment of property, as well as, resultant impact upon property values.\textsuperscript{135} While one might think that any breeding kennel would negatively impact both these factors, and that therefore any board should consistently reject any such application, this is not always the case. Where the applicant has already invested moneys in the operation and would suffer economic hardship if denied permission,\textsuperscript{136} zoning boards have often granted, through creative interpretation of the zoning law,\textsuperscript{137} non-conforming use applications. Generally, zoning

\textsuperscript{131} Id. at *2.
\textsuperscript{132} See Hume, 243 N.E.2d at 191.
\textsuperscript{133} See Scott v. Marshall County Bd. of Zoning, 696 N.E.2d 884 (Ind. Ct. App 1998); see also La Dirot Associates v. Smith, 169 A.D.2d 896, 564 N.Y.S.2d 620 (1991). Both cases deal with individual applying for either a special use exemption or a variance in an attempt to operate a kennel which, based on the zoning ordinance, was otherwise a prohibited activity.
\textsuperscript{134} See La Dirot, 169 A.D.2d at 897.
\textsuperscript{135} See Scott, 696 N.E.2d at 887.
\textsuperscript{136} See La Dirot, 169 A.D.2d at 115.
\textsuperscript{137} See Hobert v. Marque, 486 P.2d 1140 (Was. Ct. App. 1971) (holding that defendants were entitled to erect and maintain commercial dog kennel in one-family suburban residential zone where the local ordinance, in permitting "kennels" in such an area, did not provide specifically that noncommercial breeding was the
board decisions are only overturned where there has been an abuse of discretion. That breeding facilities do exist in areas where they are not a permitted activity is evidence of the fact that courts have been willing to defer to zoning board "expertise."  

4. Animal Cruelty

It could be argued that in order for a solution to the puppy mill problem to be effective it must address the plight of the animal and not, as both nuisance and zoning law, the people who may or may not have their lives inconvenienced. Accordingly, one might think that a more effective method for eliminating puppy mills would through animal cruelty laws. While state animals cruelty laws are all drafted differently, most deal directly with the causing of intentional pain to animals through abandonment, neglect, or mistreatment. Penalties for violation of such laws, which in some states can range from a Class A to a Class B misdemeanor depending on the severity of the crime, typically result in either imprisonment not exceeding twelve months or fines not in excess five thousand dollars.  

In order to examine the effectiveness of animal cruelty legislation it is necessary to highlight two very important points. Initially, in order for authorities to be alerted to the existence of cruelty at any given puppy mill, complaints must be made by people

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139 See La Dirot, 169 A.D.2d at 115.
143 Ga. Code Ann. § 16-12-4(b).
aware of the atrocities being committed. More often than not those in
the position of awareness are purchasing dogs from the breeders. It is
unlikely that distributors visiting puppy mills for business purposes
will then turn around and report any suspected violations for it would
be foolish to bite the hand that feeds you.\textsuperscript{144}

Additionally, and probably more significant, is the fact that
even though these types of statutes purport to "prevent cruel treatment
or a cruel killing or injury of any animal,"\textsuperscript{145} ultimately the ability to
effectively enforce their sanctions is subject to the rights of the
property owner. For example, in Kansas, it is a crime to sneak onto
a puppy mill and either photograph or document activities.\textsuperscript{146} Such
legislation obviously impedes the process of bringing illegal activities
to the attention of the authorities. Fourth Amendment restraints on
search and seizure have also created problems to effective
enforcement. The Kansas Court of Appeals held in \textit{State v. Marsh}
that even though warrantless inspection is necessary to further the
regulatory scheme, there must be some minimal sort of mechanism
which protects a defendant's right to be free of an unreasonable
search and seizure.\textsuperscript{147} In \textit{Marsh}, officials raided a puppy mill and
collected evidence not on a judicially ordered search warrant, but
rather on an emergency administrative order issued by the
Commissioner of the Animal Health Department pursuant to the state
Animal Dealers Act.\textsuperscript{148} The Court ultimately concluded that because

\begin{footnotesize}
\footnotetext{144}{Pearson, \textit{supra} note 53.}
\footnotetext{145}{Ala. Code Ann. § 13A-11-14, Commentary.}
\footnotetext{146}{\textit{See} Shook, \textit{supra} note 2, at 57.}
\footnotetext{148}{\textit{See} Marsh, 823 P.2d at 830.}
\footnotetext{149}{\textit{See} March, 823 P.2d at 829-30.}
\footnotetext{150}{\textit{See} Marsh, 823 P.2d at 830-31.}
\end{footnotesize}
alleged acts of cruelty and the initial stages of investigation have begun, the defendant has been effectively placed on notice and authorities are free to come onto property during reasonable business hours.\textsuperscript{151} Ultimately, however, such access subordinate to the expectation of privacy by the property owner.\textsuperscript{152} By thus protecting "unreasonable" searches and seizure and enforcing a strong privacy right in property use, the courts have deflated any possible emphasis on the statutory protection of the animal by rendering it effective only so long as people's rights come first.

\section*{B. Regulating the Distributor}

As previously discussed, the second type of legal attack is aimed at protecting the naive consumer, who purchases an unhealthy animal from a pet store, from being left with no recourse.\textsuperscript{153} It is this method which confronts the disreputability of the industry by forcing the distributor to bear the burden of market risks by imposing responsibility for the quality of its product, the puppy.

\subsection*{1. Products Liability}

One avenue for imposing such responsibility finds its roots in products liability. On occasion, courts have permitted a consumer who purchased a diseased puppy to obtain compensation under such law. In \textit{Worrell v. Sachs}, the Superior Court of Connecticut decided that a pet fell within the definition of a product under the pertinent state law and that the plaintiff could therefore sue if it turned out that their animal was diseased or defective.\textsuperscript{154} In a similar vein, a New York Court reasoned that, "[t]here is no reason why...a vendor who

\begin{itemize}
\item[\textsuperscript{151}] See Avenson, 577 F. Supp at 958.
\item[\textsuperscript{152}] Id.
\item[\textsuperscript{154}] See Worrell, 563 A.2d at 1388-89; see also Sease v. Taylor's Pets, 700 P.2d 1054, rev. denied, 704 P.2d 514 (1985).
\end{itemize}
places a diseased animal in the stream of commerce should be less accountable for his actions than one who markets a defectively manufactured product. The risk presented to human well-being is as great and probably greater than that created by a defectively manufactured product."\textsuperscript{155} It is important to understand that while some courts have held that the purchaser of a defective animal is covered under the umbrella of product liability, other courts have held the exact opposite.\textsuperscript{156} In such circumstances it is possible that the distribution of diseased animals may decrease within jurisdictions that follow \textit{Worrell} and increase in those jurisdictions that do not, thereby subverting any attempts to limit puppy milling.

2. Contract Law

As an alternative to products liability some courts have employed contract doctrine in an attempt to protect consumers from purchasing a defective dog.\textsuperscript{157} On such a theory a New York State Appellate Court ruled in that because the puppy purchased from the seller was ill, the buyer could recover veterinary expenses incurred.\textsuperscript{158} The court held that because an animal is considered a "good" within

\textsuperscript{155} Beyer v. Aquarium Supply Co., 94 Misc.2d 336, 337 (1977); see also Sease, 700 P.2d at 1054 (concluding that purpose of products liability was to provide protection to consumer injured by defective products, and that such was also appropriate for pets).

\textsuperscript{156} See Whitmer v. Schneble, 331 N.E.2d 115 (Ill. Ct. App. 1975); see also Anderson v. Farmers Hybrid Cos., 408 N.E.2d 1194 (Ill. Ct. App. 1980). Courts in both cases refused to hold that a live animal was a product under product liability law. The courts reasoned that products liability requires that the product reach the consumer without any change from its condition at the time of sale and that the changing nature of living creatures, which constantly interact with their environment, precluded such a finding.


\textsuperscript{158} See Sacco, 175 N.Y.2d at 618.
the meaning of its Uniform Commercial Code, the seller had breached both the express warranty that the animal was healthy at the time of the sale, as well as, the implied warranty of merchantability.

Once again, contract doctrine offers a means of forcing the retailer to take responsibility for the quality of its product, concern itself with the source of its merchandise. Still, a retailer can escape liability under an express warranty simply by providing effective disclaimer, and hoping, as is often the case, that the puppy will sell itself. On the other hand, one could argue that an implied warranty would serve to protect the consumer where the retailer purposely neglects to expressly guarantee its product. It is important to remember, however, that not all dogs from pet stores are unhealthy. Ultimately, a consumer may be one of many who purchases a seemingly "healthy" puppy mill animal and finds itself without injury. While the particular consumer is no worse for wear, they have effectively perpetuated the industry by buying into it. Additionally, many dogs from pet stores suffer not from physical infirmity but rather from behavioral disorder. One could well imagine the difficulty in attaching an implied warranty to the behavior of a dog, a trait that varies widely not only from dog to dog, but breed to breed.

3. State Animal Dealer Legislation

States have also attempted to attack the retailer of defective dogs by the promulgation of what are frequently termed puppy "lemon" laws. These laws allow purchasers to either return a sick puppy and either get their money back or be reimbursed for veterinary bills. Like products liability and contract law, the goal

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159  *Id.; see also* Nuijens, 543 N.Y.2d at 890 (finding that a puppy was a "good" as defined by the U.C.C.).

160  Sacco, 175 N.Y.2d 618-19; *see also* N.Y. Uniform Commercial Code §§ 2-104(1), 2-105, 2-714.

161  *See* Pearson, *supra* note 53.
of these statutes is to attack puppy mills by discouraging pet shops from acquiring sick or genetically-defective dogs from kennels.\textsuperscript{162} While the constitutionality of such laws has been attacked on a number of grounds, a federal district court has held that they are within the state police power and do not function to preempt the AWA.\textsuperscript{163} Therefore, for the time being, such laws are not in violation of the Commerce Clause. They are not, however, without problem. In order to receive remedies under these "lemon laws" most states direct the owner to return the puppy to the pet store within a specified time period. Pennsylvania requires the consumer to have both found the health problem and returned their puppy within ten days of purchase.\textsuperscript{164} Similarly, New York permits only fourteen days for the owner to return the "defective" dog.\textsuperscript{165} Some illnesses or diseases, however, do not show up until the puppy has reached maturity, which would most definitely be longer than two weeks or even a month.\textsuperscript{166} The statutory time limitation in these laws is too short to help a consumer with a puppy that has anything but an immediate ailment.

It may, however, be too early to criticize the "puppy lemon law" and pass judgment on its effectiveness. By July of 1998, the attorney general's office in Pennsylvania had already received seventy-eight consumer complaints.\textsuperscript{167} Unfortunately, because of budgetary constraints and staff limitations, only a small portion of this total have been resolved or mediated.\textsuperscript{168} Moreover, as long as the shops pay the refunds or veterinary bills they are in compliance with the law. In light of the popularity of their commodity and its high

\textsuperscript{162} Id.


\textsuperscript{164} See Heidi Russel, \textit{Puppy Law Yet to Sink Its Teeth}, LANCASTER NEW ERA, July 19, 1998, at A1 (for diseases that are congenital or heart related, however, the time limit is thirty days).


\textsuperscript{166} See supra text at p. 9.

\textsuperscript{167} See Russell, supra note 164, at A1.

\textsuperscript{168} Id.
profits, pet stores maybe willing to absorb the costs of liability\textsuperscript{169} and continue dealing with puppy mills despite this legislation.

One can easily imagine puppy mill puppies comprising the majority of dog sales from a given pet store. Unfortunately, it is equally easy to conceive of the possibility that such animals may never outwardly evidence any sign of their origin, such as disease or behavioral disorder, and therefore never cause any injury to the owner. When, however, there is a problem the right being protected under products liability, contract law, or lemon laws is the consumer’s. The question asked by the court is not whether the animal has been hurt, but rather whether a defective good, in the form of a diseased animal, has been delivered, and whether such good poses a risk of injury. Animals may be delivered to states that do not impose products liability; animals may be sold without warranty; diseased animals may be cheerfully accepted as returned merchandise. Some pet stores may choose to absorb the costs imposed by products liability, contract or lemon law statutes is a function of the market. As long as there are consumers to purchase these products the pet store remains relatively unaffected by occasional imposition of legal liability. Indeed, the possible remedies—remuneration, vet bills and the hallmark of animal dealer acts, the replacement puppy—seem to only perpetuate the idea that the product is nothing but a commodity. The existing law is therefore unable to effectively manage this situation, thereby permitting the pet store profit from sales and ultimately perpetuate the existence of the industry.

VI. What About Animal Rights?

All the existing legal regimes designed to affect the deplorable conditions of puppy mills permit only one conclusion; for one reason or another these endeavors have not been successful in managing the problem. It is uncanny how many methods attack the problem

\textsuperscript{169} See Pearson, \textit{supra} note 53.
piecemeal without ever really getting to the heart of the matter, the
interest of the animal. Animal welfare laws require the watchful eye
of the government, which is unable to oversee all operations and
discover all the violations. Based on simple arithmetic, it would be
virtually impossible for any one agency to maintain the consistent
supervision needed to truly dissuade puppy mills from carrying on
business as usual. In Missouri alone there are over one thousand
licensed breeders.\textsuperscript{170} Pennsylvania has upwards of two thousand
kennels.\textsuperscript{171} Unfortunately, the Department of Agriculture is only
staffed with approximately 50 wardens to perform inspections.\textsuperscript{172}

At the other end of the supply chain we have chosen to attack
the problem at a point when the money to be made is very large. As
illustrated earlier, even when there is compliance, the animal’s
welfare is poorly served. Products liability, contract law, and the
recent puppy lemon legislation are wholly indifferent to the fact that
the product is not a toy from the supermarket, but rather, a living
creature. When the remedy is a replacement dog, or reimbursement
for a dead one, the message about the real cruelty of the situation is
completely missed by the consumer.

A. Do Animals, Pets in Particular, Deserve Assignment
of Rights?

It has been argued that any being possessing an interest
worthy of protection deserves effective assignment of rights.\textsuperscript{173} Joel
Feinberg, author of \textit{The Rights of Animals and Unborn Generations},
offers support for this discussion by defining such interests, or
"goods," as the possession of physiological requirements, execution

\begin{itemize}
\item \textsuperscript{170} See id.
\item \textsuperscript{171} See id.
\item \textsuperscript{172} See Russell, \textit{supra} note 164, at A1.
\item \textsuperscript{173} See generally R.G. FREY, \textsc{Interests and Rights} at V, (1980) In this
book Frey lays out in full the interest argument for assigning rights to animals.
\end{itemize}
of an environmental niche, and freedom from pain.\textsuperscript{174} Similarly, animal rights proponent Tom Regan, urges that those beings who are the "subject of a life" and exhibit traits such as desire, perception, a sense of future and psychological identity possesses those interests worthy of protection.\textsuperscript{175}

No doubt any attempt to link this perception of interests with animals would meet with a great deal of skepticism. Feinberg notes that his interpretation of interests necessarily requires the rights assignee to have beliefs before it can have an interest, and that such a condition has the potential to exclude animals.\textsuperscript{176} It has, however, been argued that animals do in fact possess such interests and therefore merit assignment of rights.\textsuperscript{177} Therefore, in order to truly subscribe to this theory it may be necessary to change one's perception of animal comprehension and cognition. In the face of potential opposition, such a change can no longer be dismissed as sentimental anthropomorphism, for today "the evidence for the view that animals have interests, that they can be injured or benefited, comes not from the armchair speculations of so-called animal lovers, but from scientists themselves."\textsuperscript{178} It is, therefore, not such an enormous stretch to argue that animal interests do exist.

Additional opposition to this theory may be that interests, as they are commonly recognized, require the bearer to assert them when attempting to secure recognition. For example, people generally think of rights to free speech or religion as concepts proactively


\textsuperscript{175} TOM REAGAN, \textit{THE CASE FOR ANIMAL RIGHTS} 243 (1983).

\textsuperscript{176} See Feinberg, \textit{supra} note 174, at 53.

\textsuperscript{177} See \textit{id.} at 43-68.

asserted by an individual. It would be difficult to imagine an animal asserting any kind of right in this traditional sense. There are, however, multiple forms of legal representation that enable assertion of rights where, for one reason or another, the bearer is unable. One commonly used method is the appointment of a guardian for a severely incompetent individual. Such an alternative could arguably solve the obstacle of an animal’s inability to assert its rights.

Human prejudice, however, remains a significant cause of objection to the proposition that animals should be granted legal rights and standing. Unfortunately, such prejudice is often reflected in law and social policy. However, in the United States and elsewhere, steps have been taken which give legal status to those against whom prejudice has historically been applied. This change has not been the result of an overnight modification in legislation. It has come, instead, from an evolution of the prevailing morality that would not stand for a system that supported oppression. One important lesson can be learned from this: that the law must be open to criticism and direction and that "[t]he history of our legal systems shows that [it] can be made to be responsive to egalitarian and moral consideration." The current animal rights movement should simply be seen as another step in this ongoing process. The interests of domestic animals, especially dogs, could be more effectively served by the assignment of rights. In such a situation the puppy miller, through his or her failure to provide adequate means for the carrying on of life, might be charged with some form of assault. In such circumstances the ability of the miller to escape punishment, due to limited staffing of enforcement authority or the enticing expectation of huge economic gain might be significantly limited.

179 See Feinberg, supra note 174, at 47-8. There are representatives who function through the direction of the principal and there are other types of representatives who operate on behalf of the principal who is unable to do so.
180 See id.
181 Id. at 158.
By calling for a grant of rights to animals, we are required to change our vision and awareness of them. "We are not to see them, as Descartes did, as nature's machines; nor, as Plato did, as lawless beasts; nor as the marketing mentality does, as commodities or renewable resources. We are not to see them thus because each view is symptomatic of the same, deep, slumbering falsehood—namely, that humans are different in kind than from animals."\textsuperscript{182} Rather, we must come to see that humans \textit{are} animals. "To regard the value status of animals otherwise—to go on acting and believing as if nonhuman animals had value only if or as they served human interests—is to give regrettable testimony to the very prejudice here being challenged."\textsuperscript{183}

\section*{B. Specific Arguments Against the Assignment of Rights to Animals}

That animals should be assigned rights in certain circumstances does not mean that human rights should be completely sacrificed in return. Rather, the legitimate pet industry, breeders, and the consuming public, as well as the animals, might be better served if some form of rights were assigned.\textsuperscript{184} Several counter arguments, however, are often offered for such a position, and while many of them have already been addressed earlier in this paper, I thought better to organize the major ones in the forgoing section.

Initially, one might argue that animals already have rights established by laws such as the Animal Welfare Act, and any assignment of such would be redundant. This argument, however, overlooks the distinction between being protected by the law and possessing a legal right that is created or recognized by the law. As

\textsuperscript{182} \textit{Id.} at 159.
\textsuperscript{183} \textit{Id.}
an example, the law protects valuable pieces of art against vandalism. It does not follow that such art has rights of its own, for the law protects the art not for its own sake but for the sake of others who have an interest in its preservation. Similarly, much of the existing legislation is aimed at protecting animals does not, in similar fashion to the legal protection of artwork, establish rights. Accordingly, one can respond to the initial argument by simply maintaining that because the Animal Welfare Act protects animals it does not necessarily establish rights in them, therefore leaving room for such assignment.

It might be argued that because domestic animals are already protected, the creation of additional rights is not warranted. But it has never been the case that simply because humans – women in the nineteenth century, children today – already benefit from the laws, we should forego creating legal rights for them. "Thus, uncritically to persist in treating the two cases differently merely on the grounds that animals already are protected by (are beneficiaries of) laws, is not to engage in the debate at hand." Such an argument fails to address the effectiveness of the methods in place for managing the problem by refusing to allocate more than the bare minimum. The central question is whether protection is truly afforded by existing legislation. The human-centered legislation, which purports to protect, seems to do a disservice to the well-being of the animal. "Human interests are not the measure of animal interests." If we were to have laws based on the recognition of the interests of the

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185 Reagan, Need for Reform, supra note 178, at 157. Unlike the artwork, however, those who produce puppy mill dogs do not have the same interest in preservation. It should come as no surprise then that the laws attempting to protect them in such a fashion have been short of successful.


187 See id.

188 Reagan, Strong Animal Rights, supra note 184, at 160.

189 Id. at 161.
animal, courts would be obligated to rule differently.

In addition, it might very be maintained that once rights are assigned to animals there will be no end to the variety and number of rights that are asserted. For example, a plant could be seen as having an interest in not being harvested and eaten. There are, however, relevant differences between animals, humans, and plants that make this fear unwarranted. Every animal is not entitled to every single right that a human being has. No one could honestly be heard to argue that an animal should be granted the right to vote or engage in the vows of matrimony. In the case of the plant, a line could easily be drawn by asserting that only those beings with conscious awareness are deserving of rights. In the animal's case, "[t]he operative question is whether a given animal itself can literally be benefited, or injured; can itself literally be said to have interests...Only in those cases where the answer to these questions is affirmative do we have reason to raise the lid to animal rights." It is my contention that dogs should be understood as benefitting from being free from the cruelty and disease inflicted by puppy mills and that it is this interest that is worthy of protection through the assignment of rights.

190 Tom Reagan, *Animal Rights, Human Wrongs, in All That Dwell Therein; Essays on Environmental Rights and Environmental Ethics* 75 (1982). The case is made that animals truly have interests, that they can be injured and benefited and like us can be viewed as having valid claims against others.

191 Reagan, *Strong Animal Rights, supra* note 184, at 162. Reagan argues that because clams, oysters, amoebae, or paramecia cannot truly be said to have the ability to be benefited or injured they cannot be considered as individuals and therefore afforded rights. Consequently, he argues, "the road to the legal rights of animals is not destined to lead to chaos."

192 Ultimately, this begs the question of whether an animal, such as a cow, can be said to benefit from not being butchered and eaten. Unfortunately, this quandary is outside the scope of my thesis and therefore will be left unaddressed.

193 Reagan, *Need for Reform, supra* note 178, at 162.
VII. Conclusion

It is therefore necessary for us to examine the matter at hand, the puppy mill and efforts to eliminate the injustices it creates, in light of the concepts laid out by a possible animal rights solution. Even if legislation is able to improve the standards utilized for commercial breeding, which in turn improves the care provided to the dogs, we are still left with the ethical problems associated with factory type commercial breeding. Is it morally wrong to manipulate reproduction for the purpose of massive public demand? Not until people, both the supplying breeder and the consuming public, understand, or are forced to understand, the moral implications of their actions, will the victims of puppy mills truly be free from exploitation. Animals, specifically dogs, "are not part of the generous accommodations supplied by a benevolent deity or ever-so-thoughtful Nature. They have life, and a value, of their own. A morality that fails to incorporate this truth is empty. A legal system that excludes it is blind."

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See discussion infra Part I.

Reagan, Strong Animal Rights, supra note 184, at 155.