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Animal Liberation and the Law: Animals Board the Underground Railroad

LAURA G. KNIAZ†

This Comment provides an analysis of direct action.１ Direct action is the use of clandestine, illegal tactics to (1) free animals,² (2) educate the public about the oppression of nonhumans, and (3) inflict economic harm on animal enterprises.³ Part I provides an overview of animal protection philosophies and tactics. Part II focuses on the philosophy and tactics of animal liberators, the segment of the animal protection movement that engages in direct action. Part III explores why animal liberators may believe lawful means of advocacy do not sufficiently protect nonhumans, while Part IV measures the success of liberators’ illegal efforts. Part V assesses the backlash against animal liberators. This backlash includes the prosecution of liberators under traditional criminal statutes, the creation of federal and state laws designed to deter animal liberation crimes, the activation of numerous grand jury investigations, and the anticipated use of the Racketeer Influenced and Corrupt Organizations Act (RICO)⁴ against liberators. Finally, Part VI proposes several alternatives to this backlash that could help curb animal liberation crimes while furthering the humane treatment of nonhumans.

I. THE EMERGENCE OF THE ANIMAL PROTECTION MOVEMENT

I must interpret the life about me as I interpret the life that is my own. My life is full of meaning to me. The life around me must be full of significance to itself. If I am to expect others to respect my life, then I must respect the other life I see, however strange it may be to mine .... We need a bound-

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1. The terms direct action and animal liberation activities will be used interchangeably to refer to covert, illegal acts performed by activists to protect nonhuman animals.

2. The terms animals or nonhumans will be used to refer to nonhuman animals.

3. The terms animal enterprises, animal industry, animal users, and animal facilities refer to businesses that profit from animal use. These industries include, but are not limited to, agri-business (i.e., animal based agriculture), slaughterhouses, animal research laboratories, fur farms and furriers, rodeos, zoos, and circuses.

less ethics which will include the animals also.\(^5\)
— Dr. Albert Schweitzer

A. The Use of Animals

Every year, humans kill billions of animals for food, clothing, entertainment, and research. More than four billion cows, steer, sheep, lambs, pigs, chickens and turkeys are raised and slaughtered annually to satisfy Americans’ appetite for meat, dairy, and eggs.\(^6\)

Between ten and one hundred million animals\(^7\) are killed yearly in United States laboratories.\(^8\) Over sixteen million dogs, cats, and

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6. Schweitzer, Civilization and Ethics, supra note 5. Animals used to produce milk and eggs are ultimately killed for their flesh and skins when their production levels wane. In the United States, almost all farm animals are raised under intensive farming conditions. These nonhumans suffer commonplace cruelties such as castration, branding, debeaking, detoeing, separation of mother and young, intensive confinement, difficult transport, and painful slaughter. For an overview of the treatment of animals used for food, see Michael W. Fox, Farm Animals: Husbandry, Behavior and Veterinary Practice (1984); Ruth Harrison, Animal Machines (1964); Jim Mason & Peter Singer, Animal Factories (1980); John Robbins, Diet for a New America 48-145 (1987); Peter Singer, Animal Liberation 95-157 (2d ed. 1990) [hereinafter Singer, Animal Liberation]; Jim Mason, Brave New Farm?, in In Defense of Animals 89 (Peter Singer ed., 1985) [hereinafter Mason, Brave New Farm?].

7. The exact number of animals used in research is unknown. Animal protection activists have claimed that as many as 100 million laboratory animals are used annually in the United States. In 1986, the Congressional Office of Technology Assessment projected an annual figure of approximately 22 million. It has been argued that “[n]o truly accurate figures exist, however, because there are no requirements for all facilities that use animals to report all species to any central agency.” Heidi J. Welsh, Animal Testing and Consumer Products 129 (1990).

8. Though proponents of animal experimentation argue that such research is essential to ensure human health, e.g., American Medical Association, Use of Animals in Biomedical Research: The Challenge and Response 1-2 (1992 revised) (unpublished white paper) [hereinafter AMA White Paper], there has been substantial debate about how much animal experimentation is appropriate, what restrictions should be placed upon it, and whether it benefits humans at all. See, e.g., Animal Experimentation: The Consensus Changes (Gill Langley ed., 1989) (furnishing a collection of essays about animal experimentation); F. Barbara Orlans, In the Name of Science: Issues in Responsible Animal Experimentation (1993) (recommending increased protection for animals used in experiments); Andrew N. Rowan, Of Mice, Models and Men: A Critical Evaluation of Animal Research (1984) (delivering a scientist’s evaluation of animal research and asserting that restrictions are appropriate); Hans Ruesch, Slaughter of the Innocent (1978) (providing an exposé of vivisection); Richard D. Ryder, Victims of Science (1983) (giving an account of the use of animals in experiments); Kenneth Shapiro, A Rodent for Your Thoughts (1993) (critiquing animal-based psychological research); Robert Sharpe, The Cruel Deception: The Use
other companion animals die each year in pounds and shelters.\textsuperscript{9} Approximately two hundred million animals are killed per year by hunters.\textsuperscript{10} Still more animals spend their lives engaging in unnatural acts to entertain humans at rodeos, dog and horse races, circuses, zoos, cockfights, bullfights, and other arenas.

As these figures demonstrate, animals are commonly manipulated to satisfy humans' perceived needs and desires. Despite this widespread use of animals, many people argue that humans have a direct duty to treat nonhumans with compassion and respect.\textsuperscript{11}

\begin{flushleft}
\textbf{OF ANIMALS IN MEDICAL RESEARCH} (1988) [hereinafter SHARPE, THE CRUEL DECEPTION] (arguing that vivisection provides negligible benefits to human health); ROBERT SHARPE, SCIENCE ON TRIAL: THE HUMAN COST OF ANIMAL EXPERIMENTS (1994) [hereinafter SHARPE, SCIENCE ON TRIAL] (documenting failures and misleading results of animal research); SINGER, ANIMAL LIBERATION, supra note 6, at 25-94 (asserting that ethical considerations mandate an end to animal experimentation); Richard D. Ryder, \textit{Speciesism in the Laboratory, in In Defense of Animals} 77 (discussing the numbers of animals used in research, the nature of pain inflicted upon nonhumans, and humane alternatives to animal experimentation); Bert P. Krages II, Comment, \textit{Rats in the Courtroom: The Admissibility of Animal Studies in Toxic Tort Cases}, 2 J. ENVTL. L. & LITIG. 229 (1987) (arguing that animal studies should not be admissible for the purpose of proving causation in toxic tort cases because they provide generally inaccurate measurements of human risk); Joel Brinkley, \textit{Many Say Lab-Animal Tests Fail to Measure Human Risk}, \textit{N.Y. Times}, Mar. 23, 1993, at A1 (reporting that animal tests may be of little value when attempting to assess the effects of common environmental and household chemicals on humans); \textit{Fewer Test Animals Could Mean Safer Drugs}, \textit{ECONOMIST}, Feb. 5, 1993, at 81 (stating there is "growing evidence that animal tests are often ambiguous and sometimes downright misleading").


Historically, many scholars and philosophers have argued that humans have an indirect duty to protect animals. \textit{See generally Regan, CASE FOR ANIMAL RIGHTS, supra at 150-94} (providing a critique of indirect duty views towards animals). For instance, Immanuel Kant condemned cruelty towards animals because he believed persons who engaged in such behavior were likely to extend this violence to their interactions with humans. Immanuel Kant, \textit{Duties to Animals, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS} 122-23 (Tom Regan & Peter Singer eds., 1976); see also Alan R. Felthous & Stephen R. Kellert, \textit{Violence Against Animals & People: Is Aggression Against Living Creatures Generalized?}, 14 BULL. AM. ACAD. PSYCHIATRY L. 55 (1986) (studying possible links between childhood aggression against nonhumans and subsequent violence against humans); Dr. Randall Lockwood & Guy R. Hodge, \textit{The Tangled Web of Animal Abuse: The Links Between Cruelty to Animals and Human Violence}, HUMANE SOC'Y NEWS (Humane Soc'y of the U.S., Wash., D.C.), Summer 1986, at 2.

An indirect duty theory was also supported by Saint Thomas Aquinas. He argued that it is wrong to hurt an animal because such actions will harm the people who own or gain enjoyment from the animal. Saint Thomas Aquinas, \textit{On Killing Living Things and the Duty to Love Irrational Creatures, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS} 119 (providing excerpts of Aquinas' teachings).
These people claim that animals are not merely objects, resources, or means to human ends. Rather, they believe that animals have intrinsic worth.

B. Animal Welfare & Animal Rights

Stemming from a regard for animals and concerns about cruelty, the animal welfare movement arose in early nineteenth-century England. Continuing even today, this movement does not challenge the fundamental assumption that animals may be used for human benefit. Instead, the animal welfare movement campaigns for better treatment of animals used by humans. The welfare movement maintains that humans have a duty to avoid unnecessary cruelty by treating animals humanely. Thus, animal welfarists may accept many of the current uses of animals while simultaneously seeking to minimize animal pain.

In contrast to notions of animal welfare, the animal rights movement arose in the 1970s with the publication of such works as Peter Singer's Animal Liberation. Advocates of animal rights challenge the practice of speciesism — discriminating on the grounds of species membership alone. Animal rights advocates assert that moral and ethical concerns should not be arbitrarily limited to humans. Rather, they contend that certain rights should be extended to nonhuman species as well.

15. The term speciesism was coined by Richard Ryder in 1971. FINSEN & FINSEN, supra note 12, at 55. Peter Singer defines speciesism as "a prejudice or attitude of bias in favor of the interests of members of one's own species and against those of members of other species." SINGER, ANIMAL LIBERATION, supra note 6, at 6. According to Singer, speciesism is akin to bias based on sex or race (i.e., sexism and racism). Id. at 1-8.
16. An exhaustive analysis of animal rights philosophy is beyond the scope of this Comment. For a sampling of animal rights theory, see ANIMAL RIGHTS AND HUMAN OBLIGATIONS (Tom Regan & Peter Singer eds., 1976); ANIMALS, MEN AND MORALS (Stanley Godlovitch et. al. eds., 1972); MARY MIDGLEY, ANIMALS AND WHY THEY MATTER (1983); REGAN, CASE FOR ANIMAL RIGHTS, supra note 11; BERNARD E. ROLLIN, ANIMAL RIGHTS AND HUMAN MORALITY (1981); HENRY SALT, ANIMALS' RIGHTS CONSIDERED IN RELATION TO SOCIAL PROGRESS (1980); SINGER, ANIMAL LIBERATION, supra note 6.
17. Animal rights theorists may disagree as to which animals should be endowed with rights. While some proponents would extend rights to great apes or all mammals, others
Animal rights philosophy sets forth that nonhumans are entitled to equal consideration because there is no meaningful characteristic possessed by humans that is not also possessed by animals. Advocates point to an ever growing body of literature indicating that animals are sentient, capable of feeling pleasure and pain, and aware of their own existence. Therefore, they argue that humans must recognize some basic rights of animals, such as the right to live according to their nature and the right to be free from exploitation.

would also recognize the rights of insects and fish. Though theorists may differ regarding which nonhuman species should be identified rights holders, all advocates agree that human beings should not constitute the sole species with rights. See, e.g., REGAN, CASE FOR ANIMAL RIGHTS, supra note 11 (arguing that animals satisfying subject of life criteria are entitled to rights); Anthony D'Amato & Sudhir K. Chopra, Whales: Their Emerging Right to Life, 85 AM. J. INT'L L. 21 (1991) (arguing that rights should be extended to whales); A Declaration of Great Apes, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 4 (Paola Cavalieri & Peter Singer eds., 1993) (advancing that great apes should have rights recognized by humans); Roger W. Galvin, What Rights for Animals? A Modest Proposal, 2 PACE ENVTL. L. REV. 245 (1985) (proposing that rights be extended to nonhuman animals); Joyce S. Tischler, Comment, Rights for Nonhuman Animals: A Guardianship Model for Cats and Dogs, 14 SAN DIEGO L. REV. 484 (1977) (submitting that cats and dogs be endowed with legal rights).

18. Seventeenth-century philosopher Rene Descartes proposed that animals were mere automatons or machines. Descartes argued that animals did not think and were not aware of sights, sounds, tastes, hunger, fear, rage, pleasure, pain, etc. Rene Descartes, Animals Are Machines, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS 60 (Tom Regan & Peter Singer eds., 1976). These beliefs are now widely challenged. For a discussion of sentience and a critique of Descartes, see GARNER, supra note 14, at 11-21; REGAN, CASE FOR ANIMAL RIGHTS, supra note 11, at 3-33; SINGER, ANIMAL LIBERATION, supra note 6, at 10-17; Voltaire, A Reply to Descartes, in ANIMAL RIGHTS AND HUMAN OBLIGATIONS 67 (Tom Regan & Peter Singer eds., 1976).


22. The authors of The Great Ape Project argue that the following principles or rights should govern human relations with great apes: (1) the right to life, (2) the protection of individual liberty, and (3) the prohibition of torture. A Declaration of Great Apes, supra note 17, at 4. Roger Galvin, author of What Rights for Animals? A Modest Proposal, sets forth a slightly different declaration of rights for animals: "(1) All animals have a right to live out their lives according to and in harmony with their nature, instincts, and intelligence. . . . (2) All animals have a right to live in a habitat ecologically sufficient for normal existence. . . . (3) All animals have a right to be free from exploitation." Galvin, supra note 17, at 253; see also ROLLIN, supra note 16, at 83 (arguing that animals should be given "the right to life, the right to be protected from suffering, and the right to live life according to
Opponents of animal rights often attempt to identify attributes possessed solely by humans that allegedly provide justification for homo sapiens’ exclusive possession of rights holder status. In *Shadows of Forgotten Ancestors*, Carl Sagan and Ann Druyan explain this phenomenon:

A sharp distinction is necessary between humans and “animals” if we are to bend them to our will, make them work for us, wear them, eat them — without any disquieting tinges of guilt or regret. With untroubled consciences, we can render whole species extinct — for our perceived short-term benefit, or even through simple carelessness. Their loss is of little import: Those beings, we tell ourselves, are not like us.23

Despite the opposition’s efforts, there is an increasing body of literature blurring the distinctions between humans and other animals, whether one looks to genetic differences,24 language capabilities,25 morality,26 intelligence,27 the ability to make and use tools,28

their nature”).

It is commonly believed that advocates of animal rights would like nonhumans to be endowed with all of those rights enjoyed by humans (e.g., voting, free speech). This belief is patently in error. Animal rights proponents argue that nonhumans should only be given rights that are meaningful to their unique species. As explained by Bernard Rollin, “the rights of animals should not be the rights of adult human beings, but neither are the rights of children and corporations.” ROLLIN, supra note 16, at 86.

23. SAGAN & DRUYAN, supra note 21, at 365. Similarly, Charles Darwin commented: “Animals, whom we have made our slaves, we do not like to consider our equal.” MARJORIE SPIEGEL, THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY 96 (2d ed. 1988).

24. Genetically, humans are closely related to other animals. Human DNA differs from chimpanzee DNA by a mere 1.6 to 1.7 percent. Since much of human DNA is thought to be dormant, or junk, active human and chimp DNA differ by only 0.4%. Furthermore, humans are more closely related to chimpanzees than chimpanzees are to gorillas. In contrast, the difference in DNA between red-eyed and white-eyed vireos (a type of bird) is 2.9%. JARED DIAMOND, THE THIRD CHIMPANZEE: THE EVOLUTION AND FUTURE OF THE HUMAN ANIMAL 20-23 (1992); SAGAN & DRUYAN, supra note 21, at 276-78. Thus, based on genetic differences alone, it seems illogical to set humans apart as rights holders while grouping all other animals together as rightless beings.

25. For discussion of nonhumans’ language capabilities, see DIAMOND, supra note 24, at 143, 146-47, 151, 213-16 (reviewing language abilities of vervet monkeys, gorillas, chimpanzees and dolphins); THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 28-76 (Paola Cavalieri & Peter Singer eds., 1993) (providing evidence of language in chimpanzees, orangutans, and gorillas); SAGAN & DRUYAN, supra note 21, at 352-58, 380-83 (examining language in chimps); D'Amato & Chopra, supra note 17, at 21 (addressing language abilities of whales and dolphins); Galvin, supra note 17, at 251 nn.23-29 (citing scientific research which identifies the communicative capabilities of honeybees, ants, canids, monkeys, dolphins, gorillas, and chimpanzees); Tischler, supra note 17, at 494-96 nn.79-94 (mentioning studies which indicate that dogs, wolves, chimpanzees, and whales have communicative skills).

26. There is much evidence to indicate that many animals are ethical beings. See, e.g., GRIFFIN, supra note 21, at 214 (describing kindness in dolphins); ROBBINS, supra note 6, at 21-22, 24-33 (providing anecdotal evidence about animals’ kindness to humans and other animals). Consider the following illustration:
or possession of a soul. Thus, numerous studies persuasively demonstrate that at least some animals possess each of these allegedly unique human qualities.

In addition to proving that many animals are higher functioning, animal rights advocates may assert that such qualities are not truly determinative of who constitutes a rights holder in modern society. Infants, some persons who are profoundly mentally challenged, and persons who are senile may not have the capacity to use tools, language, or exhibit a high intellect; yet, they are still rights holders. In sum, animal rights advocates argue that the claimed differences between humans and nonhumans are differences in degree rather than kind. They assert that there is no sound basis for completely excluding animals as rights holders.

In a laboratory setting, macaques were fed if they were willing to pull a chain and electrically shock an unrelated macaque whose agony was in plain view through a one-way mirror. Otherwise, they starved. After learning the ropes, the monkeys frequently refused to pull the chain; in one experiment only 13% would do so — 87% preferred to go hungry. One macaque went without food for nearly two weeks rather than hurt its fellow. Macaques who had themselves been shocked in previous experiments were even less willing to pull the chain.

SAGAN & DRUYAN, supra note 21, at 117 (citation omitted).

27. There is much evidence indicating that many species of animals have the ability to reason. GRIFFIN, supra note 21; ROBBINS, supra note 6, at 40-44 (providing anecdotal evidence of intelligence in dogs, cats, and elephants); SAGAN & DRUYAN, supra note 21, at 390-99 (addressing the intelligence of flatworms and other animals); Tischler, supra note 17, at 492 nn.63-66 (mentioning writings which indicate animals can reason).

In fact, there are grounds to believe that in some areas, human intelligence may be matched or exceeded by that of other species. See, e.g., D’Amato & Chopra, supra note 17, at 21 nn.2-3, 6 (citing studies which indicate whales and dolphins are highly intelligent beings); Kenneth S. Norris, Dolphins in Crisis, NAT’L GEOGRAPHIC, Sept. 1992, at 5, 11-13 (“Their [dolphins] memory capacity matches our own; they can follow remarkably complicated directions — through both visual and auditory commands . . . . And they remember strings of random numbers as well as or better than we do.”).

28. Numerious studies indicate that some nonhuman animal species make and use tools. See, e.g., SAGAN & DRUYAN, supra note 21, at 282, 391-98; Galvin, supra note 17, at 250 nn.20-21.

29. Some humans who dispute rights for animals argue that nonhumans do not have souls and this quality sets humans apart from all other beings. Because it is difficult to provide scientific proof that (1) persons have souls, and (2) animals do not, this appears to be a precarious argument on which to contest the rights of animals. However, this issue has been addressed by various authors. See ANDREW LINZKY, ANIMAL RIGHTS: A CHRISTIAN ASSESSMENT OF MAN’S TREATMENT OF ANIMALS (1976); ROLLIN, supra note 16, at 6-7.

30. See GARNER, supra note 14, at 14-16; SINGER, ANIMAL LIBERATION, supra note 6, at 15-16. This argument is commonly referred to as the argument from marginal cases. GARNER, supra note 14, at 14-16.
C. Animal Protection Tactics

Advocates for animals use various techniques to elicit protection for nonhumans. Animal welfarists attempt to educate the public about animal abuse. They also lobby for protective legislation to ensure that certain identified cruelties are not inflicted upon animals. For example, an animal welfare agenda would possibly seek larger cages for laboratory animals or support farmers' efforts to raise free-range rather than battery-caged hens.

While animal rights organizations may also participate in and support these welfare efforts, the ultimate goal of the rights proponent is to eliminate human use of animals. Due to their philosophical beliefs, rights proponents would not be completely appeased by the reduction of abuse in animal facilities. Rights advocates believe that typical animal use is abuse; therefore, they seek abolition rather than mere reform. Though animal rights activists would not object to better treatment for animals, they would never be entirely appeased by welfare doctrine.

Proponents of animal rights use various legal means to pursue their agenda. They attempt to protect animals via lawsuits, political protest, and economic campaigns. Their efforts often include aggressive, yet peaceful techniques, such as civil disobedience, boycotts, picketing, and demonstrations.

By the early 1980s, however, the United States' animal rights movement developed a fringe element whose members identified


32. As a cost savings device, laying hens owned by large egg producers are typically raised in battery cages. In the animal protection community, these cages are infamous for their cruelty. Battery hens are debeaked because the intensive confinement causes them to peck each other. They are confined in stacked, wire-mesh cages that are suspended over a trench to collect droppings. Though cage sizes vary, four or five birds are typically crowded into a cage with a 12 by 20 inch floor area. This overcrowding often leads to bruised, stressed, and sick birds. See generally Singer, Animal Liberation, supra note 6, at 107-19; Mason, Brave New Farm?, supra note 6, at 90-93, 95-98. Free-range laying hens are those not raised in battery cages.

33. A few rights activists discourage animal protectors from investing significant effort on a welfare agenda. These rights advocates assert that welfare efforts provide little benefit to animals and instead mislead the public into believing that animals used by industry are treated humanely. Other rights activists participate in welfare actions because they believe these efforts will curtail injuries currently inflicted upon animals and make animal use a more costly endeavor; however, these rights advocates still ultimately support the elimination of all animal use. See Tom Regan & Gary Francione, A Movement's Means Create Its Ends, Animals' Agenda, Jan.-Feb. 1992, at 40.


themselves as animal liberators. In contrast to their self-naming, animal liberators have been labeled animal rights terrorists or extremists by the FBI and others not sympathetic to the activists' goals. These animal liberators are a small but vocal contingent of the current animal protection movement.

Frustrated by what they perceive to be an insufficient pace of change in ending animal oppression, and likening themselves to the conductors of the Underground Railroad used to free human slaves, liberators protect nonhumans by engaging in direct action against animal enterprises. This direct action includes criminal, clandestine tactics such as vandalism, property destruction, and animal theft. Unlike those who engage in routine civil disobedience, liberators act covertly and attempt to evade arrest. The remaining portion of this Comment will review the efforts of these animal liberators and the resulting backlash.

36. U.S. DEP'T OF JUSTICE & U.S. DEP'T OF AGRIC., REPORT TO CONGRESS ON THE EXTENT AND EFFECTS OF DOMESTIC AND INTERNATIONAL TERRORISM ON ANIMAL ENTERPRISES 4-5 (Oct. 1993) [hereinafter JUSTICE REPORT]. There is also a vigorous animal liberation movement in Britain. For a detailed, albeit disparaging, history of its activities, see DAVID HENSHAW, ANIMAL WARFARE (1989).


39. A variety of authors have compared the plight of enslaved humans and nonhumans. See, e.g., DAVID S. FAVRE & MURRAY LORING, ANIMAL LAW 2 (1983); SPIEGEL, supra note 23; Geza Teleki, They Are Us, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 296 (Paola Cavalieri & Peter Singer eds., 1993).

II. ANIMAL LIBERATORS

I and my daughters and husband have been regarded as almost fanatical in our care of animals . . . . Last year we exerted ourselves to get a law passed protecting the birds of Florida which were being trapped and carried off by thousands to die in miserable little cages . . . . veritable slave ships . . . . I for my part am ready to do anything that can benefit the cause.41
— Harriet Beecher Stowe

A. Who Are the Animal Liberators?

In the United States, approximately sixteen different groups have claimed responsibility for animal liberation actions.42 The most infamous and active of all these organizations is the Animal Liberation Front (ALF).43

Animal liberation entities such as the ALF appear to be amorphous in structure and have no prescribed membership criteria.44 The 1993 report by the U.S. Department of Justice and U.S. Department of Agriculture entitled Extent and Effects of Domestic and International Terrorism on Animal Enterprises (hereinafter Justice Report) explains:

Whether ALF . . . can be characterized as an organization, per se, or as an “umbrella” ideology or cause, is an issue still being debated. Regardless of how it may be characterized as a whole, it is widely believed that ALF is a

41. SPIEGEL, supra note 23, at 95 (quoting letter from Harriet Beecher Stowe, author of UNCLE TOM'S CABIN, to Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals (ASPCA) (Nov. 6, 1877)).
43. JUSTICE REPORT, supra note 36, at 5.
44. Id. at 6; ALF Primer, supra note 40; SCARCE, supra note 35, at 135-36, 213-23.
loose configuration of small, autonomous "cells," with no centralized command structure. It is also believed that there are no formal membership requirements beyond the willingness to inflict damage upon an animal enterprise.\textsuperscript{45}

An animal liberator active with the Animal Liberation Front clarifies: "We are not members of the ALF, in fact the ALF has not one single member. We are ALF activists by virtue of the fact that we carry out actions, whether on an occasional or frequent basis."\textsuperscript{46}

The exact number of persons in the ALF is unknown. Estimates suggest that approximately 100 persons conduct direct action tactics on behalf of the ALF in the United States.\textsuperscript{47} Ronald Lee, co-founder of the ALF in Britain,\textsuperscript{48} estimates that there are approximately 500 to 1,000 persons active in the ALF worldwide.\textsuperscript{49}

Law enforcement efforts to profile animal liberators appear to yield few results.\textsuperscript{50} Regarding the United States, it has been claimed that animal liberators on the East Coast tend to be well-paid professionals who generally restrict their activities to liberating animals from research laboratories. In contrast, West Coast animal liberators are believed to be anarchists, have only moderate education, and tend to hold menial jobs or work part-time so they

\begin{itemize}
\item \textsuperscript{45} Justice Report, supra note 36, at 6.
\item \textsuperscript{46} ALF Primer, supra, note 40; see also, Ryder, Animal Revolution, supra note 14, at 274. Ryder described the British ALF in the following manner:
\begin{quote}
[T]he ALF is not the highly organized and centrally controlled organization that some people have claimed, nor is it funded lavishly by sinister or other sources, but quite meagrely and by very ordinary British people. It is, most probably, a collection of individuals acting independently, driven by a sense of outrage and compassion, with no ulterior or party political motive and no particular flair for organization.
\end{quote}
\textit{Id.}
\item \textsuperscript{47} Justice Report, supra note 36, at 6; 1 Encyclopedia of Associations pt. 2, sec. 7, at 1407 (30th ed. 1996); see also Marla Williams, Saving Animals Through Violence: Shadowy ALF Leaves Costly Trail of Destruction, Seattle Times, June 18, 1991, at A1, A8 ("Law-enforcement officials and fur-industry authorities estimate that fewer than 500 people nationwide participate in ALF actions.").
\item \textsuperscript{48} The Animal Liberation Front was started in 1972 by activists Ronald Lee and Clifford Goodman. The group was initially called the Band of Mercy but was renamed the Animal Liberation Front in 1976. For a history of the British ALF, see Ryder, Animal Revolution, supra note 14, at 273-99.
\item \textsuperscript{49} Philip Windeatt, \textit{They Clearly Now See the Link}: Militant Voices, in In Defense of Animals 179, 191 (Peter Singer ed., 1985). ALF activities have been identified in Britain, Australia, New Zealand, Germany, France, Italy, Spain, Poland, Sweden, South Africa, Canada, and the Netherlands. Garner, supra note 14, at 218; Ryder, Animal Revolution, supra note 14, at 228; Scarce, supra note 35, at 140.
\item \textsuperscript{50} George G. McClellan, The Terrorists Among Us: Animal Rights Terrorism, Security Mgmt., July 1993, at 33, 36.
\end{itemize}
may devote more energy to their cause.\textsuperscript{51} For the most part, however, animal liberators are believed to be employed in a variety of occupations and to have no prior criminal record.\textsuperscript{52}

B. \textit{Liberators' Mission and Methods}

According to the ALF, the mission of animal liberators is threefold:

(1) To liberate animals from places of abuse \ldots and place them in good homes where they can live out their natural lives free from suffering; (2) to inflict economic damage [upon] those who profit from the misery and exploitation of animals; and, (3) to reveal the horror and atrocities committed against animals behind locked doors by performing non-violent direct actions and liberations.\textsuperscript{53}

Thus, the liberators' agenda includes saving individual animals, informing the public about violence inflicted on nonhumans by animal enterprises, and making animal exploitation a less lucrative business in which to engage.\textsuperscript{54} Unlike other animal protectors, animal liberators have gone underground to achieve their three-part agenda of liberation, education, and economic sabotage.

The ALF and other animal liberation groups engage in \textit{direct action}, i.e., clandestine, illegal activity to protect animals and further the liberators' agenda for change. In the United States, the types of crimes committed by animal liberators have varied widely.\textsuperscript{55} Liberation actions have ranged from vandalism, to release

\begin{itemize}
\item \textsuperscript{51} SCARCE, \textit{supra} note 35, at 135.
\item \textsuperscript{52} McClellan, \textit{supra} note 50, at 34; see also Ryder, \textit{Animal Revolution}, \textit{supra} note 14, at 278-79. One account of the British ALF states:
\begin{quote}
[O]f the 'up to 2000' ALF activists about half are working class and half middle class: 'with a strong presence of lawyers, teachers and civil servants. Unlike many other fringe or outlaw groups, the majority of ALF members currently at large have secure jobs'. \ldots None appear to enjoy breaking the law and most are reported to dread going to prison.
\end{quote}
\textit{Id.}
\item \textsuperscript{53} ALF Primer, \textit{supra} note 40.
\item \textsuperscript{54} The ALF justifies economic sabotage as follows:
\begin{quote}
It is valid to destroy any property that is used to harm animals, to harm any being that feels pain and fear. By vandalizing the labs, you make it more difficult for research to continue. You also make it more expensive to do it \ldots [I]n a way, it is much the same thing as the abolitionists who fought against slavery going in and burning down the slave quarters or tearing down the auction block or the whipping post - whatever is used to subjugate the slaves.
\end{quote}
McCain, \textit{supra} note 38, at 139.
\item \textsuperscript{55} For a record of animal liberation activities in the United States, see \textit{Justice Report}, \textit{supra} note 36, at 12-16; Marquardt, \textit{supra} note 37, at 161-64; People for the Ethical Treatment of Animals, \textit{History of American Animal Liberation Actions} (Apr. 24, 1993)
\end{itemize}
of animals, to a lone murder attempt. The Department of Justice estimates that over half of all direct action consists of petty vandalism and minor property damage. Another twenty-five percent of animal liberation activities involves the theft, or liberation, of animals. The remaining incidents of direct action consist of more serious crimes such as major property damage, arson, and bomb threats.

Animal liberators’ direct action has targeted a broad range of [hereinafter PETA, History of Liberation] (factsheet on file with PETA, Wash., D.C.).

65. JUSTICE REPORT, supra note 36, at 15-16. On November 11, 1988, Fran Stephanie Trutt, a substitute teacher from Queens, New York, planted a pipe bomb outside the headquarters of United States Surgical Corporation. She allegedly intended to harm the company’s President and Chief Executive Officer, Leon Hirsch. Trutt pleaded nolo contendere in Connecticut Superior Court to charges of attempted murder, possession of explosives, and manufacturing a bomb. As part of Trutt’s plea agreement, provisions were allegedly made so she could visit her dogs while serving her sentence. In a federal court in New York, Trutt also pleaded guilty to federal charges that she had two bombs in her apartment. Id. at 24, 27 n.27; Marvine Howe, Advocate for Animal Rights Pleads Guilty in Bomb Case, N.Y. TIMES, July 15, 1988, at 29; Pipe-Bomb Suspect Offers No-Contest Plea: Animal Activist Trutt Charged in Murder Attempt, NEWSDAY, Apr. 17, 1990, at 4; A Serious Case of Puppy Love: Violence Becomes an Issue in an Animal-Rights Protest, TIME, Nov. 28, 1988, at 24 [hereinafter Puppy Love]; Monte R. Young, Animal Rights Activist Sentenced, NEWSDAY, July 17, 1990, at 28; Monte R. Young, Trutt Sees Her Dogs: Says Visits Part of Bomb Case Plea-Bargain, NEWSDAY, July 20, 1990, at 36.

Trutt was allegedly aided by two accomplices who were employees of Perceptions International, “a surveillance organization that monitors and infiltrates animal rights groups.” JASPER & NELKIN, supra note 13, at 50. Perceptions International had been hired by U.S. Surgical. Newspaper reports stated that the accomplices may have befriended Trutt, suggested killing Hirsch, paid for the bomb, talked Trutt out of her misgivings, and provided transport to the parking lot where she attempted to plant the bomb. FINSEN & FINSEN, supra note 12, at 174; JASPER & NELKIN, supra note 13, at 50; Animal-Rights Case: Terror or Entrapment?, N.Y. TIMES, Mar. 3, 1989, at B1; Bomb Suspect’s Driver Says He Was Informer, N.Y. TIMES, Jan. 13, 1989, at B2; Robert E. Kessler & Michael Slackman, Tipster Drove Suspect in Attempted Bombing, NEWSDAY, Jan. 12, 1989, at 2; Nick Ravo, U.S. Surgical Admits Spying on Animal-Rights Groups, N.Y. TIMES, Jan. 26, 1989, at B1; but see Leon C. Hirsch, No Company Money for Bombs in Animal Case, N.Y. TIMES, Apr. 1, 1989, at 26 (letter to the editor).

Trutt targeted U.S. Surgical because it uses hundreds of live dogs each year to train doctors and the company’s salespersons in the use of the surgical staplers it manufactures. Trainees learn the stapling technique by practicing on anesthetized dogs who are subsequently killed. U.S. Surgical’s President insists there is no substitute for live animals in the training program. He claims, “A dead dog doesn’t bleed. . . . You need to have real blood-flow conditions, or you get a false sense of security.” Puppy Love, supra, at 24. Nonetheless, activists assert that “many surgeons learn stapling without practicing on live animals.” Id.

57. JUSTICE REPORT, supra note 36, at 15.

58. Id.

59. The following data indicates the most common activities perpetrated by animal liberators: vandalism/minor property damage, 51%; theft/release of animals, 25%; personal threats, 9%; major property damage, 8%; arson, 7%; bomb threats, 5%; firebombing, 4%; hoax bombing, 3%. Id. at 9-12.
animal users. These animal enterprises have included university and private research laboratories, department stores that sell clothing made from animals, fur retailers, meat retailers, and food producers. Occasionally, individuals profiting from animal use have also been the subject of direct action.60

Liberators try to avoid arrest for direct action activities. Many animal liberation incidents, therefore, occur “at night after considerable pre-incident surveillance and planning.”61 One commentator estimates that there has been staff sympathy or infiltration in more than ninety percent of the cases involving damage to animal laboratories.62

In total, the Department of Justice estimates that from 1977 to 1993, approximately 313 incidents of direct action occurred in the United States.63 The Justice Report explains, however, that this data was derived primarily from news media reports64 and cautions that “it is generally believed that many animal rights-related incidents — especially those involving relatively minor acts of vandalism such as graffiti — go unreported, and therefore are numerically underestimated in [the Department of Justice] analysis.”65 Accurate figures on the frequency of animal liberation activity may also be difficult to obtain because animal liberators do not always take credit for their actions.66 In addition, there have been assertions from within the animal protection movement that some of the more violent activities attributed to animal liberators are actually the work of agent provocateurs67 rather than animal activists.68

60. The following data indicate the frequency with which particular types of animal enterprises have been the target of illegal actions: university facilities (medical and research), 20.1%; fur retailers, 15.3%; individuals, 13.7%; meat retailers, 10.5%; food production, 8.9%; private research, 6.7%; department stores, 3.8%; federal research, 2.6%; other, 18.2%. Id.

61. Edward L. Lee, II, Violent Avengers, SECURITY MGMT., Dec. 1989, at 38, 42; see, e.g., SCARCE, supra note 35, at 219 (describing surveillance conducted by liberators before breaking into a Loma Linda University laboratory).

62. Lee, supra note 61, at 42; see FINSEN & FINSEN, supra note 12, at 103; see, e.g., SCARCE, supra note 35, at 214-16 (describing an incident of direct action in which a university laboratory contact provided assistance to the liberators).

63. JUSTICE REPORT, supra note 36, at 8.

64. Id. at 8 n.6.

65. Id. at 8 n.7.

66. JASPER & NELKIN, supra note 13, at 34.

67. The term agent provocateur refers to persons opposed to animal rights who either (1) induce animal activists to conduct illegal acts or (2) perform clandestine direct action themselves so that negative publicity is brought on the animal protection movement. See, e.g., GARNER, supra note 14, at 219-20.

68. GARNER, supra note 14, at 219-20; Andrew A. Skolnick, Terrorists Strike Again as U.S. Congress Considers Bills to Outlaw Attacks on Animal Research Centers, 267 JAMA
C. The Liberator Code: Harm Things, Not People

Animal protectors, animal users, and law enforcement officials disagree about the character of the illegal tactics used by animal liberators. Animal enterprises and their sympathizers describe liberators as terrorists or extremists and define their actions as violent.\textsuperscript{69} Liberators, however, disagree with this characterization of direct action. The official policy of the ALF is \textit{nonviolent direct action}.\textsuperscript{70} Liberators do not view acts that destroy or disrupt animal enterprises as violent because these acts are committed against inanimate objects.\textsuperscript{71} When engaging in direct action, animal liberators in the United States assert that they take extensive precautions to ensure that no person is injured.\textsuperscript{72} Thus, while liberators appear to be willing to sabotage things, they are reluctant to injure beings, whether human or nonhuman.\textsuperscript{73}

There has been no conclusive proof that a person has ever been physically injured by animal liberation activity in the United States. The Justice Report notes that "none of the extremist animal rights-related activities analyzed for this report is known to have resulted in the injury or death of another individual."\textsuperscript{74} Nonetheless, the report also states:

In February 1990[,] Dr. Hyram Kitchen, Dean of the Veterinary School of the University of Tennessee, was shot and killed on his private farm. One month before the incident, a local police department issued an alert . . . that animal rights extremists had threatened to assassinate a veterinary dean within the following 12 months. No one was ever arrested for the act and there was no claim of responsibility. Some suspect that ALF or another extremist animal rights group or individual was responsible. It must be emphasized, however, that this suspicion has never been substantiated.\textsuperscript{75}

At least for now, it appears that animal liberators in the United States have drawn a firm distinction between damaging inanimate objects and causing physical harm to humans.

It appears, however, that there may be a few dissenting voices within the liberation movement who would countenance harm to humans in the name of animal protection. For example, British Animal Liberation Front leader Tim Daley has reportedly con-
doned such violence:

In a war you have to take up arms and people will get killed, and I can support that kind of action by petrol bombing and bombs under cars, and probably at a later stage, the shooting of vivisectors on their doorsteps. It's a war, and there's no other way you can stop vivisectors.\textsuperscript{76}

Likewise, one of the most inflammatory instances in which an alleged animal liberator has advocated violence against humans can be found in\textit{A Declaration of War: Killing People to Save Animals and the Environment}, a book written under the pseudonym Screaming Wolf.\textsuperscript{77} Claiming that "the idea of nonviolence as an effective means of gaining freedom for animals is a myth," this book asserts that "[w]e cannot stop vivisection, but we can stop a vivisector. We cannot end hunting, but we can put an end to some hunters. We cannot cripple the fur industry, but we can cripple some trappers."\textsuperscript{77}\textsuperscript{8} Various animal activists have maintained that this publication was written by an animal enterprise sympathizer in an attempt to discredit the animal protection movement.\textsuperscript{79}

Despite these anomalous instances in which physical harm towards humans has been advocated, many animal activists assert that animal exploiters are the parties more accurately described as violent.\textsuperscript{80} Roger Yates, an imprisoned animal activist in Great Britain, explains:

In my prison cell I have had time to tot up the figures of animal v. human deaths in the current hysterical 'the animal rights movement is violent' era. Since the Animal Liberation Front has been in existence (about ten years) TENS OF HUNDREDS OF BILLIONS of animals have been massacred by human kind, yet not ONE person has ever been seriously injured by the animal rights movement anywhere in the world. On top of that I know of at least four animal rights campaigners who have received broken bones from the opposition, including one broken back and two skull fractures, one very serious case which involved subsequent brain surgery: can anyone state similar injuries sustained by an animal exploiter?\textsuperscript{81}

\textsuperscript{76} Id. at 1.
\textsuperscript{77} Andrew A. Skolnick, \textit{Anonymously(? Authored Book Urges Violence}, 266 JAMA 2186 (1991) (reviewing \textit{SCREAMING WOLF, A DECLARATION OF WAR: KILLING PEOPLE TO SAVE ANIMALS AND THE ENVIRONMENT} (1991)).
\textsuperscript{78} Id. at 2191.
\textsuperscript{79} Id.
\textsuperscript{80} See Garner, \textit{supra note 14}, at 220; Ryder, \textit{Animal Revolution}, \textit{supra note 14}, at 280-87.
\textsuperscript{81} Ryder, \textit{Animal Revolution}, \textit{supra note 14}, at 282. Opponents of animal liberation may also argue that animal experimentation is necessary for advances in human health care and that liberators indirectly threaten human lives by impeding research. These contentions regarding the supposed benefits of animal research, however, are not without detractors.
Similarly, alleged American ALF leader Valerie has commented: "I don't think that destroying a building can be really classified as violence. I think that burning an animal is violent. . . . People burn animals with blowtorches. They immerse guinea pigs in scalding water. They put electrodes into cats' heads." Thus, many animal advocates emphasize that liberators inflict mere economic damage; their adversaries impose pain and suffering on sentient beings. While animal users define harm to objects as violence and terrorism, animal liberators use these terms to describe harm to beings.

III. JUSTIFYING ILLEGAL TACTICS

One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. . . . I would agree with St. Augustine that 'an unjust law is no law at all.'

— Martin Luther King, Jr.

Animal liberators contend that lawful means of advocacy, used alone, cannot rescue many animals in immediate danger. Further, it appears that legal actions cannot currently end institutionalized animal oppression due to three fundamental impediments: (1) animal enterprises wield extraordinary cultural and political power in the United States; (2) profound deficiencies permeate contemporary animal protection legislation; and, (3) activists and animals typically lack legal standing to litigate specific instances of cruelty. These barriers all serve to perpetuate or condone animal exploitation and impede activists' abolitionist agenda.
A. Cultural and Political Power of Animal Industry

In the United States, the interests of animal enterprises are entrenched in culture and politics. These interests are maintained by society's pervasive use of animals and the seemingly unlimited funds of animal enterprises. This entrenched power structure has a chilling effect on activists' attempts to garner protection for nonhumans.88

The use of animals saturates the United States' economy and culture. The vast majority of U.S. residents eat animal flesh and byproducts in the form of meat, dairy, and eggs. They wear animal skins such as leather and fur. They use products tested on animals — ranging from household cleaners, to cosmetics, to medication. Finally, many people derive entertainment from animals, through zoos, circuses, rodeos, or by hunting.

Society's seemingly infinite use of animals prevents politicians and citizens from upending the status quo. Because animal user interests are so fundamentally interwoven into the economy, government may hesitate to threaten their position.88 Robert Garner, author of Animals, Politics, and Morality, explains, "government action is constrained by the need to retain the confidence of the business community (secured by not threatening their interests) since their chances of retaining power depend largely upon the state of the economy."87 Citizens, too, are resistant to changing the many aspects of their lives that are intertwined with animal use. This phenomenon is evidenced by the millions of persons who continue to eat and wear animals for personal pleasure or convenience.

Animal enterprises also maintain the status quo directly. Their resources are deep and are used to influence political entities and society-at-large. Conferring millions of dollars annually,

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85. See generally FINSEN & FINSEN, supra note 12, at 153-78 (profiling the opposition to animal protection efforts); GARNER, supra note 14, at 230-39 (arguing that these factors radically influence animal protection efforts in Britain).
86. See GARNER, supra note 14, at 235-37.
87. GARNER, supra note 14, at 235.
animal enterprises are some of the wealthiest contributors to the United States political process. Federal Election Committee (FEC) records indicate that Political Action Committees (PACs) related to animal users contribute substantial funds to the political process.\textsuperscript{88} For example, in the 1991-92 election cycle, the American Medical Association (AMA), a powerful voice on behalf of animal researchers, ranked second in contributions to federal candidates (conferring $2,936,036)\textsuperscript{89} and second in spending (disbursing $6,263,921).\textsuperscript{90} Similarly, a ranking of Cooperative PACs indicate that the food animal industry also gave significant funds to Congress.\textsuperscript{91} In 1991-92, the Committee for Thorough Agricultural Political Education of Associated Milk Producers, Inc. was ranked as the top spender of all Cooperative PACs (disbursing $1,696,537).\textsuperscript{92} Mid-America Dairymen Inc. Agricultural & Dairy Educational Political Trust Adept was second (disbursing $647,013),\textsuperscript{93} and Dairymen Inc., Special Political Agricultural Community Education PAC, was third (disbursing $386,012).\textsuperscript{94}

These wealthy industries also sponsor advertising or education campaigns to promote animal products or discredit people who oppose the use of animals.\textsuperscript{95} In fact, animal users often filter these messages through seemingly independent educational foundations or grassroots organizations. Many of these organizations, however, are merely puppets of animal users.\textsuperscript{96}

When seeking systemic change, advocates often find themselves battling powerful animal enterprises. Lawful efforts towards mere animal welfare reform are often greeted with hostility by animal enterprises. For example, strengthened animal welfare regulations proposed by the U.S. Department of Agriculture were


\textsuperscript{89} Id. at 13.

\textsuperscript{90} Id. at 12; see also Eric Kleiman, The AMA: Selling Out, AV Mag., Feb. 1994, at 14, 15-16 (discussing PAC money contributed to Congress by the AMA).

\textsuperscript{91} Id. at 32.

\textsuperscript{92} Id.; see also Eric Kleiman, Animal Activists Branded: Terrorists, AV Mag., Dec. 1993, at 2 (examining PAC funds contributed to Representative George Gekas (R-Pa.), who introduced federal legislation designed to prosecute animal liberators).

\textsuperscript{93} FEC, supra note 88, at 32.

\textsuperscript{94} Id.


\textsuperscript{96} See, e.g., Laura Bird, Corporate Critics Complain Companies Hide Behind 'Grass-Roots' Campaigns, WALL ST. J., July 8, 1992, at B1.
challenged by the animal research community as a violation upon scientific autonomy. Similarly, the American Medical Association has attempted to close the legal avenues available to animal activists. In 1991, the AMA adopted a resolution calling for the AMA to work with Congress to “prevent¶ further interference with ongoing research by animal activists, who, in the past, have been able to use the political process to scuttle scientific projects.” This resolution also mandated that the AMA “oppose legislation that inappropriately restricts the choice of scientific models and the use of animals in research.”

In sum, it appears that wealthy animal industries may have an undue influence on the United States’ policy making process. In part, the status quo maintains itself without effort by animal enterprises through a complacent populace. When animal enterprises add their vast resources to general public apathy, they are able to influence policy formation, public perceptions, and the electoral process. Due to the above factors, animal industries are a colossal opponent to lawful animal protection efforts.

B. Animal Protection Statutes

Many argue that despite powerful animal users, nonhumans are adequately protected through humane legislation. A cursory analysis of animal welfare statutes, however, indicates that these laws provide little meaningful animal protection. Though an exhaustive analysis of every animal protection statute is beyond the scope of this Comment, a brief glance at a few of these laws indicates that they are poorly enforced and tend to have significant loopholes that overlook widespread cruelty.100

1. Protection of Animals Used for Food

Two federal statutes have traditionally pertained to animals used for food — the Humane Methods of Slaughter Act (HMSA)101 and the Twenty-Eight Hour Law.102 Though these stat-


99. Id.

100. A concise summary of federal statutes that concern animal protection can be found in Henry Cohen, Federal Animal Protection Statutes, 1 ANIMAL L. 143 (1995).

utes were created in part to make the transport and slaughter of food animals more humane,\textsuperscript{103} animal advocates claim that the protection these statutes provide to nonhumans is minimal.\textsuperscript{104}

The Twenty Eight Hour Law provides:

[Animals transported by] a rail carrier, express carrier, or common carrier (except by air or water) . . . , or an owner or master of a vessel transporting animals [across state lines] may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.\textsuperscript{105}

The statute provides an exemption for animals who are transported by a vehicle or vessel in which they have “food, water, space, and an opportunity for rest.”\textsuperscript{106} The twenty-eight hour period may also be extended for (1) “unavoidable causes,” (2) upon written request of the owner or person in custody of the animals, or (3) for sheep “when the twenty-eight hour period of confinement ends at night.”\textsuperscript{107}

The Humane Methods of Slaughter Act merely requires that animals be “rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”\textsuperscript{108} The law allows the slaughter of conscious animals during ritual or kosher slaughter.\textsuperscript{109}

Probably the most grievous misfortune posed by both the HMSA and the Twenty-Eight Hour Law is that neither statute appears to accomplish its asserted purpose of protecting farm animals from needless suffering. As just one example, columnist Colman McCarthy describes an instance of humane transport and slaughter:

Some 250,000 horses, including a large percentage of thoroughbreds, are killed annually in the United States, where their flesh brings up to a dollar


\textsuperscript{103} The HMSA states in its declaration of policy: “The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering . . . .” 7 U.S.C. § 1901. Similarly, as originally enacted, the Twenty-Eight Hour Law specified that animals should be transported in a “humane manner.” 45 U.S.C. § 71 (1986).

\textsuperscript{104} For a general discussion regarding the inadequacies of animal protection laws as they relate to farm animals, see Steven M. Wise, \textit{Of Farm Animals and Justice}, 3 \textit{PACE ENVTL. L. REV.} 191 (1986).

\textsuperscript{105} 49 U.S.C.A. § 80502(a)(1).

\textsuperscript{106} 49 U.S.C.A. § 80502(c)

\textsuperscript{107} 49 U.S.C.A. § 80502(a)(2).

\textsuperscript{108} 7 U.S.C. § 1902(a).

\textsuperscript{109} 7 U.S.C. §§ 1902(b), 1906.
The common practice is to pack horses into double-deck cattle trucks — 45 to 50 animals a load — and haul them to one of nine slaughterhouses, from Connecticut to Oregon. Along the way they are not fed, watered or rested.

[At the slaughterhouse, the] 'horse is hit in the head with a tool known as a stun gun that jams a rod into a horse's brain to the depth of four inches. Then the rod retracts. The horse falls into a chute, then is hoisted by its hind legs. Its throat is slit, and it is butchered.'

This description of transport and slaughter leaves one to question whether this reality of animal agri-business constitutes humane treatment. Though the transport and slaughter may be in technical compliance with the law, they do not appear to be humane in practice.110

Furthermore, the HMSA has a limited definition of livestock. The HMSA encompasses cattle, horses, sheep, and pigs; poultry and fish are outside its scope.112 Thus, many animals used for food do not receive even the cursory protection of this statute.

Perhaps most significantly, animals used for food are not provided even a modicum of federal protection at times other than transport and slaughter. In fact, animal advocates have been rebuffed when proposing that the federal government take more substantial steps to protect farm animals.113 Thus, it appears that ac-

110. Colman McCarthy, From Track to Butcher, WASH. POST, June 4, 1994, at A19 (quoting an article from the Lexington (Ky.) Herald-Leader).

111. See supra note 6 (delineating resources which describe the treatment of animals raised under intensive farming conditions).


113. An example of the legislature's disinterest in protecting farm animals is evident in the committee hearings for the proposed Farm Animal and Research Facilities Protection Act of 1989, a precursor to the Animal Enterprise Protection Act of 1992 (AEPA). See discussion of the AEPA infra part V.B. The following is an excerpt from the statement of John F. Kullberg, President of the American Society for the Prevention of Cruelty to Animals, during questioning by Representative Harold L. Volkmer before the Subcommittee on Department Operations, Research, and Foreign Agriculture of the House Committee on Agriculture:

Mr. Kullberg. [I hope Congress enacts] veal calf legislation. What goes on in the name of raising calves for the white veal trade today is horrendous by any objective person who looks at it, but we allow it to continue, and hopefully this Congress is going to change some of those things.

Mr. Volkmer. Well, Mr. Kullberg ... I think you're close to being ... radical ... Is it cruelty to an animal for a person to raise chickens in order to eat them?

Mr. Kullberg. It depends on how they raise the chicken, sir.

Mr. Volkmer. Those people raise the chicken, they cut off their head, they take the feathers off, take all the guts out, and they cut them up and fry them and eat them. Is that cruelty? ...
tivists who wish to protect food animals must look beyond federal law.

2. Laboratory Animal Protection

The federal Animal Welfare Act (AWA) regulates the treatment of animals used in research. The Animal Welfare Act has various delineated purposes, including the provision of humane treatment to animals used in research facilities, exhibitions, or as pets. Despite this legislation, it appears animal activists legitimately claim that laboratory animals do not receive adequate protection.

Mr. Kullberg. If the ethologist tells me that to debeak that chicken and to put three of them in a cage 1 ½ feet by 1 ½ feet and to let them live out their lives in that condition, [then] that's cruel. . . .

Mr. Volkmer. Well, you have yet to persuade me . . . that there is sufficient cruelty to animals by farmers that I need to pass legislation to protect those animals.

Farm Animal and Research Facilities Protection Act of 1989: Hearing Before the Subcomm. on Dep't Operations, Research, and Foreign Agric. of the House Comm. on Agric., 101st Cong., 2d Sess. 45-47 (July 17, 1990) [hereinafter Farm Animal Hearings]. Similarly, activists have lobbied for the Humane Methods of Poultry Slaughter Act (H.R. 649), the Veal Calf Protection Act (H.R. 1455) and the Downed Animal Protection Act (S. 367 and H.R. 559). To date, none of these efforts have succeeded in being made into law.


115. The asserted purpose of the Animal Welfare Act is

(1) to ensure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) to assure the humane treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

7 U.S.C. § 2131. The AWA is also intended to regulate the “transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.” Id.

Like the Humane Methods of Slaughter Act and the Twenty-Eight Hour Law, the Animal Welfare Act narrowly defines animal and animal enterprises;\(^\text{117}\) consequently, many nonhumans are excluded from its scope.\(^\text{118}\) Under the AWA and its corresponding regulations, birds, rats, mice, cold-blooded animals, and insects are not protected.\(^\text{118}\) In practice, these exclusions mean that approximately 85% of all animals used in research are denied federal protection.\(^\text{120}\) The Animal Welfare Act is also of limited usefulness because many animal facilities are outside its scope.\(^\text{121}\) The AWA's definitions of dealer\(^\text{122}\) and exhibitor\(^\text{123}\) specifically exclude retail pet stores, state and county fairs, livestock shows, rodeos, and purebred dog and cat shows.

Probably one of the most distressing aspects of the Animal

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117. 7 U.S.C. § 2132.
118. 7 U.S.C. § 2132(g).
119. The Animal Welfare Act defines animal as follows:
The term “animal” means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes . . . .

7 U.S.C. § 2132(g).

Unlike the statute itself, regulations explicitly exclude birds, rats, and mice from the definition of animal. 9 C.F.R. § 1.1 (1996). This exclusion was challenged in court by the Animal Legal Defense Fund. The U.S. District Court for the District of Columbia held that the plaintiffs had standing to sue and the regulation was reviewable under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (1994). Animal Legal Defense Fund v. Yettter, 760 F.Supp. 923 (D.D.C. 1991). Finding that the regulation was arbitrary and capricious, the court granted the plaintiffs' motion for summary judgment on the merits. Animal Legal Defense Fund v. Madigan, 781 F. Supp. 797 (D.D.C. 1992). On appeal, the lower court decision was vacated. The appellate court found that the plaintiffs lacked constitutional standing and did not have a statutory right to judicial review under the Administrative Procedure Act. Animal Legal Defense Fund, Inc. v. Espy, 23 F.3d 496 (D.C. Cir. 1994). See also Henry Cohen, The Legality of the Agriculture Department's Exclusion of Rats and Mice from Coverage Under the Animal Welfare Act, 31 St. Louis U. L.J. 543 (1987) (arguing that the Secretary's exclusion of rats and mice from the Animal Welfare Act is inconsistent with the Act and is therefore illegal).

120. ALDF Wins Rights for Rats & Mice In Research, ANIMALS' ADVOCATE (Animal Legal Defense Fund, San Rafael, Cal.), Spring 1992, at 1, 7. The American Medical Association estimates that 12 to 15 million animals are used in biomedical research each year and that 75% to 90% of these animals are rodents. AMA White Paper, supra note 8, at 2.
121. 7 U.S.C. § 2132.
122. 7 U.S.C. § 2132(f).
123. 7 U.S.C. § 2132(h).
Welfare Act is that it provides only nominal protection to the animals covered. Although the AWA regulates the care, housing, and feeding of research animals, these provisions are commonly believed to be weak and ineffectual. Problems with the AWA include (1) the failure of the U.S. Department of Agriculture (USDA) to protect animals in noncompliant laboratories, (2) poor government enforcement of the act, (3) a lack of a private cause of action for activists, (4) Institutional Animal Care and Use Committees that fail to secure appropriate animal care, and (5) inadequate statutory mechanisms to prevent animal pain.

The U.S. Department of Agriculture’s ability to protect animals is impaired by the limited sanctions available under the AWA for noncompliance. The AWA provides that the Secretary shall promulgate rules allowing for the confiscation or destruction of any animal who is suffering due to noncompliance with the AWA; however, a significant exception is made for animals in research facilities. Specifically, the statute provides that laboratory animals may only be confiscated if they are “no longer required by such research facility to carry out the research, test, or experiment for which such animal has been utilized . . . .” Thus, despite any potential violations, the experiment is deemed more important than the animal. Therefore, the experiment, rather than the animal’s suffering, determines the action taken.

Enforcement of the Animal Welfare Act also remains deficient due to the USDA’s reluctance to administer the statute. As explained by author Esther Dukes:

For fiscal years 1983, 1984, and 1985, the USDA proposed that funding for animal welfare inspections be reduced or eliminated . . . . Moreover, APHIS [Animal and Plant Health Inspection Service] inspectors devote little time to animal welfare inspections. Indeed, APHIS veterinary medical officers who conduct AWA inspections spend only about six percent of their time on

124. See, e.g., Animal Legal Defense Fund, Inc. v. Secretary of Agric., 813 F. Supp. 882 (D.D.C. 1993) (striking down United States Department of Agriculture regulations because they were arbitrary and capricious and did not provide the minimum standards required by Congress), vacated by Animal Legal Defense Fund, Inc. v. Espy, 29 F.3d 720 (D.C. Cir. 1994) (concluding the appellees lacked standing to challenge the regulations promulgated under the Animal Welfare Act); see also supra note 116 (providing sources which analyze weaknesses in the AWA).
125. 7 U.S.C. § 2146(b).
126. 7 U.S.C. § 2146(b).
127. 7 U.S.C. § 2146(a).
128. FRANCIONE, ANIMALS AND PROPERTY, supra note 116, at 211-33; Dukes, supra note 116, at 525-37; Challenging Treatment, supra note 116, at 129-30; Masonis, supra note 97, at 156-58; McDonald, supra note 116, at 404 n.40.
animal welfare inspections.\textsuperscript{129}

It seems that current USDA enforcement efforts are insufficient as well. Though federal laboratories must adhere to the AWA, they are not inspected for compliance by the Regulatory Enforcement and Animal Care (REAC) unit of APHIS.\textsuperscript{130} Regarding non-federal facilities, the average number of compliance inspections conducted has gradually increased over the years; however, by 1992 the inspection rate reached only 1.87 inspections annually per site.\textsuperscript{131} In fact, a mere $500,000, five percent of the Animal Welfare Program's $9,594,000 annual budget, was devoted to regulatory enforcement.\textsuperscript{132} Finally, when noncompliance is identified, prosecutions for violations of the AWA remain rare.\textsuperscript{133}

Furthermore, activists may not be able to intervene when animal protection efforts by researchers and APHIS are deficient. In International Primate Protection League v. Institute for Behavioral Research, Inc., the Fourth Circuit held that the Animal Welfare Act does not authorize private individuals or organizations to be named guardians of research animals seized from a medical research facility whose chief is convicted for violations of state animal cruelty laws.\textsuperscript{134} The court barred an implied cause of action, stating:

To imply a cause of action in these plaintiffs might entail serious consequences. It might open the use of animals in biomedical research to the hazards and vicissitudes of courtroom litigation. It may draw judges into the supervision and regulation of laboratory research. . . . In fact, we are persuaded that Congress intended that the independence of medical research be respected and that administrative enforcement govern the Animal Welfare Act.\textsuperscript{135}

Thus, it appears that for now, the Secretary of Agriculture is the exclusive enforcer of the AWA.\textsuperscript{136}

Though the AWA does not currently appear to give activists a

\begin{footnotesize}
\textsuperscript{129} Dukes, supra note 116, at 526.
\textsuperscript{130} 1992 USDA ANIMAL WELFARE ENFORCEMENT 6-7.
\textsuperscript{131} Id. at 3.
\textsuperscript{132} Id. at 5.
\textsuperscript{133} Dukes, supra note 116, at 533; McDonald, supra note 116, at 404-05.
\textsuperscript{134} 799 F.2d 934 (4th Cir. 1986), cert. denied, 481 U.S. 1004 (1987).
\textsuperscript{135} Id. at 935.
\textsuperscript{136} But see Marci Messett, Note, They Asked for Protection and They Got Policy: International Primate's Mutilated Monkeys, 21 Akron L. Rev. 97 (1987) (arguing that the Animal Welfare Act provisions can be interpreted to provide a private cause of action). Representative Charles Rose (D-NC) sponsored H.R. 4535, an unsuccessful bill which proposed that the Animal Welfare Act be amended to allow private enforcement. Boman, supra note 116, at 288 nn.113-14 and accompanying text.
\end{footnotesize}
private cause of action, it requires the creation of Institutional Animal Care and Use Committees (IACUCs). IACUCs were created to provide internal inspection and review of the treatment of animals used in research. Animal activists claim that many IACUCs fail to provide adequate protection for animals in laboratories. By law, IACUCs may have an unlimited number of members; however, at least one of these committee members must "provide representation for general community interests in the proper care and treatment of animals ..." Nonetheless, many researchers may attempt to prevent animal advocates from becoming committee members. These animal experimenters fear activists would disrupt or gain control of the IACUCs and, "given their philosophy, would deny most proposed experiments." Consequently, IACUCs are often solely comprised of experimenters and their allies. For this reason, the committees tend to become rubber-stamping mechanisms for research activities instead of a means to protect animals from cruelty.

The AWA also exercises limited influence over the use of animals during experiments. For example, pain relieving drugs, anesthesia, or euthanasia may all be withheld from an animal when scientifically necessary. Researchers may also use an animal in more than one major operative experiment if there is scientific necessity. To prove scientific necessity a researcher is merely required to specify that animal pain is necessary to the research protocol and file a report with the IACUC explaining the

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137. 7 U.S.C. § 2143(b).
139. 7 U.S.C. § 2143(b)(1).
141. AMA White Paper, supra note 8, at 21.
142. One such example of anti-animal protection bias occurred at the Letterman Army Institute of Research in San Francisco. Jan Polon Novic, a former public member of Letterman's IACUC, stated in testimony prepared for a congressional hearing: "Humane concerns about animals, or the necessity for the research, almost never entered the picture . . . resulting in the waste of millions of tax dollars and thousands of animals' lives annually." Rick DelVecchio, Letterman Institute Rapped for Animal Work: Ex-Panel Member Alleges Waste, Cruelty, S.F. Chron., Apr. 8, 1992, at A16. In her testimony, she recalled experiments in which "animals were burned with lasers, insects were allowed to feed on the shaved skin of rabbits, pigs were nearly bled to death, and rabbits were subjected to eye surgery without medication to relieve their pain." Id. Polon Novic said she "cast the lone dissenting vote on ninety percent of the research proposals" that came before the IACUC and that she was "dismissed after complaining to Representative Barbara Boxer (D-CA) about committee procedures." Id. A spokeswoman for Letterman said Polon Novic was terminated from the committee because "she went beyond her role as representative of the public on animal care and sought to evaluate the scientific merit of research proposals." Id.
experimenter's belief. Due to the nature of IACUCs, this statutory loophole essentially allows the infliction of pain on animals to go unchecked.

In sum, the AWA is profoundly deficient in several key areas. At best, the statute provides minimal protection to a small fraction of animals used in research. Thus, the federal government appears to be shirking its statutory and ethical duty to protect the well-being of animals in laboratories. While animal liberators would likely object to almost all animal research in principle, the AWA arguably allows even the most heinous research practices to be inflicted on laboratory animals without restraint.

3. State Anti-Cruelty Statutes

Persons who argue that current legislation adequately protects animals may also attempt to cite state anti-cruelty laws in their support. All fifty states have enacted some form of criminal statute prohibiting cruelty to animals. Though these statutes vary significantly by state, a few trends may be identified across jurisdictions. Like the federal animal welfare laws, state anti-cruelty statutes fail to ensure animal protection.

In his book, Animal Rights and the Law, author Daniel S. Moretti provides an overview of anti-cruelty statutes from each state. He explains:

The key to determining what sort of act constitutes cruelty in each state depends on several factors. First, how does the law define animal? Second, what kind of activities are expressly or impliedly exempted from cruelty? Third, what level of intent is required for conviction? Fourth, is the punishment imposed for cruelty an effective one? Fifth, is the anti-cruelty law effectively enforced?

Each of these components of state anti-cruelty laws is addressed below.

Whether a being constitutes an animal as defined under state anti-cruelty legislation varies significantly by state. Most states use a broad definition of animal that includes all living creatures except humans. However, some states use a more narrow interpretation of animal that only encompasses domesticated or warm-

146. For a discussion of IACUCs see supra notes 137-142 and accompanying text.
150. Id. at 2.
blooded animals. Still others provide no definition at all.\textsuperscript{151}

States have also adopted various definitions regarding cruelty to animals. Many jurisdictions define cruelty as "an act, failure to act, or neglect that causes unjustifiable or unnecessary pain to an animal."\textsuperscript{152} There is disagreement, however, about what acts are unjustifiable or unnecessary. For instance, a strict reading of these statutes could prohibit the wearing of animal skins because this practice is unnecessary to the well-being of both humans and animals. Also, affirmative defenses such as acts of discipline, acts in protection of property, and acts in protection of humans have all been upheld by various courts as necessary or justified behavior.\textsuperscript{153}

Certain exemptions further weaken state statutes. For example, most states have implicitly or explicitly exempted animal experimentation.\textsuperscript{154} Routine hunting, trapping, fishing, and slaughtering are also outside the scope of state anti-cruelty statutes.\textsuperscript{155}

Additionally, many states have limited the impact of their anti-cruelty statutes by requiring a high level of intent to convict humans under these statutes. A few states merely require a showing of ordinary or criminal negligence to warrant conviction.\textsuperscript{156} Most jurisdictions, however, demand that an offender's actions be committed recklessly, knowingly, intentionally, willfully, or even maliciously to constitute the crime of cruelty to animals.\textsuperscript{157}

Punishment for the offense of cruelty to animals also varies widely by jurisdiction.\textsuperscript{158} Almost all the state statutes provide fines and imprisonment. Judges, however, are often reluctant to imprisonment persons for this offense\textsuperscript{159} and fines tend to be minimal.\textsuperscript{160}

\textsuperscript{151} Id. at 3.

\textsuperscript{152} Id. (emphasis added).


\textsuperscript{155} Moretti, supra note 149, at 3.

\textsuperscript{156} Soehnel, supra note 153, at 769-73 §§ 8-9, 11.

\textsuperscript{157} Id. at 761-69 §§ 3-7.

\textsuperscript{158} See Francone, Animals and Property supra note 116, at 156-58 (providing a synopsis of penalties and enforcement difficulties relating to state anti-cruelty laws).

\textsuperscript{159} Moretti, supra note 149, at 6.

\textsuperscript{160} ROLLIN, supra note 16, at 79. Typical maximum penalties under state anti-cruelty statutes are fines of up to $500 - $1000 and/or as much as a one year jail sentence. These maximum penalties are rarely invoked. Id.
Consequently, these penalties do not typically deter injury to animals. 161

Finally, anti-cruelty statutes are not effectively enforced. 162 Moretti explains: "Very few people who commit cruelty are ever brought into a courtroom and prosecuted . . . . In light of the small amount of money being spent to enforce anti-cruelty laws, it is obvious that state legislatures have not taken as much of an interest in animal welfare as they might have." 163 Due to these substantial shortcomings, current animal protection statutes provide little substantive protection for animals, and activists often find these laws to be of limited utility in securing humane treatment for nonhumans. 164

C. Standing

Despite weaknesses in anti-cruelty laws, activists have repeatedly attempted to use the courts to secure protection for animals. In these cases, one of the most difficult problems facing activists involves standing. Courts often find that activists fail to meet the burden of establishing standing and activists' claims are therefore dismissed. 165

The constitutional requirement for standing is found in Article III of the United States Constitution. 166 This provision limits the jurisdiction of federal courts to cases and controversies. 167 To meet the constitutional requirements for standing, plaintiffs must show that (1) they have suffered some actual or threatened injury, i.e., injury in fact; 168 (2) the injury is traceable to the challenged

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162. ROLLIN, supra note 16, at 79; Merritt Clifton, Horse Starvation, EQUUS, Oct. 1992, at 14 (addressing scarcity of convictions in cases of equine abuse).
163. MORETTI, supra note 149, at 6-7.
164. See FRANCIONE, ANIMALS AND PROPERTY, supra note 116, at 135-60 (reviewing state anti-cruelty prosecutions).
167. Id.
168. Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970). An organization may gain representational standing by showing injury to itself or to the mem-
action; and, (3) the injury is likely to be redressed by a favorable decision.¹⁶⁹ Oftentimes, plaintiffs must also show that their asserted injury is within the zone of interests regulated by the statute under which they are suing.¹⁷⁰ Under current standing interpretations, courts often find that animal activists fail to meet the injury in fact and zone of interests criteria.

Courts have frequently recognized that activists may have standing to litigate cases involving wild animals. In these cases, judges have found that the activists will suffer some aesthetic or recreational harm if a proposed action is taken against the free-roaming animals.¹⁷¹ Courts have also typically held, however, that activists do not have standing when the animal in question is not free-roaming, but is owned by another person. In these cases, animal advocates may not allege economic detriment because they do not own the animal harmed. Also, if the animal is not on public lands, the advocates suffer no aesthetic or recreational harm and are further restricted in gaining standing. Thus, activists who wish to bring suit to protect an animal from its owner, whether the owner is a fur farmer or an animal research facility, often have difficulty meeting the standing requirement of injury in fact.¹⁷²

Furthermore, courts find that many animal protection statutes, including the Animal Welfare Act, do not provide an express or implied private right of action under which activists may sue. Consequently, activists frequently cannot use animal protection statutes to gain standing because their claims are found to be

¹⁶⁹. Oliveira, supra note 168, at 941 § 3c.
outside the statutes' zones of interests.\(^1\)\(^7\)\(^3\)

For individual activists and animal protection organizations to overcome current standing impediments, they must make a "roundabout and often unavailing demonstration" that their rights are being invaded.\(^1\)\(^7\)\(^4\) Predictably, these claims often fall short of what is required. In fact, as standing doctrine has been applied in the context of animal protection cases, there has been a trend in judicial determinations. Animal activists, whether individuals or organizations, are generally denied access to the courts where they do not own the animal, the animal is confined to private property, and the claimants do not have a statutory basis on which to sue.\(^1\)\(^7\)\(^5\) Due to these standing guidelines, animal advocates are frequently foreclosed from using the courts to secure animal protection.

While a few scholars have proposed an expanded standing doctrine for animal protectors,\(^1\)\(^7\)\(^6\) this remedy fails to address the more pressing and fundamental problem perceived by activists — i.e., the law has yet to grant legal rights and standing to animals themselves.\(^1\)\(^7\)\(^7\) If animals themselves had standing, suits could be brought to recover for their injuries and there would be no need to find an indirect injury to a human.

Thus, in justifying their decision to pursue illegal tactics, liberators may point to substantial cultural, political, economic and philosophical obstacles to their abolitionist agenda. In addition, legal barriers to animal protection are substantial. Animal welfare statutes are typically ineffective. Standing barriers for activists and animals are monumental. In addition, other newly created legal barriers to animal protection are continually being introduced.\(^1\)\(^7\)\(^8\)

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174. Christopher D. Stone, Should Trees Have Standing? — Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450, 466 (1972) [hereinafter Stone, Standing I].

175. Boman, supra note 116, at 273-84.

176. See e.g., Klauber, supra note 165, at 510-20 (suggesting expansion of standing doctrine to allow altruism, ethical interests, and a broadened third party rule); McDonald, supra note 116, at 399, 421-31 (proposing that animal protection groups be granted standing to challenge unacceptable research on laboratory animals using a public nuisance action).

177. Tom Regan, All That Dwell Therein: Animal Rights and Environmental Ethics 152 (1982). It is beyond the scope of this article to propose exactly which animals should have exactly which rights. For discussion of these issues, see supra notes 17 and 22.

178. Other methods have been used to hinder activists' efforts to protect animals. For instance, many states have created hunter harassment statutes to deter anti-hunting activity. For an analysis of hunter harassment legislation, see Dorman v. Satti, 678 F. Supp. 375 (D.C. Conn.), aff'd, 862 F.2d 432 (2d Cir. 1988), cert. denied, 490 U.S. 1099 (1989) (declaring Connecticut's Hunter Harassment Act unconstitutional); Ugalde, supra note 10; Frank J. Wozniak, Annotation, Validity and Construction of Statutes Prohibiting Harassment of
Animal oppression is entrenched in the United States and lawful change on behalf of nonhumans appears to be glacial. Consequently, animal liberators may feel compelled to challenge the status quo through direct action. They believe that lawful channels of advocacy, used in isolation, will achieve only minimal change over a prolonged period of time.\textsuperscript{179} Meanwhile, the needs of nonhumans are urgent.

IV. MEASURING THE LIBERATOR'S ACHIEVEMENTS

Those who profess to favor freedom, and yet depreciate agitation, are men who want crops without plowing up the ground. They want rain without thunder and lightening. They want the ocean without the awful roar of its many waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle. Power concedes nothing without a demand.\textsuperscript{180}

— Frederick Douglass

Animal liberators may contest that they use illegal methods to secure animal protection because they have been essentially foreclosed from pursuing legal avenues of change. Even so, one must still inquire whether unlawful tactics are more successful than their legal counterparts. This section will review the liberators' achievements by analyzing their impact on the animals, the public, animal enterprises, and the animal protection movement as a whole.

A. Impact on the Animals: Liberation

Over the past fifteen years, animal liberators have successfully aided numerous animals. Likening themselves to abolitionists during the slave era,\textsuperscript{181} liberators have freed at least 4,417 nonhumans...
These animals have included dogs, cats, monkeys, mice, rabbits, hens, horses, dolphins, and coyotes. Animal protectors report that captive animals are removed from animal enterprises, given necessary medical care by sympathetic veterinarians, and placed on the Underground Railroad until safe, permanent homes are found.

The animal research community and its sympathizers allege that many of the nonhumans stolen from animal enterprises suffer greatly when they are released from confinement. Author Robert Garner rebuts this argument:

The animal research community often claim[s] that this [animal release] is irresponsible either because the rescued (or stolen, depending on your point of view) animals are incapable of survival in the wild or because they would make unsuitable pets. Whether or not this is true (and information on their destination is of course clouded in secrecy), since the animals may have suffered and would almost certainly have died in the laboratory anyway, it is unlikely that their treatment will be any worse in the hands of the animal liberators. Certainly, we have no reason to believe that the animals taken are not generally treated with care and responsibility. Indeed, whatever else may be said about the activists involved, it is faintly ridiculous, given their beliefs and the lengths to which they are prepared to go to follow them, to suggest that they would do otherwise.

Thus, it seems likely that most of the nonhumans released from animal facilities live a life which is just as good as, if not better than, what they would have experienced under the dominion of animal industry.

Although thousands of individual animals have been saved by...
animal liberators, these numbers pale in comparison to the billions of nonhumans used by animal enterprises each year. Thus, if one measures the liberators' success in terms of each individual animal who will live a better life because he or she was removed from an animal enterprise, there have been many victories. If, however, one assesses achievement by comparing the percentage of animals freed to the number of animals killed annually by animal industry, the results are sobering.188

B. Impact on the Public: Education

The animal liberators' education campaign has also realized some success. Activists remove research data, documents, and videotapes from animal facilities and then give these items to aboveground animal rights groups to publicize.189 This illegally obtained information has generated a substantial amount of media publicity and exposed instances of cruelty to animals.190 In addition to helping the public become more cognizant of the character of animal use by industry, information gathered by animal liberators has occasionally served as a catalyst for increased scrutiny of animal enterprises.

One such instance in which the fruits of direct action exposed activities at a particular laboratory involved a raid at the University of Pennsylvania Head Injury Clinic. In May 1984, members of the Animal Liberation Front broke into experimenter Thomas Gennarelli's laboratory. During the raid, the liberators caused approximately $20,000 in damage and stole 60 hours of videotapes.191

The stolen recordings were used by People for the Ethical Treatment of Animals (PETA) to create Unnecessary Fuss, a videotape documenting the treatment of the animals in the laboratory.192 The footage from Unnecessary Fuss shows experimenters placing inadequately anesthetized baboons in vices where their heads were then smashed with a device. The film also shows the experimenters “mocking the injured animals, flopping dazed primates around a table, and taunting an injured primate to shake

188. See supra notes 6-10 and accompanying text (providing a summary of the number of animals used in the United States each year).
189. JUSTICE REPORT, supra note 36, at 7; PETA, History of Liberation, supra note 55.
190. For discussion regarding the importance of media as a tool for the animal rights movement, see GARNER, supra note 14, at 221 (“[T]he use of more and more extreme and larger-scale actions may well have been a product of the declining media interest in the more minor acts of damage to property.”); RYDER, ANIMAL REVOLUTION, supra note 14, at 287-88 (addressing the impact of the media on direct action in Britain).
191. PETA, History of Liberation, supra note 55.
hands."\(^{193}\)

Gennarelli’s experiments were funded by $14 million in taxpayer dollars and spanned approximately thirteen years.\(^{194}\) In 1985, the National Institutes of Health terminated funding for the experiments and shut down the lab as a result of public outcry.\(^{195}\)

It has been claimed that direct action has caused several other modifications at animal research facilities. Rik Scarce, author of *Eco-Warriors*, explains:

Federal funds for the City of Hope National Medical Center in California were also cut after evidence from another 1984 raid showed numerous improprieties. An arson attack in 1989 against a University of Arizona animal research laboratory caused $100,000 in damage to two buildings, and activists freed nearly 1,100 mice, rats, rabbits, guinea pigs, and frogs. Subsequently, the University was reported by some to have given up research on primates.\(^{196}\)

Though not every incident of direct action results in the cessation of research, it appears that some of the animal liberators’ efforts have provided a foundation of data upon which lawful animal rights organizations may base their campaigns, educate the public, and apply pressure on animal facilities.

This information-gathering role is particularly important because above ground animal advocates are often barred from obtaining such incriminating information via lawful means. Activists may collect some data regarding the care and treatment of laboratory animals through the use of Freedom of Information Act (FOIA) requests under the Administrative Procedure Act (APA).\(^{197}\) The FOIA, however, encompasses only documents, and the contents may be highly censored. Under this statute, activists may lawfully be denied access to information that is (1) commercial or financial and privileged or confidential, (2) an inter- or intra-agency communication, (3) personal in nature, (4) part of an open law enforcement investigation, or (5) otherwise exempt from public disclosure.\(^{198}\) Further, responses may take months or even years.

\(^{193}\) Thomas, *supra* note 95, at 733.
\(^{194}\) Id.
\(^{195}\) FINS\textsc{e}N & FINSEN, *supra* note 12, at 67-71. Gennarelli’s laboratory was reopened in 1992. *Gennarelli Hasn’t Stopped: Neither Have We!,* Acti\textsc{v}ator (Am. Anti-Vivisection Soc’y, Jenkintown, Pa.), Feb. 1995, at 3. For additional background regarding the head injury scandal, see FINS\textsc{e}N & FINSEN, *supra* note 12, at 67-71; Robert Weil, *Inhuman Bondage*, Omni, Nov. 1986, at 65.
\(^{196}\) SCARCE, *supra* note 35, at 127.
\(^{198}\) 5 U.S.C. § 552(b); see, e.g., Letter from Dale K. Hall for Cheryl A. Oswalt, Freedom of Information Act Officer, the United States Department of Agriculture, Animal and
Finally, even this incomplete and tardy information cannot be obtained about private animal enterprises, which are not subject to the federal Freedom of Information Act and similar state statutes. Thus, liberators' unlawful tactics may occasionally fill a void created by insufficient public disclosure laws.

C. Impact on Animal Enterprises: Economic Sabotage

It appears that the liberators' campaign of economic sabotage is a potent device against animal industry. Direct action has caused significant expense to animal enterprises. These losses are estimated by United States animal industry to total $100 million.

Animal facility losses from a single instance of direct action can range from hundreds to millions of dollars. The most costly direct action incident to date involved an arson attack at an animal diagnostic laboratory that was under construction at the University of California, Davis in 1987. Damage estimates for the incident have ranged from $3.5 to $4.5 million. Since 1977, there have been at least twenty-one acts of major property damage for which estimated direct costs exceeded $10,000.

Each act of economic sabotage involves a variety of direct and indirect costs to the targeted animal enterprise. Expenses include repair and replacement costs for damaged equipment. Animal facilities must also purchase new animals to replace those taken by liberators. Further, direct action often causes financial losses due to delays in work. Direct action may also be a catalyst for long term costs to animal enterprises. These collateral effects can in-
clude the expense of extra security and surveillance,\textsuperscript{208} higher insurance premiums, and temporary losses of revenue if the animal facility closes for repairs.\textsuperscript{209} Finally, indirect costs from animal liberation activities may include such intangible harms as decreased employee morale.\textsuperscript{210}

In sum, liberators appear to be having some success in fulfilling their three-pronged agenda. Animals are being freed, the public is becoming informed, and animal enterprises are experiencing economic losses. Nonetheless, one must also assess the effect direct action has had on the animal protection movement as a whole.

D. Impact on the Animal Protection Movement: Help or Hindrance?

It is unclear whether direct action ultimately helps or harms the bargaining position of law-abiding animal protectors. On the one hand, the more extreme activities of animal liberators may make animal welfarists and animal rights activists appear moderate and reasonable. This contrast may enhance the bargaining position of lawful animal protectors who can claim that if some of their objectives are not met, escalation in direct action is likely.\textsuperscript{211} Direct action, however, could also have a negative impact on law-abiding animal protection efforts. Debates over the use of illegal techniques have caused a schism in the animal protection movement. Some activists argue that direct action paints the whole movement as a terrorist effort.\textsuperscript{212} For example, the position of Joyce Tischler, Executive Director of the Animal Legal Defense Fund, has been described as follows:

Tischler fears the ALF's violent tactics could destroy the animal rights movement by undermining public support. She points to Britain, where she feels underground tactics have given the movement a bad name. She notes that many people have come to associate the entire movement with violence and extremists, and hopes the prominent animal rights and welfare organizations will dissociate themselves from ALF tactics.\textsuperscript{213}

Some activists also feel that direct action diverts attention away from law-abiding efforts.\textsuperscript{214}

\begin{itemize}
\item[208.] Animal industries estimate that liberator activities have caused security costs to rise 10% to 20%. \textit{Id.} at 22.
\item[209.] \textit{Id.} at 22.
\item[210.] \textit{Id.} at 21-23.
\item[211.] \textsc{Garnet}, supra note 14, at 226; \textit{see also} \textsc{Manes}, supra note 42, at 18, 187-88 (making a similar argument in the context of lawful ecological activism and \textit{eco-sabotage}).
\item[212.] \textsc{ALF}, \textit{Opposing Viewpoints}, supra note 182, at 206, 209; \textsc{Garnet}, supra note 14, at 221-22; \textsc{Jasper} \& \textsc{Nelkin}, supra note 13, at 37, 49-51; \textsc{Scarce}, supra note 35, at 126.
\item[213.] \textsc{Jasper} \& \textsc{Nelkin}, supra note 13, at 37.
\end{itemize}
from the issue of animal protection to the nature of the direct action activities themselves. These law-abiding advocates worry that the public may "switch sympathy for the animals . . . to the animal abusers."214

Despite these fears, there does not appear to be epidemic public disapproval of direct action or substantial impediment of lawful animal protection efforts. The Animal Liberation Front has a support group with 10,000 paying members215 and the animal protection movement as a whole continues to expand.216 Despite these trends, there has been substantial backlash against animal liberators from government and animal industries.

V. Backlash

We reserve the use [of the words 'terrorism' and 'terrorist'] in practice for politically motivated violence of which we disapprove. The words imply a judgment about the political context in which those who we decide to call terrorists operate, and above all about the nature of the regime under which and against which they operate. We imply that the regime itself is legitimate. If we call them 'freedom fighters' we imply that the regime is illegitimate.217

With the support of animal industry, state and federal governments have initiated a backlash response to direct action. Tactics used to impede animal liberators include prosecutions under traditional criminal statutes, the enactment of federal and state laws specifically designed to thwart direct action, the impaneling of numerous grand juries, and the likely use of the Racketeer Influenced and Corrupt Organizations Act.218

214. GARNER, supra note 14, at 225 (quoting Lorraine Kay from AV Magazine, May 1991, at 12). This argument has also been raised within the radical environmental movement in regards to monkeywrenching, or ecosabotage. One environmental activist responds to this critique by arguing:

History informs us that direct action engenders as much support as opposition. The American Revolution saw as many colonists enter the Troy ranks as enlisted in the Continental Army. During the Second World War, as many Frenchmen joined Nazi forces as participated in the famous French Underground. The majority of the public floats non-committally between conflicting forces.


215. JASPER & NELKIN, supra note 13, at 34.

216. FINSEN & FINSEN, supra note 12, at 257-58.


A. State Criminal Prosecutions

It is unclear exactly how many persons have been prosecuted for animal liberation activities. The Justice Report notes that in the United States,\(^{219}\) nine persons have been convicted in connection with a specific animal liberation incident.\(^ {220}\) In contrast, author Rik Scarce writes that as of 1990, only four persons have been

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\(^{219}\) Animal liberators have also been convicted for direct action incidents in Britain. Ryder, Animal Revolution supra note 14, at 273-74, 276-77; Scarce, supra note 35, at 141.

\(^{220}\) Justice Report, supra note 36, at 24. According to the Department of Justice, these nine convictions arose from the following incidents:

1. Fran Stephanie Trutt pleaded guilty to state and federal charges for her November 1, 1988 bombing attempt at U.S. Surgical Corporation. Trutt targeted U.S. Surgical because it uses hundreds of live dogs each year to train doctors and salespersons in the use of the surgical staplers it manufactures. The trainees practice by stapling multiple surgical incisions on dogs who are then killed. For further information on the Trutt case, see supra note 56.

2. Roger Troen was convicted of first degree theft, second degree burglary, and conspiracy to commit burglary in the second degree for his participation in the October 26, 1986 break-in and theft at the University of Oregon breeding facility in Eugene, Oregon. Approximately $50,000 in damage was done to the facility and 264 animals were released. The Animal Liberation Front claimed responsibility for this incident. Oregon v. Troen, 786 P.2d 751, 752 n.1 (Or. Ct. App. 1990), review denied, 801 P.2d 841 (Or. 1990), cert. denied, 501 U.S. 1232 (1991); PETA, History of Liberation, supra note 55. For additional information on this conviction see discussion infra part V.A.2.b.

3. John P. Goodwin, Michael S. Karbon, and Jessie Keenan were convicted of misdemeanors for vandalizing several fur shops in Memphis, Tennessee. On May 18, 1993, these defendants were each sentenced to 11 months, 29 days imprisonment for their guilty pleas to four counts of vandalism under $500. The Vegan Front claimed responsibility for the incidents. See Marquardt, supra note 37, at 161; Lawrence Buser, "Payday" Arrives for 3 Sent to Prison, Com. Appeal, May 18, 1993, at B1; Lawrence Buser, Three Face Jail, Fines in Anti-Fur Vandalism, Com. Appeal, reprinted in Out of the Cages!, Fall 1993, at 13.

4. Chris DeRose and Aaron Leider were sentenced to ninety days in jail for the April 21, 1988 break-in at the UCLA Brain Research Institute. The Los Angeles Times reported that as a result of this direct action, "videotapes and photographs of cats with electrodes implanted in their heads and spines were smuggled out and publicized . . . ." Kathleen Hendrix, The Unbridled Activist: In Chris DeRose’s World, Animal Studies Are Inhuman — and He’ll Do Most Anything to Stop Them, L.A. Times, Aug. 31, 1988, pt. V at 1.

5. Two activists pleaded no contest to charges of burglary and possession of stolen property. This prosecution arose from the December 9, 1984, break-in and theft at the City of Hope Research Institute and Medical Center in Duarte, California. During this break-in, 115 animals were released and $400,000-$500,000 in research was disrupted. The two defendants were fined $10,000 each. See Justice Report, supra note 36, at 31; PETA, History of Liberation, supra note 55.

Telephone Interview with Scott Hendley, Esq., U.S. Dep’t of Justice (Nov. 12, 1993).

Since the date of this report, activist Rodney Coronado pleaded guilty to federal charges pertaining to direct action. For a synopsis of this case, see infra notes 337-343.
convicted for animal liberation activities. In fact, the precise number of persons convicted for direct action in the United States may be difficult to ascertain because many of these cases involve misdemeanors for which it is difficult to obtain comprehensive data. By all accounts, however, relatively few persons have been convicted for direct action. This section will look at two state cases, Hawaii v. LeVasseur and Oregon v. Troen. Levasseur and Troen are the only reported animal liberation cases to reach an appellate court. In each case, the defendants unsuccessfully attempted to introduce a choice of evils defense.

1. The Choice of Evils Defense

The choice of evils defense, also known as necessity or lesser evils, sets forth that an otherwise criminal act was correct behavior under the circumstances because it was done to avoid a greater harm. Thus, necessity is a type of justification defense. Necessity is a common-law defense in some jurisdictions while in others it has been codified. Generally, a successful necessity defense requires some specified combination of the following elements:

1. the criminal action was taken to avoid a grave harm;
2. the harm to be avoided was imminent;
3. there was no available legal alternative;
4. the harm to be avoided was greater than the harm caused by the criminal act;
5. it was reasonable for the actor to believe that his criminal act would avert the threatened harm;
6. and the actor was not personally at fault in creating the situation calling for the necessity of choosing between two evils.

221. Scarce reports that other than Fran Trutt, only three people have been arrested for animal liberation activities. He states that all of these activists were found with liberated rabbits in their possession and all received fines. Scarce, supra note 35, at 136.
224. The terms choice of evils, necessity, and lesser evils will be used interchangeably.
225. 1 Paul H. Robinson, Criminal Law Defenses § 24(a), at 83 (1984). Other necessity defenses include self defense, defense of others, defense of property, and public authority defenses. 1 id. at 83-85. A justification defense differs from a defense of excuse. Excuses admit that the action may be wrong, but argue the actor should be forgiven because he suffered from a condition making him not responsible for his deed. Such excusing conditions may include insanity, intoxication, immaturity, or an involuntary act defense (e.g., reflex action or convulsion). 1 id. § 25, at 91-93.
227. 1 Wayne R. LaFave & Austin W. Scott, Jr., Criminal Law § 5.4(d) (2d ed. 1986).
necessity defense may be barred if one or more of these elements is not met or if there is an apparent legislative intent to preclude use of the defense in the situation at issue.\textsuperscript{228}

Defendants engaging in a wide variety of protests have attempted to use the necessity defense. Activists challenging cruelty to animals,\textsuperscript{229} nuclear power, nuclear weapons, abortion, the Vietnam war, United States policy in Central America, investments in corporations doing business in South Africa, reduced funding for AIDS research, harmful logging practices, substandard prison conditions, and other issues have all attempted to raise necessity.\textsuperscript{230}

Though most courts have denied activists the opportunity to intro-

\textit{See also Robinson, supra} note 225, \S\ 124.

\textsuperscript{228} LaFave & Scott, supra note 227; Pearson, supra note 226.

\textsuperscript{229} Animal rights activists engaging in public civil disobedience have unsuccessfully attempted to present the necessity defense. For instance, in \textit{United States v. Allen}, defendants appealed their convictions for unlawfully entering a military base in violation of 18 U.S.C. \S 1382. The defendants claimed the district court erred when it denied them the opportunity to present the necessity defense to the jury. \textit{United States v. Allen}, Nos. 90-10400, 90-10550, 90-10551, 90-10552, 1991 U.S. App. LEXIS 18368, *1 (9th Cir. Aug. 5, 1991) (may not be cited to or by the courts of the 9th Circuit except as provided by 9th Cir. R. 36-3).

In this case, the defendants held placards and stood outside the Letterman Army Institute (Letterman) to demonstrate their opposition to an experiment in which nineteen stolen greyhound dogs were to be used for research. \textit{Id.} at *2. For the experiment, the dogs were to have a piece of bone from their forelegs replaced by a synthetic compound. After a healing period, the dogs were to be euthanized. Joanne Anderson, \textit{Cruelty to Greyhounds}, \textit{NewSDay}, Oct. 10, 1989, at 59; Molly Moore, \textit{Sale of Dogs for Army Experiment Probed: More Than a Dozen Greyhounds Were Obtained for Research Without Owners' Approval}, \textit{WASH. POSf}, Oct. 9, 1989, at E1.

Prior to their unlawful entry, the defendants attempted to obtain information from military officials at Letterman, contacted local and national political leaders, and participated in numerous lawful demonstrations. In addition, Representative Barbara Boxer wrote a letter to the Army demanding the experiment be canceled because there was no evidence it was medically or scientifically valid and because it would cause needless suffering to the dogs. Only after the activists' participation in civil disobedience, did Letterman release the serial numbers of the dogs. This information eventually led to the dogs' return to their owners. According to newspaper reports, this controversy also prompted federal investigations into the way the Army obtained the dogs and a review of the planned experiments. \textit{Allen}, 1991 U.S. App. LEXIS 18368 at *1-2; \textit{Barbara Boxer Urges the Army to Cancel Presidio Test on Dogs}, \textit{S.F. CHRON.}, Oct. 4, 1989, at A9; Moore, supra, at E1.

Despite the activists' various efforts and the ultimate release of the dogs' serial numbers, the district court held the defendants could not assert the necessity defense because they "(1) failed to show that the entry into the Presidio led to the cessation of the research, and (2) did not pursue alternative legal options available, including seeking permission for the demonstration." \textit{Allen}, 1991 U.S. App. LEXIS 18368 at *3. The appellate court affirmed the lower court's decision adding that the "defendants failed to demonstrate that a lawsuit against the Government was not a viable alternative." \textit{Id.} at *5. The Ninth Circuit failed to address how the activists would have been able to establish standing to bring suit.

\textsuperscript{230} Pearson, supra note 226, at 521 \S\S 3-22; \textit{See also Creative Defenses in Civil Disobedience Cases}, 42 \textit{GUILD PRAC.} 97 (1985).
duce these claims, a few have permitted the defense.\textsuperscript{231}

In cases involving political protest, it has been argued that allowing activists to submit necessity claims to the jury serves important constitutional and policy functions. First, the opportunity to argue necessity ensures defendants’ due process rights to put on a defense. Second, it preserves activists’ rights to be judged by their peers and have a jury determine questions of fact such as reasonableness and credibility.\textsuperscript{232} Finally, the application of necessity to cases of political protest may present an opportunity for the defendant to empower himself politically, empower a cross section of the community (i.e., the jury), and increase the quantity and quality of public discourse on a controversial issue.\textsuperscript{233}

Analysis of \textit{Hawaii v. LeVasseur}\textsuperscript{234} and \textit{Oregon v. Troen}\textsuperscript{235} illustrates how criminal prosecutions and rejection of the necessity defense have been used to thwart animal activists. Proper application of the necessity defense in these cases would have enabled these animal liberators to submit their claims to the jury.

\textsuperscript{231}See, \textit{e.g.}, New York v. Gray, 571 N.Y.S.2d 851 (N.Y. Crim. Ct. 1991) (allowing the defendants to assert the necessity defense in a case involving public protest of policies allegedly increasing vehicular pollution); New York v. Archer, 537 N.Y.S.2d 726 (N.Y. City Ct. 1988) (holding defendants could present evidence concerning necessity if they first established that a hospital was performing second or third trimester abortions).

\textsuperscript{232}The necessity defense has also been permitted in situations not arising from political protest. \textit{LaFave & Scott}, supra note 227, at § 5.4(c); \textit{See, e.g.}, People v. Lovercamp, 118 Cal. Rptr. 110 (Cal. Ct. App. 1974) (finding that defendant's offer of proof concerning the alleged necessity of her prison escape was sufficient to create a question of fact to be determined by the jury); People v. Pena, 197 Cal. Rptr. 264 (Cal. App. Dep't Super. Ct. 1983) (stating that the defense of necessity was available to appellant convicted for driving under the influence of intoxicating liquor); Jenks v. Florida, 582 So.2d 676 (Fla. Dist. Ct. App. 1991) (concluding that the trial court erred in refusing to recognize the defense of medical necessity for a person with AIDS convicted of cultivation of marijuana and possession of drug paraphernalia); State v. Hastings, 801 P.2d 563 (Idaho 1990) (holding that the defendant was entitled to present evidence at trial on the common law defense of medical necessity); New Jersey v. Tate, 456 A.2d 1281 (N.J. Super. Ct. App. Div. 1984) (permitting defendant with quadriplegia to present evidence to establish that he possessed marijuana to ease the pain caused by spasticity associated with his disability).


2. Rejection of the Choice of Evils Defense

a. Hawaii v. LeVasseur

Hawaii v. LeVasseur\(^{236}\) involved the first recorded animal liberation incident in the United States.\(^{237}\) Kenneth LeVasseur was an undergraduate research assistant at a University of Hawaii Institute of Marine Biology laboratory in Kewalo Basin, Honolulu. LeVasseur fed, swam with, and cleaned the tanks of Kea and Puka, two Atlantic bottle-nose dolphins being studied at the laboratory. In May 1977, without the university's permission, LeVasseur and several accomplices removed Kea and Puka from their tanks and transported the dolphins to a bay approximately fifty miles from the laboratory. The dolphins were then released into the ocean.\(^{238}\) When the dolphins were freed, a message was left at the laboratory identifying the activists as the Undersea Railroad.\(^{239}\)

LeVasseur was prosecuted for this direct action under Hawaii's criminal code for theft in the first degree.\(^{240}\) At trial, LeVasseur attempted to assert the choice of evils defense — i.e., the evil of keeping the dolphins captive in an allegedly substandard laboratory was a greater harm than the crime of theft. The trial court disallowed LeVasseur's defense and subsequently convicted him of first degree theft.\(^{241}\)

Gavan Daws, author of "Animal Liberation" as Crime, explains LeVasseur's motive in rescuing the dolphins:

[Defense counsel spoke of the] bad and rapidly deteriorating physical conditions at the laboratory; a punishing regimen for the dolphins, involving

\(^{236}\) 613 P.2d 1328.

\(^{237}\) PETA, History of Liberation, supra note 55; Letter from Sheila F. Anthony, Assistant Attorney General, U.S. Dep't of Justice, and Eugene Branstool, Assistant Secretary, Marketing and Inspection Services, U.S. Dep't of Agric., to Thomas S. Foley, Speaker of the House of Representatives 1 (Sept. 2, 1993) (on file with author).

\(^{238}\) 613 P.2d at 1330-31. Approximately four or five others helped LeVasseur free the dolphins. Id. at 1331. The only named accomplice was Steven Charles Sipman, who was tried separately and convicted. He was sentenced to five years probation, required to spend 500 hours in community service, and ordered to pay the state the value of the dolphins. Value of 2 Dolphins, supra note 186, at A14.


\(^{240}\) 613 P.2d at 1330 (citing HAW. REV. STAT. § 708-831(1)(b)).

\(^{241}\) 613 P.2d at 1330, 1332.
overwork, reductions in their food rations, the total isolation they endured, deprived of the company of other dolphins . . . to the point where Puka, having refused to take part consistently in experimental sessions, developed self-destructive behaviors symptomatic of deep disturbance, and finally became lethargic, 'comatose.' LeVasseur, seeing this, fearing that death would be the outcome, and knowing that there was no law he could turn to, believed himself authorized, in the interest of the dolphins' well-being, to release them.\textsuperscript{242}

Thus, LeVasseur's decision to free the dolphins stemmed from his knowledge of their deteriorating physical and mental health.

It appears that LeVasseur's beliefs about the laboratory's inadequacies were well founded. A report executed pursuant to an inspection under the Marine Mammal Protection Act\textsuperscript{243} stated that the laboratory should not receive new dolphins until "extensive repairs [have] been done" to the facility.\textsuperscript{244} The standards under which the laboratory was inspected were not applicable to the conditions under which Kea and Puka were kept since they were captured prior to the Act and therefore were not within the scope of its coverage.\textsuperscript{245}

Despite the conditions at the laboratory and the dolphins' poor health, trial judge Masato Doi blocked LeVasseur's choice of evils defense. LeVasseur was sentenced to five years probation with the condition that he serve six months in jail.\textsuperscript{246} He appealed this decision to the Hawaii Intermediate Court of Appeals raising as error the lower court decision regarding the choice of evils defense.\textsuperscript{247} On review, the intermediate court of appeals analyzed the applicability of the choice of evils defense to LeVasseur. The Hawaii choice of evils statute specifies that, unless the criminal code provides otherwise, illegal activity may be justified if (1) it is done to avoid a greater harm to another; (2) the actor is not negligent or reckless in appraising the necessity for his conduct; and (3) as a

\textsuperscript{242} Daws, \textit{supra} note 239, at 366-67.
\textsuperscript{244} Appellant's Opening Brief at 16, \textit{LeVasseur} (No. 6930).
\textsuperscript{245} \textit{Id.}
\textsuperscript{246} 613 P.2d at 1335.
\textsuperscript{247} Appellant's Opening Brief at 11-23, \textit{LeVasseur} (No. 6930). LeVasseur also argued that (1) the trial court abused its discretion by limiting his counsel's voir dire of the jury; (2) the advancement of his trial date by the trial court deprived him of his Sixth Amendment right to effective assistance of counsel; (3) he was denied a fair trial because his cross examination was unduly limited; (4) he was denied an impartial tribunal; (5) the trial court denied him the right to compulsory process; (6) the rejection of corroborating testimony regarding the deteriorated conditions at the laboratory was reversible error; (7) the jury instructions were erroneous; and, (8) his sentence was unduly harsh. \textit{Id.} at 23-62. The appellate court found each of LeVasseur's claims to be without merit. \textit{LeVasseur}, 613 P.2d at 1331-35.
matter of law, the evil the actor seeks to avoid is a greater harm than the offense the actor commits. In *LeVasseur*, the appellate court addressed each of these elements in turn.

Looking to the legislature’s definition of *another*, the intermediate court of appeals found that this term did not include dolphins. *Another* was defined by the Hawaii legislature as “any other *person* and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions.” Since the dolphins were neither a state nor a political subdivision, they could only satisfy the definition of *another* if they were *persons* under the law. The Hawaii legislature had defined *person* as a natural person, a corporation, or an unincorporated association. Using these statutory definitions, the court found that dolphins were neither a *person* nor *another* whom the choice of evils defense was meant to protect.

Alternatively, LeVasseur argued that by releasing Kea and Puka, he was protecting the United States from harm or evil. The defendant claimed that one of the purposes of the Animal Welfare Act was to protect the well-being of laboratory animals such as Kea and Puka. LeVasseur argued that because its law was not being properly administered, the United States was suffering a harm. By stealing the dolphins, LeVasseur explained, he was able to defend the United States and enforce its policy of animal welfare. The intermediate court of appeals agreed that the Animal Welfare Act and its regulations manifested a national pol-

248. The Hawaii choice of evils statute provides:

(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to himself or to another is justifiable provided that:

(a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

*Id.* at 1332-33 (reproducing HAw. REV. STAT. § 703-302).

249. *Id.* at 1333 (reprinting HAw. REV. STAT. § 701-118(3) (1985)) (emphasis added).

250. *Id.* (referring to HAw. REV. STAT. § 701-118(7)(1985)).

251. *Id.*

252. *Id.*

253. *Id.*
icy to protect the well-being of these laboratory animals.\textsuperscript{254} The court concluded that a violation of this statutory purpose would constitute a harm or evil to the United States, \textit{another} under Hawaii's choice of evils law.\textsuperscript{255}

Next, the court considered whether LeVasseur "recklessly or negligently appraise[d] the necessity for his conduct" when he liberated Kea and Puka. If he was found to have recklessly or negligently examined the necessity, LeVasseur could not have invoked the choice of evils defense. The intermediate court of appeals recounted that LeVasseur began researching the release of the dolphins a year before he removed them. The court also noted that LeVasseur failed to contact the government and report the allegedly life threatening conditions at the laboratory. Though the court reviewed other options it believed were available to LeVasseur, its discussion fell short of determining that LeVasseur acted recklessly or negligently when he released the dolphins.\textsuperscript{256} Rather, the court held that LeVasseur's defense failed because, as a matter of law, the evil of theft was at least as great a harm as a life threatening violation of the Animal Welfare Act.\textsuperscript{257}

Most courts, like Hawaii's appellate court, have denied activists the opportunity to introduce their claims of necessity as a matter of law. Some commentators have argued, however, that questions of competing values should be treated as questions of fact, or mixed law and fact, to be decided by the jury. Edward B. Arnolds

\begin{footnotes}
\item 254. \textit{Id.}
\item 255. \textit{Id.}
\item 256. If the intermediate court had found against the defendant on this issue of negligence or recklessness, one could argue that this decision would be in error. LeVasseur, as well as the other people at the laboratory, had been able to observe the dolphins' deteriorating health and abysmal laboratory conditions over an extended period of time. Nonetheless, it seemed that no one at the laboratory was inclined or able to shield the dolphins from harm. Despite the significant laboratory inadequacies, no repairs were anticipated at the facility. Similarly, the Department of Agriculture had failed to ensure the dolphins' well-being. The agency neither confiscated the dolphins nor imposed adequate sanctions to spur improvements. Consequently, it appears that LeVasseur may have reasonably appraised the necessity for his conduct when he saw that neither the laboratory's self-monitoring nor the Department of Agriculture's enforcement powers provided effective protection to the dolphins. \textit{See Appellant's Opening Brief at 11-16, LeVasseur} (No. 6930).

It has been argued that when the necessity defense is at issue, questions regarding the opportunity for legal alternatives should consider more than mere availability; they should address effectiveness as well. Bauer & Eckerstrom, \textit{supra} note 233, at 1179-80; Schulkind, \textit{supra} note 232, at 91-93. While the availability of legal options would, therefore, be relevant to an inquiry into the reasonableness of LeVasseur's beliefs and actions, the existence of lawful options should not entirely usurp a factual inquiry into the effectiveness of those alternatives.
\end{footnotes}
and Norman F. Garland, authors of *The Defense of Necessity In Criminal Law*, explain:

Theoretically, submitting the value issue to the jury would be in keeping with the concept of trial by jury. Where activity falls within the "penumbra" of the law or where disagreement exists in a society about a moral issue . . . there seems to be little reason why a defendant should not be allowed in the first instance to have the jury as the "conscience of the community" and his peers decide whether he made an objectively correct choice of values. If the jury decides in the defendant's favor, he is vindicated. If the jury votes to convict, the defendant still has a right to appeal their decision.258

*LeVasseur* involved just such an instance of competing values. Nonetheless, the *LeVasseur* court held that as a matter of law, a life-threatening violation of the Animal Welfare Act was a less significant evil than the release of the ill animals. The intermediate court of appeals should have submitted the defense to the jurors and allowed them, as representatives of the community, to weigh the competing interests and determine whether LeVasseur's actions were justified.

b. Oregon v. Troen

Only one other reported appellate case involves the criminal prosecution of an animal liberator. In *Oregon v. Troen*,259 Roger Troen, a fifty-seven year old former elementary school teacher, participated in a break-in at a University of Oregon psychology department laboratory. While he did not personally break into the laboratory, Troen drove a get-away car carrying monkeys, rabbits, hamsters and rats from the laboratory. He also helped find homes for the approximately 125 liberated animals.260 Like LeVasseur, Troen attempted to introduce a choice of evils defense to prove his actions were justified.

In support of his choice of evils defense, Troen sought to admit graphic photographic and videotaped evidence of animal abuse in laboratories.261 During a pretrial motion, the trial court sup-

261. 786 P.2d at 753.
pressed this proffered evidence and held that the choice of evils defense was inappropriate to Troen’s defense. The Lane County Circuit Court ultimately convicted Troen of first degree theft, second degree burglary, and conspiracy to commit burglary in the second degree. He was sentenced to five years probation with various conditions and ordered to pay $34,912.96 in restitution.

Troen appealed his conviction to the Oregon Court of Appeals on two grounds. First, he claimed as error the granting of the state’s pretrial motion to limit evidence in support of his proposed choice of evils defense. Speaking for the court of appeals, Judge Graber explained that a trial court could properly rule on the admissibility of evidence during a pretrial hearing only if the proffered proof carries an “unusual potential for prejudice.” Troen had described his proffered evidence as “graphic photographic evidence of research practices and abuses, [and] graphic video-taped documentaries of other similar research practices and animal abuses.” The court of appeals found that this proffered evidence had an unusual potential for prejudice. Consequently, Judge Graber held that the trial court did not abuse its discretion when it ruled on the admissibility of the evidence during a pretrial hearing.

The court of appeals never addressed the substance of the trial court’s ruling. The court of appeals should have considered that, in cases like Troen’s, the prejudicial effect of graphic evidence relates to its probative value. While in many cases, graphic evidence is irrelevant to the issue at hand, in this case the graphic evidence was vitally related to Troen’s necessity defense. That is, the nature and extent of animal suffering in the laboratory was relevant to the issue of whether Troen reasonably believed that illegal intervention was warranted. Troen’s evidence would have provided essential corroboration for his beliefs and been invaluable in his attempts to persuade a jury that his acts were justified. Thus, the Troen court improperly applied the relevancy balancing...
Troen also appealed the trial court’s decision that his proffered choice of evils defense was legally insufficient to warrant jury submission. On review, the appellate court explained that the choice of evils defense could be submitted to a jury only if the defendant’s evidence was sufficient for the jury to find that “(1) the defendant’s conduct was necessary to avoid a threatened injury; (2) the threatened injury was imminent; and, (3) it was reasonable for the defendant to believe that the need to avoid that injury was greater than the need to avoid the injury that the charging statute seeks to prevent.” Troen argued that he had met his burden with the requisite degree of persuasiveness; the court of appeals disagreed. Judge Graber found that the “trial court correctly understood its role” and had not held Troen to too high a standard.

Though the Oregon court did not specify the exact quantum of evidence it required, this standard should have been low as a matter of law. The issue of legal sufficiency in necessity cases has been a frequent source of controversy across jurisdictions. In his treatise, Criminal Law Defenses, author Paul Robinson cautions that though a judge must determine whether this standard has been met as a matter of law, “care should be taken . . . not to preempt the jury’s province where the evidence does provide a basis for a defense.” Similarly, it has been argued: “There is a disjunction . . . between the low standard of production courts hearing the necessity defense articulate in their hypothetical evidentiary

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271. Id. The Oregon choice of evils statute specifies:
1. Unless inconsistent with other provisions . . . defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:
   a. That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and
   b. The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.
2. The necessity and justifiability of conduct under subsection (1) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.

272. 786 P.2d at 753.
273. Across jurisdictions, the quantum of evidence required to satisfy a defendant’s burden of production have included the following standards: some evidence, more than a scintilla, slight evidence, evidence to support, some credible evidence, and evidence sufficient to raise a reasonable doubt. 1 Robinson, supra note 225, § 4(c), at 35-36.
274. Id. § 4(d).
tests, and the extraordinarily high standard which many of these same courts ultimately impose on civil disobedients raising the necessity defense.\textsuperscript{276} It appears that the Oregon courts made one of these all too frequent errors.

Trial Judge Edwin E. Allen commented during Troen’s sentencing: \textquote{\textquote{I’ve wondered what I would do . . . if, as a member of the state board of education or as a legislator, I heard and saw what I have heard and seen. Very frankly, it is disturbing to me as a citizen of this state and this city.}'}\textsuperscript{277} Among other things, Judge Allen was referring to witnesses’ testimony claiming that the university’s 20,000 research animals \textquote{had been routinely deprived of veterinary care, left to die in their cages, and used in ‘joke photos.’}’\textsuperscript{277} These comments indicate there was enough evidence to satisfy Troen’s minimal burden of production for letting his necessity defense reach the jury.

Despite its discussions regarding the suppression of prejudicial evidence and the legal sufficiency of Troen’s defense, the Oregon Court of Appeals stated that it ultimately barred the necessity defense because it was inconsistent with federal animal care regulations. The court explained:

\begin{quote}
Extensive federal regulations govern the treatment of animals used in the experiments that the laboratories were performing. For this purpose, regulations authorizing conduct have the same effect as statutes authorizing conduct. Although defendant alleges in his brief that the laboratory that he helped to raid was violating several federal regulations, he does not point to any evidence in the record that would support those allegations. Accordingly, federal law expressly allows what the victim of the crime was doing, so defendant may not offer a choice of evils defense when he interfered with that activity because of his belief that what the laboratory was doing is morally wrong.\textsuperscript{278}
\end{quote}

Thus, the appellate court held that a defendant may not argue necessity when the evil to be avoided is allowed under federal regulations.

\textsuperscript{275} Schuldkind, \textit{supra} note 232, at 89 (footnotes omitted).
\textsuperscript{276} Newkirk, \textit{supra} note 38, at 346-47.
\textsuperscript{277} Id. at 347. Author Ingrid Newkirk describes one such joke photograph as follows: In one such photo, the university’s director of animal care appeared, a lit cigarette dangling from his lips and a bottle of beer in one hand. In the other hand he held up a screaming, frightened primate infant - umbilical cord still attached - pretending to have just delivered him from a female student sprawled out on an operating table.
\textit{Id.}
Arguably, the court of appeals erred here as well. Some jurisdictions have found that preemption is a narrow exception to the justification defense. These courts do not allow legislation in a particular area to serve as a total bar to the necessity defense. Instead, they consider whether there is evidence sufficient to indicate the legislature has weighed all possible competing harms and made a preemptive value choice. Thus, these jurisdictions interpret the preemption doctrine more literally. They require that the legislature specifically weigh competing harms, including those foreseen by defendants, and make a value choice that explicitly rejects the defendant's position.

While it is true that the Animal Welfare Act and community values appear to condone some animal experimentation, they also condemn unnecessary cruelty to animals and advance that animals should be treated humanely. In fact, the Animal Welfare Act's congressional statement of purpose includes a provision which states that this legislation was intended "to insure that animals intended for use in research facilities . . . are provided humane care and treatment . . . ." Consequently, Troen's proposed choice of evils defense should not have been preempted if his actions were taken to prevent cruelty to animals.

Furthermore, the court of appeals may have selectively read the lower court's record when it found the defendant did not point to any evidence indicating the University at Oregon laboratory was in violation of federal regulations. Testimony at trial set forth several potential violations, including deprivation of appropriate veterinary care for the laboratory animals.

In sum, it appears the court of appeals erred in many ways. First, it failed to address the substance of the trial court's pretrial ruling suppressing highly probative evidence. Second, it incorrectly determined that there was no evidence in the record to support Troen's choice of evils defense. Finally, it erred in deciding that the defendant's direct action was preempted by federal law.

As indicated by LeVasseur and Troen, prosecutors have successfully used traditional criminal statutes such as burglary, conspiracy, and theft to convict animal liberators. Though there have been few convictions, it does not appear that this dearth results from acquittals or any lack of effort by government and animal enterprises in making animal liberation a law enforcement priority.

279. Schulkind, supra note 232, at 108-09.
280. Id.
282. See supra note 277 and accompanying text.
In fact, as the following discussion regarding anti-liberation laws and grand jury investigations will indicate, government is investing significant effort and resources to quell direct action.

B. Anti-Liberation Laws

As a direct response to animal liberation crimes in the United States, Congress used its commerce power to enact the Animal Enterprise Protection Act of 1992 (AEPA). This section will analyze various aspects of the AEPA, including which actions are criminalized under the statute, the penalties for such offenses, and the history of the Act. Finally, this Comment will critique this anti-liberation statute and provide information on proposed amendments to the act.

The AEPA specifies that a person commits an offense if he or she:

(1) travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility in interstate or foreign commerce, for the purpose of causing physical disruption to the functioning of an animal enterprise; and
(2) intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding $10,000 to that enterprise, or conspires to do so . . . .

Simply put, this statute makes direct action by animal liberators a federal crime.

The AEPA provides progressively harsh penalties for defendants based on the nature of the direct action. If there is damage in excess of $10,000, the liberator may be fined and imprisoned for up to one year. If a person is injured during a violation of the statute, the defendant may be fined and imprisoned for up to ten years. A defendant may be fined and imprisoned for life if someone is killed during an animal liberation action. Finally, the statute empowers courts to order restitution to targeted animal enterprises for lost profits and ruined experimentation.
The Animal Enterprise Protection Act, originally entitled the Farm Animals and Research Facilities Protection Act, was introduced to the House of Representatives by Congressman Charles W. Stenholm (D-Tex.).292 Stenholm’s bill criminalizing “animal rights terrorism”293 met resistance on various fronts. Some opponents of the bill alleged that this legislation was redundant because the direct action tactics encompassed by the AEPA (e.g., theft, arson, property destruction) were already offenses under state law.294 As evidenced by previous convictions of animal liberators, these traditional criminal statutes had already proven to be effective in prosecuting direct action.295 In addition, many states had already enacted laws that specifically criminalized economic sabotage by animal liberators.296

The United States Department of Justice also discouraged enactment of this new legislation. Paul L. Maloney, Deputy Assistant

293. Id.
294. See, e.g., Lee, supra note 61, at 38.
295. See discussion infra part V.A.
Attorney General for the agency’s Criminal Division, testified during a hearing for the bill:

[D]espite our sympathy to the aims of some of these bills, the Department cannot endorse the creation of new federal criminal legislation which, in our view, would add nothing to the prosecution of these types of offenses. Indeed, enactment of this kind of proposal might serve only to raise the hopes and expectations of the research community to unrealistic levels.  

While proponents of the bill claimed that federal legislation was critical for garnering increased assistance from the Federal Bureau of Investigation (FBI) in investigating direct action, these assertions were disputed by the Department of Justice.  

Acting Assistant Attorney General Bruce Navarro stated, “[t]he Federal Bureau of Investigation has never, to our knowledge, had to refrain from entering a laboratory facility case because there was no statutory basis for its involvement.”

At least one member of Congress opposed the AEPA on animal protection grounds. Representative Charles Rose (D-NC), the only member of the House Committee on Agriculture to vote against a precursor to the AEPA, stated:

Unfortunately, there is still very much abuse in some animal facilities . . . . Many of you here will say that this is not the issue, but I very much disagree. Much of the [animal liberators’] violence occurs when individuals know that there is abuse going on, but the Department of Agriculture does absolutely nothing to stop it.

Nonetheless, the Animal Enterprise Protection Act was ultimately passed at the urging of many animal enterprises, including animal research associations and food animal lobbyists.
One notable aspect of the AEPA is the breadth of its coverage. Ironically, the statute’s definition of animal enterprise is much broader than those definitions used in federal animal protection laws. The AEPA defines animal enterprise as “(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; (B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or (C) any fair or similar event intended to advance agricultural arts and sciences.”

Unlike the AEPA, federal animal protection statutes do not encompass animals on farms or at rodeos and fairs.

Similarly, though the AEPA does not specifically delineate a definition of animal, the definitions found within the statute’s legislative history are much broader than those provided in federal animal protection laws. Throughout much of its development, the AEPA explicitly noted that the term animal should include “warm or cold-blooded animals used for food, fiber production, agriculture, research, education, testing, or exhibition [including] poultry, fish, and invertebrates.” One version of the bill even specified that insects were animals encompassed by the legislation. In contrast, animal protection statutes are typically interpreted much more narrowly.

Though the AEPA appears to be very extensive when contrasted with federal animal protection statutes, there have been various attempts to expand its coverage even further. For example, House Report 3064, proposed by Representative George Gekas (R-Pa.), endeavored to protect individuals working in animal enterprises from direct action. This bill would have made it a federal crime to cause “physical harm to another person or to the property of another person in order (A) to prevent that person from participating in an animal enterprise; or (B) to retaliate against that person for participating in an animal enterprise.”

Representative Stenholm also proposed substantial amendments to the AEPA. House Report 3575 prohibited activities in which a person “by force, threat of force, or physical obstruction, intentionally injures, intimidates, or interferes with any person, or

Council. Id. at 114, 135, 155, 157, 159, 177, 189, 219, 225, 231, 276, 278-80, 288.
303. See supra notes 113, 122-123 and accompanying text.
306. See supra notes 112, 119-120 and accompanying text.
attempts to do so, because that person or any other person . . . is engaging in activities in an animal enterprise.\textsuperscript{308} The bill would have also provided additional penalties for defendants who engaged in a second or subsequent offense after a prior conviction under the AEPA.\textsuperscript{309} Finally, House Report 3575 provided that any person aggrieved by actions barred under the statute could bring a civil suit requesting an injunction, compensatory and punitive damages, an award of statutory damages in the amount of $5,000 per violation, and reasonable fees for attorneys and expert witnesses.\textsuperscript{310} Hence, if passed, this bill would have granted individual animal users a private cause of action. In contrast, animal activists and nonhumans themselves are commonly denied access to the courts under current animal protection statutes.\textsuperscript{311}

Animal activists have sought legislation providing meaningful protection for animals. Congress has responded to these requests by providing more protection to animal users. Such a reply might reinforce animal liberators' beliefs that lawful means of advocacy, used alone, will not adequately protect nonhumans.

C. \textit{Grand Jury Investigations: Prosecution or Persecution?}

In addition to passing the Animal Enterprise Protection Act and similar state statutes, government has responded to animal liberators by impaneling numerous grand juries to investigate incidents of direct action. The Moscow-Pullman Daily News reports that, from the late 1980s to 1994, approximately nine or ten grand juries have been convened to study direct action.\textsuperscript{312} These grand juries had been impaneled in five states: Washington, Oregon, Utah, Michigan and Louisiana.\textsuperscript{313} While most of these grand juries

\textsuperscript{308}. H.R. 3575, 103d Cong., 1st Sess. § 2(a) (1993).
\textsuperscript{309}. Id. § 2(B).
\textsuperscript{310}. Id. § 2(C).
\textsuperscript{311}. See supra part III.C.
have been federal, at least one local grand jury has been convened as well.\footnote{14}

Many animal rights activists claim that these investigations are not used to begin legitimate legal actions, but to harass and imprison animal advocates and sympathizers. According to one activist:

Grand juries have always been used against political movements to squash us. They were used in the 1800s to bring slaves back to the South. They’ve been used against the civil rights movement, the anti-war movement, the American Indian movement, the women’s movement. This is not . . . the first or the last time this will happen.\footnote{16}

Hence, many animal protectors claim the government’s true objective in instituting these grand juries is to persecute an unpopular social justice movement and intimidate sympathizers.\footnote{16}

There appears to be some evidence supporting the activists’ claims. Dozens of animal rights activists, acquaintances of alleged animal liberators, and sympathizers of the animal protection movement have been subpoenaed, sometimes repeatedly, to testify before grand juries investigating direct action.\footnote{17} In addition, at least six individuals have been charged with contempt of court and jailed for refusing to cooperate with grand jury investigations.

Henry Hutto and Debra Ann Young were jailed in connection with a federal grand jury investigation in Sacramento, California.

\footnote{14. After an investigation by local authorities in Oregon, Crescenzo Vellucci, Jr., Bill J. Keogh, and Jonathan C. Mark Paul, were charged with second-degree burglary, theft, criminal mischief, and conspiracy to commit burglary for their alleged participation, along with Roger Troen, in the October 1986 break-in at the University at Oregon. These charges were later dropped. Dan Bernstein, \textit{Judge Dismisses Charges in Animal-Rights Case, SACRAMENTO BEE}, May 2, 1991, at B3; Bill Bishop, \textit{UO Lab Charges Dismissed: But Case Against 3 in Break-in Could Be Reinstated, REG.-GUARD}, May 2, 1991; Man Held, Accused of Theft at UO Labs: The Sacramento Suspect Has Been a Local Spokesman for the Militant Animal Liberation Front, \textit{OREGONIAN}, Oct. 15, 1990, at B1.}

\footnote{15. Japenga, \textit{supra} note 313, at E1.}


The Sacramento grand jury was investigating an April 1987 arson at the Animal Diagnostic Laboratory under construction at the University at California, Davis. This direct action caused $3.5 to $4.5 million in damage. Hutto was jailed forty-five days for his refusal to assist the grand jury.318 Young was jailed for two days when she refused to name her associates in the animal rights movement. She was released from prison after agreeing to aid the Sacramento grand jury's investigation. While in jail, Young was allegedly denied counsel and access to the prescription medication she used to maintain her blood pressure.319

Four persons were jailed for contempt of court for allegedly refusing to testify before a federal grand jury investigating the August 1991 ALF break-in at the Washington State University (WSU) Fur Animal Research Farm in Pullman. During the raid, twenty-three animals were released, including seven coyotes, six minks, and ten mice.320 Damages from the incident totalled approximately $50,000. These losses included the theft of research documents and destruction of computer equipment.321 Jonathan Paul, who apparently was not a suspect in the WSU case, was imprisoned approximately 156 days for his refusal to identify other activists in photographs.322 Deborah Stout, believed by authorities to be a participant in the WSU incident, was jailed five months for her refusal to testify before the grand jury.323 In addition, Kimberly Jean Trimiew, an organic farmer and a suspect in the WSU raid, was also imprisoned for approximately five months due to her refusal to cooperate.324

318. Hutto was reportedly placed in solitary confinement and lost approximately twenty pounds during his incarceration because, as a vegan, he could not eat most of the prison fare provided to him. Finsen & Finsen, supra note 12, at 176; 4 of 5 Jailed Activists Stayed Quiet, Moscow-Pullman Daily News, Oct. 20, 1993, at 1A.


320. PETA, History of Liberation, supra note 55.

321. Id.


324. Dean Kuipers, The Tracks of the Coyote, ROLLING STONE, June 1, 1995, at 58; Ken Olsen, Seattle Activist Gets Grand Jury Reprieve, Moscow-Pullman Daily News, Aug. 1, 1994. See also Around the Region: Grand Jury Ends Probe of WSU Raid; Outcome Un-
Perhaps the most notorious use of these grand juries, however, may be the imprisonment of author and graduate student Rik Scarce. Although not a suspect, Scarce was incarcerated for 159 days when he refused to reveal the sources for his book, *Eco-Warriors*, to the grand jury investigating the WSU raid.

Scarce appealed his imprisonment for contempt to the Ninth Circuit Court of Appeals. Claiming a scholar's privilege under the First Amendment and federal common law, Scarce argued that the names of his confidential sources were privileged information protected from grand jury inquiry. The appellate court rebuffed Scarce's First Amendment claim by invoking the balancing test of *Branzburg v. Hayes*. The court stated:

*[We] perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial.*

The court also found that Scarce had no scholar's privilege as a matter of federal common law because the confidentially obtained information was "relevant to a legitimate grand jury inquiry and sought in good faith." Thus, the Ninth Circuit rejected Scarce's claim regarding a scholar's privilege and upheld his confinement.

In response to animal protectors' contentions of harassment,
some government officials argue that these grand jury investigations are lawful and that incarceration of activists is necessary to stimulate compliance.\textsuperscript{332} For example, Jim Provencher, Spokesman for the Seattle field division of the Bureau of Alcohol, Tobacco and Firearms (ATF) asserted, "These are serious crimes we're investigating . . . . If you commit crimes that fall within ATF jurisdiction, we're going to pursue you. We are not investigating people for their beliefs . . . . We are not going against people for who they are. We're talking tenacious investigation of serious felonies."\textsuperscript{333}

Similarly, when asked in a \textit{Los Angeles Times} interview why activists testifying before the grand jury may not have an attorney present though they can be jailed for up to eighteen months without charges being filed, Bill Hyslop, the U.S. Attorney for eastern Washington, responded that the process was "totally legal, totally constitutional."\textsuperscript{334} He explained that witnesses cannot have an attorney present because the purpose of the grand jury is not to determine innocence or guilt but to assess whether charges should be filed.\textsuperscript{335} Hyslop added that the jailing was not punitive but rather was intended to "compel" testimony.\textsuperscript{336}

These grand jury inquiries have produced one conviction. In a five-count indictment, a Michigan federal grand jury charged activist Rodney A. Coronado with arson, destruction of government property, theft, use of an unregistered explosive, and violation of the Hobbs Act. These charges were related to an alleged Animal Liberation Front arson at a Michigan State University (MSU) mink research laboratory in February 1992.\textsuperscript{337}

In 1995, Coronado pled guilty to aiding and abetting the ALF raid on MSU. He also pleaded guilty to theft of property for an incident unrelated to animal liberation activities.\textsuperscript{338} Coronado, who

\textsuperscript{332} Japenga, supra note 313, at E1.
\textsuperscript{333} Id.
\textsuperscript{334} Id. at E2.
\textsuperscript{335} Id.
\textsuperscript{336} Id.
\textsuperscript{337} During the raid, a fire destroyed thirty-two years of research files regarding experiments with minks. It has been estimated that this direct action caused $125,000 to $250,000 in damage to buildings and equipment. Michael Hedges, \textit{Animal-Rights Activist Indicted for Arson at Lab}, \textit{WASH. TIMES}, July 17, 1993, at A3; \textit{Michigan Grand Jury Indicts Animal Extremist Rodney Coronado}, PR Newswire, July 16, 1993, available in LEXIS, Nexis Library, NEWS file, WIRES subfile. After a fourteen month search, Coronado was arrested at the Pasqua Indian Reservation outside of Tucson, Arizona. \textit{Animal Rights Activist Is Arrested for Arson}, \textit{CHI. TUB.}, Sept. 29, 1994, at 3; \textit{Animal Rights Fugitive Rodney Coronado Arrested}, PR Newswire, Sept. 28, 1994, available in LEXIS, Nexis Library, NEWS file, WIRES subfile.
\textsuperscript{338} Ken Olsen, \textit{Coronado Pleads to Helping ALF at MSU: Activist Takes Fall for WSU Damage, Too}, \textit{MOSCOW-PULLMAN DAILY NEWS}, March 4 & 5, 1995, at 1A, 9A.
is part Yaqui (a Native American Tribe) and part Mexican,\(^{339}\) allegedly stole and destroyed a calvaryman’s journal that “glorified Native American genocide.”\(^{340}\) Coronado’s plea may have been largely attributable to this separate incident of theft. Ken Olsen, staff writer for the *Moscow-Pullman Daily News*, reports:

> In the end, it appears that Coronado’s impulsive theft of a soldier’s diary from the Little Bighorn Battlefield Museum, not evidence from animal rights cases, gave the government the leverage it needed to get him to take a plea bargain. . . . The government revealed that it had solid evidence that Coronado stole a calvaryman’s journal from the museum near Custer's Last Stand in Montana in 1992. There was an eyewitness who put Coronado at the scene. Experts had lifted 13 latent fingerprints from the glass display case where the journal was kept. . . . Coronado faced 10 years in prison on that charge alone, a charge he would have likely been convicted on.\(^{341}\)

As a result of his plea, Coronado was sentenced in August 1995 to fifty-seven months in prison\(^ {342}\) and ordered to pay $2.5 million in restitution to institutions and businesses damaged by animal rights activists.\(^ {343}\)

> Given the considerable exertion by law enforcement and the lengthy imprisonments of persons not suspected of criminal activity, the return appears small — one conviction that arguably resulted from evidence unrelated to animal liberation activity. Although these law enforcement efforts may fall within legal guidelines, the activists’ claims of harassment may have some merit. The government may be treading a fine line between zealous inquiry and hysterical inquest.

D. **RICO**

Prosecutors and animal enterprises will probably also use the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970\(^ {344}\) to bring criminal

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343. Anderson, * supra* note 342, at 18C. Coronado was directed to pay restitution to various animal research and fur facilities. Designated centers include Michigan State University, Oregon State University, Washington State University, Northwest Fur Breeders, Malecky Mink Farm, and the Fuggans Rocky Mountain Fur Company. *Rod Coronado Sentenced, supra* note 340, at 2.
and civil claims against animal liberators. The use of RICO against politically motivated activism was condoned by the U.S. Supreme Court in *NOW v. Scheidler*.\(^{345}\)

In *Scheidler*, petitioner health care centers\(^{346}\) brought a RICO claim against a coalition of anti-abortion groups called the Pro-Life Action Network (PLAN).\(^{347}\) The petitioners asserted that through a pattern of racketeering activity, PLAN was engaged in a nationwide conspiracy to close abortion clinics. The health care centers claimed that "respondents conspired to use threatened or actual force, violence or fear to induce clinic employees, doctors, and patients to give up their jobs, give up their economic right to practice medicine, and give up their right to obtain medical services at the clinics."\(^{348}\) Petitioners further alleged that the "conspiracy 'has injured their business and/or property interests.'"\(^{349}\) The district and circuit courts initially dismissed this case on the grounds that the health care centers failed to state a claim under RICO.\(^{350}\) Petitioners appealed to the Supreme Court.

In a unanimous decision, the Court held that for a claim to be asserted under RICO, racketeering activities do not need to have an underlying economic (i.e., profit-seeking) motive.\(^{351}\) The Court explained that neither the explicit terms of the offense,\(^{352}\) nor RICO's definition of *racketeering activity*,\(^{353}\) specified that a profit

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346. Petitioners in *Scheidler* included the National Organization for Women (NOW) and two abortion providers, Delaware Women's Health Organization, Inc. (DWHO) and Summit Women's Health Organization, Inc. (SWHO). *Id.* at 801. The Court held that DWHO and SWHO had standing to sue under RICO. *Id.* at 802-03.

347. PLAN was composed of individuals and groups that opposed the legal availability of abortions. *Id.* at 801. Other respondents named in the complaint were Joseph Scheidler, John Patrick Ryan, Randall A. Terry, Andrew Scholberg, Conrad Wojnar, Timothy Murphy, Monica Migliorino, Vital-Med Laboratories, Inc., Pro-Life Action League, Inc., Pro-Life Direct Action League, Inc., Operation Rescue, and Project Life. *Id.* at 801 n.1.

348. *Id.* at 801-02.

349. *Id.* at 802.


351. *Id.*

352. RICO provides, "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." 18 U.S.C.A. § 1962(c).

353. RICO gives the following definition of *racketeering activity*:

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, . . . which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), . . . section 659 (relating to theft from interstate shipment) if the act
motive was integral to a RICO violation. As a result, the Court held that the petitioners could bring suit even though PLAN’s allegedly violent actions were motivated by ethical rather than economic reasons.

It is likely that the holding in Scheidler will impact various ideologically based groups that use illegal tactics but lack a profit motive. Robert Sedler, a constitutional law professor at Wayne State University, explains:

"If animal rights activists block the entrance to fur stores or go into stores and spray paint on the furs, the furriers could bring a RICO claim against them. Same thing if environmentalists trespass on somebody’s property… Peaceful picketing, debate, meetings, prayers — all of that is protected by the First Amendment. But when you go over the limit, there is a federal cause of action against you…"

Thus, in addition to affecting abortion protesters, the application of RICO to advocacy groups could impact animal rights activists and other protestors who employ illegal means, such as nuclear arms protesters, AIDS activists, civil rights demonstrators, and radical environmentalists.

The institution of RICO claims against animal liberators could be very desirable to animal enterprises. Under RICO, triple dam-

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354. 114 S. Ct. at 803-06.


356. See also Aaron Epstein, *Justices Give Abortion Sites a Key Weapon: A Federal Anti-Racketeering Law Can Be Used Against Activists Who Conspire to Block Clinics*, PHILA. INQUIRER, Jan. 25, 1994, at A1 (“Briefs filed with the high court argued that applying RICO to advocacy groups could imperil the rights of nuclear arms protesters, AIDS activists, civil rights demonstrators and animal rights advocates, among others.”); David G. Savage, *Court Allows Abortion Suits Under RICO*, L.A. TIMES, Jan. 25, 1994, at A1 (“[The Scheidler] ruling also gives government prosecutors the power to use the law against any terrorist organization that uses violence for political reasons. Similarly, it would permit lawsuits against animal rights activists, environmental extremists or others who use force or violence to achieve their goals.”).
ages and attorneys' fees may be assessed against unsuccessful defendants. Consequently, animal enterprises would have substantial economic incentive to bring suit against above-ground animal rights activists engaging in public acts of civil disobedience, as well as any animal liberators who are successfully identified.

The scientific community is already exploring the potential for such litigation. The future use of RICO was addressed at a symposium held by the National Association for Biomedical Research. Here, attorney David Hardy stated, "the RICO statute has obvious application to ALF and, quite likely, to the above-ground parallel groups which aid and finance its activities." He added: "The RICO statutes offer the prospect of imposing sanctions not only against ALF and other underground groups, but also against members and directors of the above-ground parallel organizations which conduct trespass demonstrations, home picketing, and other harassment of animal researchers." Lorenz Otto Lutherer and Margaret Sheffield Simon, authors of Targeted: The Anatomy of an Animal Rights Attack, concur:

As the scientific community organizes to fight this battle [against animal rights activists] and as funds are raised for future action, it is inevitable that such RICO suits will be brought. They hold the most promise not only for subduing the movement in the courtroom but also for damaging the movement in the minds of the general public. RICO laws have come to symbolize protection against gangsters, and after well-publicized convictions under these statutes, the general public would be much less eager to donate money to groups linked with gangsterism.

Thus, the future use of RICO against animal liberators appears almost certain.

VI. IMPLEMENTING CHANGE

The time will come when men ... will look upon the murder of animals as they now look upon the murder of men.

— Leonardo da Vinci

In the United States, the use of animals is pervasive. Although

357. 18 U.S.C.A. § 1964(c).
358. LUTHERER & SIMON, supra note 37, at 141.
359. Id.
360. Id. at 142.
most persons agree that nonhumans experience pain and pleasure, many resist the idea of animal rights. This longstanding, widespread acceptance of animal exploitation has produced cultural, political, economic, and philosophical barriers to change. Humankind’s narrow ethical circle has also led to prejudice in the law. In the case of animal use and abuse, the legal system delivers no justice. Ineffective humane legislation and standing barriers allow the oppression of nonhumans to proceed virtually unchecked.

For these reasons, animal liberators perceive that lawful means of advocacy, used alone, are currently inadequate to secure meaningful animal protection and ignite a radical change in the United States’ policies towards nonhumans. The liberators’ perceptions may be correct. Prospects for the immediate end of animal abuse are dismal. For those who count the losses animal by animal — thousands every minute in the U.S. alone — anything but immediate reform is cause for revolt, or direct action.

This Comment advocates change. Rather than shielding the status quo, there must be a substantial shift in humankind’s relationship with animals. It is time to move away from an economy and way of life based on animal oppression. Policies favoring the subjugation of nonhumans should be upended. This transformation can begin by implementing three progressive, yet incremental steps: (1) the backlash against liberators should be tempered; (2) abolitionist animal protection statutes must be created; and, (3) at least some animals should be granted legal standing to pursue remedies for their injuries. While these steps, at least initially, will not entirely close the gap between animal users and animal liberators, they will begin to narrow the breach.

A. Dismantling the Backlash

In the period between 1793 and 1850, rather than dismantle institutionalized slavery, the United States responded to the unlawful liberation of Africans by developing and amending the Fugitive Slave Act. This statute was designed to crush dissent and stop lawlessness. The United States has instituted a similar backlash against animal liberators. Rather than challenge animal exploitation and the substantial barriers to change, government has attempted to deter direct action by punishing liberators. In addition to yielding minimal results, these efforts fail to recognize that animal liberation is not necessarily symptomatic of lawlessness and

362. See supra notes 6-10 and accompanying text.
363. Fugitive Slave Act, ch. 7, 1 Stat. 302 (1793), amended by ch. 60, 9 Stat. 462 (1850), repealed by U.S. CONST. amend. XIII.
anarchy, but may result from oppression and subjugation. Just as the conductors of the Underground Railroad violated the law to aid enslaved Africans, liberators circumvent the law so they may assist animals threatened by harm.

A variety of things may be done to begin dismantling the backlash against animal liberators while at the same time not giving carte blanche to individuals who take the law into their own hands. When animal liberators are prosecuted under traditional criminal statutes, they should be permitted to present the necessity defense to the jury. Under such a system, activists may still be convicted, yet they would be given a voice and a fairer trial. In addition, government should cease dumping resources into the creation and strengthening of redundant legislation such as the Animal Enterprise Protection Act. Resources could instead be used to strengthen and enforce anti-cruelty statutes. Finally, grand jury investigations should be moderated. While some crimes may warrant investigation, non-suspects, such as Rik Scarce and Jonathan Paul, should not be jailed for up to five months at a time. These steps would provide an opportunity for liberators to educate the public about animal abuse while still providing society with a means to condemn any acts it believes to be wrong.

B. Abolitionist Statutes

In addition to controlling the backlash against liberators, abolitionist animal protection statutes should be created and enforced. As evidenced by the Humane Slaughter Act, the Twenty-Eight Hour Law, the Animal Welfare Act, and state anti-cruelty statutes, current efforts to manage animal use provide little substantive protection for nonhumans. To protect nonhumans, legislatures should begin making abolitionist statutes.

There are some indications that the populace might be ready to abolish several forms of animal use. For example, a 1993 poll by the Los Angeles Times found that "half or more [of the] Americans surveyed agree with two principal tenets of the animal protectionist cause — they are opposed to sport hunting and the wearing of fur." Similarly, it is likely that the public would support an end to the testing of cosmetics, cigarettes, and alcohol on animals. Sweden, one of the most progressive countries regarding animal protection, has already banned such tests. Over time, similar bans could be made regarding the use of animals in entertainment

(e.g., circuses, rodeos, dog races) and the eating of animal flesh. These and other abolitionist acts would gradually, yet successfully, make humans less culturally, philosophically, and economically dependent on the use of nonhumans.

C. Standing for Animals

Under the law, nonhumans are mere property much like any other object. Property does not have inherent rights; rather, it is owned by rights holders. This lack of personhood has a profound impact on the treatment of animals. While courts have recently begun to hear suits raising the question of the sentimental value of animals, this viewpoint still looks to the damage suffered by the human owner rather than the injury to the nonhuman. This viewpoint fails to acknowledge that an action impacts an animal independent of the repercussions on any human being.

Rights should be endowed upon animals themselves. Many scholars have argued that animals deserve legal recognition of their inherent rights because they may be injured, they have interests, and they may directly benefit from legal rights. If animals were granted personhood, they would have standing themselves and could pursue remedies for their injuries through a legal representative.

Various arguments are commonly put forth to challenge legal rights for animals. Oftentimes it is argued that only human beings may have legal rights. However, under the law as it presently exists, it is clear that many non-humans are endowed with personhood. Corporations, ships, trusts, joint ventures, municipalities, and nation-states enjoy legal rights. In fact, it has even been debated whether personhood should be extended to other unconventional entities such as lakes, mountains, tribes, artifacts, future

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368. Regan, ALL THAT DWELL THEREIN, supra note 177, at 159-74.

369. Id. at 153-55.

370. Several writers have suggested the implementation of a guardian model for animals. E.g., Rollin, supra note 16, at 81 (stating that "the most plausible candidates [to press the rights of animals are] members of humane societies and veterinarians"); Gary L. Francione, Personhood, Property and Legal Competence, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 248, 254-56 (Paola Cavalieri & Peter Singer eds., 1993) (examining the intricacies of a guardianship model to protect the legal rights of great apes); Tischler, supra note 17.
generations, and artificial intelligences.\footnote{371}

Similarly, some opponents of personhood for animals have argued that only those individuals who can themselves press claims can enjoy legal rights. Fetuses,\footnote{372} infants, some persons who are mentally disabled, corporations, municipalities, and many other entities, however, frequently press claims via guardians or other representatives even though they cannot appear in court, speak, or sign their names.\footnote{373}

The law is not static. This country's definition of personhood has changed throughout history. Each expansion, ranging from children to women to African-Americans, was met with some resistance by skeptics. In \textit{Should Trees Have Standing? — Toward Legal Rights for Natural Objects}, author Christopher Stone explains:

Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable. We are inclined to suppose the rightlessness of rightless 'things' to be a decree of Nature, not a legal convention acting in support of some status quo. . . . And so the United States Supreme Court could straight-facedly tell us in \textit{Dred Scott} that Blacks had been denied the rights of citizenship 'as a subordinate and inferior class of beings, who had been subjugated by the dominant race . . . .'\footnote{374}


It is not inevitable, nor is it wise, that natural objects should have no rights to seek redress in their own behalf. It is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak either; nor can states, estates, infants, incompetents, municipalities or universities. Lawyers speak for them, as they customarily do for the ordinary citizen with legal problems.

\textit{Id.}

374. \textit{Id.} at 453.
As this country's ethical circle expands, concerns that the law will plunge into anarchy or chaos should not prevent the United States' legal system from once again extending the concept of personhood. Treating animals as rights holders can be implemented gradually. Even many non-abolitionists would agree that animals such as primates, whales, dolphins, dogs, and cats deserve as much legal standing as a corporation, ship, or trust. Once rights have been extended to a species other than homo sapiens, more may follow in time. By endowing personhood upon animals and thereby eliminating their status as mere property, rights for animals and effective advocacy on behalf of nonhumans could become the norm.

D. Epilogue

Perhaps many feel that the imprisonment of animal liberators places a wall of safety between society and lawlessness. But behind the doors of laboratories, the gates of farms, and the bars of zoos lay innumerable acts of violence and iniquity. By failing to stop the oppression of nonhumans while investing vast resources to punish their champions, the United States sanctions these atrocities. The United States must reassess its reaction to infrequent acts of animal liberation and channel its efforts toward ending the more frequent and grievous violations upon nonhumans.

Where the law perpetuates and condones cruelty, as it does by its failure to ensure animal protection, some may appeal to a higher order of justice. It is time to change society's policy of penalizing animal liberators and defending animal users. No doubt the Underground Railroad, the Boston Tea Party, and the Nazi resistance movement made those in power feel as though law and order were imperiled. As history teaches, however, today's law may be tomorrow's shame; today's criminals may be tomorrow's heroes.

375. REGAN, ALL THAT DWELL THEREIN, supra note 177, at 162.

376. JASPER & NELKIN, supra note 13, at 2 (explaining that some animal liberators believe they appeal to a higher law when they damage property to stop violence against living beings).

377. In his writings, author Isaac Bashevis Singer has compared the slaughter of nonhumans to the oppression of Jews. See, e.g., Isaac Bashevis Singer, The Letter Writer and Other Stories, in THE EXTENDED CIRCLE: A COMMONPLACE BOOK OF ANIMAL RIGHTS 335 (Jon Wynne-Tyson ed., 1989) (e.g., "[A]ll people are Nazis; for the animals it is an eternal Treblinka.")