

# Desecrating the Ark: Animal Abuse and the Law's Role in Prevention

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Boys may kill frogs for fun, but the frogs die in earnest.<sup>1</sup>

Human violence against animals has existed for centuries. Certain kinds of violence toward animals, such as hunting and killing them for food, have almost always been viewed as acceptable. Historically, even the deliberate torture of domestic animals has been regarded either as an exercise of the owners' justifiable dominion over their property<sup>2</sup> or as an amusing spectacle.<sup>3</sup> At the beginning of the nineteenth century, however, social reformers began to press for laws forbidding intentional animal cruelty, and such laws were gradually enacted in England and the United States.<sup>4</sup>

It is debatable whether modern animal cruelty laws, many of them identical to their nineteenth-century predecessors, have been effective in curtailing animal abuse. Although there has been an increasing public outcry over individual incidents of animal abuse,<sup>5</sup> these acts are seemingly on the rise and are perpetrated by both children and adults.<sup>6</sup> Arguably, the flaw in the legal system lies with inadequate penalties for animal abuse and apathetic enforcement of existing laws.

Today, only a scant majority of state jurisdictions provide for felony-level penalties for intentional animal abuse.<sup>7</sup> In addition, anecdotal evidence suggests that police in many jurisdictions are not trained to identify and arrest animal abusers,<sup>8</sup> prosecutors are hesitant to devote their resources to vigorous investigation and prosecution of animal cruelty offenses, which are

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1. Plutarch, *Which Are the Most Crafty, Water or Land Animals?* in FAMILIAR QUOTATIONS 1121 (John Bartlett ed., 1951).

2. In eighteenth-century England, wealthy amateur "physiologists" tortured animals for the amusement of their guests, carving up, dismembering, and gutting living animals during so-called home "petty experiments." Ronald Baenninger, *Violence Toward Other Species*, in TARGETS OF VIOLENCE AND AGGRESSION 5, 17 (Ronald Baenninger ed., 1991).

3. In sixteenth-century France, it was common to celebrate Midsummer Day, to the hilarity of those in attendance, by burning one or two cats in a public bonfire attended by the king and queen. KEITH TESTER, ANIMALS AND SOCIETY: THE HUMANITY OF ANIMAL RIGHTS 67 (1991).

4. See *infra* notes 119-50 and accompanying text (discussing several English and American statutes).

5. See Ranny Green, *The Internet Is Superb*, SEATTLE TIMES, Aug. 6, 2000, available at LEXIS (citing tougher anticruelty laws passed in Alabama and Wyoming because of public outrage over animal torture).

6. John Caniglia, *Cruelty to Animals on Rise*, PLAIN DEALER (Cleveland), Apr. 5, 1999, available at LEXIS, Nexis Library.

7. Green, *supra* note 5, at H5.

8. Heather Ratcliffe, *Animal Abuse Is Focus of Police, Prosecutors*, ST. LOUIS POST-DISPATCH, Sept. 14, 2000, available at LEXIS, Nexis Library.

frequently only misdemeanors,<sup>9</sup> and courts are often reluctant to enforce the available sanctions,<sup>10</sup> particularly against juvenile offenders—perhaps on the theory that torturing a cat is nothing more than a childish prank.<sup>11</sup>

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9. See Cynthia Scanlon, *Animal Abuse Targeted*, NAT'L L.J., June 30, 1997, available at LEXIS, Nexis Library (noting that animal abuse cases often get "shuffled to the bottom of the pile"). One author has observed that states frequently delegate authority to enforce their animal cruelty laws to private humane organizations, which often lack the funding and manpower to pursue every suspected case vigorously. Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 16 (1998).

During the course of gathering materials for this Article, my research assistant sent e-mails to district attorneys in eleven major American cities, inquiring about the handling of animal cruelty cases and the prosecutors' awareness, if any, of the posited link between animal cruelty and violence against humans. Even with follow-up telephone calls, eight of the district attorneys' offices did not respond at all: Atlanta, Boston, Chicago, Houston, Los Angeles, Miami, New Orleans, and San Francisco. The Philadelphia District Attorney's office responded that it "[did] not express opinions of the kind you are seeking about these kinds of abstract questions and issues." E-mail from Matthew Perks, Assistant District Attorney, Phila., Pa., to Rudolph L. Oldeschulte, Research Assistant, DePaul University College of Law (Nov. 8, 2000) (on file with author). On the other hand, the King County District Attorney in Seattle, Washington indicated that the prosecutors there are well aware of the connection between animal cruelty and violence against humans and have been successful in prosecuting animal abuse cases. The penalties for juveniles are often light, however, consisting of a few months of supervision with little or no available mental health treatment. Telephone Interview by Rudolph L. Oldeschulte with Donna Wise, Assistant District Attorney, King County Prosecutor's Office, Seattle, Wash. (Nov. 17, 2000). The District Attorney's office in Brooklyn, New York responded to our inquiries with an extensive e-mail message outlining the approach to animal abuse cases in that district. Brooklyn prosecutors, the e-mail response stated, are quite cognizant of the link between animal abuse and other kinds of violence and have undertaken to educate the judiciary and prosecutors in other New York communities in that regard. E-mail from Carol L. Moran, Deputy District Attorney, Kings County, Brooklyn, N.Y., to Rudolph L. Oldeschulte, Research Assistant, DePaul University College of Law (Oct. 26, 2000) (on file with author).

The general lack of response to our inquiries about the enforcement of animal cruelty laws may simply indicate that prosecutors lack sufficient resources to respond to academic researchers. On the other hand, the apparent indifference to our inquiries may suggest that the animal cruelty cases, not to mention people interested in them, are a low priority on most prosecutors' agendas.

10. As recently as 1997, "people convicted of pet abuse [in New York City] might be slapped with a small fine and sentenced to clean cages if they were sentenced at all." Julie Chen, *The Early Show: New Program Lets People Charged with Animal Abuse Serve Time Working at ASPCA* (CBS television broadcast, Apr. 3, 2000). In addition, it has been reported that only one in ten of those convicted of animal cruelty receives a jail sentence, and the average fine imposed is only \$132. Arnold Arluke & Jack Levin, *Hurting Animals Is an Important Clue*, BOSTON HERALD, Sept. 1, 1997, at 23.

11. One appellate court found that the defendants' actions were not "exceptionally cruel, heinous or depraved" where the defendants had kidnapped a number of cats, "twisting one cat's neck, throwing things at them, bouncing them on the tree limb, eventually hanging them for five to ten minutes and laughing at the cigarette they had placed in one dead cat's mouth." *State v. Picard*, No. 38116-4-1, 1996 Wash. App. LEXIS 621, at \*6-7 (Wash. Ct. App. Nov. 4, 1996). The court also found that the cats were not particularly vulnerable victims. *Id.* at \*8. Another court found that a defendant who killed a hunter's dog and assaulted the hunter had not committed an unusually heinous act: "This court deploras the senseless killing of a gentle and intelligent dog and regrets the pain that [the owner] has suffered because of that act.

Although the relatively light criminal penalties for animal cruelty and neglect and the underenforcement of existing laws may suggest that animal abuse is not a serious social problem, certain evidence indicates otherwise. A growing body of social science literature reveals that there is a link between juvenile violence against animals and later adult violence against humans. In other words, the rascally child prankster who burns his dog to death often develops into a spousal batterer, a child abuser, or even a murderer. The weight of this evidence should persuade lawmakers to modify laws to increase criminal penalties for animal abuse, to enforce existing laws more stringently, and to refer juvenile offenders for psychological evaluation and treatment more frequently so that the likelihood of later adult violence is reduced.

Throughout history the law has always mirrored to some extent the philosophical and religious views of its era. Three divergent views of the relationship between animal and human interests characterize the philosophical and religious literature on animals. These three perspectives ultimately have shaped our legal treatment of other species. In the first view, animal interests are subordinate to human interests. In the second view, animal interests are intertwined with human interests. Finally, in the third view, animal interests are separate from, but equal to, human interests. Over time, the law has evolved as our society has moved away from the first view that regards animals as merely property to be exploited for human purposes. As the second and third views have become more prevalent in society, the law has moved toward recognizing animals as feeling creatures deserving of at least some legal rights.

Modern social science data also support, at a minimum, the second view—namely, that animal interests and human interests are intertwined. More specifically, the data suggest that humans should take cognizance of cruelty to animals because such behavior often leads to violence against humans as well.<sup>12</sup> Taken as a whole, these studies bolster the legal reforms proposed in this Article. Although the more animal-protective third view suggests that animals are worthy of humane treatment because of their sentient nature, policymakers need not adopt that view to support the legal changes advocated in this Article. The weight of the social science research concludes that there is a positive correlation between animal abuse and

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However, exceptional cruelty or extraordinary inhumanity is not demonstrated by the facts of this case in regard to the intentional killing of an animal.” State v. Jones, No. 03C01-9302-CR-00057, 1994 Tenn. Crim. App. LEXIS 762, at \*24 (Tenn. Crim. App. Nov. 22, 1994). Recently, however, a few courts have adopted a much harsher attitude toward animal abuse crimes. See, e.g., State v. Collins, No. 33,750-KA, 2000 La. App. LEXIS 2187, at \*21 (La. Ct. App. Sept. 27, 2000) (upholding sentence of five years’ hard labor imposed on defendant who killed neighbor’s cat and subsequently ate it).

12. See *infra* notes 279-318 and accompanying text (discussing the relationship between juvenile animal cruelty and subsequent acts of violence).

violence against humans, and because of that correlation, investigation, punishment, and treatment of animal abusers foster human welfare.

Part I of this Article attempts to tease out the three views of the relationship between animal and human interests in philosophical and theological writings.<sup>13</sup> Although philosophers and religious writers over the centuries have adopted all three views, most modern thinkers can agree that, at a minimum, animal and human interests are intertwined.<sup>14</sup> They aver that deliberate animal cruelty injures not only the animals but also the human perpetrators because it degrades the human spirit and hardens individuals to the suffering of their fellow humans.

As a prelude to the arguments for the legal reform of animal cruelty laws, Part II of this Article analyzes the changing role of the law in protecting domestic animals from their human masters. Again, the three views of the relationship between animal interests and human interests emerge. Part II.A describes the shift of Anglo-American law during the nineteenth century from regarding animals as the property of their owners to viewing them as living beings capable of suffering and worthy of greater legal protection.<sup>15</sup> Part II.B summarizes modern statutory treatment of animal cruelty as anywhere from a minor offense to a felony with serious penalties.<sup>16</sup> Part II.B also notes the deficiencies of many of the statutory schemes and asserts that even if society is not ready to accord animals the full spectrum of legal rights enjoyed by humans, animal cruelty statutes should be reformed at a minimum to protect human interests.

Part III of this Article continues this theme of protecting human interests by examining the social science research on the link between animal abuse by juveniles and juveniles' later commission of violent crimes against humans. Part III.A briefly considers the anecdotal evidence linking childhood abuse of animals to later adult violence.<sup>17</sup> Part III.B then explores in greater depth the growing number of studies showing an above-average incidence of animal cruelty during childhood among adult batterers and murderers.<sup>18</sup>

Finally, Part IV outlines desired changes in animal cruelty laws that, it is hoped, will reduce the overall incidence of violence against both humans

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13. See *infra* notes 20-104 and accompanying text (explaining the philosophical and religious underpinnings of the three views).

14. See *infra* notes 58-104 and accompanying text (discussing the relationship between animal and human interests).

15. See *infra* notes 106-65 and accompanying text (giving overview of nineteenth-century animal law).

16. See *infra* notes 168-245 and accompanying text (providing survey of contemporary animal cruelty legislation).

17. See *infra* notes 248-58 and accompanying text (considering anecdotal evidence of link between juvenile animal cruelty and subsequent acts of violence).

18. See *infra* notes 266-378 and accompanying text (providing overview of studies showing link between childhood animal cruelty and adult violent crime).

and animals.<sup>19</sup> It argues for increased criminal sanctions for adult animal abusers, cross-reporting requirements, more frequent placement of juvenile animal offenders in treatment programs, and restrictions on ownership of animals by convicted animal abusers.

#### I. PHILOSOPHICAL AND RELIGIOUS THEORIES REGARDING ANIMALS

[A] person who already displays . . . cruelty to animals is also no less hardened towards men. We can already know the human heart, even in regard to animals.<sup>20</sup>

Philosophers, theologians, and religious teachers have espoused widely varying views of the place of animals in the divine creation and in human society. As will be demonstrated, these views have inevitably informed the legal treatment of animals.<sup>21</sup> Just as the law has often viewed animals as merely chattels, many philosophical and religious authors clearly regarded animals as inferior to humans and as available to serve human needs. Others viewed animals as almost co-equal with humans in the cosmos: as sentient beings, animals are deserving of respect and compassion. Some animal cruelty laws reflect that view and are predicated on the notion that animals share a common bond of suffering with humans and that, insofar as humans are legally protected from needless suffering, animals should be protected as well.

In another view, some philosophers and theologians would only proscribe certain human behavior toward animals. In this view, animals themselves are not entitled to any particular treatment, but people, in the service of human needs, owe animals certain duties of care ranging from refraining from cruel treatment to providing domestic animals with adequate food, water, and medical care. This view of the interconnection between animal and human interests may also be seen as the justification for animal cruelty law. Accordingly, the law should protect animals from needless abuse and should require proper care of animals so that animals may continue to serve humans and humans can avoid degrading themselves by brutalizing animals.<sup>22</sup>

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19. See *infra* notes 387-443 and accompanying text (outlining proposed changes to animal cruelty law).

20. IMMANUEL KANT, *Of Duties to Animals and Spirits*, in LECTURES ON ETHICS 212 (Peter Heath & J.B. Schneewind eds., Cambridge Univ. Press 1997) (1780-1781).

21. See *infra* notes 106-67 and accompanying text (giving overview of nineteenth-century animal law).

22. The idea that animal and human interests are intertwined can also be found in the ecosystemic view of the natural world. In this view, “[a]nimals and plants within an ecosystem are intricately interrelated, and the decline of any one species may have serious effects on the balance of the entire system, with unexpected consequences for humans.” Kelly Nolen, *Residents at Risk: Wildlife and the Bureau of Land Management’s Planning Process*, 26 ENVTL. L. 771, 779 (1996). The ecosystemic view, which gained recognition through Aldo Leopold’s writings in the

Despite the divergence of theological and philosophical thinking about animals and their place in our society, perhaps the common thread throughout most philosophical and religious works is that needless cruelty to animals should be avoided. While these authors may differ on whether hunting, consumption of animals, animal sacrifice, and animal experimentation are morally justified, almost all would agree that pointless abuse of animals should be eschewed.<sup>23</sup> Such abuse degrades the human abusers, destroys valuable economic assets, and inflicts gratuitous suffering on living creatures.<sup>24</sup>

A closer examination of the various philosophical and theological writings on animals reveals the three distinct views of the relationship between animal and human interests outlined earlier: animal interests as totally subservient to human interests, animal interests as intertwined with human interests, and animal interests as separate from and equal to human interests. In arriving at their respective views of the animal-human relationship, these writers have often focused on the perceived physical, emotional, and spiritual similarities and differences between animals and humans. In general, those thinkers who regard animals as similar to humans in their ability to feel and in their role in the divine creation are more likely to argue for protecting animals from human abuse.

A. ANIMAL INTERESTS AS SUBORDINATE TO HUMAN INTERESTS

Much of the ancient and modern philosophical construct of the essential nature of animals derives from the writings of Aristotle and St. Thomas Aquinas. Aristotle believed that only humans had a moral and rational sense: “[F]or in this particular man differs from other animals, that he alone has a perception of good and evil, of just and unjust, and it is a participation of these common sentiments which forms a family and a city.”<sup>25</sup> Aquinas, building upon Aristotelian philosophy, focused on rationality as

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1940s, relates more directly to laws affecting wild animals in their natural habitat than to the legal proscriptions against abuse of captive animals. See ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 203-04 (1942) (discussing the ecosystemic law as it relates to “soils, waters, plants, and animals”). Nonetheless, this view has had an impact on the environmental laws and shows the willingness of society to recognize that humans do not exist independently of the ecosystem. See Mark Sagoff, *Muddle or Muddle Through? Takings Jurisprudence Meets the Endangered Species Act*, 38 WM. & MARY L. REV. 825, 884 (1997) (discussing cases reviewing theories of ecosystem preservation). According to this viewpoint, we cannot destroy other species, plant or animal, without risking our own well-being.

23. See *infra* notes 58-104 and accompanying text (noting the different views held by various philosophers and theologians).

24. See generally Steven G. Smith, *Sympathy, Scruple, and Piety: The Moral and Religious Valuation of Nonhumans*, 21 J. RELIGIOUS ETHICS 319 (1993) (noting that the difference between the moral status of humans and that of animals must be explained by a number of different considerations rather than a single criterion).

25. ARISTOTLE, *THE POLITICS* § 1253a, at 4 (William Ellis trans., E.P. Dutton 1912).

the key quality distinguishing humans from nonhumans.<sup>26</sup> In his view, rational creatures alone were capable of distinguishing between right and wrong, of being able to direct their own actions, and of knowing “something of the nature of providence.”<sup>27</sup> Animals, as irrational creatures, did not share these abilities. As a consequence of their superior position in the divine plan, humans could justifiably use animals for their own purposes, even if such uses involved killing the animals:

Hereby is refuted the error of those who said it is sinful for a man to kill brute animals; for by the divine providence they are intended for man’s use according to the order of nature. Hence it is not wrong for man to make use of them, either by killing or in any other way whatever.<sup>28</sup>

Related to the issue of rationality is an animal’s capacity for self-awareness. Many philosophers distinguish humans from animals on this basis, arguing that only humans have self-consciousness. Georg Hegel posited that animals merely responded to external stimuli to which they were already internally susceptible.<sup>29</sup> Karl Marx echoed that idea by claiming that humans alone were conscious of themselves as a “species-being.”<sup>30</sup> Marx also commented that animals cannot distance themselves from their life activities and reflect upon them: “The animal is immediately one with its life activity. It does not distinguish itself from it. It is *its life activity*.”<sup>31</sup> Similarly, some philosophers asserted that animals were separated from humans by their lack of souls. René Descartes, for example, viewed animals as simply intricate mechanisms without rationality, self-consciousness, or souls.<sup>32</sup>

Both Friedrich Nietzsche and Thomas Hobbes emphasized the ability to communicate as the essential feature of humanity. Nietzsche stated, “[I]t seems to me that . . . the subtlety and strength of consciousness are always in proportion to the *capacity for communication* of a man (or an animal).”<sup>33</sup> While conceding that animals have voice and communication, Hobbes

26. See 2 ST. THOMAS AQUINAS, BASIC WRITINGS OF SAINT THOMAS AQUINAS 220-24 (Anton C. Pegis trans., Random House 1945) (discussing humans as rational creatures and the reasons for their actions).

27. *Id.* at 223-24.

28. *Id.* at 222.

29. GEORG WILHELM FRIEDRICH HEGEL, LECTURE ON THE PHILOSOPHY OF WORLD HISTORY 49-50 (H.B. Nisbet trans., Cambridge Univ. Press 1975) (1830).

30. 3 KARL MARX, *Economic and Philosophic Manuscripts of 1844*, in COLLECTED WORKS 275-76 (Lawrence & Wishart 1975) (1844).

31. *Id.* at 276.

32. RENÉ DESCARTES, DISCOURSE ON THE METHOD AND MEDITATIONS ON FIRST PHILOSOPHY 34-36 (David Weissman ed., Yale Univ. Press 1996) (1637). Descartes noted that even the least intelligent human or one without the ability to hear could communicate thoughts and desires to others; animals, on the other hand, do not possess this communicative capacity. *Id.* at 35-36.

33. 10 FRIEDRICH WILHELM NIETZSCHE, *The Joyful Wisdom*, in THE COMPLETE WORKS OF FRIEDRICH NIETZSCHE 296 (Oscar Levy ed., T.N. Foulis 1910) (1882).

asserted that only humans have true language and speech.<sup>34</sup> Hobbes believed that this capacity for language allows humans to organize themselves into societies and to govern themselves.<sup>35</sup> Without language, humans would be condemned to “savagery” and “solitude.”<sup>36</sup>

Early Jewish and Christian writings, which frequently influenced philosophical views about animals, supported the idea that humans, because of their superior nature, may properly subject animals to any use, including abuse. These writings argued for a God-given right to subdue animals to satisfy human needs.<sup>37</sup> In the Bible’s Creation story, God gave mankind dominion over all living things that “creep upon the earth,”<sup>38</sup> and later in his pact with Noah, God again renewed his grant of dominion over animals.<sup>39</sup> The New Testament reiterated the notion that human life outweighs animal life. For example, Jesus was recorded as saying that human beings are more valuable than “bird[s]” or “sparrows.”<sup>40</sup>

Early Christianity, in its rejection of Hebrew law, also jettisoned some of the Hebrew concern for animals.<sup>41</sup> For example, Hebrew law forbade eating unclean foods, including certain animals; Christians believed that it did not

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34. THOMAS HOBBS, MAN AND CITIZEN 37-43 (Charles T. Wood et al. trans., Doubleday 1972) (1658).

35. *Id.* at 39-40.

36. *Id.* at 40.

37. Some Eastern religions as well embrace the idea of human superiority over animals. For example, Confucian thinkers had no doubts about the supremacy of humans and of familial relationships in the natural order. Rodney L. Taylor, *Of Animals and Man: The Confucian Perspective*, in ANIMAL SACRIFICES 237, 245 (Tom Regan ed., 1986). Vehemently rejecting Buddhist vegetarianism and a strictly nonviolent ethic towards all living things, Confucianists “thought that people ought to have no qualms about eating *anything* not human.” WILLIAM R. LAFLEUR, BUDDHISM 57 (1988). Confucius taught that individuals should strive for their own and society’s moral development and that people should focus especially on fulfilling their moral responsibilities to their own kin. Taylor, *supra*, at 242-43. Although classical Confucianism recognized man’s superiority to animals, later forms of the religion emphasized that both humans and animals ultimately derive from the same material force (*ch’i*) and the intermingling of the two forms of *ch’i*, *yin* and *yang*. *Id.* at 250. Because of this bond between humans and the rest of the natural world, part of man’s moral development necessarily involves understanding the suffering of other living things and responding to that suffering. *Id.* at 253-54. Thus, animals, as well as other humans, are deserving of kind and compassionate treatment.

38. *Genesis* 1:26-28.

39. *Genesis* 9:2-3. Some Christian thinkers have argued that originally man did not have the right to slaughter animals for food: “Whether or not we find it practicable and desirable, the diet assigned to men and beasts by God the Creator is vegetarian.” 3 KARL BARTH, CHURCH DOGMATICS 208 (G. W. Bromiley & T. F. Torrance eds., 1960). Biblical scholars have asserted that only after the Flood, which had decimated the natural world to the extent that vegetation was no longer sufficient to support human life, did God permit humans to kill animals for food. Andreas-Holger Maehle, *Cruelty and Kindness to the “Brute Creation,”* in ANIMALS AND HUMAN SOCIETY: CHANGING PERSPECTIVES 82 (Aubrey Manning & James Serpell eds., 1994).

40. *Matthew* 6:26, 10:31.

41. See STEPHEN H. WEBB, ON GOD AND DOGS 24 (1998) (noting that “Christians celebrated their freedom” from the previous laws and neglected “the ethical problems involved in dealing with animals”).

matter in a moral sense what one ate, but what one did and said.<sup>42</sup> Christianity also focused on the salvation of “the individual soul, imperiled in a chaotic world, not on the preservation and enhancement of all life.”<sup>43</sup> In this scheme, ethical concerns for animals became marginalized, if not extinguished.

Mankind’s superior qualities, such as rationality, self-awareness, and language abilities, coupled with the seeming divine license given to humans to rule the animal world, led a number of early Western philosophers to justify an almost unrestricted dominion over animals—with all that such dominion implied. For instance, several philosophers, including St. Augustine, regarded killing as part of the right of dominion.<sup>44</sup> In addition, Hobbes opined that humans were allowed to use and kill animals because of humans’ natural superiority and strength. Such superiority, Hobbes believed, is a product of the natural order of things, even apart from an express right over animals conferred by God.<sup>45</sup> Ultimately, because animals have no rational association with humans, they have no moral relationship with humankind either.

Two nineteenth-century philosophers, Johann Fichte and Henry Sidgwick, echoed the opinion that animals belong to humans and have no independent status. As property, animals may be subjected to human use, and humans owe no duties to animals except insofar as some human interest is involved.<sup>46</sup> Fichte noted that individuals may properly acquire property in animals by subjecting them to their dominion and control.<sup>47</sup> Sidgwick observed: “[It] is obvious that the exclusive use of such [tame] animals may be appropriated to individuals without much more difficulty than that of inanimate things.”<sup>48</sup>

42. *Id.*

43. *Id.*

44. St. Augustine, *The City of God, in 2 A SELECT LIBRARY OF THE NICENE AND POST-NICENE FATHERS OF THE CHRISTIAN CHURCH 14-15* (Philip Schaff ed., 1887).

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We get a right over irrational creatures, in the same manner that we do over the persons of men; to wit, by force and natural strength . . . [We may] reduce those to servitude, which by art may be tamed and fitted for use, and . . . persecute and destroy the rest by a perpetual war as dangerous and noxious. Our dominion therefore over beasts, hath its original from the *right of nature*, not from *divine positive right*.

HOBBS, *supra* note 34, at 209.

46. JOHANN GOTTLIEB FICHTE, *THE SCIENCE OF RIGHTS* 302-11 (A.E. Kroeger trans., Routledge & Kegan Paul 1970) (1798). Fichte, however, suggested that when man domesticates an animal and separates it from nature, he “must replace nature in becoming [its] nourisher.” *Id.* at 302. He implied that by claiming the benefit of the animal’s labors, man then owes the animal a duty of care.

47. *Id.* at 302-03.

48. HENRY SIDGWICK, *THE ELEMENTS OF POLITICS* 74 (4th ed. 1919). Sidgwick asserted that

Relying on the observable differences between humans and animals, several ancient and modern philosophers have taken the position that animals do not have any moral or natural legal rights and that humans have very few, if any, meaningful obligations towards animals. Aristotle<sup>49</sup> and Aquinas<sup>50</sup> both believed that because animals and humans are so different from one another there can be no concept of justice towards animals. Animals have no right to just treatment, nor do humans have any obligation to provide just treatment for animals. The seventeenth-century philosopher Samuel Pufendorf relied on natural law concepts to argue that animals have no intrinsic rights.<sup>51</sup> Again, they are not capable of enjoying friendship with humans or of entering into any type of social compact.<sup>52</sup> As such, they are not entitled to the rights enjoyed by people and are rightfully killed for human use.<sup>53</sup>

In the eighteenth century, David Hume reiterated this view by stating that because there is no society with animals, animals have no rights to equal justice: “[I]ntercourse with [animals] could not be called society, which supposes a degree of equality; but absolute command on one side, and servile obedience on the other.”<sup>54</sup> Developing this theory in the modern context, John Rawls proclaimed that only humans are entitled to equal justice.<sup>55</sup> Animals, given their obvious limitations, cannot participate in the social contract among human beings and therefore have no entitlement to human rights such as the right to equal justice before the law.<sup>56</sup> James Madison, one of the principal architects of the American Constitution, would have agreed. He believed that slaves, as human beings, could be

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by caring for domesticated animals, an individual naturally acquired property rights in them. Such rights could also extend to wild animals if “their existence is entirely or largely due to the labour applied by the holder of the land” on which the animals reside. *Id.* at 74-75.

49. See ARISTOTLE, *supra* note 25, § 1254b, at 8-9 (characterizing animals as subservient to humans).

50. See 2 AQUINAS, *supra* note 26, at 145-46, 295-96 (emphasizing how humans, as opposed to animals, are rational beings).

51. SAMUEL PUFENDORF, THE LAW OF NATURE AND NATIONS 114-20 (Basil Kennet trans., J. & J. Bonwicke 1749) (1688). Pufendorf stated that “it is impossible to conceive how a Creature should be capable of Law, and at the same time incapable of Reason.” *Id.* at 115.

52. *Id.*

53. Because God expressly gave man dominion over animal, “all scruples are removed, especially those that can arise from the slaughter of animals. The impression that this practice is somewhat barbarous is sufficiently removed by the simple realization that the Creator has assigned animals to such a condition . . . .” SAMUEL PUFENDORF, *On the Law of Nature and Nations in Eight Books*, in THE POLITICAL WRITINGS OF SAMUEL PUFENDORF 93, 175 (Craig L. Carr ed., Oxford Univ. Press 1994) (1688).

54. DAVID HUME, AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS 18 (Tom L. Beauchamp ed., Clarendon Press 1998) (1751).

55. JOHN RAWLS, A THEORY OF JUSTICE 505 (1971).

56. *Id.* (“Thus equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation.”).

viewed as constitutional persons entitled to certain rights whereas animals could not.<sup>57</sup>

This view of animals in the hierarchy of living creatures spans centuries and illuminates a justification often given for the destruction of animals: they are not worthy of the same protections that should be accorded humans. Because they lack rationality, self-awareness, language, and souls, they are inferior, dispensable, and subservient to humans. This view has filtered into statutory and case law where judges and legislatures have sometimes regarded crimes against animals as trivial and only mildly antisocial.

*B. ANIMAL INTERESTS AS INTERTWINED WITH HUMAN INTERESTS*

Despite the early philosophical and theological emphasis on mankind's superiority to animals, several leading theorists have struggled with the idea that humans should not regard animals as mere chattels. Some of these thinkers have argued that even if animals are not entitled to the full range of moral and legal rights, they should not be abused needlessly. In addition, these writers have suggested that merely because we have the ability to control and destroy animals, we should not necessarily exercise that ability. Michel de Montaigne, for example, admitted his own delight in the thrill of the hunt, but, at the same time, professed his abhorrence of the resulting cruelty to animals.<sup>58</sup> Unthinking and repeated cruelty to animals, he stated, hardens one to the prospect of cruelty to other humans.<sup>59</sup> The concept of human degradation resulting from animal abuse informs many modern animal cruelty laws. By abusing animals, individuals reveal their general antisocial tendencies, which may lead them ultimately to injure their fellow humans.

A number of philosophers and theologians have observed that human interests and animal interests are interrelated on some level. Acknowledging

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57. Madison observed:

[T]he slave may appear to be degraded from the human rank, and classed with those irrational animals, which fall under the legal denomination of property . . . .  
[But] the slave is no less evidently regarded by the law as a member of the society; not as a part of the irrational creation . . . .

THE FEDERALIST NO. 54, at 367-68 (James Madison) (Jacob E. Cooke ed., 1961).

58. MICHEL E. DE MONTAIGNE, *Of Cruelty*, in THE COMPLETE WORKS OF MONTAIGNE 306, 313 (Donald M. Frame trans., Stanford Univ. Press 1957) (1578-1580) ("I cannot bear to hear the scream of a hare in the teeth of my dogs, although the chase is a violent pleasure.").

59. Montaigne noted that after the Romans became accustomed to the public slaughter of animals, they progressed to killing "men and gladiators." *Id.* at 316. Montaigne also believed that man was not necessarily superior to animals, that animals had their own language, society, and natural ability to survive in the wild: "We recognize easily enough, in most of their works, how much superiority the animals have over us and how feeble is our skill to imitate them." MICHEL E. DE MONTAIGNE, *Apology for Raymond Sebond*, in THE COMPLETE WORKS OF MONTAIGNE, *supra* note 58, at 330-34.

that senseless abuse of animals degrades the human perpetrator, they have also recognized the propriety of human dominion over animals, but only so far as necessary to serve a higher good. John Locke asserted that no person may “destroy himself, or so much as any Creature in his Possession,” except when “some nobler use, than its bare Preservation, calls for it.”<sup>60</sup> Alexander Pope reiterated this idea when he stated that humans have the right to destroy animals that are “mortal or noxious,” and that in all other cases, we should not deprive animals of the “common enjoyment of life.”<sup>61</sup>

Religious writings, like philosophical thinking, gradually evolved toward a more animal-protective stance. Starting in the seventeenth century, some Christian theologians began increasingly to condemn needless brutality against harmless animals based on three distinct arguments.<sup>62</sup> First, several theologians argued that the Bible itself exhorts man to treat animals with kindness. In support of this argument, they quoted *Proverbs* 12:10 (“A righteous man regardeth the life of his beast: but the tender mercies of the wicked are cruel.”) and similar passages. Second, God loved His entire creation, including animals, and had endowed animals with feelings and the ability to experience happiness. As a result, mankind, in imitation of the divine, should treat animals with kindness and care; to do otherwise was considered a violation of God’s will.<sup>63</sup> Finally, these Christian theologians asserted that pointless cruelty to animals could lead to brutal actions against other humans. Because the good Christian was commanded to love his neighbor and to treat others with charity, it was an indirect violation of God’s will for Christians to abuse animals. By treating animals with kindness, one would develop one’s impulse to regard other humans with love and benevolence.<sup>64</sup>

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60. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 289 (Peter Laslett ed., Cambridge Univ. Press 1960) (1689). In the same work, however, Locke clearly affirms man’s dominion over animals as given by God in the Bible and states that humans may certainly kill animals to satisfy their hunger. *Id.* at 177-80.

61. Alexander Pope, *Of Cruelty to Animals*, in *A HUNDRED ENGLISH ESSAYS* 164 (Rosalind Vallance ed., Thomas Nelson & Sons Ltd. 1936) (1713).

62. See Maehle, *supra* note 39, at 83-84 (arguing that the Bible commanded humans “to treat animals carefully,” that God showed “grace and mercy towards all creatures,” and that “[c]ruelty to animals would lead to callousness towards other human beings”).

63. See ANDREW LINZEY, *ANIMAL THEOLOGY* 55-58 (1994).

64. Similarly, Islamic law also forbids pointless cruelty to animals. Although Islam recognizes that man is superior to animals in that he can distinguish between right and wrong and exercise freedom of choice in his actions, Islamic thought acknowledges the importance of animals in God’s total creation. Al-Hafiz B.A. Masri, *Animal Experimentation: The Muslim Viewpoint*, in *ANIMAL SACRIFICES* 171, 175-77 (Tom Regan ed., 1986). One commentator observed: “Cruelty to animals is so offensive to God that it is declared as a serious sin.” *Id.* at 184. Specifically, Muslims are forbidden to kill animals for sport or for nonessential luxuries (such as fur coats), to confine wild animals in cages or zoos, to breed animals in unhealthy conditions, and to use animals in painful or disfiguring scientific studies. *Id.* at 185. Like other philosophical and religious teachings, Islam recognizes that animal abuse debases the human perpetrator, while care for animals elevates the human spirit. *Id.* at 193. The prophet

Jewish law, like Christian writings, recognizes the duality of mankind's relationship with animals. According to the Talmud, we need animals for certain purposes (food, clothing, and so forth) and are permitted to work them and even kill them to serve these purposes.<sup>65</sup> At the same time, however, Jewish law forbids unnecessary acts of cruelty against animals, such as wanton destruction of animals or the subjection of them to pain and suffering that serves no human need.<sup>66</sup> The Hebrew Bible also imposes certain duties on mankind toward animals—for example, the duty to help another's donkey stand when it has fallen under a heavy load.<sup>67</sup> By means of the rabbinical principle of analogy, this duty has become the basis for the Talmudic duty to relieve the suffering of all living beings.<sup>68</sup>

Unwilling to go so far as embrace the idea that animals are on a par with humans and thus deserving of human rights, thinkers adopting the second view emphasized that kind behavior toward animals serves human interests. But there are variations in the amount of kindness required. For example, Immanuel Kant expressed the view that humans only owed animals the indirect duties that grow out of our duties to other humans.<sup>69</sup> If a man chooses to care for his aged dog that can no longer serve him, he is fulfilling not a direct duty owed to the dog, but indirectly his duty owed to human servants.<sup>70</sup> In other words, if he treats his dog inhumanely, he may lose the impulse toward compassion and may treat his fellow humans harshly. Ultimately, the man's human servants will suffer because of the harsh character that their master has developed through his abusive treatment of his animals.

Rawls built upon Kant's notion of indirect duties to animals.<sup>71</sup> In Rawls's theory of social justice, all individuals, as moral persons, participate in an implicit social contract under which we owe certain "natural" duties to one another.<sup>72</sup> These duties include the duty of justice, the duty of mutual

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Mohammed stated, "Whoever is kind to the creation of God is kind to himself." MUHAMMAD AMIN, *WISDOM OF THE PROPHET MUHAMMAD* 200-01 (5th ed. 1960).

65. Ze'ev Levy, *Ethical Issues of Animal Welfare in Jewish Thought*, 45 *JUDAISM* 47, 47-55 (1996).

66. J. David Bleich, *Judaism and Animal Experimentation*, in *ANIMAL SACRIFICES* 61, 89-90 (Tom Regan ed., 1986).

67. *Deuteronomy* 22:1-4; *Exodus* 23:4-5.

68. WEBB, *supra* note 41, at 22. One Jewish scholar observed that cruelty to animals can take many forms: "Human beings who stuff animals with food only to fatten them up for the market do not display acts of kindness. Such deeds are not only selfish, but cause the animals discomfort and suffering." NOAH J. COHEN, *TSA'AR BA'ALE HAYIM—THE PREVENTION OF CRUELTY TO ANIMALS: ITS BASES, DEVELOPMENT AND LEGISLATION IN HEBREW LITERATURE* 46 (1959).

69. KANT, *supra* note 20, at 212-13.

70. *Id.* at 212.

71. For a critique of John Rawls's theory of justice as applied to animals, see generally Donald VanDeVeer, *Of Beasts, Persons, and the Original Position*, 62 *MONIST* 368 (1979).

72. RAWLS, *supra* note 55, at 114-15.

respect, and the duty of mutual aid.<sup>73</sup> Animals, in Rawls's view, are not moral persons because they lack the requisite qualities—namely, a conception of their own good and a sense of justice.<sup>74</sup> He was not willing to concede, however, that humans owe no duties to animals even though animals are unable to participate in the social contract.<sup>75</sup> In this vein, he observed that “[c]ertainly it is wrong to be cruel to animals . . . . The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly imposes duties of compassion and humanity in their case.”<sup>76</sup> But because only moral persons are owed the “natural” duties, conceivably Rawls was suggesting that animals are owed the duty of compassion because humans can observe animals' suffering and recoil from it. Thus the duty not to treat animals cruelly could be regarded as an indirect duty, growing out of the direct duty to treat fellow humans with respect.<sup>77</sup>

Philosophers and theologians with this second viewpoint have moved a short distance beyond the view that animal interests are totally subordinate to human interests. They still see the world from a human-centered perspective: mankind has the ability to dominate animals at will, but humans should not necessarily exercise that ability unless it serves some significant human need. To use and abuse animals carelessly and cruelly serves no legitimate human purpose and, in fact, may inure individuals to the suffering of their fellow humans. But recognizing that serving animal interests may also satisfy human interests is a step toward acknowledging that animal interests have worthy claims on human actors.

C. ANIMAL INTERESTS AS SEPARATE FROM BUT EQUAL TO HUMAN INTERESTS

A number of philosophers and religious writers have argued that animals, despite their observable differences from humans, have interests

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73. *Id.*

74. *Id.* at 505.

75. Rawls's difficulty in fitting animals into his theory of justice is reflected in his seemingly contradictory remarks regarding them: “While I have not maintained that capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity.” *Id.* at 512.

76. *Id.*

77. The concept of indirect duties to animals is also a central principle of Hinduism. Classical Hindu thought teaches that man has no duties to animals and thus implicitly that animals have no rights. Basant K. Lal, *Hindu Perspectives on the Use of Animals*, in ANIMAL SACRIFICES 199, 205 (Tom Regan ed., 1986). But Hinduism stresses that humans do have duties regarding animals, such as the duty to practice *ahimsā* or nonviolence towards animals. *Id.* at 206. These duties, however, flow from man's responsibility to himself to seek his soul's salvation, not from any direct duty to animals. *Id.* Although Hindu mythology sometimes portrays man as being reincarnated as an animal, this view does not support the idea that man then owes special duties of care to animals as the repository of former humans. Human life is regarded as superior to all other life, and thus reincarnation as an animal represents a form of spiritual regression resulting from an individual's misdeeds while human: “This inferior life cannot demand duty from us.” *Id.*

worthy of protection. Bertrand Russell argued that there is “no impersonal reason for regarding the interests of human beings as more important than animals.”<sup>78</sup> Similarly, Max Horkheimer criticized the Western Christian tradition for not recognizing the independent worth of nature, particularly animals.<sup>79</sup> Gottfried von Leibniz, in fact, firmly believed that animals have souls: “Therefore we may say that not only the soul (the mirror of the indestructible universe) is indestructible, but also the animal itself is, although its mechanism is frequently destroyed in parts and although it puts off and takes on organic coatings.”<sup>80</sup> Similarly, the Eastern religion of Jainism ascribes a rational sense to animals. In many Jaina stories animals make reasoned choices, often to avoid violent behavior, thereby advancing themselves from animal to human status.<sup>81</sup>

Several thinkers have also argued for recognition of some variety of animal rights and correspondingly, human duties to animals. Jeremy Bentham asserted that animals, like humans, have the right to be free from needless brutality.<sup>82</sup> Bentham argued that as sentient beings, animals are capable of pleasure and pain, and that thus it is implicitly immoral to subject them to brutality.<sup>83</sup> In an early American treatise on animal rights, Herman Daggett likewise argued passionately for the recognition of animal rights.<sup>84</sup> He asserted that as part of God’s creation, animals are entitled to certain privileges, in particular the privilege to be free from unnecessary suffering at the hands of humans.<sup>85</sup> A century later, Henry S. Salt elaborated on

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78. 1 BERTRAND RUSSELL, *If Animals Could Talk*, in MORTALS AND OTHERS: AMERICAN ESSAYS, 1931-1935, at 120, 121 (Harry Ruja ed., 1975) (1932). Russell observed that our superior capacity for destruction leads us to conclude that we are entitled to use and dominate animals: “We can destroy animals more easily than they can destroy us; that is the only solid basis of our claim to superiority.” *Id.*

79. MAX HORKHEIMER, ECLIPSE OF REASON 104-06 (1947). He reported, “Pope Pius IX did not permit a society for the prevention of cruelty to animals to be founded in Rome because, as he declared, theology teaches that man owes no duty to any animal.” *Id.* at 104-05.

80. Gottfried Wilhelm Freiherr von Leibniz, *Monadology*, in LEIBNIZ: DISCOURSE ON METAPHYSICS CORRESPONDENCE WITH ARNAULD AND MONADOLGY 268 (Eugene Freeman ed., 1968) (1714).

81. Christopher Chapple, *Noninjury to Animals: Jaina and Buddhist Perspectives*, in ANIMAL SACRIFICES 217 (Tom Regan ed., 1986) [hereinafter Chapple, *Noninjury*].

82. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, in THE UTILITARIANS 381 (Dolphin Books 1961) (1789) (“The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny.”).

83. *Id.* Bentham, in an oft-quoted passage, observed that rationality and language are not the primary qualities entitling a creature to just treatment: “[T]he question is not, Can they *reason?* nor, Can they *talk?* but, Can they *suffer?*” *Id.*

84. Herman Daggett, *The Rights of Animals: An Oration*, in POLITICAL THEORY AND ANIMAL RIGHTS 129-32 (Paul A.B. Clarke & Andrew Linzey eds., 1990) (1791).

85. *Id.* at 131 (“If we judge impartially, we shall acknowledge that there are the rights of a beast, as well as the rights of a man. And because man is considered as the Lord of this lower creation, he is not thereby licensed to infringe on the rights of those below him . . .”).

Daggett's argument and declared that "animals have rights, and these rights consist in the 'restricted freedom' to live a natural life—a life, that is, which permits of the individual development."<sup>86</sup> He acknowledged that animals may still be used to serve human needs, but stressed that humans should not be entitled to injure an animal unless absolutely necessary to satisfy a legitimate human interest.<sup>87</sup>

Several twentieth-century philosophers have asserted that animals, like humans, are deserving of consideration, if not rights, and that humans, as a result, owe animals certain duties. In his germinal work, *Animal Liberation*, first published in 1975, Peter Singer built on Bentham's utilitarian approach and applied it to animals.<sup>88</sup> He argued that equality should be the guiding principle of any moral philosophy. Under this principle, "the interests of every being affected by an action are to be taken into account and given the same weight as the like interests of any other being."<sup>89</sup> In other words, differences in intelligence, strength, size, and other comparable qualities does not mean that some individuals are less deserving of consideration than others.<sup>90</sup> The capacity for suffering binds us all, human and animal.<sup>91</sup>

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Even more than Christianity, many Eastern religions emphasize that animals are deserving of human protection and care. Both Jainism and Buddhism reject the Hindu practice of animal sacrifice, and "all Jainas are strict vegetarians." CHRISTOPHER KEY CHAPPLE, NONVIOLENCE TO ANIMALS, EARTH, AND SELF IN ASIAN TRADITIONS 10 (1993) [hereinafter CHAPPLE, NONVIOLENCE]. Buddhism stresses that an individual must "not hate any being, and cannot kill a living creature even in thought." HAR DAYAL, THE BODHISATTVA DOCTRINE IN BUDDHIST SANSKRIT LITERATURE 199 (1932). Although Buddhists generally believe that rebirth as an animal is not desirable and is a punishment for evil deeds, they also have a profound reverence for animal life. Chapple, *Noninjury*, *supra* note 81, at 219. In fact, Buddha's observing of animal suffering is said to have contributed to his desire to seek *nirvāna* or enlightenment. CHAPPLE, NONVIOLENCE, *supra*, at 22. After his conversion to Buddhism, Aśoka, one of the most famous Indian emperors, established laws restricting hunting and meat consumption and founded hospitals and roadside watering stations for animals. Chapple, *Noninjury*, *supra* note 81, at 222-24. The current Dalai Lama has stressed in his writings the commonality among all living things: "And, no matter whether they belong to the higher groups such as human beings or to the lower groups such as animals, all beings primarily seek peace, comfort and security. Life is as dear to a mute creature as it is to a man." TENZIN GYATSO, UNIVERSAL RESPONSIBILITY AND THE GOOD HEART 78 (1980). The Dalai Lama urged people "not only to abstain from doing injury but also to cultivate a great spirit of compassion involving an eager longing to save all sentient beings from pain and misery." *Id.* at 79.

86. HENRY S. SALT, ANIMALS' RIGHTS: CONSIDERED IN RELATION TO SOCIAL PROGRESS 28 (Soc'y for Animal Rights 1980) (1892).

87. Salt noted:

If we must kill, whether it be man or animal, let us kill and have done with it; if we must inflict pain, let us do what is inevitable, without hypocrisy, or evasion, or cant. But (here is the cardinal point) let us first be assured that it *is* necessary . . .

*Id.* at 28-29.

88. PETER SINGER, ANIMAL LIBERATION 1-23 (2d ed. 1990).

89. *Id.* at 5.

90. *Id.* at 2-6. In Singer's view, "[e]quality is a moral idea, not an assertion of fact. . . . *The principle of the equality of human beings is not a description of an alleged actual equality among humans:*

Although Singer saw no need to expand his theories to encompass animal rights, recognition that animals have interests, particularly in not suffering, is enough to bring them within the moral community and to mandate that ethical principles applied to humans be similarly applied to animals.<sup>92</sup>

Although Singer's work greatly advanced the general thinking on the extent of human responsibilities regarding animals, other philosophers found his utilitarian orientation limiting and ultimately unsatisfactory. Robert Nozick rejected the application of utilitarianism to the ethical problems regarding our relations with animals, arguing that it led inexorably to the conclusion that animals are subordinate to humans.<sup>93</sup> Nozick believed that utilitarians inevitably weigh human interests as paramount to animal interests by imposing a priori limits on harm to humans.<sup>94</sup> In other words, human beings may never be sacrificed to benefit animals whereas animals may be unthinkingly sacrificed to benefit humans.<sup>95</sup>

Tom Regan also forcefully argued that utilitarianism was inadequate to explain the rights of animals in society and our duties to them.<sup>96</sup> Regan asserted that utilitarianism, with its balancing of the aggregate satisfactions of individuals against their aggregate frustrations, has no regard for the inherent value of individuals *qua* individuals.<sup>97</sup> In the standard utilitarian calculus, animals would typically find themselves undervalued because their feelings, satisfactions, and frustrations would not carry as much weight as those of humans.<sup>98</sup> Regan also thought that contractarianism was inadequate to explain animal rights.<sup>99</sup> In the contractarian view, only those able to understand and participate in the social contract are owed direct duties by the other contract partners.<sup>100</sup> Accordingly, humans owe no direct duties to animals because of their inability to understand the social compact. The contract partners, however, may owe indirect duties to those not able to

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*it is a prescription of how we should treat human beings.*" *Id.* at 4-5.

91. *Id.* at 7 ("The capacity for suffering and enjoyment is a *prerequisite for having interests at all*, a condition that must be satisfied before we can speak of interests in a meaningful way.").

92. *Id.* at 8-9.

93. See ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 39-42 (1974) (stating that utilitarianism is inappropriate in its application to animals).

94. *Id.* at 39.

95. *Id.* at 40-41.

96. See TOM REGAN, THE CASE FOR ANIMAL RIGHTS 228-31 (1983) (discussing utilitarianism).

97. See *id.* at 226-28 (stating that some individuals will inevitably have their interests affected in a negative way for the benefit of others).

98. See *id.* (noting that utilitarianism tends to "favor the 'superior' over the 'inferior'").

99. See *id.* at 163-74 (discussing contractarianism).

100. See *id.* (stating that it seems "that we are not required to give strict justice to creatures lacking this capacity").

participate directly in the social contract—animals and children, for example.<sup>101</sup>

Regan asserted that animals have an inherent worth regardless of the extent of their satisfactions and frustrations and regardless of their ability to participate in a social contract: “Inherent value, then, belongs equally to those who are the experiencing subjects of a life.”<sup>102</sup> He advocated not only that animals have inherent worth but also that their inherent value is equal to that of humans, and as such, they are deserving of the “equal right to be treated with respect.”<sup>103</sup>

Whether one speaks in terms of animal “interests” or animal “rights,” by the end of the twentieth century, the notion that animals are deserving of at least some human consideration had gained a firm foothold in the social and political consciousness.<sup>104</sup> Philosophers will no doubt continue to debate the exact extent of animal entitlement and human responsibility and will also do so beyond the context of Singer’s utilitarianism and Regan’s rights analysis. The varying philosophical views, however, come together at the rejection of animal suffering that does not serve legitimate human needs. The discussion about what is a “legitimate” human need—e.g., hunting for sport, wearing a fur coat, eating veal or any animal flesh—will undoubtedly go on for years into the future.

In sum, three distinct views of animal interests emerge from the philosophical and theological literature. In Part II, where I examine the criminalization of animal cruelty, these views are directly reflected in the relevant laws regarding animals. Early on, many philosophical and religious thinkers asserted mankind’s supremacy over animals and the resulting right to use animals for any purpose. The “supremacy” view translated into a host of laws that classified domestic animals as property and wild animals as subject to capture and killing. Other writers have argued that although animals do not possess rights as such, they should not be treated cruelly because such treatment has an impact on human morals and behavior. In this way, human beings degrade themselves by perpetrating needless

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101. Indirect duties grow out of direct duties to others. For example, although individuals may not directly owe a dog the duty not to be cruel to it, they may owe the dog such a duty indirectly through other duties, such as a duty to the dog’s owner to respect the owner’s property rights or sentimental regard for the animal. TOM REGAN, *THE STRUGGLE FOR ANIMAL RIGHTS* 50-52 (1987).

102. *Id.* at 60.

103. *Id.* at 61.

104. Attorney Steven Wise has argued that certain animal species, namely chimpanzees and bonobos, are deserving of legal rights because they share certain fundamental traits with humans, such as language, self-awareness, empathy, the ability to teach others, and the ability to deceive others intentionally. STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* 179-237 (2000). Wise believes that legal rights for these creatures should include, at a minimum, freedom from “serious infringements upon their bodily integrity and bodily liberty.” *Id.* at 267.

violence on helpless animals. The “impact” view arguably led to the enactment of the early anticruelty laws, which were often categorized with other laws relating to morality, such as prohibitions on gambling and prostitution. Finally, some philosophers and theologians have urged that animals have interests that are, at least to some extent, equal to human interests—in particular, the right to be free from needless suffering. The “equality” view arguably has had little effect on laws relating to animals. Perhaps because of policymakers’ unwillingness to embrace fully this third view, animal cruelty and neglect laws continue to suffer from ambiguous wording, inadequate penalties, and underenforcement. I continue by exploring in greater depth the gradual development of criminal animal cruelty laws and the shortcomings of the modern laws.

## II. THE CRIMINALIZATION OF ANIMAL CRUELTY

For most of recorded history, the law has hardly concerned itself with the interests of animals *qua* animals. When it took notice of animals at all, the law regarded them as a species of property to be protected from injury and destruction by others as one might protect any personal property. The owner of an animal had an interest in the animal as a chattel; the animal itself had no legally cognizable interests. Thus, of the three views of the animal-human relationship discussed above, the legal system embraced the first view until well into the nineteenth century: animals were no more than chattels and their interests were subordinated to human interests.<sup>105</sup> During the nineteenth century, one can observe a shift in the thinking of courts and legislatures toward regarding animals as rightfully having some protectable interests. By the beginning of the twentieth century, some judicial and legislative bodies had begun to espouse the second and, to a lesser extent, the third views of the relationship between animal and human interests. Animals came to be regarded as being worthy of some legal protection, either because their interests were intertwined with human interests or because they had interests equal to those of human beings.

### A. *THE EVOLUTION OF NINETEENTH CENTURY ANIMAL LAW FROM PROPERTY TO COMPASSION*

It is of common knowledge that within the past few years, as incident to the progress of civilization, and as the direct outgrowth of that tender solicitude for the brute creation which keeps pace with man’s increased knowledge of their life and habits, laws . . .

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105. For an interesting discussion of the use of property concepts to elevate the status of animals, see generally David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473 (2000) (arguing that even as property, animals could be regarded as holding equitable title to themselves with legal title residing in humans who would be charged with guardianship responsibilities toward them).

have been enacted by the various states having the common object of protecting these dumb creatures from ill treatment by man.<sup>106</sup>

Like the prevailing philosophy of the time,<sup>107</sup> the early English common law regarded tame animals as a species of personal property.<sup>108</sup> In fact, the word “chattel” is commonly thought to derive from “cattle,” one of the prime examples of valuable personal property.<sup>109</sup> Individuals could own domestic animals and enjoy exclusive possession of them like any inanimate object.<sup>110</sup> In feudal times domestic animals such as cattle, oxen, sheep, and poultry served as money, and rents and taxes were paid with them.<sup>111</sup>

In certain circumstances, a landowner had the right to “distrain” another’s animals to satisfy overdue rents or to prevent a continuing trespass by the animals.<sup>112</sup> Having seized the animals, the landlord then had the duty to impound them until the animals’ owner had the opportunity to replevy them.<sup>113</sup> While impounded, the animals were to be furnished with food and water, either by the landowner or by the animals’ owner, depending on the circumstances.<sup>114</sup> This legal rule might be regarded as an early example of an anticruelty provision, but it is more likely that the English common law sought to protect the value of the owner’s personal property. Accordingly, the law forbade the distrainer from impounding household goods outdoors in the event that they might be damaged by the weather.<sup>115</sup>

Given the limited view of animal rights, cruelty to animals as such was not recognized as a criminal offense at common law.<sup>116</sup> Popularly known as

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106. *Waters v. People*, 46 P. 112, 113 (Colo. 1896).

107. See HOBBS, *supra* note 34, at 209 (observing mankind’s natural dominion over animals).

108. For an interesting discussion of the inherent subordination of animals through the common law’s classification of animals as property, see GARY L. FRANCIONE, ANIMALS, PROPERTY AND THE LAW 38-46 (1995).

109. 2 SIR FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 151 (S.F.C. Milson ed., Cambridge Univ. Press 1968) (2d ed. 1898).

110. 2 WILLIAM BLACKSTONE, COMMENTARIES \*389.

111. 2 POLLOCK & MAITLAND, *supra* note 109, at 151.

112. 3 BLACKSTONE, *supra* note 110, at \*4.

113. *Id.* at \*8.

114. If the distrainer placed the animals in a “pound-covert” or covered enclosure such as a stable, he was under an obligation to provide sustenance to the animals. *Id.* at \*9. If he put them in a special “pound-ouvert” or open pen, he was required to notify the owner of the impoundment so that the owner could supply the animals with food and water. *Id.* And finally, if the animals were placed in a common “pound-ouvert,” the owner was expected to discover their location on his own and to provide them with food and water. *Id.* Whether this expectation created a legal duty on the party of the owner is unclear. *Id.*

115. *Id.*

116. *Stephens v. State*, 3 So. 458, 459 (Miss. 1888). The common law offense of “malicious mischief” prohibited injury to another’s personal property done “either out of a spirit of wanton cruelty or black and diabolical revenge.” 4 WILLIAM BLACKSTONE, COMMENTARIES \*243. The perpetrator could exercise “wanton cruelty” presumably only toward living things. Rembert

“Dick Martin’s Act,”<sup>117</sup> the first English statute specifically forbidding cruelty to animals was passed in 1822.<sup>118</sup> The law made it illegal for any person to “wantonly and cruelly beat, abuse or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other Cattle.”<sup>119</sup> Punishment for violating the Act included a fine between ten shillings and five pounds or imprisonment up to three months if the fine could not be paid.<sup>120</sup> But, several features of the act, including an incredibly short statute of limitations<sup>121</sup> and severe penalties for “frivolous” complaints,<sup>122</sup> may have deterred effective enforcement. Even so, this Act evidences the first tentative shift from the view that animals are completely subordinate to humans to the view that animal and human interests are intertwined.

The early American colonists evidenced some impulse toward protection of animals. The Massachusetts Bay Colony’s “Body of Liberties,” enacted in 1641, prohibited “any Tyranny or Cruelty towards any Bruit Creatures, which are usually kept for the use of Man.”<sup>123</sup> But by the early nineteenth century the focus of American statutes criminalizing injury to animals was more clearly on property protection.<sup>124</sup> These laws covered only economically valuable animals owned by someone other than the defendant. A typical early statute prohibited the willful and malicious killing or injuring of cattle, horses, and other livestock of another person.<sup>125</sup> Negligent and

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v. State, 56 Miss. 280, 282 (1879). In some states, malice toward the owner of the property could be inferred from the nature of the defendant’s actions—“from the instrument used, or the wantonness, cruelty, or recklessness of the deed.” *Territory v. Olsen*, 22 P. 163, 164 (Utah 1889).

117. Richard Martin, a member of the House of Commons representing Galway, Ireland, campaigned tirelessly on behalf of humanitarian causes and introduced and secured the passage of the first animal cruelty statute in Great Britain. SYDNEY H. COLEMAN, *HUMANE SOCIETY LEADERS IN AMERICA* 23-26 (1924). It has been suggested that the earliest British anticruelty statutes were directed more at controlling the lower classes than at protecting animals. The first animal cruelty bill introduced into the British Parliament abolished bullbaiting, a popular working-class pastime, whereas foxhunting, a passion of the wealthier classes, has been deemed perfectly acceptable until quite recently. WEBB, *supra* note 41, at 74.

118. *Grise v. State*, 37 Ark. 456, 463 (1881).

119. An Act to Prevent the Cruel and Improper Treatment of Cattle, 1822, 3 Geo. 4, c. 71, § 1 (Eng.).

120. *Id.*

121. Prosecution under the Act had to be commenced within ten days after the offense. *Id.* § 2.

122. If the presiding magistrate determined that the complaint was “frivolous or vexatious,” he had the discretion to impose a fine of up to twenty shillings against the complaining party. *Id.* § 5.

123. 2 THE LAWS AND LIBERTIES OF MASSACHUSETTS, 1641-1691, at 265 (John D. Cushing ed., Scholarly Res. 1976) (1672).

124. For a comprehensive review of the nineteenth-century animal cruelty laws, see David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800s*, 1993 DET. C. L. REV. 1.

125. For examples, see MICH. REV. STAT. tit. XXX, ch. 154, § 45 (1846); N.Y. REV. STAT. tit. 6, § 26 (1) (1829); OHIO STAT. ch. 35, § 83 (1841); 1846 Vt. Laws 35, § 2.

even reckless actions were implicitly excluded as were acts of violence against dogs, cats, birds, and all wild animals. The early nineteenth-century laws were hardly interested in preventing animal suffering. As they involved property protection, these statutes often categorized the crime as a felony and carried stiff penalties.<sup>126</sup> Later statutes designed to punish animal cruelty as such did not.

Even though most laws in this era were concerned with animals as property, there were tentative legislative impulses toward criminal penalties for animal cruelty, regardless of whether the perpetrator's actions affected someone else's property interests. An 1821 Maine statute forbade the cruel beating of horses or cattle, without regard to ownership, and subjected the offender to a fine of between two and five dollars or a jail term of up to thirty days.<sup>127</sup> A similar 1829 New York enactment added sheep to the list of protected animals and prohibited the cruel "beating or torture" of such animals, regardless of whether they belonged to the defendant or another party.<sup>128</sup> Following this early lead, Michigan,<sup>129</sup> Connecticut,<sup>130</sup> Minnesota,<sup>131</sup> Pennsylvania,<sup>132</sup> and Vermont<sup>133</sup> adopted similar anticruelty provisions by 1865, expanding the Maine and New York acts to include "other animals."

A significant shift in public attitudes toward the disenfranchised followed the Civil War. As a result, the post-Civil War era was ripe for increased public attention to animal welfare. The emancipation of slaves and the addition of the Reconstruction Amendments to the Constitution pushed society toward a more profound recognition of the dignity of all beings.<sup>134</sup> A watershed event in the history of animal protection occurred in 1866 when the New York legislature, with the prodding of the famous

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126. See MICH. REV. STAT. tit. XXX, ch. 154, § 45 (1846) (providing for maximum of five years' imprisonment in the state prison or \$1000 fine and imprisonment in the county jail for not more than one year); 1846 Vt. Laws 34 (providing for maximum of five years' imprisonment or \$500 fine, or both).

127. 1821 Me. Laws ch. IV, § 7.

128. N.Y. REV. STAT., part IV, ch. 1, tit. 6, § 26(2) (1829); see also N.H. REV. STAT. tit. XXVI, ch. 219, § 12 (1843).

129. MICH. REV. STAT. tit. I, ch. 8, § 22 (1838).

130. CONN. STAT. tit. VI, ch. 10, § 142 (1854).

131. MINN. STAT. ch. 96, § 18 (1859).

132. 1860 Pa. Laws tit. IV, § 46.

133. VT. GEN. STAT. ch. 113, § 26 (1863).

134. One political philosopher of the late nineteenth century commented on the parallels between the situation of slaves a century earlier and that of animals in his day:

The present condition of the more highly organized domestic animals is in many ways very analogous to that of the negro slaves of a hundred years ago: look back, and you will find in their case precisely the same exclusion from the common pale of humanity; the same hypocritical fallacies, to justify that exclusion; and, as a consequence, the same deliberate stubborn denial of their social "rights."

SALT, *supra* note 86, at 21.

animal advocate Henry Bergh,<sup>135</sup> passed a new anticruelty statute that significantly expanded the scope of protection afforded animals by increasing the kinds of animals and the types of abusive acts covered.<sup>136</sup> The legislature amended the law within a year to provide more effective enforcement tools, and the 1867 revised act<sup>137</sup> became the model for anticruelty laws throughout the nation.<sup>138</sup> The 1867 act specifically forbade a list of actions, such as overdriving, overloading, and beating, that could result in pain and suffering.<sup>139</sup> This list applied to such behavior directed toward “any living creature,”<sup>140</sup> without regard to its ownership or its economic value. The statute also prohibited dog fighting, bear baiting, and the like,<sup>141</sup> required the provision of adequate food and water to impounded animals,<sup>142</sup> banned transportation of animals in a cruel manner,<sup>143</sup> and forbade the abandonment of infirm animals in public places.<sup>144</sup>

Perhaps the most revolutionary part of the 1867 New York statute was its enforcement provision. The American Society for the Prevention of Cruelty to Animals (ASPCA), although a private body, was granted authority to arrest violators of the anticruelty statute.<sup>145</sup> In addition, all fines collected from the defendant were to be remitted to the ASPCA.<sup>146</sup> Undoubtedly

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135. The son of a wealthy American shipbuilder, Bergh spent many of his early adult years in Europe where he was shocked by the abusive treatment of animals. When he returned in 1864 to live in the United States, he resolved to devote his life to promoting animal welfare. COLEMAN, *supra* note 117, at 34-36. He founded the American Society for the Prevention of Cruelty to Animals in New York in 1866. *Id.* at 39.

136. N.Y. REV. STAT. tit. 6, § 26 (1866). The statute read: “Every person who shall, by his act or neglect, maliciously kill, maim, wound, injure, torture or cruelly beat any horse, mule, ox, cattle, sheep or any other animal belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.” *Id.*

137. N.Y. REV. STAT. §§ 375.2-9 (1867).

138. See Favre & Tsang, *supra* note 124, at 21-22 (discussing anticruelty statutes).

139. This provision stated in full:

If any person shall over-drive, over-load, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be over-driven, over-loaded, tortured, tormented or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated, or killed as aforesaid, any living creature, every such offender shall, for every such offence, be guilty of a misdemeanor.

N.Y. REV. STAT. § 375.1 (1867).

140. *Id.*

141. *Id.* § 375.2.

142. *Id.* § 375.3.

143. *Id.* § 375.5.

144. N.Y. REV. STAT. § 375.7 (1867).

145. *Id.* § 375.8. The statute required that the Society’s agent receive a special appointment from the local county sheriff in order to make arrests under the statute. *Id.*; Davis v. Am. Soc’y for the Prevention of Cruelty to Animals, 75 N.Y. 362, 367 (1878).

146. During the first year of the ASPCA’s existence, it secured sixty-six convictions out of 119 prosecutions for animal cruelty, which resulted in a total of \$296 in criminal fines. Favre &

recognizing that the local public authorities might be ill-equipped or disinclined to seek out and arrest perpetrators of crimes against animals, Bergh pushed for inclusion of the private enforcement mechanism.

The New York initiative influenced public opinion in other states, and within fifteen years after adoption of the 1867 New York statute, several other states had adopted laws modeled on the New York law.<sup>147</sup> A few states even added a provision barring cruel neglect of one's own animal and requiring that an animal's owner or custodian provide it with sufficient food, water, and shelter.<sup>148</sup> Some states, such as California<sup>149</sup> and Maryland,<sup>150</sup> were slower to adopt animal cruelty laws, but by the end of the nineteenth century most states had some sort of anticruelty laws in effect.

Although the nineteenth-century state cases show the influence of the anticruelty initiative, many courts continued to analyze criminal animal abuse cases under the rubric of property—e.g., trespass, nuisance, and destruction of another's goods. State courts exhibited the three different attitudes toward the prevention of injury to animals that are reflected in the philosophical and theological literature discussed earlier.<sup>151</sup> First, several courts still viewed animals strictly as a form of personal property to be protected from malicious destruction.<sup>152</sup> These courts were seemingly unconcerned about any rights or interests of the animals themselves and were unequivocal in their view that animals were put on earth to serve man. Second, some judges perceived that cruelty to animals was wrong, even if no property interests were involved, and emphasized that animal cruelty was degrading to the human perpetrator, the human witnesses, and society as a whole.<sup>153</sup> In other words, human interests were intertwined with animal interests in that abuse of animals diminished the human condition and could lead to violence against people. And finally, a few courts acknowledged that animals themselves had interests worthy of legal protection.<sup>154</sup> Because animals were capable of pain and suffering, their

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Tsang, *supra* note 124, at 17 n.81.

147. See, e.g., Ill. Stat. ch. 5a, §§ 26-29 (1869); MASS. GEN. LAWS ch. 344, §§ 1-9 (1869); Neb. Comp. Stat., part III, ch. X, §§ 67a-73 (1881); 1873 N.J. Acts ch. 411, §§ 1-17.

148. See, e.g., Ill. Stat. ch. 5a, § 26 (1869) ("whoever, having the charge or custody of any such animal . . . shall . . . fail to provide such animal with proper food, drink, and shelter or protection from the weather, shall . . . be punished by a fine . . ."); ME. REV. STAT. tit. XI, ch. 124, § 28 (1871); MASS. GEN. LAWS ch. 344, § 1 (1869).

149. California did not adopt the comprehensive New York legislation of 1867 until 1900. See 1900 Cal. Stat. 154.

150. Maryland passed a brief anticruelty statute, similar to the early statutes of other states, in 1890. See 1890 Md. Laws 198.

151. See *supra* notes 20-104 and accompanying text (discussing attitudes towards prevention of animal cruelty).

152. See *infra* notes 155-61 and accompanying text (referring to the characterization of animals as property).

153. See *infra* notes 162-64 and accompanying text (finding animal cruelty uncivilized).

154. See *infra* notes 165-67 and accompanying text (discussing cases that embraced the

needless abuse became a direct injury to all sentient beings.

Throughout the nineteenth century, many criminal indictments for animal cruelty were still brought under the property-oriented malicious mischief statutes, even after the passage of anticruelty laws.<sup>155</sup> To be guilty of malicious mischief, the accused must have wantonly and maliciously injured another's property.<sup>156</sup> "Maliciously" was defined as ill will or spite towards the owner of the property in question.<sup>157</sup> Thus a defendant who became enraged at another's cow for trampling the defendant's crops, and then killed the cow, could not be convicted of malicious mischief because he lacked the requisite malice toward the cow's owner.<sup>158</sup>

This view of animals as property inhibited many courts' willingness to enforce anticruelty laws. Some courts found it inconceivable that an individual should be guilty of a crime for disciplining his own horse, even with excessive force,<sup>159</sup> or for shooting a stray dog that wandered onto his property.<sup>160</sup> Wild animals, in this view, were not subject to being protected at all—there was no property in them and they existed purely to serve human interests.<sup>161</sup>

During the 1800s, other courts rejected the perception of animals as mere property and apparently were influenced by the new anticruelty laws. But even these courts often announced that the policy behind anticruelty statutes was the protection of people, not animals, from barbarous and

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concept of animal welfare).

155. Prosecutors may have still used the malicious mischief statute against animal abusers because generally the penalties for malicious mischief were much more severe than those for animal cruelty. *See, e.g.,* *People v. Knatt*, 50 N.E. 835, 835 (N.Y. 1898) (noting that malicious mischief was a felony, whereas animal cruelty was only a misdemeanor).

156. *People v. Olsen*, 22 P. 163, 164 (Utah 1889).

157. *Owens v. State*, 8 S.W. 658, 659 (Tex. Ct. App. 1888). In some cases, however, the court allowed the trier of fact to infer malice towards the owner from the abusive nature of the defendant's behavior towards the animal. *State v. Williamson*, 27 N.W. 259, 259-60 (Iowa 1886).

158. *State v. Landreth*, 4 N.C. 331, 331-32 (1816).

159. *See, e.g., State v. Avery*, 44 N.H. 392, 396 (1862) (holding that defendant's nonmalicious beating of a horse to discipline it, even if unreasonably harsh, did not violate the anticruelty statute).

160. *See, e.g., Wright v. State*, 30 Ga. 325, 327 (1860) (holding that defendant was wrongly convicted of malicious mischief for shooting a mule that entered his cornfield); *King v. Wansey*, 8 Haw. 115, 117 (1890) (holding that defendant was wrongly convicted of malicious injury for stoning a dog that stole a piece of meat); *Hodge v. State*, 79 Tenn. 528, 531-32 (1883) (holding that defendant's use of a steel trap that ripped out a trespassing dog's tongue was not cruelty because defendant's purpose was to protect his property).

161. *Aldrich v. Wright*, 53 N.H. 398, 403 (1873); *Pierson v. Post*, 3 Cai. R. 175, 177 (N.Y. Sup. Ct. 1805). One court doubted whether there was any meaningful distinction between wild and captive animals in terms of man's ability to use them for his own purposes: "Is the bird in the cage any better, or has it any higher rights, than the bird in the woods? Both were placed here by the Almighty, for the use of man." *Commonwealth v. Lewis*, 21 A. 396, 396 (Pa. 1891). The court held that the defendant was not guilty of cruelty to animals for shooting live pigeons for sport. *Id.*

uncivilized behavior. Pointless torture of dumb creatures was an offense against public morals and could not be tolerated.<sup>162</sup> Such behavior, it was thought, led to other types of base conduct, such as gambling, dissemination of pornography, and the like.<sup>163</sup> This judicial view could be lauded as progress towards recognizing that no civilized society should tolerate cruel behavior to any relatively defenseless living thing, be it a child, a woman, or an animal. Or, it could be criticized as merely the upper-class judges' aversion to certain lower-class pursuits such as cockfighting and bear baiting.<sup>164</sup>

Finally, a few nineteenth-century courts embraced wholeheartedly the humane spirit behind the early anticruelty laws. These courts stressed that animals, as living creatures, could experience pain and suffering.<sup>165</sup> Humans with almost absolute power over such creatures should be required to treat them with kindness and compassion, to avoid harming them needlessly,<sup>166</sup>

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162. One court observed that the purpose of anticruelty laws was "the elevation and refinement of . . . man," but that in no way were these laws to be construed as limiting "man's proper dominion 'over the fish of the sea and over the fowl of the air, and over every living thing that moveth upon the earth.'" *Hunt v. State*, 29 N.E. 933, 933 (Ind. Ct. App. 1892). Another court noted the connection between brutality towards animals and that towards humans: "Cruelty to [animals] manifests a vicious and degraded nature, and it tends inevitably to cruelty to men . . . [H]uman beings should be kind and just to dumb brutes, if for no other reason than to learn how to be kind and just to each other." *Stephens v. State*, 3 So. 458, 459 (Miss. 1887); *see also* *Commonwealth v. Turner*, 14 N.E. 130, 131-32 (Mass. 1887) (noting that animal cruelty statute's purpose is to protect public morals, not private property rights or animal rights).

163. *See* *Goddard v. President & Trs.*, 15 Ill. 588, 590-91 (1854) (discussing types of activities including animal cruelty that offend public morals).

The judicial concern for public morals is echoed in nineteenth-century opinions decrying mistreatment of slaves:

These offences are usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well disposed citizens, take refuge in the company of coloured [sic] persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man.

*State v. Hale*, 9 N.C. 582, 585 (1823).

164. It has been argued that the nineteenth-century British animal cruelty laws reflected mostly an upper-class attempt to control the behavior of the working classes—e.g., by restricting lower-class pastimes such as bear baiting and limiting harsh treatment of horses, which were mostly used by cab drivers and other working people. WEBB, *supra* note 41, at 74. One American court, however, suggested that the generally upper-class pursuit of fox hunting could be considered animal cruelty under the criminal statute. *Commonwealth v. Turner*, 14 N.E. 130, 132 (Mass. 1887).

165. One court deplored the suffering endured by cattle subject to dehorning: "Who could read this testimony and reflect for a moment upon the agony endured by the unfortunate beast as the saw tears its way through membranes, blood vessel, arteries and nerves without being painfully touched with commiseration for the dumb creature in misery and distress?" *State v. Crichton*, 4 Ohio Dec. 481, 482 (Cin. Police Ct. 1893).

166. For example, a nineteenth-century Colorado court found that shooting pigeons for sport could not be legally justified: "[T]he pain and suffering caused by such acts are

and to provide for their care and safety in certain circumstances.<sup>167</sup> This visionary stance foreshadowed American society's increasing concern about animal welfare throughout the twentieth century.

#### B. CONTEMPORARY ANIMAL CRUELTY STATUTES

It may be that the day will come when the sentiments of mercy and humanity shall have so far advanced, with the progress of refining thought, that the man who can so estimate a fleeting satisfaction above a life, however lowly, which only Omnipotence can bestow, will be regarded as exceptionally selfish and cruel.<sup>168</sup>

Today all fifty states and the District of Columbia have some form of statutory protection for animals against acts of cruelty or neglect.<sup>169</sup> These statutes vary considerably in the animals that are covered, the perpetrator's required state of mind, the specific acts that are prohibited, and the designated penalties. Although contemporary animal cruelty statutes<sup>170</sup> have moved away from the view of animal interests as strictly subordinate to human interests, they have not fully embraced either of the other two views of animal interests—as being interrelated with human interests or as

disproportionate to the end sought to be attained . . . ." *Waters v. People*, 46 P. 112, 115 (Colo. 1896).

167. Some courts acknowledged that anticruelty laws essentially conferred upon animals certain legal rights: "[Such laws] seem to recognize and attempt to protect some abstract rights in all . . . animate creation . . . from the largest and noblest to the simplest and most insignificant." *Grise v. State*, 37 Ark. 456, 458 (1881); *see also State v. Karstendiek*, 22 So. 845, 847 (La. 1897) (noting that animal cruelty laws recognize that animals have rights that should be protected).

168. *State v. Bogardus*, 4 Mo. App. 215, 219-20 (1877) (noting cruelty of shooting live pigeons for sport).

169. For an overview of state animal cruelty statutes, in particular penalties under those statutes, see generally Pamela D. Frasch et al., *State Anti-Animal Cruelty Statutes: An Overview*, 5 ANIMAL L. 69 (1999).

170. Although the focus of this section is on state animal cruelty laws, several federal statutes protect animals, either in their natural habitat or in captivity. *See* Humane Methods of Slaughter Act of 1978, 7 U.S.C. §§ 1901-1906 (1994 & Supp. V 1999); Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (1994 & Supp. V 1999); Bald Eagle Protection Act, Golden Eagle Protection Act, 16 U.S.C. §§ 668a-668d (1994); Airborne Hunting Act, 16 U.S.C. §§ 742j-742l (1994); Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (1994 & Supp. V 1999); Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1407 (1994 & Supp. V 1999); Dolphin Protection Consumer Information Act, 16 U.S.C. § 1385 (1994 & Supp. V 1999); Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (1994 & Supp. V 1999); Twenty-Eight Hour Law, 49 U.S.C. § 80502 (1994) (all providing protection for animal welfare). The Animal Welfare Act, in particular, has been instrumental in shielding animals held at research facilities, for exhibition, or for sale from inhumane treatment. *See* Philip J. Hiltz, *Court Says Lab Rats Deserve Special Care*, N.Y. TIMES, Oct. 7, 2000, available at LEXIS, Nexis Library (extending the Federal Animal Welfare Act to cover mice, birds, and rats). For further discussion of federal animal welfare statutes, see generally Henry Cohen, *Federal Animal Protection Statutes*, 1 ANIMAL L. 143 (1995).

deserving of their own legal protection. A brief survey of these acts reveals that many are inadequate by failing to provide a sufficient level of protection for animals and a range of appropriate punishments for animal abusers, including referral for psychological evaluation and treatment. Given the probable link between juvenile animal abuse and the commission of later violent crimes by the same offenders as adults,<sup>171</sup> it is incumbent upon legislatures and judges to develop and employ screening and treatment devices that may reduce recidivism rates and the progression of juvenile offenders to more violent criminal acts. In the last Part of this Article, I propose several reforms that will increase the overall effectiveness of animal cruelty laws as devices to identify, treat, and punish abusers.<sup>172</sup>

### 1. "Animal"

A threshold question for any legislative scheme that criminalizes animal cruelty and neglect is whether all or only some animals will be covered. In other words, the basic scope of a state statute forbidding animal cruelty normally depends upon that statute's definition of "animal." There are, of course, advantages and disadvantages to a broadly worded definition of "animal."

Several anticruelty laws define "animal" as any living creature except a human being.<sup>173</sup> This broad definition would seemingly include everything from pet dogs and cats, to working animals such as horses, to animals held for ultimate consumption, to earthworms in the backyard. The majority of anticruelty statutes that contain a definition of "animal" define the term as nonhuman vertebrates<sup>174</sup> or as nonhuman vertebrates with the exception of fish.<sup>175</sup> Some statutes restrict their definition to domesticated animals and

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171. See *infra* notes 248-378 and accompanying text (discussing the social science data establishing a correlation between animal abuse and the commission of violent crimes against humans).

172. See *infra* notes 386-443 and accompanying text (discussing legal solutions to the problem of childhood animal abuse).

173. See, e.g., COLO. REV. STAT. ANN. § 18-9-201(2) (West 1999 & Supp. 2000) ("any living dumb creature"); FLA. STAT. ANN. ch. 828.27(1)(a) (Harrison 2000) (same); MINN. STAT. ANN. § 343.20(2) (West 1990) ("every living creature except members of the human race"); NEV. REV. STAT. 574.050(1) (2000) (same); N.J. STAT. ANN. § 4:22-15 (West 1998) ("the whole brute creation"); N.Y. AGRIC. & MKTS. LAW § 350(1) (McKinney 1991) ("every living creature except a human being"); N.D. CENT. CODE § 36-21.1.01(1) (1987 & Supp. 2001) ("every living animal except the human race"); R.I. GEN. LAWS § 4-1-1(a)(1) (1998) ("every living creature except a human being"); VT. STAT. ANN. tit. 13, § 351(1) (1998) ("all living sentient creatures, not human beings").

174. See, e.g., IDAHO CODE § 25-3502(2) (Michie 2000); MICH. COMP. LAWS ANN. § 750.50(1)(b) (West 1991 & Supp. 2001); OR. REV. STAT. § 167.310(1) (1999); S.C. CODE ANN. § 47-1-10 (1) (Law. Co-op. 1987 & Supp. 2000).

175. See, e.g., ALASKA STAT. § 11.61.140 (c) (Michie 1996); ARIZ. REV. STAT. ANN. § 13-2910(G)(1) (West 2001); DEL. CODE ANN. tit. 11, § 1325(a)(11) (1995) (by implication).

wild animals previously captured.<sup>176</sup> And finally, a few states have their own unique definitions of “animal.”<sup>177</sup>

The advantage of the broadly worded statutes is that they encompass cruel acts perpetrated upon all species, not merely the familiar household pets and farm animals. Thus deliberate torture and mutilation of an insect or worm could be prosecuted under these statutes. In justifying a broadly worded definition of “animal,” one might argue that the adolescent or adult who pulls the legs off a spider has a similar propensity for cruel and deviant behavior as someone who beats a dog. But there are some difficulties with the all-encompassing anticruelty laws. First, by including invertebrates and other lower animals, the statutes may tend to trivialize the crime of animal cruelty by equating the swatting of a housefly with the burning of a cat. Second, the statutes may end up criminalizing actions that are viewed as socially acceptable, such as the extermination of insect pests, the use of worms as bait, and the capture of butterflies for a collection.

## 2. The Required State of Mind

Almost all animal cruelty laws require that the defendant have engaged in the cruel or inhumane treatment of animals with a culpable state of mind beyond mere negligence. Commonly, the statutes demand that the defendant’s actions be committed “intentionally or knowingly.”<sup>178</sup> For certain categories of offenses, a number of statutes use other terms to define “intent”—namely, willfulness or malice.<sup>179</sup> Less frequently, the laws punish

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176. See, e.g., N.H. REV. STAT. ANN. § 644:8(II) (1996 & Supp. 2000); TENN. CODE ANN. § 39-14-201(1) (1997); TEX. PENAL CODE ANN. § 42.09(c)(1) (Vernon 1994 & Supp. 2001).

177. See, e.g., GA. CODE ANN. § 16-12-4 (a)(1) (1999 & Supp. 2001) (excluding from definition of “animal” any fish or “any pest that might be exterminated or removed from a business, residence, or other structure”); 18 PA. CONS. STAT. ANN. § 5511(q) (West 2000 & Supp. 2001) (defining “domestic animal” as any “dog, cat, equine animal, bovine animal, sheep, goat or porcine animal”).

178. See, e.g., ARIZ. REV. STAT. ANN. § 13-2910(A) (West 2001); ARK. CODE ANN. § 5-62-101 (Michie 1987); 510 ILL. COMP. STAT. 70/3.03(a) (2000); TENN. CODE ANN. § 39-14-202(a) (1997) (all requiring intentional commission of animal cruelty). Typically, a defendant intentionally commits an act when he consciously desires to do so, whereas he knowingly commits an act when he is simply aware of what he is doing, whether or not he desires to engage in that act or desires a particular result from that act. 1 CHARLES E. TORCIA, WHARTON’S CRIMINAL LAW § 27, at 169-70 (15th ed. 1993); Kenneth W. Simons, *Rethinking Mental States*, 72 B.U. L. REV. 463, 468-71 (1992).

179. See, e.g., CAL. PENAL CODE § 597 (West 1999); OR. REV. STAT. § 167.322(1)(a) (1999) (defining first-degree animal abuse as maliciously killing an animal); VA. CODE ANN. § 3.1-796.122 (Michie 1994 & Supp. 2000) (requiring cruelty be willful). Although the terms “malice” and “willfulness” might suggest some greater degree of purposefulness beyond mere intent, most courts interpret those terms in the criminal context to be equivalent to intent. See *State v. Crawford*, 406 S.E.2d 579, 587 (N.C. 1991); ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 857 (3d ed. 1982). With respect to particular offenses, however, some courts have found that “malice” means hatred, ill will, or spite. See *State v. Gaylord*, 356 So. 2d 313, 314 (Fla. 1978) (holding that “malice” within the context of criminal statute defining “maliciously punishing a

reckless behavior that results in animal cruelty<sup>180</sup> or merely negligent acts that cause unnecessary pain and suffering to animals.<sup>181</sup> And, in a few instances, the statutes seem to set a standard of strict liability.<sup>182</sup> For example, laws banning dog fighting, cockfighting, and the like are often phrased as absolute prohibitions without regard to the actor's state of mind.<sup>183</sup>

The requirement of a culpable state of mind, of course, is typical of many criminal statutes and is consistent with the idea that society wants to punish those who engage in consciously antisocial acts. The intentionality requirement, however, serves as a barrier to prosecution and conviction of some animal abusers—particularly, those who engage in serious neglect of their companion animals. It may be difficult to prove beyond a reasonable doubt that defendants intentionally or willfully failed to provide their pet with adequate food and water. To protect companion animals further, legislatures should consider punishing grossly negligent conduct that leads to the premature death of a companion animal.

### 3. The Prohibited Acts

Another observable deficiency in American anticruelty statutes is their notable lack of uniformity, especially with respect to the kinds of punishable behavior. Some laws are almost identical to their nineteenth-century counterparts and fail to reflect predominant contemporary attitudes about

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child” as aggravated child abuse meant ill will, hatred, or spite).

180. See, e.g., ALA. CODE § 13A-11-14(a) (1994) (proscribing intentionally or recklessly cruel mistreatment or neglect). A person who acts “recklessly” normally is consciously aware of a probability of harm to another but acts in conscious disregard of it. TORCIA, *supra* note 178, at 170.

181. See, e.g., MONT. CODE ANN. § 45-8-211(1) (1999) (punishing “knowingly” or “negligently” mistreating or neglecting an animal); N.H. REV. STAT. ANN. § 644:8(III) (1996 & Supp. 2000) (defining negligent torture, overwork, transportation, or abandonment as a misdemeanor on first offense). A person who acts “negligently” is not aware of a risk of harm but should have been aware of it. TORCIA, *supra* note 178, at 170-71. The standard of culpability may be greater in criminal negligence than in “ordinary” or civil negligence. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 3.7(b), at 235 (2d ed. 1986).

182. Criminal laws that impose strict liability on defendants, however, are generally disfavored. LAFAVE & SCOTT, *supra* note 181, at 155-57. Even where a penal statute does not expressly require intent or knowledge by the defendant, most courts will imply a requirement of a culpable mental state. See *Carson v. United States*, 556 A.2d 1076, 1079 (D.C. 1989) (implying purpose, knowledge, or reckless standard to child abuse statute); *State v. Lima*, 546 A.2d 770, 772 (R.I. 1988) (same). Some state statutes also contain a general provision stating that where a particular state of mind is not set forth in a criminal provision, intent, knowledge, or reckless mental state is applicable. 720 ILL. COMP. STAT. 5/4-3(b) (2000); 1 JOHN F. DECKER, ILLINOIS CRIMINAL LAW 86-91 (3d ed. 2000).

183. See, e.g., 18 PA. CONS. STAT. ANN. § 5511(h.1) (West 2000) (proscribing as a third degree felony permitting animals to engage in fighting for amusement); WYO. STAT. ANN. § 6-3-203(c) (Michie 2001) (stating that anyone who “for gain causes or allows” dog or cockfighting commits aggravated cruelty to animals).

the protection of animals.<sup>184</sup> Although animal cruelty laws vary considerably as to the scope and nature of the prohibited activities, the types of forbidden acts can be divided into three general, but overlapping, categories: (a) cruel mistreatment of animals, (b) significant acts of neglect, and (c) unjustified killing. Often the statutes avoid specific prohibitions in favor of general proscriptions, but some laws list specific acts, such as abandonment or animal fighting, that are presumptively cruel.

*a. Cruel Mistreatment of Animals*

Most anticruelty statutes ban acts that inflict unnecessary pain and suffering on animals. These prohibitions are often phrased in terms of cruel mistreatment,<sup>185</sup> torture,<sup>186</sup> mutilation,<sup>187</sup> maiming,<sup>188</sup> and the like. Retaining the language of the nineteenth-century laws, some statutes forbid the overdriving, overloading, and overworking of animals<sup>189</sup>—behavior directed primarily at horses, mules, oxen, and other farm animals.

In addition to these general proscriptions against abusive acts, the statutes often forbid certain specific behavior that may cause unnecessary pain and suffering to animals. For example, many statutes specifically ban animal fighting<sup>190</sup> and transportation of an animal in an inhumane way.<sup>191</sup> A

184. See D.C. CODE ANN. § 22-801 (1996) (prohibiting the overdriving, overloading, and overworking of animals—activities more prevalent with respect to livestock than companion animals).

185. ALA. CODE § 13A-11-14(a)(1) (1994); ARIZ. REV. STAT. ANN. § 13-2910 (A)(4) (West Supp. 2001); ARK. CODE ANN. § 5-62-101(a)(2) (Michie 1997); DEL. CODE ANN. tit. 11, § 1325 (b)(1) (1995); KY. REV. STAT. ANN. § 525.130 (1)(a) (Michie 1999); NEB. REV. STAT. ANN. § 28-1009(1) (Michie 1995).

186. See MD. ANN. CODE art. 27, § 59 (a)(1) (1996 & Supp. 2000) (describing methods of torture prohibited by law).

187. ME. REV. STAT. ANN. tit. 7, § 4011 (1)(D) (West 1989 & Supp. 2000); MD. ANN. CODE art. 27, § 59(b) (1996 & Supp. 2000); MASS. GEN. LAWS ANN. ch. 272, § 77 (West 2000); MISS. CODE ANN. § 97-41-1 (1999).

188. MICH. COMP. LAWS ANN. § 750.50b(2) (West 1991 & Supp. 2000); MINN. STAT. ANN. § 343.21(1) (West 1990 & Supp. 2001).

189. CONN. GEN. STAT. § 53-247(a) (2001); FLA. STAT. ANN. ch. 828.12(1) (Harrison 2001); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991); S.C. CODE ANN. § 47-1-40 (Law. Co-op. 1987 & Supp. 2000).

190. CONN. GEN. STAT. § 53-247(c) (Supp. 2001); MD. ANN. CODE art. 27, § 59(a)(4) (Supp. 2000); S.C. CODE ANN. § 16-17-650 (Law. Co-op. 1985). All but three states (Louisiana, Oklahoma, and New Mexico) prohibit cockfighting, and all fifty states ban dog fighting. PAMELA D. FRASCH ET AL., ANIMAL LAW 655, 663 (2000). Notwithstanding these prohibitions, both types of animal fighting are flourishing in many states. Conservatively, perhaps 10,000 individuals nationwide enter dog fighting competitions on a routine basis. Susan E. Davis, *Blood Sport: Dog Fighting Is Big Business in California, and Just About Impossible to Stop*, 17 CAL. LAW. 44, 47 (1997). It is legal to breed the birds used in cockfighting in all states, and cockfighting is estimated to generate hundreds of millions of dollars a year in sales of birds, medicine, food, and fighting gear. Peter T. Kilborn, *In Rural Enclaves of U.S., Cockfights Are Flourishing*, N.Y. TIMES, June 6, 2000, at A1.

191. See, e.g., LA. REV. STAT. ANN. § 14:102.1A(1)(f) (West Supp. 2001) (proscribing

few carve out individual practices that one may speculate were found to be problematic in that particular state. For instance, Texas prohibits the use of a live animal as a lure in dog race training or in dog racing.<sup>192</sup> Louisiana and Vermont make it a crime to sell artificially dyed fowl.<sup>193</sup> Pennsylvania specifically bans the padding of a cow's udder to enhance its appearance.<sup>194</sup> And, Alabama forbids "bear exploitation," which generally involves using bears in wrestling matches.<sup>195</sup>

*b. Significant Acts of Neglect*

Most modern animal cruelty laws recognize that inhumane treatment of animals can take the form of not only affirmative acts of torture, beating, and mutilation, but also significant neglect and abandonment. Thus many statutes criminalize the cruel neglect of animals in the care or custody of the actor.<sup>196</sup> These statutes, in essence, impose a legal duty on the custodian of animals to provide them with the necessities of life.<sup>197</sup> Some statutes specify that criminal neglect consists of the failure to provide adequate food, water, and shelter.<sup>198</sup> Several of these laws also include the failure to furnish essential medical care in the definition of neglect.<sup>199</sup> A few laws describe additional acts of neglect, such as leaving an animal in a motor vehicle without proper ventilation or protection from extreme heat or cold,<sup>200</sup> or confining an animal in an unduly small cage.<sup>201</sup>

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transportation of an animal "in a cruel or inhumane manner"); OHIO REV. CODE ANN. § 959.13(3) (Anderson 1988) (same).

192. TEX. PENAL CODE ANN. § 42.09(a)(7) (Vernon Supp. 2001).

193. LA. REV. STAT. ANN. § 3:2363 (West 1987); VT. STAT. ANN. tit. 13, § 352(9) (1998).

194. 18 PA. CONS. STAT. ANN. § 5511(g) (West 2000).

195. ALA. CODE § 13A-12-5 (1994 & Supp. 2000).

196. See, e.g., ALA. CODE § 13A-11-14(a)(2) (1994) (forbidding "cruel neglect" of animals in human custody); ARIZ. REV. STAT. ANN. § 13-2910(A)(1) (West 1989 & Supp. 2000) (same); MO. ANN. STAT. § 578.012.1(3) (West 1995 & Supp. 2001) (same).

197. See 1 DECKER, *supra* note 182, at 61-73.

198. See, e.g., CAL. PENAL CODE § 597(b) (West 1999) (proscribing deprivation of "necessary sustenance"); CONN. GEN. STAT. ANN. § 53-247(a) (West 1994 & Supp. 2000) (same); N.M. STAT. ANN. § 30-18-1A.(2) (Michie Supp. 2000); TENN. CODE ANN. § 39-14-202 (a)(2) (1997) (same); UTAH CODE ANN. § 76-9-301(1)(a) (Supp. 1999) (same).

199. See, e.g., KY. REV. STAT. ANN. § 525.130 (1)(a) (Michie 1996) (requiring adequate healthcare); LA. REV. STAT. ANN. § 14:102.1A(1)(c) (West Supp. 2001) (requiring "proper veterinary care"); MD. ANN. CODE art. 27, § 59(a)(3) (1996 & Supp. 2000) (requiring "necessary veterinary care").

200. See 510 ILL. COMP. STAT. ANN. 70/7-1 (West 1993 & Supp. 2000) (forbidding confinement of an animal in a motor vehicle without proper ventilation or protection from heat or cold).

201. See N.D. CENT. CODE § 36-21.1-02 (8) (Supp. 2001):

No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal.

American anticruelty laws also recognize that abandonment<sup>202</sup> of an animal without providing for its care may result in great pain and suffering and even death. Most domesticated animals are not equipped to find food and shelter in the wild or even in an urban area. Abandoned animals, moreover, are more likely to be caught in traps, hunted, captured by pathological animal abusers, and subjected to a variety of diseases. Thus several statutes forbid the abandonment of any animal without arranging for someone else to take care of it.<sup>203</sup>

*c. Unjustified Killing*

Almost all modern anticruelty laws forbid the unjustified or malicious killing of certain animals.<sup>204</sup> Many of these laws, however, ban only the unnecessary destruction of an animal owned by another and place no direct restrictions on owners' killing of their own animals.<sup>205</sup> The killing of one's own animal, depending upon the method used, might instead fall under the proscriptions against cruel mistreatment of an animal. The apparent exclusion from many of these statutes of owners' destroying their own animals can be traced to the long-held view that animals are property and that one has the complete liberty to dispose of one's property as one sees fit.

Of course, there are numerous exceptions to the killing prohibition. Animals may be slaughtered for food purposes.<sup>206</sup> Hunting and fishing, which most often involve the killing of an animal, are exempted.<sup>207</sup> The

202. One statute defines "abandonment" as "completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person." DEL. CODE ANN. tit. 11, § 1325 (a)(6) (1995). Another statute specifies that "[n]o person may allow any maimed, sick, infirm, or disabled animal of which the person is the owner, or of which the person has custody, to lie in any street, road, or other public place for more than three hours after notice." N.D. CENT. CODE § 36-21.1-02(6) (Supp. 1999).

203. See, e.g., ARK. CODE ANN. § 5-62-101 (a)(1) (Michie 1997 & Supp. 2001); COLO. REV. STAT. ANN. § 18-9-202 (1)(a), (b) (West 1999 & Supp. 2000); MONT. CODE ANN. § 45-8-211(1)(d) (1999); N.D. CENT. CODE § 36-21.1-02 (1987 & Supp. 2001); WYO. STAT. ANN. § 6-3-203 (b) (Michie 2001) (all prohibiting the abandonment of animals).

204. See, e.g., CONN. GEN. STAT. ANN. § 53-247(a)-(b) (West 2001); FLA. STAT. ANN. § 828.12(1),(2) (West 2000 & Supp. 2001); GA. CODE ANN. § 16-12-4(a) (1999); KY. REV. STAT. ANN. § 525.130(1)(c) (Michie 1999); N.J. STAT. ANN. § 4:22-17(a)-(b) (West 1998); OKLA. STAT. ANN. tit. 21, § 1685 (West 1983); VA. CODE ANN. § 3.1-796.122(A)(i) (Michie 1994 & Supp. 2000) (all prohibiting the unjustified or malicious killing of certain animals).

205. See, e.g., ALA. CODE § 13A-11-14(a)(3) (1994); ARIZ. REV. STAT. ANN. § 13-2910(A)(5) (West 2000); 18 PA. CONS. STAT. § 5511(a) (2000); S. D. CODIFIED LAWS § 40-1-21 (Michie 1991) (all prohibiting the killing of or cruelty against an animal "of another").

206. See, e.g., CAL. PENAL CODE § 599c (West 1999) (exempting "animals used for food" from the animal cruelty statute); NEV. REV. STAT. ANN. 574.200.4 (Michie 1999) (same).

207. See, e.g., MICH. COMP. LAWS ANN. § 750.50b(8) (West 1991 & Supp. 2001); N.Y. AGRIC. & MKTS. LAW § 353-a.2 (McKinney 2001); N.C. GEN. STAT. § 14-360(c)(1) (1999) (all exempting hunting, fishing, or other "lawful takings" from the killing prohibition).

euthanasia of an incurably ill animal is also allowed.<sup>208</sup> The destruction of unadoptable animals at an animal shelter is frequently included as an exception.<sup>209</sup> Landowners are frequently allowed to kill animals trespassing on their land, particularly if the animal is injuring the landowner's property.<sup>210</sup> And finally, the death of an animal during scientific experimentation is expected and permitted.<sup>211</sup>

Some statutes that permit animal killing in certain circumstances prohibit particular methods of destruction. For example, several states ban killing of an animal by use of a decompression chamber<sup>212</sup> or by the administration of poison.<sup>213</sup> Other states more generally restrict euthanasia to the use of humane methods.<sup>214</sup> Maine specifically allows individuals to kill their own cat or dog with a firearm provided that the shooter is eighteen years of age or older, the weapon and ammunition used will produce instantaneous death by a single shot, and death is, in fact, instantaneous.<sup>215</sup>

#### 4. Penalties

The lack of uniformity among American animal abuse statutes is perhaps most apparent with respect to the penalties that may be imposed on violators. Although state anticruelty laws differ somewhat in their specifics, they share many of the same general substantive provisions, including sweeping prohibitions on torture, mutilation, maiming, neglect, and unjustified killing of animals. The penalties for animal abuse, however, vary widely from state to state. In some jurisdictions, judges are specifically empowered in animal cruelty cases to order a wide range of remedies

208. See, e.g., IND. CODE ANN. § 35-46-3-12 (b)(1)(C) (West 1998); UTAH CODE ANN. § 76-9-301(5)(d) (1999) (both exempting humane killings of incurable animals from the killing prohibition).

209. See, e.g., MISS. CODE ANN. § 97-41-3 (2000); S.D. CODIFIED LAWS § 40-1-21 (Michie 1991).

210. See, e.g., ARIZ. REV. STAT. ANN. § 13-2910(B)(1) (West 1989 & Supp. 2000); N.C. GEN. STAT. § 14-360(c)(4) (1999); OHIO REV. CODE ANN. § 959.04 (Baldwin, 1994).

211. See, e.g., GA. CODE ANN. § 16-12-4(e) (1999 & Supp. 2000); IOWA CODE ANN. § 717B.2.11 (West Supp. 2000); KAN. STAT. ANN. § 21-4310(b)(2) (1995 & Supp. 1999); LA. REV. STAT. ANN. § 14:102.1.C (West 1986 & Supp. 2001); WIS. STAT. ANN. § 951.02 (West 1996).

212. See, e.g., ALASKA STAT. § 11.61.140(3) (Michie 2000); WYO. STAT. ANN. § 6-3-203(d) (Michie 1999 & Supp. 2000). A decompression chamber simulates an ascent to high altitudes in a brief period of time and often causes severe pain to the animals killed in this way. People for the Ethical Treatment of Animals, *Euthanasia: The Compassionate Option*, at <http://www.peta-online.org/mc/facts/fsc9.html>.

213. See, e.g., 510 ILL. COMP. STAT. ANN. 70/6 (West 1993); LA. REV. STAT. ANN. § 14:102.1.A(1)(g) (West 1986 & Supp. 2001); MISS. CODE ANN. § 97-41-17 (2000).

214. See, e.g., COLO. REV. STAT. ANN. § 18-9-201(2.7) (West 1999 & Supp. 2000); GA. CODE ANN. § 4-8-5(b)-(c) (1995); IOWA CODE ANN. § 717B.3(1) (West Supp. 2000); KAN. STAT. ANN. § 21-4310 (b)(5) (1995 & Supp. 1999); MO. ANN. STAT. § 578.005(7) (West 1995).

215. ME. REV. STAT. ANN. tit. 7, § 4011(1-A)(B) (West Supp. 2000). The statute also requires the owner to take precautions to protect others from harm and to avoid restraining the cat or dog in such a way as to cause "undue suffering." *Id.*

designed variously to punish and rehabilitate offenders and to protect future potential victims.<sup>216</sup> Also some states specify degrees of punishment ranging from minimal fines and short prison terms to substantial fines and lengthy prison terms.<sup>217</sup> In these states, the level of punishment that may be imposed depends upon the seriousness of the offense and the actor's state of mind.<sup>218</sup>

In other jurisdictions, however, the available remedies are lacking in flexibility and heft. Judges are not granted statutory authority specifically in animal abuse cases to impose penalties other than a fine or term of incarceration, and the offense of animal cruelty itself is classified as a low-grade misdemeanor with relatively light punishments.<sup>219</sup> As will be discussed, it is important for the courts to be able, and in some cases be required, to order sanctions other than fines and confinement, particularly where juvenile animal abusers are involved.<sup>220</sup> Court-mandated therapy, community service in an animal shelter, and temporary or permanent restrictions on pet ownership all may be appropriate remedies in given cases.

Whether classified as a misdemeanor or felony, animal cruelty or neglect most often carries a maximum sentence of one year in prison.<sup>221</sup>

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216. See, e.g., *id.* at tit. 17, § 1031.3 (authorizing fines, restrictions on animal ownership, and psychiatric counseling).

217. See, e.g., LA. REV. STAT. ANN. § 14:102.1 (West 1986 & Supp. 2001) (authorizing penalties ranging from \$1000 to \$25,000 and from six months to ten years imprisonment).

218. *Id.* (listing more serious penalties imposed for "aggravated" animal cruelty).

219. See, e.g., D.C. CODE ANN. § 22-801 (1996) (authorizing maximum of 180 days in jail or \$250 fine or both).

220. See *infra* notes 414-36 and accompanying text (addressing various studies performed by professionals in the psychology field).

221. See, e.g., ALASKA STAT. § 11.61.140(d) (Michie 2000) (stating that cruelty to animals is a class A misdemeanor); *id.* § 12.55.135(a) (specifying that a violator of a class A misdemeanor should not be imprisoned for more than a year); ARK. CODE ANN. § 5-62-101(b) (Michie 1997) (classifying cruelty to animals as a class A misdemeanor); *id.* § 5-4-401(b)(1) (Michie 1997) (stating that a class A misdemeanor sentence shall not exceed one year); CONN. GEN. STAT. ANN. § 53-247(a) (West 1994) (specifying that one shall not be imprisoned for more than one year for the crime of cruelty to animals); FLA. STAT. ANN. § 828.12(1) (West 2000) (stating that cruelty to animals is a misdemeanor of the first degree); *id.* § 775.082(4)(a) (stating that imprisonment for a first-degree misdemeanor should not exceed one year); HAW. REV. STAT. ANN. § 711-1109(4) (Michie 1999) (stating that cruelty to animals is a misdemeanor); *id.* § 706-663 (specifying that imprisonment for a misdemeanor should not exceed one year); KAN. STAT. ANN. § 21-4310(d) (1995 & Supp. 1999) (specifying that cruelty to animals is a class A nonperson misdemeanor); *id.* § 21-4502(1)(a) (stating that imprisonment for a class A misdemeanor should not exceed one year); KY. REV. STAT. ANN. § 525.130(4) (Michie 1996) (stating that cruelty to animals in the second degree is a class A misdemeanor); *id.* § 532.090(1) (stating that a term for a class A misdemeanor shall not exceed twelve months); MASS. GEN. LAWS ch. 272, § 77 (2000) (specifying that cruelty to animals shall not result in imprisonment for more than one year); S.D. CODIFIED LAWS § 40-1-27 (Michie 1991) (stating that cruelty to animals is a class 1 misdemeanor); *id.* § 22-6-2(1) (specifying that a class 1 misdemeanor may not result in imprisonment for longer than one year); TEX. PENAL CODE ANN. § 42.09(d) (Vernon 1994) (stating that cruelty to animals is a class A misdemeanor); *id.* § 12.21(2) (stating that a class A misdemeanor may not result in confinement in jail for more than one year).

Several states provide for a maximum prison term of only six months<sup>222</sup> with a few limiting confinement to a maximum of thirty days.<sup>223</sup> It is extremely rare for a state statute to allow the court to impose more than one year in prison on a first-time offender. Permissible maximum fines for an initial, nonmalicious offense span a wide range from \$100 to \$5000, depending upon the jurisdiction.<sup>224</sup> Subsequent or aggravated offenses frequently carry stiffer penalties, with maximum prison terms and fines reaching as high as ten years<sup>225</sup> and \$150,000 respectively.<sup>226</sup>

Several states specifically provide for additional remedies in cases of criminal animal abuse. Perhaps most importantly for the victim, forty-four states and the District of Columbia permit or require a humane society agent or police officer to seize an abused or neglected animal.<sup>227</sup> Most states allow

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222. See, e.g., ALA. CODE § 13A-11-14 (1994) (classifying animal cruelty as a Class B misdemeanor); *id.* § 13A-5-7(2) (1975) (authorizing maximum prison term of six months for Class B misdemeanor); ARIZ. REV. STAT. ANN. § 13-2910(F) (West 1989) (classifying animal cruelty as a class 1 misdemeanor); *id.* § 13-707 (authorizing maximum prison term of six months for class 1 misdemeanor); D.C. CODE ANN. § 22-801 (1996) (specifying maximum prison term of 180 days for animal cruelty); LA. REV. STAT. ANN. § 14:102.1.A(2)(a) (West 1986 & Supp. 2001) (specifying maximum prison term of six months for simple animal cruelty).

223. See, e.g., 510 ILL. COMP. STAT. ANN. 70/16(c)(7) (West 1998) (classifying the first offense for animal cruelty as a Class C misdemeanor); 730 ILL. COMP. STAT. ANN. 5/5-8-3(a)(3) (West 1998) (imposing maximum prison term of thirty days for a Class C misdemeanor).

224. See, e.g., D.C. CODE ANN. § 22-801 (1996) (specifying maximum fine of \$250 for animal cruelty); IOWA CODE ANN. § 717B.2 (West Supp. 2000) (classifying animal abuse as aggravated misdemeanor); *id.* § 903.1(2) (West 1994 & Supp. 2000) (authorizing maximum fine of \$5000 for aggravated misdemeanor); KAN. STAT. ANN. § 21-4310(d) (1995 & Supp. 1999) (classifying animal cruelty as Class A nonperson misdemeanor); *id.* § 21-4503(a) (authorizing maximum fine of \$2500 for Class A nonperson misdemeanor); MISS. CODE ANN. § 97-41-1 (2000) (classifying animal cruelty as misdemeanor); *id.* § 97-41-13 (authorizing maximum fine of \$100 for animal cruelty); S.D. CODIFIED LAWS § 40-1-27 (Michie 1991) (classifying animal cruelty as Class 1 misdemeanor); *id.* § 22-6-2(1) (Michie 1998) (authorizing maximum fine of \$1000 for Class 1 misdemeanor); TEX. PENAL CODE ANN. § 42.09(d) (Vernon 1994 & Supp. 2001) (classifying animal cruelty as Class A misdemeanor); *id.* § 12.21(1) (authorizing maximum fine of \$4000 for Class A misdemeanor); VT. STAT. ANN. tit. 13, § 353(a)(1) (1998) (specifying maximum fine of \$2000 for animal cruelty).

225. See, e.g., S.C. CODE ANN. § 16-11-510 (Law. Co-op. 1985 & Supp. 2000) (illustrating the harsher penalty imposed for an aggravated offense). Interestingly, the ten-year maximum prison term applies to destruction of animals (valued as over \$5000) as personal property instead of animal cruelty per se. *Id.* Because the vast majority of companion animals are not worth more than \$5000, this heavier penalty will rarely be available.

226. See, e.g., ARIZ. REV. STAT. ANN. § 13-2910 (F) (West 2001) (classifying crime of interference with or harm to working or service animal as Class 6 felony); *id.* § 13-801 (authorizing maximum fine of \$150,000 for Class 6 felony).

227. ALA. CODE § 3-1-13 (1996); ARIZ. REV. STAT. ANN. § 3-1721(a) (West 1995 & Supp. 2000); ARK. CODE ANN. §§ 5-62-112, -114, -119 (Michie 1997); CAL. PENAL CODE §§ 597f(a), 599a (West 1999); CONN. GEN. STAT. § 29-108d, 53-253 (2001); DEL. CODE ANN. tit. 3, § 7907(a) (1995 & Supp. 2000); *id.* tit. 11, § 1325(e); D.C. CODE ANN. § 22-805, -812 (1996); FLA. STAT. ANN. § 828.073 (West 2000); HAW. REV. STAT. § 711-1110.5 (1996); IDAHO CODE §§ 25-3505, -3511, -3513 (Michie 2000); 510 ILL. COMP. STAT. ANN. 70/10, 70/12 (West 1998); IND. CODE §§ 35-46-3-6, 35-46-3-6(e)-(f) (1998 & Supp. 2000); IOWA CODE ANN. § 717B.5 (West Supp. 2001);

seizure even before the defendant has been convicted.<sup>228</sup> In addition to the seizure provision, many jurisdictions hold the defendant responsible for reimbursing the appropriate agency for the seized animal's care.<sup>229</sup> This duty of reimbursement is enforced variously through bonding provisions,<sup>230</sup> imposition of a lien upon the seized animal,<sup>231</sup> or a direct court order to the defendant requiring reimbursement.<sup>232</sup> Creating an additional monetary

KAN. STAT. ANN. § 21-4311 (1995 & Supp. 2000); KY. REV. STAT. ANN. § 436.605 (Michie 1999); LA. REV. STAT. ANN. § 14:102.2 (West 1986 & Supp. 2001); ME. REV. STAT. ANN. tit. 17, § 1021 (West Supp. 2000); MD. ANN. CODE art. 27, § 67 (1996 & Supp. 2000); MASS. GEN. LAWS ch. 272, §§ 82, 83 (2000); MICH. COMP. LAWS ANN. § 750.53 (West 1991); MINN. STAT. § 343.12 (1990); *id.* §§ 343.22(1), .29(1), .235(1) (1990 & Supp. 2000); MISS. CODE ANN. § 97-41-2(1) (1999); MO. ANN. STAT. §§ 578.016, .018.1, .030.1 (West 1995); NEB. REV. STAT. § 28-1012(1), (3) (1995 & Supp. 2000); NEV. REV. STAT. 574.055(1), (6) (1999); N.H. REV. STAT. ANN. § 105:14 (1990); *id.* § 644: 8(IV-a)(a) (1996 & Supp. 2000); N.J. STAT. ANN. §§ 4:22-26.1, -46, -50 (West 1998); N.Y. AGRIC. & MKTS. LAW § 373 (McKinney 1991 & Supp. 2001); N.C. GEN. STAT. § 14-363.2 (1999); N.D. CENT. CODE § 36-21.1-06 (1987 & Supp. 2001); OHIO REV. CODE ANN. §§ 1717.09, .13 (West 1994); OKLA. STAT. ANN. tit. 21, §§ 1685, 1686 (West 1983 & Supp. 2001); OR. REV. STAT. § 167.345 (1999); 18 PA. CONS. STAT. ANN. § 5511(e), (j), (l) (West 2000); R.I. GEN. LAWS §§ 4-1-18, -19, -22 (1998); S.C. CODE ANN. §§ 47-1-140, -150 (Law. Co-op. 1987 & Supp. 2000); S.D. CODIFIED LAWS §§ 40-1-5, -28 (Michie 1991); TENN. CODE ANN. §§ 39-14-202(c), -210(f) (1997); UTAH CODE ANN. §§ 76-9-301(9)(d), -305(1) (1999); VT. STAT. ANN. tit. 13, § 354 (a), (b)(2)-(3), (c) (1998); VA. CODE ANN. §§ 3.1-796.113, .115(A) (Michie 1994 & Supp. 2001); WASH. REV. CODE § 16.52.085(1) (1992 & Supp. 2001); W. VA. CODE §§ 7-10-3, -4(a), -4(c) (2000); *id.* § 61-8-21; *id.* § 19-20-12(c) (1997); WIS. STAT. §§ 951.15, .16 (1996); WYO. STAT. ANN. § 11-29-109 (Michie 2001).

228. ALA. CODE § 3-1-13 (1996); ARK. CODE ANN. § 5-62-114 (Michie 1987); CAL. PENAL CODE § 597f(a) (West 1998); CONN. GEN. STAT. § 29-108d (1990); DEL. CODE ANN. tit. 11, § 1325(e) (1996) (all authorizing the state, or organizations authorized by the state, to take possession of abused animals).

229. See *infra* notes 230-32 (listing ways a defendant can reclaim an animal).

230. IOWA CODE ANN. § 717B.4(1) (West Supp. 2000); KAN. STAT. ANN. § 21-4311(a) (Supp. 1999); LA. REV. STAT. ANN. § 14:102.2 (West 1986 & Supp. 2001); MICH. COMP. LAWS ANN. § 750.50(3) (West 1991 & Supp. 2000); MINN. STAT. § 343.235 (1990 & Supp. 2001); MISS. CODE ANN. § 97-41-2(2) (2000); MO. ANN. STAT. § 578.018.2 (West 1995); N.Y. AGRIC. & MKTS. LAW § 373.4 (McKinney 1991 & Supp. 2001); OR. REV. STAT. § 167.347(3)-(5) (1999); VT. STAT. ANN. tit. 13, § 354(f) (1998); WASH. REV. CODE § 16.52.085(4) (1999 & Supp. 2001) (all providing that an owner may pay a bond to retrieve an impounded animal).

231. ALA. CODE § 3-1-13 (1996); CAL. CIV. PROC. CODE § 1208.5 (West 1982); CONN. GEN. STAT. §§ 29-108d, 53-253 (1994); DEL. CODE ANN. tit. 3, § 7904 (1993 & Supp. 2000); D.C. CODE ANN. § 22-804 (1996); IDAHO CODE §§ 25-3505, -3511 (Michie 2000); 510 ILL. COMP. STAT. ANN. 70/12 (West 1992); ME. REV. STAT. ANN. tit. 17, § 1021.6 (West Supp. 2001); MD. ANN. CODE art. 27, § 68 (1996); MASS. GEN. LAWS ch. 272, § 82 (2000); MISS. CODE ANN. § 97-41-2(4) (2000); MO. ANN. STAT. § 430.165 (West 1995 & Supp. 2001); *id.* § 578.016.2; NEB. REV. STAT. § 28-1011(2) (Supp. 2000); NEV. REV. STAT. 574.055(3) (1999); N.D. CENT. CODE § 36-21.1-06(4) (1987 & Supp. 1999); OHIO REV. CODE ANN. § 1717.13 (West 1997); OKLA. STAT. ANN. tit. 21, § 1685 (West 1983); 18 PA. CONS. STAT. ANN. § 5511(1) (West 2000); R.I. GEN. LAWS § 4-1-18 (1998); S.C. CODE ANN. §§ 47-1-140, -170 (Law. Co-op. 1987 & Supp. 2000); S.D. CODIFIED LAWS § 40-1-5 (Michie 1991); TENN. CODE ANN. §§ 39-14-202(c), -210(e) (1997); UTAH CODE ANN. § 76-9-305(2) (1998); VT. STAT. ANN. tit. 13, § 354(c) (1998); WIS. STAT. § 951.15(2) (1996); WYO. STAT. ANN. § 11-29-109 (Michie 1999) (all authorizing use of a lien imposed upon the animal to cover expenses for its care).

232. ARK. CODE ANN. § 5-62-118(b) (Michie 1997); CAL. PENAL CODE §§ 597e, f, .1(a), .1(c)

penalty, a number of states allow the sentencing judge to require that the defendant make restitution to the owner of the abused animal for costs associated with its medical care or replacement.<sup>233</sup>

To reduce the chances that a particular offender will engage in future acts of animal cruelty, several state animal cruelty statutes provide for court-ordered psychotherapy and/or restrictions on future pet ownership. For example, California requires the court to order a defendant who has received probation for a conviction of animal cruelty to complete counseling “designed to evaluate and treat behavior or conduct disorders.”<sup>234</sup> Defendants must pay for their own counseling but may be eligible for a deferred payment schedule or a reduced fee.<sup>235</sup> Colorado allows the judge in an animal cruelty case involving a juvenile to order the defendant to complete an anger management program or other appropriate treatment program if the defendant has been declared a juvenile delinquent.<sup>236</sup> The court must order completion of an anger management program or other appropriate treatment program if the defendant has been declared a juvenile delinquent for a second or subsequent time.<sup>237</sup> In Nevada, juvenile delinquents can be ordered to participate in psychological counseling.<sup>238</sup> West Virginia has a similar provision for all offenders convicted of animal cruelty: after the second or subsequent conviction, the defendant may not

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(West 1999); FLA. STAT. ANN. § 828.073(4)(c)(3) (West 2000); IND. CODE ANN. § 35-46-3-6(h)(1) (Michie 1998 & Supp. 2000); IOWA CODE ANN. § 717B.4(3) (West Supp. 2000); KAN. STAT. ANN. § 21-4311(c) (Supp. 2000); LA. REV. STAT. ANN. § 14:102.2 (West 1986 & Supp. 2001); ME. REV. STAT. ANN. tit. 17, § 1031.3 (West Supp. 2001); MD. ANN. CODE art. 27, § 68 (1996); MICH. COMP. LAWS ANN. § 750.50(5) (West Supp. 2001); MINN. STAT. ANN. § 343.23 (West 1990); *id.* § 343.235(3)(d) (West Supp. 2001); MISS. CODE ANN. § 97-41-2(4) (2000); MO. ANN. STAT. § 430.165 (West Supp. 2001); MONT. CODE ANN. § 45-8-211(3)(a) (1999); NEB. REV. STAT. § 28.1011(1) (Supp. 2000); NEV. REV. STAT. 574.120(2) (2000); N.H. REV. STAT. ANN. § 644:8 (1996 & Supp. 2000); N.J. STAT. ANN. § 4:22-17 (West 1998 & Supp. 2001); N.Y. AGRIC. & MKTS. LAW § 356 (McKinney 1991); N.C. GEN. STAT. § 14-363 (1999); OHIO REV. CODE ANN. § 1717.13 (West 1997); OR. REV. STAT. § 167.350 (1999); 18 PA. CONS. STAT. ANN. § 5511(1) (West 2000); R.I. GEN. LAWS § 4-1-22(c) (1998); S.D. CODIFIED LAWS § 40-1-5.1 (Michie 1991); TENN. CODE ANN. § 39-14-207(b) (1997); VT. STAT. ANN. tit. 13, § 353(b)(2) (1998); VA. CODE ANN. § 3.1-796.115(F) (Michie Supp. 2001); WASH. REV. CODE § 16.52.200(4) (Supp. 2001); W. VA. CODE ANN. §§ 61-8-19(c), 7-10-4(d) (Michie 2000); WIS. STAT. § 951.17 (1996); WYO. STAT. ANN. § 6-3-203(j) (i) (Michie 2001).

233. ALA. CODE § 3-1-10 (1996); ARIZ. REV. STAT. ANN. § 13-2910(D) (West 2001); KAN. STAT. ANN. § 29-409 (2000); MISS. CODE ANN. § 97-41-15(2) (2000); OHIO REV. CODE ANN. § 1717.11 (West 1997); WIS. STAT. § 951.18(4) (1996 & Supp. 2000).

234. CAL. PENAL CODE § 597(g) (West 1999).

235. *Id.* In the case of indigent defendants, Medi-Cal or county mental health departments are responsible for the costs of counseling under certain circumstances. *Id.*

236. COLO. REV. STAT. ANN. § 19-2-918.5(1) (West 1999). The court may order the defendant to undergo an evaluation before imposing a treatment requirement. The defendant’s parents or legal guardian are required to pay the cost of the evaluation. *Id.* § 19-2-918.5(2).

237. *Id.* § 19-2-918.5(3).

238. NEV. REV. STAT. 62.2295 (2000).

be granted probation until he/she has undergone a complete psychiatric evaluation.<sup>239</sup> Several states allow the court to order the defendant to participate in an animal cruelty education or prevention program.<sup>240</sup>

To further reduce the likelihood that the offender may abuse other animals in the future, several statutes permit the sentencing judge to restrict the defendant's future ownership of animals, including the animal that was the subject of the original complaint. For example, in Minnesota the court may require that the abused or neglected animal be turned over to the local authorities.<sup>241</sup> The defendant may reclaim the animal only if he demonstrates "by clear and convincing evidence that [he] is able and fit to have custody of and provide adequately for an animal."<sup>242</sup> Some states even allow the court to order "permanent relinquishment"—in other words, to forbid the defendant from ever owning an animal again.<sup>243</sup>

Aside from these other penalties, a number of jurisdictions include community service as a punishment option in their animal cruelty statutes.<sup>244</sup> In addition, some of those states allow the court to order that the community service be performed in an animal shelter<sup>245</sup> where the offender is likely to receive education about companion animals and perhaps learn compassion for them.

In sum, contemporary animal cruelty statutes have evolved somewhat from their nineteenth-century forebears toward reflecting more completely the second and third views of animal interests outlined above. But, overall, a lack of uniformity, an unduly restrictive state-of-mind requirement, and the absence of adequate identification, rehabilitation, and punishment regimes inhibit the utility of modern state anticruelty laws as a truly effective mechanism for preventing animal abuse. Lackadaisical enforcement of existing laws<sup>246</sup> and an attitude of indifference displayed by a segment of the

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239. W. VA. CODE § 61-8-19(g) (2000).

240. *See, e.g.*, N.M. STAT. ANN. § 30-18-1.F (Michie Supp. 2000); OR. REV. STAT. § 167.350(4) (1999); VT. STAT. ANN. tit. 13, § 353(b)(4) (1998); WASH. REV. CODE § 16.52.200(6) (Supp. 2001) (all stating the court may order the defendant to take animal cruelty or prevention programs).

241. MINN. STAT. ANN. § 343.21(10) (West 1990 & Supp. 2001).

242. *Id.*

243. *See, e.g.*, ME. REV. STAT. ANN. tit. 17, § 1031.3 (West Supp. 2000); MICH. COMP. LAWS ANN. § 750.50(6) (West Supp. 2001) (both allowing the court to order permanent relinquishment for second or subsequent violation).

244. *See, e.g.*, LA. REV. STAT. ANN. § 14:102.1.A(2)(b) (West Supp. 2001) (requiring community service); MICH. COMP. LAWS ANN. § 750.50(4) (West Supp. 2001) (same); R.I. GEN. LAWS § 4-1-5(a) (1998) (same).

245. MINN. STAT. ANN. § 343.21(10)(3) (West 1990 & Supp. 2001); N.J. STAT. ANN. § 4:22-17 (West 1998 & Supp. 2001).

246. *See supra* notes 8-11 and accompanying text (discussing the apathetic prosecution of animal cruelty offenses). Professor Sunstein has suggested allowing private individuals to sue to enforce the federal Animal Welfare Act as a means of shoring up the inadequate enforcement of the Act by the Department of Agriculture. Cass R. Sunstein, *Standing for Animals (with Notes on*

public<sup>247</sup> only serve to undermine further the efficacy of the animal cruelty statutes.

In the next Part, I explore more deeply the justification for the second view of animal interests—namely, that animal interests and human interests are interrelated. Modern social science research supports the notion that animal abusers are more likely than nonabusers to engage in violent acts against humans. By identifying, rehabilitating, and sometimes punishing animal abusers, the legal system ultimately advances human interests. One need not believe that animals have a “right” to be free from torture and neglect to promote legal reforms directed at reducing the overall incidence of animal abuse. In identifying and treating young abusers especially, society arguably diminishes the likelihood that such abusers will progress to violent acts against humans. By incarcerating chronic, incorrigible abusers, the law removes them from society where they are likely to perpetrate crimes upon humans.

### III. THE SCIENTIFIC LINK BETWEEN CHILDHOOD ANIMAL ABUSE AND LATER ADULT CRIMES

Although a number of philosophers and theologians have speculated over the years that humans who torture animals become hardened and cruel in their attitude and dealings with other humans, there has been, until recently, no scientific basis for this speculation. Now, several social science studies support the notion that cruelty to animals can be a predictor of later violent crimes against humans. Thus, if one regards the view of animals as merely chattels as outmoded and the view of them as creatures deserving of legal rights as insupportable, one may be persuaded that human interests and animal interests converge in both the prevention of animal abuse and the punishment and treatment of animal abusers. Animals can help society to identify people at risk of committing further violent acts, and counseling such individuals while they are still relatively young can reduce the overall level of violence in society.

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*Animal Rights*), 47 UCLA L. REV. 1333, 1366 (2000). One possible solution to insufficient enforcement of state anticruelty laws would be creation of a private cause of action for animal cruelty. The early anticruelty statutes permitted private animal welfare organizations to prosecute statutory violations. See *supra* notes 145-146 and accompanying text (discussing the ASPCA's authority to enforce the animal cruelty statute). Some contemporary statutes contain similar provisions. CONN. GEN. STAT. § 29-108e (2001); MINN. STAT. §§ 343.01-12 (1990); OHIO REV. CODE ANN. §§ 1717.01-09 (West Supp. 2001).

247. Some commentators are openly appalled by the prospect of severe punishment of animal abusers. Reacting to a guilty verdict against a defendant who threw a dog into traffic during a bout of “road rage,” one journalist noted, “[The defendant] killed an unbearably adorable dog. He faces three years in the pokey for crimes against cuteness.” Paul Farhi, *What Price Animal Cruelty?; No Offense but Our Hypocrisy Is Showing*, HOUS. CHRON., June 24, 2001, at 1.

A. ANECDOTAL EVIDENCE CONNECTING JUVENILE ANIMAL CRUELTY WITH  
SUBSEQUENT VIOLENT ACTS

The popular press has frequently reported a childhood history of animal abuse among convicted serial and mass murderers.<sup>248</sup> While not scientifically based, these accounts at least raise the question of whether there is a link between childhood animal abuse and the commission of later violent crimes by the same individuals. Collectively, these sources tentatively suggest that whatever predisposition to violence exists in these offenders has its roots in childhood aggression.<sup>249</sup> This anecdotal evidence reinforces the social science studies and supports the idea that identification of aggressive impulses in children may lead to earlier treatment of sociopathic tendencies and avoidance of the progression toward violent adult crimes.

Many of history's most famous violent offenders started their "careers" with abusive acts toward animals. Albert DeSalvo, the so-called "Boston Strangler," confessed to having murdered thirteen women in 1962-63.<sup>250</sup> During his youth, DeSalvo was known to have trapped dogs and cats in orange crates and to have shot arrows through the boxes.<sup>251</sup> Edmund Emil Kemper III was convicted in 1973 of having murdered eight women, including his mother.<sup>252</sup> At his trial, Kemper testified that as a child he had frequently tortured dogs and cats.<sup>253</sup> In 1978 David Berkowitz, the notorious "Son of Sam," pleaded guilty to thirteen murders and attempted murders.<sup>254</sup> Earlier he had shot a neighbor's Labrador retriever because, he falsely alleged, he heard the dog directing him to kill others.<sup>255</sup> Yet another infamous serial murderer, Carroll Edward Cole, executed in 1985, recalled

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248. Sometimes the facts do not support the popular view of a particular serial murderer's prior history of animal torture. For example, the Wisconsin killer Jeffrey Dahmer was widely believed to have mutilated animals as a youngster. See AM. HUMANE ASS'N, *GROWING UP HUMANE IN A VIOLENT WORLD* 20 (1996). In fact, he had a fascination with dead animals—"road kill" and the like—and apparently did not kill any animals himself. Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963, 972 (1999).

249. The Federal Bureau of Investigation, for example, includes a history of cruelty to animals in its profiles of serial killers. A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence Toward Animals*, THE PROSECUTOR, Jan./Feb. 1996, at 32.

250. Neal D. Barnard & A.R. Hogan, *Moving up the Chain of Abuse*, SEATTLE POST-INTELLIGENCER, June 6, 1999, at C1.

251. *Id.*

252. Lolis Eric Elie, *The Practice of Violence*, TIMES-PICAYUNE, Nov. 24, 1997, at B1.

253. *Id.*

254. John Caher, *Animal Abuse Bill Gets Another Shot*, TIMES UNION (Albany, N.Y.), Apr. 26, 1998, at A1.

255. Lee Lescaze, *Berkowitz Pleads Guilty in 6 "Son of Sam" Murders*, WASH. POST, May 9, 1978, at A1.

that his first childhood act of violence was strangling a puppy.<sup>256</sup>

More recently, the adolescent boys implicated in various school shootings frequently abused animals before they directed their violent impulses toward their peers. The teenage boys identified as the perpetrators of the April 1999 shootings at Columbine High School in Littleton, Colorado, spoke of having mutilated animals.<sup>257</sup> In another instance, a fifteen-year-old boy apparently boasted of having tortured and killed animals<sup>258</sup> before fatally shooting two classmates and wounding twenty-two others in Springfield, Oregon, in 1998.<sup>259</sup> One of the boys who confessed to the 1998 Jonesboro, Arkansas, school shootings was said to have routinely shot dogs with his .22 caliber rifle.<sup>260</sup> Finally, in Pearl, Mississippi, in 1997 a sixteen-year-old boy stabbed his mother to death and then went to his high school where he killed two classmates and injured seven others.<sup>261</sup> Earlier he had recorded in his personal journal an account of torturing his dog, Sparkle, to death, calling his actions “true beauty.”<sup>262</sup>

Of course, this sampling of juvenile crime does not provide convincing proof that all child animal abusers go on to become adult offenders. Nor does it demonstrate that all violent adult criminals started out as animal abusers as children. It does furnish, however, the basis for a hypothesis that has been tested through a variety of social science studies. As a threshold matter, the hypothesized link between violence toward animals and violence toward humans has an intuitive appeal. One may speculate that if an individual is predisposed to microwave a cat, he/she may later direct those aggressive impulses toward other living creatures including humans.<sup>263</sup> Such aggression, especially at an early age, indicates a lack of empathy toward others<sup>264</sup> and a disregard for the social controls that ordinarily restrain the

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256. Jason Collington, *First Kill: Animal Abuse May Predict Other Forms of Violence*, TULSA WORLD, Oct. 31, 1999, at A1.

257. Mitchell Zuckoff, *Loners Drew Little Notice; Colorado School Killings*, BOSTON GLOBE, Apr. 22, 1999, at A1.

258. Joyce Howard Price, *Lawmaker Wants Animal Cruelty Taken Seriously; Seeks Study of Link to Human Crimes*, WASH. TIMES, May 27, 2000, at A4.

259. *Colorado High School Gunmen Linked to Animal Cruelty*, PR NEWSWIRE, Apr. 27, 1999, at 4711.

260. *Id.*

261. Price, *supra* note 258, at A4.

262. *Id.*

263. In one social science study, an incarcerated subject reported that he had run his cat through an incinerator where it exploded. The study's investigators rated him as an “aggressive criminal” because of his long history of violence toward others. Alan R. Felthous & Stephen R. Kellert, *Violence Against Animals and People: Is Aggression Against Living Creatures Generalized?*, 14 BULL. AM. ACAD. PSYCHIATRY & L. 55, 58-59 (1986) [hereinafter Felthous & Kellert, *Aggression*]. Killing a cat in a microwave was held to be a “cruel killing” by one state court. *State v. Tweedie*, 444 A.2d 855, 857 (R.I. 1982).

264. For example, even after being arrested for criminal mischief, nine children, none older than fourteen years, laughed and bragged about torturing a horse to death in a pasture.

impulse toward criminal behavior. If a child fails to develop empathy for others and to internalize ordinary social constraints on violent actions, it is logical to assume that the child, if his behavior goes unchecked and his psychological condition untreated, will progress toward further and more deviant criminal behavior as he gets older.<sup>265</sup>

*B. SOCIAL SCIENCE STUDIES SUBSTANTIATING A LINK BETWEEN JUVENILE ANIMAL CRUELTY AND ADULT VIOLENT CRIME*

As early as the seventeenth century, the philosopher John Locke urged parents to teach their children to be kind to animals.<sup>266</sup> He believed that children who freely engaged in animal cruelty might grow up to be callous and harsh toward their fellow humans.<sup>267</sup> In 1806, just as the anticruelty movement was beginning, Phillippe Pinel, the founder of modern psychiatry, developed the concept of “mania without delirium”—a disorder in which the sufferers were aware of themselves and their actions, but were dominated by an “abstract and sanguinary fury, with a blind propensity to acts of violence.”<sup>268</sup> Pinel cited the example of a murderer who started out by killing animals.<sup>269</sup>

A century later Sigmund Freud suggested that psychoanalysts pay particular attention to children who were deliberately cruel to animals.<sup>270</sup> He

*Nine Texas Children Admit Torturing Horse*, N.Y. TIMES, Sept. 24, 1995, at A18.

265. Contradicting the “progression” hypothesis, several studies have found that many juveniles essentially “grow out” of their criminal impulses as they mature. Two key factors in the adolescent maturation process are the development of empathy toward others and the development of impulse control. For example, some “normal” young adults will consider the effect of their decision-making not only on their own self-interest, but also on the interests of others, and will also have the ability to control their violent impulses. See Donald L. Beschle, *The Juvenile Justice Counterrevolution: Responding to Cognitive Dissonance in the Law’s View of the Decision-Making Capacity of Minors*, 48 EMORY L.J. 65, 97-100 (1999) (claiming juvenile animal abusers who continue their deviant behavior never acquire the empathy and impulse control necessary to curtail their antisocial behavior).

266. 9 JOHN LOCKE, *Some Thoughts Concerning Education*, in THE WORKS OF JOHN LOCKE IN TEN VOLUMES 112-14 (11th ed. London, W. Otridge & Son 1812) (1693).

267. *Id.* at 112 (“[T]hey who delight in the suffering and destruction of inferior creatures, will not be apt to be very compassionate or benign to those of their own kind.”).

268. PHILLIPE PINEL, *A TREATISE ON INSANITY* 150-56 (D. D. Davis trans., Hafner Publ’n Co. 1962) (1806). Pinel’s “mania without delirium” can be compared to the modern psychiatric concept of antisocial personality disorder. Antisocial personality disorder is characterized by a pattern of repeated failure to conform to societal norms, including committing illegal acts, lying, manipulating others, and engaging in aggressive acts towards others. AM. PSYCHIATRIC ASS’N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* § 301.7, at 646 (4th ed. 1994). Persons with this disorder are frequently impulsive and lack empathy for others. *Id.*

269. PINEL, *supra* note 268, at 151-52.

270. SIGMUND FREUD, *Three Contributions to the Theory of Sex* (1905), in BASIC WRITINGS OF SIGMUND FREUD 593-94 (A.A. Bill ed., 1938). Freud believed that a child’s cruelty towards others arose from the child’s desire for mastery and from an abnormally focused interest in sexuality: “Children who are distinguished for evincing especial cruelty to animals and playmates may be justly suspected of an intensive and a premature sexual activity which emanates from the

believed that such cruelty often evinced a general tendency toward deviant behavior that might develop into adult violence.<sup>271</sup> The anthropologist Margaret Mead echoed this sentiment in the 1960s when she urged child therapists to take note of a patient's cruel behavior toward living things: "It may well be that this [behavior] could prove a diagnostic sign, and that such children, diagnosed early, could be helped instead of being allowed to embark on a long career of episodic violence and murder."<sup>272</sup> She urged parents and teachers to make a special effort to teach children that violence toward animals is inappropriate and wrong.<sup>273</sup>

More recently, studies of the hypothesized link between childhood animal abuse and later violent criminal behavior have produced mixed results.<sup>274</sup> A number of these reports found a meaningful correlation between juvenile aggression toward animals and antisocial behavior in the same individuals as adults.<sup>275</sup> Other studies found no such connection.<sup>276</sup> One recent carefully conducted study strikes a middle path: the authors found that childhood animal cruelty was not necessarily a precursor to adult violent behavior, but that there was a positive correlation between antisocial behavior (whether violent or nonviolent) and animal cruelty.<sup>277</sup> In other words, criminals were more likely than those in the general population to commit aggressive acts toward animals, but their acts of animal cruelty were just as likely to postdate their other criminal behavior as to precede it.<sup>278</sup>

#### 1. Studies Finding an Association Between Juvenile Animal Cruelty and Later Violence as Adults

The earliest studies of violent offenders and animal cruelty focused on a

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erogenous zones." *Id.* at 594.

271. Childhood cruelty to animals, Freud believed, stemmed from the child's lack of empathy towards others: "The absence of the barrier of pity brings with it a danger that the connection between the cruel and the erotogenic instincts, thus established in childhood, may prove unbreakable in later life." *Id.* Anna Freud, in her work on developmental lines, observed that a child's natural aggression, unless appropriately channeled as the child matures, can progress from "the child's maltreatment of his own toys to the torturing of defenseless animals and from there to massive destructiveness turned against inanimate objects." ANNA FREUD, *A Psychoanalytic View of Developmental Psychopathology (1974 [1973])*, in 8 THE WRITINGS OF ANNA FREUD 67 (1981).

272. Margaret Mead, *Cultural Factors in the Cause and Prevention of Pathological Homicide*, 28 BULL. MENNINGER CLINIC 11, 22 (1964).

273. *Id.* at 20-22.

274. Felthous & Kellert, *Aggression*, *supra* note 263, at 713-15.

275. See *infra* notes 279-318 and accompanying text (discussing the history of the triad relative to aggressive crimes).

276. See *infra* notes 319-46 and accompanying text (claiming interview questions to be inadequate for educing information regarding prior cruelty to animals).

277. See Arluke, *supra* note 248, at 970-72 (discussing a serial murderer's prior history of animal torture).

278. *Id.* at 969-70.

triad of juvenile behaviors: fire setting, enuresis (or bedwetting), and animal cruelty.<sup>279</sup> These investigations hypothesized that a child with a pattern of these behaviors was more likely than a child without such behavior patterns to commit violent crimes as an adult. Doctors Daniel Hellman and Nathan Blackman found in their 1966 study<sup>280</sup> of incarcerated males<sup>281</sup> that almost three-fourths of those charged with aggressive crimes<sup>282</sup> had a history of the triad or part of the triad.<sup>283</sup> For individuals charged with nonaggressive crimes,<sup>284</sup> the figures were reversed—seventy-two percent did not display any of the triadic behaviors.<sup>285</sup> More specifically, sixteen of the thirty-one patients charged with aggressive crimes had a history of animal abuse whereas only nine of the fifty-three patients charged with nonaggressive crimes had such a history.<sup>286</sup>

In addition, D.E. Wax and V.G. Haddox conducted a small study of six adolescents, declared delinquent under California law, who exhibited the triad of fire setting, enuresis, and animal cruelty.<sup>287</sup> They observed that these young males had all exhibited violence toward people and also engaged in aggressive or deviant sexual behavior.<sup>288</sup>

In a 1977 study, Drs. Alan Felthous and Bernard Yudowitz compared data on thirty-one female offenders and nineteen male offenders to determine whether there was a correlation between certain behavior patterns and the commission of violent crimes.<sup>289</sup> After administering a questionnaire and interviewing the subjects, the researchers discovered that the male offenders had a higher incidence of killing animals, but torturing

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279. Although clinical forensic psychologists and psychiatrists now largely discount the predictive value of the “triad” as such, they acknowledge that certain elements of the triad, such as animal abuse, may correlate with the development of later violent behavior. Interview by Rudolph L. Oldeschulte with Dr. Richard M. Hinton, Clinical Associate Professor, University of Arizona College of Medicine, Tucson, Ariz. (Dec. 5, 2000).

280. Daniel S. Hellman & Nathan Blackman, *Enuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime*, 122 AM. J. PSYCHIATRY 1431, 1432-34 (1966).

281. *Id.* at 1432. The authors, both psychiatrists, examined and interviewed eighty-four prisoners at an acute intensive psychiatric treatment center serving the St. Louis area. *Id.*

282. *Id.* (defining aggressive crimes as violent crimes against the person, including murder, serious assaults, armed robbery, and forcible rape).

283. *Id.* at 1432-33.

284. *Id.* at 1432 (defining nonaggressive crimes to include misdemeanors and relatively nonaggressive felonies such as burglary, child molestation, stealing, car theft, and forgery).

285. Hellman & Blackman, *supra* note 280, at 1433.

286. *Id.*

287. D.E. Wax & V.G. Haddox, *Sexual Aberrance in Male Adolescents Manifesting a Behavioral Triad Considered Predictive of Extreme Violence: Some Clinical Observations*, 19 J. FORENSIC SCI. 102, 103 (1974).

288. *Id.* at 105-08.

289. Alan R. Felthous & Bernard Yudowitz, *Approaching a Comparative Typology of Assaultive Female Offenders*, 40 PSYCHIATRY 270, 271 (1977).

animals was equally prevalent in both groups.<sup>290</sup> In the second part of the study, the scientists divided the female subjects into two groups—assaultive (those who had been convicted of a crime of violence) and nonassaultive (those never charged or convicted of a violent crime).<sup>291</sup> Interestingly, cruelty to animals was the only childhood behavior that distinguished the two groups in a statistically meaningful way, with thirty-six percent of the assaultive females having engaged in animal cruelty as children compared to none of the nonassaultive females.<sup>292</sup>

Dr. Felthous continued this line of research by investigating a group of 346 male patients admitted to a Navy psychiatric hospital.<sup>293</sup> He carved out two subgroups from the study sample: (1) seventy-four aggressive males who had a history of assault or aggressive threats against others and (2) seventy-five nonaggressive males who lacked a history of any of these behaviors since age fifteen.<sup>294</sup> Again utilizing interviews and questionnaires as the methods of data collection, he discovered that animal killing and/or cruelty<sup>295</sup> was positively correlated with the aggressive group.<sup>296</sup> Although only eighteen percent of the aggressive group reported engaging in animal cruelty as children and only twenty-three percent had needlessly killed a dog or cat, many more aggressive subjects had engaged in this behavior as compared to the nonaggressive subjects.<sup>297</sup> The aggressive group was also compared with a group of men admitted to the hospital for nonpsychiatric reasons. Again the author concluded that the aggressive group had a much higher incidence of childhood animal killing or cruelty than the nonpsychiatric group.<sup>298</sup> For example, twenty-three percent of the aggressive sample admitted to have needlessly killed a dog or cat as a child whereas only four percent of the

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290. *Id.* at 275.

291. *Id.* at 271-72 (defining the assaultive group to include individuals convicted of a crime of personal violence: assault and battery, assault with a deadly weapon, manslaughter, or murder).

292. *Id.* at 272 (showing that histories of physically injurious paternal punishments and cruelty to animals were significantly associated with convictions for crimes of personal violence).

293. Alan R. Felthous, *Childhood Antecedents of Aggressive Behaviors in Male Psychiatric Patients*, 8 BULL. AM. ACAD. PSYCHIATRY & L. 104, 104-05 (1980).

294. *Id.* at 105 (defining the aggressive group to consist of those subjects who gave a history of (1) assaultively injuring someone seriously enough to require medical treatment or dental restoration plus either (2) threatening serious harm against others or (3) carrying a knife or firearm for potential use against others (except for legitimate job requirements)).

295. *Id.* The questionnaire distinguished between purposeless slaying of dogs or cats and other forms of cruelty to those animals such as torturing them. *Id.*

296. *Id.* at 106.

297. *Id.* at 107. Over twice as many of the aggressive group reported having killed dogs or cats as did the nonaggressive group, and over three times as many of the aggressive group reported having engaged in other types of animal cruelty as compared with the nonaggressive group. *Id.*

298. Felthous, *supra* note 293, at 108.

nonpsychiatric sample responded affirmatively to the same question.<sup>299</sup>

Expanding upon this research, Dr. Felthous joined with Stephen R. Kellert to conduct a comprehensive study of the connection, if any, between childhood animal cruelty and later propensities for violence.<sup>300</sup> The researchers studied 152 men in Connecticut and Kansas and divided them into three groups: highly or moderately aggressive criminals, nonaggressive criminals, and noncriminals.<sup>301</sup> Through extensive interviews<sup>302</sup> the scientists were able to establish a significant association between acts of cruelty in childhood and serious, recurrent aggression against people as an adult.<sup>303</sup> Twenty-five percent of the aggressive criminals had abused animals five or more times in childhood whereas only 5.8% of moderate and nonaggressive criminals and none of the noncriminals had done so.<sup>304</sup>

In the second part of the study, the researchers identified the subjects in all four groups who had exhibited a pattern of substantial animal cruelty in childhood.<sup>305</sup> Of the twenty prisoners with this history, sixteen fell in the most aggressive category whereas only four belonged to the nonaggressive category.<sup>306</sup> Only three of the fifty noncriminals had a pattern of childhood animal abuse.<sup>307</sup> With one exception, all of the abusers in the nonaggressive criminal and noncriminal groups showed a pattern of recurrent, impulsive violence toward humans.<sup>308</sup> Thus, researchers found that childhood animal abuse had a statistically significant connection with adult propensities towards violence, even in noncriminals.<sup>309</sup>

A few additional smaller studies have demonstrated a seemingly higher-

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299. *Id.*

300. Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 HUM. REL. 1113, 1113 (1985).

301. *Id.* at 1116-17. The criminals were chosen from federal penitentiaries in Leavenworth, Kansas and Danbury, Connecticut. *Id.* Noncriminals were selected at random from urban, small town, and suburban areas near New Haven, Connecticut and Topeka, Kansas. *Id.* Criteria for defining aggressiveness included aggressive speech, aggressive preparatory behaviors, and aggressive actions. *Id.*

302. Each subject was interviewed for approximately one to two hours and asked over 440 closed- and open-ended questions relating to the subject's demographic characteristics, childhood family relationships, childhood behavior patterns, and sixteen specific types of animal cruelty, including wounding an animal on purpose, throwing an animal off a high place, breaking an animal's bones, and deliberately starving an animal. *Id.* at 1117-19.

303. *Id.* at 1127.

304. Kellert & Felthous, *supra* note 300, at 1119-20.

305. Felthous & Kellert, *Aggression*, *supra* note 263, at 56 (defining substantial cruelty to animals as a pattern of deliberately, repeatedly, and unnecessarily hurting vertebrate animals in a manner likely to cause serious injury). The authors divided the aggressive group in the original study into two groups for the purposes of this study: aggressive criminals and moderately aggressive criminals. *Id.*

306. *Id.* at 57.

307. *Id.*

308. *Id.* at 62-66.

309. *Id.* at 64.

than-normal incidence of childhood animal cruelty among adult violent offenders. In a 1986 study, a group of investigators found that among their sample of sixty-four men, approximately forty-eight percent of convicted rapists and roughly thirty percent of convicted child molesters admitted to abusing animals in childhood or adolescence.<sup>310</sup> A 1988 study of thirty-six sexual murderers found that the thirty-six percent had committed cruel acts against animals as children and forty-six percent had engaged in such acts as adolescents.<sup>311</sup>

Reinforcing the link between childhood animal cruelty and adult violence, two studies suggest that juvenile animal abuse does not improve with the passage of time alone. In 1971, researcher Fernando Tapia compiled eighteen case studies of children who had been referred to a university psychiatric hospital for engaging in animal cruelty, among other behaviors.<sup>312</sup> He noted that all of the subjects were males with normal intelligence.<sup>313</sup> Almost all of them engaged in other aggressive behaviors besides animal abuse, including bullying, fighting, stealing, and fire setting.<sup>314</sup> Although he found that a variety of biological and environmental factors appeared to contribute to the destructive behavior, the most common factor was a chaotic home with aggressive parental models.<sup>315</sup> In a follow-up study six years later, Tapia and his associate were able to review thirteen of the original eighteen cases.<sup>316</sup> They found that eight of the children were still cruel to animals.<sup>317</sup> The ones who had experienced the greatest improvement had undergone a change in the chaotic home environment—either by removal from the home or by an amelioration of the original home environment.<sup>318</sup>

## 2. Studies Not Finding an Association Between Juvenile Animal Cruelty and Later Violence as Adults

Although the bulk of the social science data suggests a link between childhood animal abuse and adult violence, a few studies have found no clear association between animal cruelty in children and a propensity for violence as adults. But even some of these studies showed a “near

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310. David Tingle et al., *Childhood and Adolescent Characteristics of Pedophiles and Rapists*, 9 INT'L J.L. & PSYCHIATRY 103, 113 (1986).

311. ROBERT K. RESSLER ET AL., *SEXUAL HOMICIDE: PATTERNS AND MOTIVES* 15, 29 (1988).

312. Fernando Tapia, *Children Who Are Cruel to Animals*, 2 CHILD PSYCHIATRY & HUM. DEV. 70, 71 (1971).

313. *Id.* at 76.

314. *Id.*

315. *Id.* at 77.

316. John D. Rigdon & Fernando Tapia, *Children Who Are Cruel to Animals—A Follow-Up Study*, 8 J. OPERATIONAL PSYCHIATRY 27, 27 (1977).

317. *Id.* at 33.

318. *Id.* at 36.

association” between childhood animal abuse and adult violence. In addition, the methodology of many of these studies is suspect. Several researchers collected their data by means of reviewing the charts of psychiatric patients. In some cases, those charts may not have revealed childhood animal abuse because the interviewing physician may not have asked about that issue.<sup>319</sup>

In two studies in which no clear association was found, the researchers observed that childhood animal cruelty was just shy of having a significant association with later adult violence. A 1968 study attempted to test nine variables, including childhood animal cruelty, thought to predict homicidal behavior.<sup>320</sup> There the investigator interviewed three groups, each consisting of twenty patients at a Veteran’s Administration hospital: twenty patients convicted of homicide, twenty patients who had made homicidal threats, and twenty patients with no history of homicide or homicidal threats.<sup>321</sup> He collected data by interviewing each subject for up to an hour.<sup>322</sup> Of the nine variables, only one—suicide attempts—had any significant association with any of the groups: the homicide-threat group was significantly more likely to have attempted suicide than the homicide-offender group.<sup>323</sup> The author observed, however, that of the nine variables, “[t]he incidence of only one factor, cruelty to animals, exceeded the higher incidence of the various factors in the homicide-threat and matched homicide-offender groups.”<sup>324</sup>

In a 1973 study, researchers administered a standardized questionnaire to ninety-five female prisoners in an attempt to isolate behavioral, personality, or family history factors predictive of violent acts.<sup>325</sup> Although the authors could not definitively state that cruelty to animals is associated with recurrent, diffuse aggression against people, they did identify childhood animal abuse as one of several factors that reached “near

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319. See Felthous & Kellert, *Aggression*, *supra* note 263, at 66 (“A perfunctorily raised question in an interview or an item on an outline for data retrieval from hospital or prison charts is, in our opinion, inadequate for educing information on prior cruelties to animals.”).

320. JOHN M. MACDONALD, HOMICIDAL THREATS 52-64 (1968). The nine factors were parental brutality, parental seduction, fire setting, cruelty to animals, enuresis, police arrest record, arrests for assault, alcoholism, and attempted suicide. *Id.* at 52-56.

321. *Id.* at 56. The researcher attempted to match the members of each group by age, race, and the social class of the member’s parents. *Id.* at 56-57.

322. *Id.* at 58-59.

323. *Id.* at 63. The author concluded that the existence of prior suicide attempts might be useful in distinguishing the homicide-threat patients with a low potential for actually carrying out their threats from those with a high potential. *Id.* at 61.

324. *Id.* at 62.

325. Carlos E. Climent et al., *Epidemiological Studies of Women Prisoners, I: Medical and Psychiatric Variables Relating to Violent Behavior*, 130 AM. J. PSYCHIATRY 985, 985 (1973). The authors also gathered data on the subjects by administering standard psychological tests to them, conducting psychiatric interviews with them, surveying the correctional officers in charge of the subjects, and reviewing the subjects institutional, criminal, and medical records. *Id.* at 985-86.

significance” in association with violence.<sup>326</sup>

Some of the studies finding no association between juvenile animal abuse and adult violent crime can be criticized for the conclusions drawn from the data. In a small 1978 study, the author investigated twenty rapists and twenty nonviolent child molesters to determine whether they exhibited any or all of the triadic behaviors: fire setting, enuresis, and animal cruelty.<sup>327</sup> Thirty-five percent of the rapists and thirty percent of the child molesters reported childhood animal cruelty.<sup>328</sup> The researcher concluded that the predictive value of the triadic behaviors, including childhood animal cruelty, was undetermined, apparently believing that child molestation qualified as a nonviolent offense.<sup>329</sup> But one might observe that violence is rarely necessary when an offender chooses to molest children because of their lack of sophistication and emotional and physical vulnerability.<sup>330</sup> In addition, child molestation could certainly be classified as a grossly deviant behavior even if physical force is not employed.<sup>331</sup> A more meaningful study might have compared offenders convicted of serious felonies with normal subjects.

The methodology of some of the studies finding no association between animal cruelty and violent behavior can also be criticized. A number of these studies relied on the review of patient charts, as opposed to direct interviews of subjects, as the method for gathering data. The difficulty with the chart review method is that it relies on the questions asked of subjects at an earlier time by someone unrelated to the study—e.g., a nurse or physician at the admitting hospital. The individual evaluating the patient may fail to ask questions regarding childhood animal cruelty, and thus no evidence of that behavior will appear in the patient’s chart. The researchers relying on these charts will then note no evidence of childhood animal cruelty for particular patients who may or may not in fact have such a history. For example, in a

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326. *Id.* at 989-90.

327. Richard T. Rada, *Psychological Factors in Rapist Behavior*, in CLINICAL ASPECTS OF THE RAPIST 36 (Richard T. Rada ed., 1978).

328. *Id.* Forty-five percent of both groups had experienced enuresis, whereas thirty percent of the rapists and fifteen percent of the child molesters had engaged in fire setting. *Id.*

329. *Id.*

330. Studies have shown that child molesters tend to pick socially isolated and vulnerable children and to manipulate them through a variety of techniques into submitting to sexual activity. See ERIC LEBERG, UNDERSTANDING CHILD MOLESTERS: TAKING CHARGE 15-38 (1997). Molesters will tell children that such activity is acceptable or, if the children protest, they will threaten them in some way to ensure their complicity. *Id.*

331. Although different cultures through the ages have approved of sexual contact between adults and children, the modern view is that such contact is almost always harmful to the affected children and is strongly condemned. See SANDY K. WURTELE & CINDY L. MILLER-PERRIN, PREVENTING CHILD SEXUAL ABUSE: SHARING THE RESPONSIBILITY 1-24 (1992). Adults who were molested as children tend to have more depression and lower self-esteem than others who were not molested. *Id.* They also suffer more frequently from substance abuse, eating disorders, nightmares, and poor sexual adjustment. *Id.*

1983 study of delinquent and nondelinquent boys admitted to a hospital psychiatric unit in a one-year period, the authors relied on data gathered from the subjects' hospital records as well as the probation records for the delinquent boys.<sup>332</sup> The investigators found no significant difference between the delinquent and nondelinquent boys in terms of engaging in cruel acts toward animals.<sup>333</sup> The authors noted, however, that cruelty to animals was not "mentioned" in any of the delinquent histories and in only two of the records of the nondelinquents, implying that the issue was never raised.<sup>334</sup> Similarly, another 1983 study of 109 killers, 38 nonviolent offenders, and 54 normal controls found that the triad of enuresis, fire setting, and cruelty to animals in childhood "was not significant and had little predictive value."<sup>335</sup> Notwithstanding this observation, the researchers noted that the murderers had a greater incidence of childhood cruelty to animals than did the nonviolent offenders—eight percent versus zero.<sup>336</sup> The authors also conceded that in relying primarily on existing medical records, they ran the risk that the initial evaluator of the patient did not ask about a particular item:

[T]he presence of information on an item in the medical charts, for example, cruelty to animals, is a positive datum for the examiner but the absence of the information is interpreted with less certainty. That is, it may be a negative finding or the original examiner who had evaluated the information may have failed to elicit or report the information of interest to [the] study.<sup>337</sup>

In addition, some researchers classified a patient as violent who had one incident of violent behavior in his past.<sup>338</sup> Thus repeat offenders were grouped with single incident offenders for purposes of the study. This grouping may have tended to dilute the childhood animal abuse percentages. Childhood animal cruelty may be associated with later recurrent violent behavior as opposed to the propensity to commit an isolated violent incident.

Notwithstanding these criticisms, there are still a number of well-conducted studies that could not establish an association between childhood animal abuse and the impulse towards violence. In a 1972 study,

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332. Shelley S. Shanok et al., *A Comparison of Delinquent and Nondelinquent Adolescent Psychiatric Inpatients*, 140 AM. J. PSYCHIATRY 582, 583 (1983).

333. *Id.* at 584.

334. *Id.*

335. R. Langevin et al., *Childhood and Family Background of Killers Seen for Psychiatric Assessment: A Controlled Study*, 11 BULL. AM. ACAD. PSYCHIATRY & L. 331, 331 (1983).

336. *Id.* at 338.

337. *Id.* at 340.

338. Shanok et al., *supra* note 332, at 583.

investigators compared forty violent with forty nonviolent patients in a hospital emergency room.<sup>339</sup> They administered a questionnaire to each of the patients with fourteen questions dealing with “neurotic childhood traits,” including cruelty to animals.<sup>340</sup> They found no discernable difference between the two groups in the incidence of childhood animal cruelty.<sup>341</sup> A 1975 study of child psychiatric patients compared ten adolescent boys who had committed homicide, ten who had attempted or threatened homicide, and ten psychiatric control subjects.<sup>342</sup> For data collection, the researchers employed an evaluative form, a review of case histories, and a one-week observation of each boy by two independent evaluators.<sup>343</sup> The researchers found that the triadic behaviors (fire setting, enuresis, and animal cruelty) were evenly distributed among the three groups.<sup>344</sup> And, finally, in a 1983 study of fifty-one children admitted to the psychiatric unit of an urban hospital, investigators divided the subjects into those who had been homicidally aggressive and those who had not.<sup>345</sup> They concluded that the incidence of cruelty to animals between the two groups was not significantly different—fourteen percent of the homicidally aggressive children and three percent of the nonhomicidal children had engaged in that behavior.<sup>346</sup>

### 3. Animal Abuse as Part of General Social Deviance: A Middle Approach

The studies reviewed above attempted to test, among other things, the hypothesis that childhood acts of cruelty toward animals are associated with later violent behavior by the subjects as adolescents or adults. Several studies

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339. Carlos E. Climent & Frank R. Ervin, *Historical Data in the Evaluation of Violent Subjects: A Hypothesis Generating Study*, 27 ARCHIVES GEN. PSYCHIATRY 621, 621 (1972).

340. The childhood traits included cruelty to animals, sleepwalking, sleep talking, nail biting, thumb sucking, difficulty in talking, stealing, hyperactivity, frequent nightmares, pyromania, enuresis, stubbornness, temper tantrums, and emotional deprivation. *Id.* at 622.

341. *Id.* Only three of the fourteen traits were present to a significantly higher degree in the violent group: stubbornness, temper tantrums, and emotional deprivation. *Id.* at 622-23.

342. Ismail B. Sendi & Paul G. Blomgren, *A Comparative Study of Predictive Criteria in the Predisposition of Homicidal Adolescents*, 132 AM. J. PSYCHIATRY 423, 424 (1975).

343. *Id.*

344. *Id.* The authors noted that a majority of the adolescent murderers were diagnosed as schizophrenic, and that seventy percent of the group that had threatened or attempted homicide were diagnosed with organic brain syndrome. *Id.* They also concluded that five environmental factors, including parental brutality and seduction by a parent, significantly differentiated the murderers from the other two groups. *Id.* at 425.

345. Dorothy Otnow Lewis et al., *Homicidally Aggressive Young Children: Neuropsychiatric and Experiential Correlates*, 140 AM. J. PSYCHIATRY 148, 149 (1983). Twenty-one of the children were judged to be homicidally aggressive, having tried to kill others or made serious threats to do so. *Id.* Thirty children were classified as not homicidally aggressive. *Id.* at 150-51.

346. *Id.* at 150. One might criticize this study on some of the bases discussed above: it relied on hospital records for its data, and it concluded that a five-fold greater incidence of animal cruelty among the homicidal children as compared to the nonhomicidal children was not significant. *Id.* at 149-50.

found such an association;<sup>347</sup> some did not.<sup>348</sup> The hypothesis can be characterized as a form of the “violence graduation hypothesis.” In other words, children who hurt animals are likely to graduate to more violent acts towards humans as they mature. This graduation may occur because of a deterioration in the individual’s psychological health, because of the reinforcing nature of the earlier abusive acts towards animals, or because of the greater opportunities for significant violence towards humans as one gets older.

One recent study in 1999, while noting the general trend in the social science literature toward recognizing the violence graduation hypothesis as applied to childhood animal abuse, found that the theory could not be supported.<sup>349</sup> But Professor Arnold Arluke and his colleagues did conclude that animal abuse was positively correlated with antisocial behavior, whether violent or otherwise, and that it was just as likely to occur after antisocial behavior as before it.<sup>350</sup> The researchers suggested that their data supported the “deviance generalization hypothesis,” in which “animal abuse is simply one of many forms of antisocial behavior that can be expected to arise from childhood on.”<sup>351</sup>

The investigators in the Arluke study criticized the methodology employed by earlier researchers who found an association between childhood animal abuse and later violence toward humans. At the outset, they observed that earlier studies had often relied on interviews, questionnaires, and other forms of self-reporting.<sup>352</sup> Data collected from such sources, they contended, is likely to be unreliable for several reasons. First, in prison populations, a high proportion of the inmates refused to participate, thus skewing the study sample.<sup>353</sup> Individuals volunteering to participate in a psychological study might be prone to self-aggrandizement. Second, prisoners might have incentives to exaggerate their violent activities to reinforce their self-image and their image among others as tough and belligerent.<sup>354</sup> Third, both prison and psychiatric subjects tend to be mentally disturbed and thus inherently unreliable in their descriptions of their own behaviors and traits.<sup>355</sup> Finally, interviewers are usually seeking to

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347. See *supra* notes 279-318 and accompanying text (describing studies correlating juvenile animal cruelty and later adult violence).

348. See *supra* notes 319-46 and accompanying text (discussing studies that do not find any connection between juvenile animal cruelty and later adult violence).

349. Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. INTERPERSONAL VIOLENCE 963, 970 (1999).

350. *Id.* at 970-71.

351. *Id.* at 965.

352. *Id.* at 966.

353. *Id.*

354. Arluke et al., *supra* note 349, at 966.

355. *Id.*

prove a particular hypothesis and hence might allow bias to creep into the interview process.<sup>356</sup>

Arluke and his colleagues also faulted the earlier studies for trying to link childhood animal abuse with only one dependent variable—violence.<sup>357</sup> They asserted that those studies conceived of the issue too narrowly, ignoring the possibility that animal abuse could be associated generally with antisocial behavior, whether violent or not.<sup>358</sup> In other words, an animal abuser may end up committing property crimes such as arson and burglary even if he does not “graduate” to rape and murder.

The Arluke study undertook to remedy the defects of prior studies by employing chart review as the method of data collection and by examining whether or not animal abusers had committed any significant crimes, violent or nonviolent. The authors created their study sample by reviewing the records of the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) from 1975 to 1986, in which they noted 153 individuals who were prosecuted for at least one form of animal cruelty within the study’s definition.<sup>359</sup> The researchers developed case controls by selecting individuals from each abuser’s neighborhood and then matching them to the abusers by gender, socioeconomic status, age, and street address.<sup>360</sup> To determine whether any of the abusers or controls had criminal records, the authors examined the computerized records of the state criminal justice system and noted the nature and dates of any offenses.<sup>361</sup>

The researchers concluded that although animal abuse was positively correlated with criminal behavior, it was not necessarily a precursor to criminal behavior because the animal abuse was as likely to occur after the criminal offense as before it. Animal abusers, they determined, were significantly more likely than the controls to have committed some kind of crime, including violent offenses.<sup>362</sup> In fact, seventy percent of the abusers had committed at least one offense as compared with only twenty-two percent of the control participants.<sup>363</sup> Thus animal abusers were 3.2 times more likely to have been convicted of a crime than the controls.<sup>364</sup> Finding some support for the graduation hypothesis, the authors noted that the

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356. Cf. Lewis et al., *supra* note 345, at 149 (discussing the potential lack of uniformity within data).

357. Arluke et al., *supra* note 349, at 967.

358. *Id.*

359. *Id.* at 966-67. “Animal cruelty” was defined for the purposes of this study as an incident in which “an animal had been intentionally harmed physically (e.g., beaten, stabbed, shot, hanged, drowned, stoned, poisoned, burned, strangled, driven over, or thrown).” *Id.* at 966.

360. *Id.* at 967.

361. *Id.*

362. Arluke et al., *supra* note 349, at 968.

363. *Id.* at 968-69.

364. *Id.* at 969.

abusers were 5.3 times more likely to have engaged in a violent criminal act than the nonabusers.<sup>365</sup>

Although violence was much more common among the abusers than the control participants, the abusers were much more likely to have committed nonviolent offenses as well, such as property crimes,<sup>366</sup> drug-related offenses,<sup>367</sup> and disorderly conduct.<sup>368</sup> The authors concluded that this data did not support the graduation hypothesis—that abusers started out with more minor offenses and “graduated” to greater levels of violence.<sup>369</sup> The data did provide support, however, for the deviance generalization hypothesis—that the abusers often had antisocial behavioral traits that caused them to be involved in all types of criminal activity without any necessary escalation from nonviolent to violent.<sup>370</sup> Perhaps more significantly, the researchers discovered that there was no temporal relationship between animal abuse and criminal activity. The animal abuse was just as likely to occur after the criminal act as before it.<sup>371</sup> Thus the researchers could not conclude that animal abusers were likely to graduate from torturing animals to harming humans. They suggested that if any graduation was occurring, it might be from more remote objects to more intimate ones—first, the offender harms a stranger, then he injures his own family or his own pet.<sup>372</sup>

The Arluke study adds an invaluable perspective to the understanding of the relationship between animal abuse and violence towards humans, but, like many of the other studies, it too has its limitations. The investigators were unable to access the sealed juvenile criminal records of the participants.<sup>373</sup> Hence it is unknown how many subjects committed offenses before age seventeen.<sup>374</sup> Additionally, it is unclear from the study whether the researchers were examining arrest records or conviction records of the participants. Some of the study’s language suggests that arrest records were the basis for deducing that a participant had committed an offense.<sup>375</sup> By

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365. Thirty-seven percent of the abusers had committed a violent crime, whereas only seven percent of the controls had. *Id.*

366. The abusers were four times more likely than the nonabusers to have been arrested for a property crime. *Id.*

367. The abusers were three and a half times more likely than the controls to have been arrested for a drug-related offense. Arluke et al., *supra* note 349, at 969.

368. The abusers were also three and a half times more likely to have been arrested for disorderly conduct than the control participants. *Id.*

369. *Id.* at 970.

370. *Id.*

371. *Id.* at 969-70.

372. Arluke et al., *supra* note 349, at 971.

373. *Id.* at 967.

374. Although the MSPCA records included animal abusers as young as eleven, it is not clear how many youthful abusers are prosecuted for animal cruelty. *Id.*

375. “[T]hey were four times more likely to be arrested for property crimes . . . , three and

relying on the prosecution records of the MSPCA, moreover, the researchers restricted their subject sample to only reported animal abusers and did not include individuals who may have abused animals as children but were not discovered or reported. Finally, the study does not distinguish between animal abusers who were prosecuted for a single offense as opposed to those who had multiple incidents of animal cruelty.<sup>376</sup> It is possible that further study of repeat abusers might reveal that they do graduate to violence towards humans.<sup>377</sup>

Even accepting the conclusions of the Arluke study at face value, it does not necessarily diminish animal abuse as a useful tool in predicting criminal behavior. If anything, the study reinforces the connection between animal cruelty and antisocial behavior. Even if animal abusers do not graduate to more violent crimes against humans, they are more likely to engage in criminal behavior than nonabusers.<sup>378</sup> At whatever point in the cycle of criminal behavior their cruelty to animals is discovered, such cruelty should be taken seriously and suitably punished and treated.

#### IV. LEGAL SOLUTIONS TO THE PROBLEM OF CHILDHOOD ANIMAL ABUSE

For centuries, prominent thinkers have inveighed against cruel treatment of animals. Some commentators have regarded “brute creatures” as deserving of “rights” protecting them against neglect and inhumane treatment.<sup>379</sup> Although perhaps not entitled to the full panoply of rights accorded humans, animals should be entitled to exist without needless abuse by humans.<sup>380</sup> Other writers have argued against cruelty to animals because of the effect of such cruelty on the human perpetrators and the human observers.<sup>381</sup> Sadistic acts directed at helpless creatures, these writers

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a half times more likely to be arrested for drug-related offenses . . .” *Id.* at 969.

376. The authors themselves suggested that repetitive animal abusers may be more likely to progress to violence against humans than single incident abusers: “Had we instead studied repeated acts of abuse, it is possible that the graduation hypothesis might have been supported because psychopathology may be more present in animal abusers with repeated offenses than in those who commit single acts of abuse.” *Id.* at 968.

377. The American Humane Association has filed a formal petition with the Department of Health and Human Services calling for a full federal investigation of the link between domestic violence and animal abuse, including the correlation between childhood cruelty to animals and later juvenile delinquency and/or domestic violence. Am. Veterinary Med. Ass’n, *AHA Calls for Investigation into Animal/Human Abuse Link*, J. AM. VETERINARY MED. ASS’N, Oct. 15, 1997, available at <http://www.avma.org/onlnews/javma/oct97/s101597b.htm> (on file with the *Iowa Law Review*).

378. *Id.*

379. See *supra* notes 78-104 and accompanying text (discussing animal interests as separate from but equal to human interests).

380. *Id.*

381. See *supra* notes 58-77 and accompanying text (explaining animal interests as intertwined with human interests).

assert, demean the human participants and degrade the human spirit.<sup>382</sup> Perpetrators of animal cruelty are allowed to vent their most debased feelings, and any innocent bystander undoubtedly suffers feelings of horror at the cruelty displayed.<sup>383</sup> Even those not actually witness to the cruelty will feel dismay and disgust at learning of it.<sup>384</sup> These authors then conclude that people should refrain from abusing animals because of the adverse effects such actions have on the human population.<sup>385</sup>

The studies linking childhood animal abuse to later adult violent crime find their philosophical support among this latter group of thinkers. Commentators focusing on this link are saying, in essence, that because children who harm animals often resort later to committing violent acts against other people, society should be concerned about such behavior and seek ways to prevent it and to treat the youthful offenders. Animal welfare and human welfare are thus inextricably connected. In this view, we need not necessarily concern ourselves with the rights of the victims—namely, the animals themselves. Do they have a moral right to be treated humanely by their human overseers? We do not need to answer that question in this context. Suffice it to say that the social science link between violence against animals and violence against humans suggests that the law should punish habitual animal abuse with some severity, find ways to identify abusive tendencies in juveniles, and mandate treatment programs proven to reduce recurrence of abusive behavior. In the following sections I propose some legal reforms that aim to meet these goals of punishment, identification, and treatment.<sup>386</sup>

#### A. THE DEFINITION OF THE CRIME AND ITS PUNISHMENT

My earlier review of the state statutes providing for criminal penalties for animal abuse revealed that those statutes vary widely in their definitions of animal cruelty, the defendant's required state of mind, the classification of the offense as a misdemeanor or felony, and the punishments allowed.<sup>387</sup> I suggest that a model statute should provide for varying levels of infractions

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382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. Many of these reforms are proffered in an attempt to have the law function more as a therapeutic agent and by so doing to increase the psychological well-being both of humans and animals in society. Recent scholarship on therapeutic jurisprudence has suggested that the law and the actors in the legal system have important roles to play in increasing the mental and emotional health of the population. *See generally* David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, 67 REV. JUR. U.P.R. 317 (1998) (discussing the aforementioned scholarship); Bruce J. Winnick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 PSYCHOL. PUB. POL'Y & L. 184 (1997) (same).

387. *See supra* notes 168-247 and accompanying text (discussing contemporary animal cruelty statutes).

for animal abuse depending upon the defendant's state of mind, the nature of the act committed, and the number of prior offenses.

In fashioning the appropriate punishment for animal abuse offenses, lawmakers should attempt to distinguish between casual and chronic abusers, and between those who will grow out of the behavior and those who will progress to more serious offenses.<sup>388</sup> Simply increasing the penalties for animal abuse across the board will not necessarily deter the behavior. Some scholars have argued that a criminal punishment regime with low-certainty/high-severity characteristics tends to have little deterrent effect.<sup>389</sup> The relatively low probability of prosecution and conviction encourages would-be lawbreakers to commit crimes: they rightly perceive the possibility of getting caught and punished as somewhat remote.<sup>390</sup> At the same time, if the crimes carry with them a relatively severe punishment, juries will be reluctant to find guilt and citizens will be disinclined to assist law enforcement authorities in their efforts to find and convict perpetrators of these crimes.<sup>391</sup>

This line of argument applies neatly to the crime of animal abuse. Animal cruelty is already an underprosecuted crime. Prosecutors inundated with cases involving crimes against people and property are naturally reluctant to expend public resources on prosecuting an individual alleged to have neglected a pet. Against this backdrop of underenforcement of existing animal abuse laws, more severe penalties for animal abuse arguably will not deter the crime, particularly if the community views the penalties as too severe. Members of the public will be reluctant to report animal abuse crimes if only a few perpetrators are caught and punished and those who are punished are done so in a disproportionately harsh manner.

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388. A recent longitudinal study of the developmental course of behavioral and emotional problems in children and adolescents identified deviant subjects through a variety of assessment devices and then reevaluated them fourteen years later. Marijke B. Hofstra et al., *Continuity and Change of Psychopathology from Childhood into Adulthood: A 14-Year Follow-up Study*, 39 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 850, 851 (2000). The researchers found that over half the subjects could no longer be considered deviant; they grew out of their deviant behavior and emotional problems. *Id.* at 857. But the authors concluded that the subject adolescents who exhibited deviance were more likely to still have emotional and behavioral problems than the children studied. *Id.* In other words, a child with deviant behavior was more likely to grow out of it than an adolescent with deviant behavior.

389. See Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 378 (1997) ("Based on the perception that criminals are unlikely to be caught, some potential law-breakers will infer that crime pays, and act accordingly.").

390. See JAMES Q. WILSON & RICHARD J. HERRNSTEIN, *CRIME AND HUMAN NATURE* 398 (1985); Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. POL. ECON. 521, 556-59 (1973); Daniel Nagin & Alfred Blumstein, *The Deterrent Effect of Legal Sanctions on Draft Evasion*, 29 STAN. L. REV. 241, 269 (1977) (all noting that without an increase in the probability of getting caught, increase in punishment has little deterrent effect).

391. See Kahan, *supra* note 389, at 381-82 (noting that a punishment scheme with low certainty but high severity often encourages law abiders to side with the lawbreakers).

Furthermore, mandating prison for all juvenile offenders who have engaged in animal abuse may cut them off from needed treatment, unduly stigmatize them in their community, and expose them to other, more hardened criminal elements at an earlier age.<sup>392</sup> Some adolescents who abuse animals do so in an isolated and occasional manner and do not progress to more serious offenses as adults. In essence, they “grow out of” the behavior, as they do with many juvenile criminal activities, such as vandalism, petty theft, and so forth.<sup>393</sup>

On the other hand, infrequent enforcement of animal cruelty laws and relatively light penalties for animal abuse create the social message that injuring animals through neglect or deliberate cruelty is marginally acceptable or a minor criminal infraction. Any system of criminal justice that purports to deter this behavior must seek to make it socially unacceptable for any person of any age to engage in animal cruelty, to mandate treatment for youthful offenders whose propensity for cruelty stems from some underlying emotional disorder, and to imprison individuals for repeated acts of cruelty when they do not respond to other sanctions or treatment.

Children and adolescents engage in animal cruelty or neglect for any one of a number of reasons: ignorance as to the consequences of their actions, peer pressure, inability to care properly for an animal, and/or violent and cruel propensities. In adjudicating juvenile animal cruelty cases, the courts need to attempt to identify the cause of the animal abuse. Ignorance and peer pressure presumably can be overcome through education and appropriate therapy. If juveniles have abused animals because of their inability to care for them properly—e.g., because of lack of resources or lack of knowledge, this deficiency may be remedied through training, financial assistance, and/or removal of animals from the home.

A child or adolescent who abuses animals because of violent and cruel

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392. See generally Donald L. Beschle, *The Juvenile Justice Counterrevolution: Responding to Cognitive Dissonance in the Law's View of the Decision-making Capacity of Minors*, 48 EMORY L.J. 65 (1999); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68 (1997); Julianne P. Sheffer, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System*, 48 VAND. L. REV. 479 (1995) (all criticizing the current “get tough” policy adopted by several states in dealing with juvenile offenders). This policy includes trying more juveniles as adults, imposing harsher penalties on juvenile offenders, and incarcerating juveniles with adult offenders.

393. See generally Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 L. & HUM. BEHAV. 249 (1996) (observing that adolescents naturally acquire adult decision-making capabilities sometime between early and late adolescence). Thus, poor impulse control and risk-seeking, which tend to be the hallmarks of some adolescent antisocial behavior, should diminish in most individuals as they proceed into late adolescence. See Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 166-67 (1997) (noting that this decrease in antisocial activity presumably occurs whether or not the individual adolescent was ever arrested, prosecuted, or punished).

personality traits, however, needs intensive and perhaps long-term therapy. Specific types of appropriate therapy will be discussed in a later section.<sup>394</sup> But it is important that judges be trained to understand the available options for treatment and that communities establish programs specifically for treatment of animal abusers.

#### B. IDENTIFICATION OF ABUSERS

Animal abuse, like other types of family abuse, is often a hidden crime. A pet confined to its owner's house and yard may never be seen by anyone outside the owner's family. Unlike an adult or even a child abuse victim, an animal has limited ability to communicate with the outside world to make known its desperate situation. Increasing the chances that animal abuse will be discovered is an important facet of any criminal justice system focused on eradicating all forms of family violence, including animal cruelty.<sup>395</sup>

Two statutory reforms would assist in bringing more cases of animal abuse and neglect to the attention of the courts: (1) requiring veterinarians to report suspected instances of animal cruelty and (2) requiring child welfare agencies to note the condition of animals within the abusive family and alert prosecuting authorities if they observe suspected animal abuse. Both of these proposed reforms would interject an outside observer into the abusive situation and impose on that observer the duty to report cases of suspected animal cruelty and neglect. Without such third party intervention, many cases of animal abuse will continue to go unreported.

Only two states currently require veterinarians to report suspected animal abuse.<sup>396</sup> One state statute has created a procedure for veterinarians to report suspected animal cruelty to the state agency responsible for seizing abused animals.<sup>397</sup> Six states accord veterinarians at least partial immunity from civil suits for their role in investigating suspected animal abuse.<sup>398</sup> Ideally, a state statute should combine all of these features: require veterinarians to report suspected animal cruelty and neglect,<sup>399</sup> provide a

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394. See *infra* notes 403-30 and accompanying text (discussing possible treatment of animal abusers).

395. See Charlotte A. Lacroix, *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, 4 ANIMAL L. 1, 23-26 (1998) (discussing the benefits of mandated reporting requirements in uncovering both child abuse and animal abuse).

396. MINN. STAT. § 346.37(6) (1990 & Supp. 2001); W. VA. CODE § 7-10-4a(a) (2000).

397. Illinois allows veterinarians to report suspected animal abuse or neglect to the state Department of Agriculture. 510 ILL. COMP. STAT. ANN. 70/12 (West 1993).

398. CAL. BUS. & PROF. CODE § 4830.5 (West 1990); FLA. STAT. ANN. § 828.12(3) (West 2000 & Supp. 2001); IDAHO CODE § 25-3514A (Michie 2000); MD. ANN. CODE art. 27, § 67 (1996 & Supp. 2000); N.H. REV. STAT. ANN. § 644:8(IV-a)(c) (1996 & Supp. 2000); OR. REV. STAT. § 686.445 (1999).

399. See Am. Veterinary Med. Ass'n, *Cruelty to Animals, Animal Abuse, and Animal Neglect*, at <http://www.avma.org/care4pets/morewelf.htm> (May 30, 2000) (explaining that the American Veterinary Medical Association already recognizes the ethical responsibility of all veterinarians

well-defined procedure for reporting, and insulate veterinarians from liability to pet owners for reporting such abuse.

At the present time, only one state authorizes child welfare authorities to report known or suspected animal abuse.<sup>400</sup> Although mandated reporting requirements have been criticized as ill-defined and unduly burdensome,<sup>401</sup> such requirements may be the only avenue in some cases for uncovering animal cruelty or neglect. Studies have shown that family violence is often not restricted to one victim.<sup>402</sup> Batterers tend to lash out at all members of the family, including companion animals. Parents who are neglecting rather than battering their children often lack the requisite skills, personality traits, or resources to care for any helpless creature; thus family pets suffer as well. Children who are neglected or battered, moreover, may turn on their pet as an outlet for their anger and frustration. Once again the plight of the family dog or cat is not likely to be uncovered without the intervention of an outside agent, such as a child welfare officer.

### C. TREATMENT OF ABUSERS

Some psychiatrists and psychologists have acknowledged that a certain amount of cruelty to animals is to be expected among small children. Children, like adults, are subject to having sadistic fantasies and have fewer socially acceptable outlets for them.<sup>403</sup> Thus, in some cases, children act out

to report suspected cases of animal abuse or neglect to the appropriate authorities).

400. See FLA. STAT. ANN. § 828.03(1) (West 2000) (providing that state authorities organized for the prevention of cruelty to animals may appoint agents to investigate possible acts of cruelty toward animals); see also CAL. PENAL CODE § 11166 (West 2000); CONN. GEN. STAT. § 46b-129(a) (1995 & Supp. 2000); D.C. CODE ANN. §§ 32-908 to -909 (1998); OHIO REV. CODE ANN. §§ 1717.14 (West 1997) (all requiring or permitting humane investigators to report known or suspected child abuse).

401. See SETH C. KALICHMAN, MANDATED REPORTING OF SUSPECTED CHILD ABUSE: ETHICS, LAW AND POLICY 186-88 (1993) (arguing that mandated reporting laws are either too vague or too narrowly defined, thus leading to over- or underreporting).

402. See Murry J. Cohen & Caroline Kweller, *A Message About Power, Control*, PLAIN DEALER (CLEVELAND), Oct. 25, 2000, available at LEXIS, Nexis Library (citing several studies demonstrating a link between animal abuse and family violence). See generally CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE: LINKING THE CIRCLES OF COMPASSION FOR PREVENTION AND INTERVENTION (Frank R. Ascione & Phil Arkow eds., 1999).

403. See ANNA FREUD, *Certain Types and Stages of Social Maladjustment (1949)*, in 4 THE WRITINGS OF ANNA FREUD 88 (1981) [hereinafter *Social Maladjustment*]; ANNA FREUD, *Instinctual Drives and Their Bearing on Human Behavior (1953 [1948])*, in 4 THE WRITINGS OF ANNA FREUD 511-12 (1981) [hereinafter *Instinctual Drives*] (all discussing attitudes of children). Anna Freud, however, also recognized that frequent and persistent antisocial acts, such as animal abuse, may indicate a pathological aggressiveness in a child:

Closer observation shows that the pathological factor in these cases is to be found not in the aggressive tendencies themselves, but in a lack of fusion between them and libidinal (erotic) urges. The pathological factor is found in the realm of the erotic, emotional development which has been held up through adverse external or internal conditions, such as absence of love objects, lack of emotional response

these fantasies by brutalizing objects weaker than themselves—for example, other children or small animals.<sup>404</sup> But admittedly, every boy who pulls the wings off a fly when he is seven years old does not go on to become a serial murderer or rapist or even a nonviolent criminal.<sup>405</sup> The justice system needs to be able to identify those children at risk of progressing to further violence<sup>406</sup> and to assist them in obtaining the help that they need.<sup>407</sup>

Several social science studies suggest that a constellation of different factors may lead aggressive children and adolescents to commit violent crimes as adults. As one study noted, “[t]o say that early aggression predicts later aggression leads nowhere except, perhaps, to incarceration.”<sup>408</sup> That study found that delinquent juveniles who had both a history of family violence and/or abuse and also two or more psychiatric, neurological, and cognitive vulnerabilities were much more likely to commit violent crimes as adults than juveniles without both of those characteristics.<sup>409</sup>

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from the adult environment, breaking of emotional ties as soon as they are formed, deficiency of emotional development for innate reasons.

ANNA FREUD, *Aggression in Relation to Emotional Development: Normal and Pathological (1949 [1947])*, in 4 THE WRITINGS OF ANNA FREUD 496 (1981) [hereinafter *Aggression*].

404. *Aggression*, *supra* note 403, at 496; *Social Maladjustment*, *supra* note 403, at 88.

405. Anna Freud observed:

As the individual child matures, his aggressive feelings and the hostile attitudes derived from them normally lose some of their violence and urgency. After speech development has been completed, for instance, anger and hate can find a new, comparatively harmless, outlet in words instead of being confined to uncontrolled fantasies and harmful actions.

*Instinctual Drives*, *supra* note 403, at 504.

406. One study comparing the childhood behavioral traits of disturbed adolescents living in a group home with a control group of nondisturbed adolescents found that the disturbed subjects were much more likely to have experienced clusters of certain behaviors in childhood—namely, nail biting, finger or thumb sucking past age three, enuresis past age five, nightmares causing awakening, fire setting, running, encopresis, cruelty to animals, and sleepwalking. Adrian D. Copeland, *Childhood Symptoms of Maladjustment: A Prognostic Indicator of Adolescent Psychopathology*, in 19 ADOLESCENT PSYCHIATRY: DEVELOPMENT AND CLINICAL STUDIES 394-99 (Sherman C. Feinstein & Richard C. Marohn eds., 1993). The author concluded that “symptom clusters of childhood maladjustment were forerunners of later major psychopathology and, thus, constitute a predictive criterion.” *Id.* at 398.

407. Anna Freud believed that appropriate therapy could assist a child in overcoming his destructive impulses: “Where it is possible to help the child’s arrested or otherwise disturbed libidinal impulses to become more normal, the fusion between erotic and destructive impulses will follow automatically, and aggression will be brought under the beneficent influence of the erotic urges.” *Aggression*, *supra* note 403, at 497.

408. Dorothy Otnow Lewis et al., *Toward a Theory of the Genesis of Violence: A Follow-up Study of Delinquents*, 28 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 431, 436 (1989) (detailing the results of a follow-up study of ninety-five incarcerated juveniles and focusing on their criminal activities since the original study).

409. *Id.* at 434-35. Psychiatric vulnerability was defined as the subject’s having had paranoid ideation, visual or auditory hallucinations, or loose, rambling, or illogical responses during psychiatric interviews. *Id.* at 433. A subject was considered to have a neurological vulnerability if

The Felthous and Kellert study discussed earlier found that 25% of aggressive adult criminals had engaged, as juveniles, in five or more incidents of animal abuse as opposed to only 5.3% of nonaggressive adult criminals and none of the noncriminals studied.<sup>410</sup> These figures suggest that multiple incidents of animal abuse may be indicative of a profoundly antisocial personality. Another, more recent, study of personality traits in juvenile delinquents identified two traits that correlate with the likelihood of recidivism: distress and restraint.<sup>411</sup> Those incarcerated juveniles with high levels of distress—namely, depression, anxiety, low self-esteem, and low sense of well-being—were more likely to commit additional crimes after release from prison than incarcerated juveniles with lower levels of distress.<sup>412</sup> In addition, juveniles with low levels of restraint—in other words, those who were impulsive, irresponsible, and inconsiderate of others—were much more likely than other convicted juveniles who lacked such qualities to commit additional offenses.<sup>413</sup>

Drawing upon available social science research and evaluation by social workers and child psychologists,<sup>414</sup> juvenile courts may be able to identify

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he had three or more psychomotor symptoms or had a history of seizures or an abnormal EEG. *Id.* Cognitive vulnerability was found in subjects who had a reading ability of three or more years below that expected for age and intelligence and also either an inability to subtract serial sevens or an inability to recall four digits backward. *Id.*

410. Kellert & Felthous, *supra* note 300, at 1119-20.

411. Hans Steiner et al., *Personality Traits in Juvenile Delinquents: Relation to Criminal Behavior and Recidivism*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 256, 259 (1999).

412. *Id.* at 258-59.

413. *Id.* at 259. The author suggested that identification of these specific traits in convicted juveniles can assist the courts and penal institutions in structuring rehabilitative programs to meet the particular needs of individual offenders. *Id.* For example, youths with high levels of distress may suffer from some type of affective disorder and thus may benefit from drug treatment. *Id.* at 261.

414. The ability of mental health professionals to predict future violent behavior in specific individuals has been a hotly debated topic for the last twenty-five years. Several studies in the 1970s concluded that mental health professionals had no greater accuracy than chance in predicting who would and would not engage in future violent behavior. Bruce J. Ennis & Thomas R. Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CAL. L. REV. 693, 733-38 (1974); John Monahan, *The Prediction of Violent Behavior: Toward a Second Generation of Theory and Policy*, 141 AM. J. PSYCHIATRY 10, 10-11 (1984). More recent studies, however, suggest that clinicians have some ability to predict future violence at a rate greater than chance, particularly where violence is defined to include self-reported behavior in addition to behavior resulting in arrest or hospitalization. Douglas Mossman, *Assessing Predictions of Violence: Being Accurate About Accuracy*, 62 J. CONSULTING & CLINICAL PSYCHOL. 783, 788-90 (1994); Randy K. Otto, *On the Ability of Mental Health Professionals to "Predict Dangerousness": A Commentary on Interpretations of the "Dangerousness" Literature*, 18 LAW & PSYCHOL. REV. 43, 63 (1994). Social science researchers are continuing to refine their methods for predicting future violent behavior. See Charles D. Casat et al., *Identification of Elementary School Children at Risk for Disruptive Behavioral Disturbance: Validation of a Combined Screening Method*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1246, 1250-52 (1999) (noting that a screening method combining two evaluation methods of children at risk for disruptive behavioral difficulties had high predictive value).

convicted child and adolescent animal abusers most at risk of progressing to further and more violent criminal activity. Having identified at-risk juveniles, however, courts then face the task of recommending appropriate treatment for them. Several social science studies have shown that once conduct disorders and antisocial behaviors develop in a child or adolescent, they are extremely difficult to change. In one classic study, the vast majority of children with conduct disorders did not function well as adults.<sup>415</sup> Many treatment strategies, such as anger management programs, individual psychotherapy, and juvenile boot camps,<sup>416</sup> have been resounding failures.<sup>417</sup> In addition, very few treatment programs are directed specifically at the problem of animal cruelty.<sup>418</sup>

Recent studies, however, show some promising results for multisystemic therapy (MST) programs, which attempt to treat aggressive children in the context of their school and family environment.<sup>419</sup> MST programs treat conduct-disordered children and adolescents in the environment in which they live, rather than sending them away to the artificial environment of a boot camp or other juvenile facility.<sup>420</sup> Unlike individual psychotherapy and anger management courses, MST programs involve treatment of not only the disturbed juvenile but also the entire family.<sup>421</sup> Based on the theory that a young person's deviant behavior is a product of a multitude of factors, both internal and external,<sup>422</sup> MST attempts to address all or most of these

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415. LEE N. ROBINS, *DEViant CHILDREN GROWN UP: A SOCIOLOGICAL AND PSYCHIATRIC STUDY OF SOCIOPATHIC PERSONALITY* 292-96 (1966). The author did a follow-up study of 524 children who had been referred to a municipal psychiatric clinic for treatment thirty years earlier. *Id.* He compared their characteristics and life situation as adults with those of one hundred control subjects. *Id.* at 287-89. He observed that

[t]he maladjustment of the patients showed itself in their high rate of arrests, low occupational achievement, their mental hospitalizations and numerous subjective symptoms, high divorce rates, alienation from friends, relatives, church, and all kinds of organizations, extensive use of welfare services, frequent moves, excessive use of alcohol, and the transmission of behavior problems to their children.

*Id.* at 293.

416. For a critique of juvenile boot camps, see generally Doris Layton MacKenzie & Claire Souryal, *A "Machiavellian" Perspective on the Development of Boot Camp Prisons: A Debate*, 2 U. CHI. ROUNDTABLE 435 (1995).

417. One author noted that many mental health professionals and policymakers have all but abandoned any "possibility of attenuating further criminal activity in those youths who are already serious perpetrators." Charles M. Borduin, *Multisystemic Treatment of Criminality and Violence in Adolescents*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 242, 243 (1999).

418. In a program established in 1997, New York City courts can order convicted animal abusers to participate in therapy with a specially trained psychologist at the ASPCA. Patrick Rogers & Fannie Weinstein, *Watchdog*, PEOPLE, June 19, 2000, at 85-88.

419. See *infra* notes 424-27 and accompanying text (discussing the multisystemic therapy programs).

420. Borduin, *supra* note 417, at 243-44.

421. *Id.*

422. For a discussion of the multitude of factors that may put children at risk for conduct

factors by providing individual psychotherapy and appropriate medication (if necessary) to the disturbed juvenile, by assisting parents to overcome their own substance abuse and psychopathological problems, by training parents in more effective ways to handle their children, by promoting increased academic effort by the juvenile, and by supporting desirable extracurricular activities by the juvenile.<sup>423</sup>

Long-term studies of MST suggest that it is perhaps the most effective strategy available to combat juvenile conduct disorders and antisocial behavior.<sup>424</sup> There is some evidence that early intervention is vital in preventing development of juvenile delinquency.<sup>425</sup> One study of a therapeutic preschool project found that children who participated in the project were more likely at age nineteen than their untreated counterparts to have graduated from high school, to have obtained good grades, and to be employed.<sup>426</sup> They were also less likely to be on welfare or to have been arrested, especially for serious crimes.<sup>427</sup>

In addition, researchers and clinicians have found that pet therapy can often be effective in assisting a child in overcoming emotional problems.<sup>428</sup> The lack of empathy that, in some cases, drove the child to be cruel to animals may be overcome by encouraging the child to develop a bond with a particular animal.<sup>429</sup> Once established, that bond can lead the child to

disorders, see Alan E. Kazdin, *Conduct Disorders Across the Life-Span*, in DEVELOPMENTAL PSYCHOPATHOLOGY: PERSP. ON ADJUSTMENT, RISK, AND DISORDER 248, 253-55 (Suniya S. Luthar et al. eds., 1997). These factors include a difficult child temperament, neuropsychological deficiencies, family criminal behavior, harsh parental punishment, unhappy marital relationships, large family size, poverty, and an unchallenging school environment. *Id.*

423. *See id.* at 244-45.

424. *See* SCOTT W. HENGGELER & CHARLES M. BORDUIN, FAMILY THERAPY AND BEYOND: A MULTISYSTEMIC APPROACH TO TREATING THE BEHAVIOR PROBLEMS OF CHILDREN AND ADOLESCENTS 224-31 (1990). One study comparing a group of juvenile offenders treated with MST with a group referred for alternative treatment found that the MST-treated group had fewer behavior problems and less association with deviant peers after treatment than did the group in the alternative treatment program. *Id.* at 225-26.

425. *See* Laura S. Miller, *Preventive Interventions for Conduct Disorders*, 3 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 405, 414-16 (1994).

426. Edward Zigler et al., *Early Childhood Intervention: A Promising Preventative for Juvenile Delinquency*, 47 AM. PSYCHOLOGIST 997, 1000 (1992). In this program, the Perry Preschool Project, African-American preschoolers at risk for retarded intellectual functioning and eventual academic failure were identified and then assigned either to an intensive preschool program or to a control group. *Id.* The preschool program involved high quality, cognitively oriented education of the children, visits by teachers to the children's homes to inform parents of their children's activities, and monthly small group meetings of parents to discuss child rearing and other issues. *Id.*

427. *Id.*

428. *See* BORIS M. LEVINSON & GERALD P. MALLON, PET-ORIENTED CHILD PSYCHOTHERAPY 63 (2d ed. 1997); Hildegard George, *The Role of Animals in the Emotional and Moral Development of Children*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 380, 380-92 (Frank R. Ascione & Phil Arkow eds., 1999).

429. One clinician noted the efficacy of pet therapy in developing empathetic feelings in

experience empathetic feelings for others, perhaps for the first time in the child's life.<sup>430</sup>

Prosecutors, defense counsel, judges, and other actors in the juvenile justice system need to be educated about the availability of appropriate therapies for children and adolescents convicted of animal cruelty.<sup>431</sup> There is some indication that chronic offenders tend to first engage in antisocial behavior as young children.<sup>432</sup> Thus, the earlier that the child can receive treatment, the better. In some cases, where the convicted abuser shows evidence of having a conduct disorder, therapy beyond individual counseling or an anger management program may be advisable. Both MST therapy and pet therapy show some promise for assisting juvenile defendants in overcoming their antisocial behavior and becoming better adjusted adults capable of making a positive contribution to society.

#### D. PROTECTION OF ANIMALS

Any criminal justice effort directed at responding to animal cruelty also must consider the protection of the abused animals. Although this Article has focused on the prevention and punishment of animal cruelty as means to serve humans interests in reducing juvenile delinquency and violent crime, ultimately the animals themselves are worthy of protection from needless injury. Do animals have the "right" to be free from human violence against them, or do we as humans simply recognize that it is demeaning for "civilized" creatures to brutalize weaker beings? An affirmative answer to either question leads us to the conclusion that domesticated animals in particular should be shielded from torment even if pet owners suffer some interference with their property rights.

Certainly, punishment and treatment of the abusers should reduce the incidence of animal torture and neglect, but in some cases measures aimed

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children: "The child learns that if you want to be loved you must love. . . . The child will learn to accept the pet as a sort of junior partner engaged with him in the business of living." LEVINSON & MALLON, *supra* note 428, at 146. One possible objection to pet therapy is that it allows animal abusers to be in contact with the former objects of their abuse. Presumably, however, the child patient is allowed initially to be with animals only with the supervision of a trained therapist. Only later after the child has improved would he/she be allowed to have unsupervised contact with companion animals.

430. *Id.*

431. For a meta-analysis of the effectiveness of various programs in reducing juvenile recidivism, see Mark W. Lipsey, *Can Rehabilitative Programs Reduce the Recidivism of Juvenile Offenders? An Inquiry into the Effectiveness of Practical Programs*, 6 VA. J. SOC. POL'Y & L. 611, 640 (1999) (finding that successful programs all had certain characteristics in common, including "provision of certain services . . . ; a distinct role for the juvenile justice system . . . ; a sufficient amount of service . . . ; and work with the most amenable juvenile subpopulation").

432. Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674, 694-96 (1993) (finding that adolescence-limited delinquency is product of a maturity gap, whereas life-course-persistent offenders exhibit neuropsychological problems and poor home environment since childhood).

directly at protecting the animals may be needed. These measures include the convicted abuser's forfeiture of the abused animal, restrictions on the abuser's future ownership of animals, remittance of assessed fines to state and local humane agencies, and creation of shelters for battered spouses and their children that allow pets.

Forfeiture of the abused or neglected animal assures that the animal will not again be subject to the inhumane treatment that resulted in conviction of the animal's owner. As a prelude to forfeiture, most states allow a law enforcement officer, authorized humane agent, or both to seize abused animals.<sup>433</sup> In a few states, seizure is required.<sup>434</sup> Upon conviction, the defendant in the majority of states may be ordered to forfeit the abused animal permanently.<sup>435</sup> In some states, forfeiture is mandatory for all or

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433. ALA. CODE § 3-1-13 (1996); ARIZ. REV. STAT. ANN. § 3-1721 (West Supp. 2000); ARK. CODE ANN. §§ 5-62-113, -114, -119 (Michie 1997); CONN. GEN. STAT. § 29-108d (1990); DEL. CODE ANN. tit. 3, § 7904(a) (1993); *id.* tit. 11, § 1325(e) (1995); D.C. CODE ANN. § 22-812 (1996); FLA. STAT. ANN. § 828.073 (West 2000); HAW. REV. STAT. § 711-1110.5 (1999); IDAHO CODE §§ 25-3505, -3511, -3513 (Michie 2000); 510 ILL. COMP. STAT. ANN. 70/10, 70/12 (West 1993); IND. CODE ANN. §§ 35-46-3-6(b), (e), (f) (Michie 1998); IOWA CODE ANN. § 717B.5 (West Supp. 2000); KAN. STAT. ANN. § 21-4311 (Supp. 1999); KY. REV. STAT. ANN. § 436.605 (Michie 1996); LA. REV. STAT. ANN. §§ 14:102.2- 102.3 (West Supp. 2001); ME. REV. STAT. ANN. tit. 17, § 1021 (West Supp. 2000); MD. ANN. CODE . art. 27, § 67 (Supp. 2000); MASS. GEN. LAWS ch. 272, §§ 82, 83 (2000); MICH. COMP. LAWS ANN. § 750.50(3) (West 1991); MISS. CODE ANN. § 97-41-2(1) (2000); MO. ANN. STAT. §§ 578.016, .018.1, .030(1) (West 1995); NEB. REV. STAT. §§ 28-1012(1), (3) (Supp. 2000); N.H. REV. STAT. ANN. § 105:14 (1990); *id.* §§ 644: 8(IV)(a), (IV-(a)) (Supp. 2000); N.J. STAT. ANN. §§ 4:22-26.1, -46, -50 (West 1998); N.Y. AGRIC. & MKTS. LAW § 372 (McKinney Supp. 2001); N.C. GEN. STAT. § 14-363.2 (1999); N.D. CENT. CODE § 36-21.1-06 (Supp. 1999); OHIO REV. CODE ANN. §§ 1717.09, .13 (West 1997); OKLA. STAT. ANN. tit. 21, §§ 1685, 1686(C) (West 1983); OR. REV. STAT. § 167.345 (1999); 18 PA. CONS. STAT. ANN. § 5511(e), (j), (l) (West 2000); R.I. GEN. LAWS §§ 4-1-18, -19, -22 (1998); S.C. CODE ANN. §§ 47-1-140, -150 (Law. Co-op. 2000); S.D. CODIFIED LAWS §§ 40-1-5, -28 (Michie 1991); TENN. CODE ANN. §§ 39-14-202(c), -210(f) (1997); UTAH CODE ANN. §§ 76-9-301(9)(d), -305(1) (1998); VT. STAT. ANN. tit. 13, § 354 (b)(2), (b)(3), (c) (1998); VA. CODE ANN. §§ 3.1-796.113, .115(A) (Michie 1994); WASH. REV. CODE § 16.52.085(1) (Supp. 2001); WIS. STAT. § 173.13 (Supp. 2000); WYO. STAT. ANN. § 11-29-109 (Michie 1999) (all empowering law enforcement officers and/or authorized humane agents to seize certain abused or neglected animals).

434. CAL. PENAL CODE § 597f(a) (West 1999); MINN. STAT. ANN. § 343.12 (West 1990); NEV. REV. STAT. 574.055(1) (1999); W. VA. CODE § 7-10-4(a) (2000).

435. DEL. CODE ANN. tit. 3, § 7904(b) (Supp. 2000); FLA. STAT. ANN. §§ 828.073(4)-(6) (West 2000); HAW. REV. STAT. § 711-1110.5 (1993); 510 ILL. COMP. STAT. ANN. 70/12 (West 1993 & Supp. 2001); IND. CODE ANN. § 35-46-3-6(h)(2) (West 1998-2000); IOWA CODE ANN. § 717B.4 (West Supp. 2001); KAN. STAT. ANN. § 21-4311(e) (Supp. 2000); LA. REV. STAT. ANN. § 14:102.2.d (West Supp. 2001); MD. ANN. CODE art. 27, § 67 (1996 & Supp. 2000); MASS. GEN. LAWS ANN. ch. 272, § 77 (West 2000); MICH. COMP. LAWS ANN. § 750.50b(5) (West Supp. 2000); MINN. STAT. § 343.21(10) (1990 & Supp. 2001); MISS. CODE ANN. § 97-41-2 (1999); MO. ANN. STAT. § 578.021 (West 1995); MONT. CODE ANN. § 45-8-211(2)(b) (1999); N.H. REV. STAT. ANN. § 644:8(IV) (1996 & Supp. 2000); N.J. STAT. ANN. § 4:22-26.1 (West 1998); N.Y. AGRIC. & MKTS. LAW § 373(6)(b)(3) (McKinney Supp. 2000); N.C. GEN. STAT. § 14-363.2 (1999); N.D. CENT. CODE § 36-21.1-06 (1987); OHIO REV. CODE ANN. § 959.99(D) (West Supp. 2000); OR. REV. STAT. §§ 167.347, .350 (1999); 18 PA. CONS. STAT. ANN. § 5511(m) (West 2000); R.I. GEN. LAWS § 4-1-2(B) (1998); S.D. CODIFIED LAWS § 40-1-34 (Michie 1991); UTAH CODE ANN. § 76-9-301(9)

particular animal cruelty offenses.<sup>436</sup>

In cases of deliberate animal cruelty, forfeiture should be mandatory under state anticruelty statutes. An individual who willfully beats or tortures an animal has revealed a lack of impulse control and a disregard for the suffering of another living creature such that forfeiture may be the only way to protect the abused animal from further harm.<sup>437</sup> In addition, forfeiture is an appropriate punishment of those defendants who have so utterly abandoned their moral and legal responsibilities to their animals. In cases of animal neglect, particularly neglect caused by ignorance or poverty, state statutes should afford judges the discretion to allow the defendant to retain ownership of the animal only if the defendant demonstrates to the court sufficient resources to care for the animal. In addition, the defendant should be required to complete an education program on the humane treatment of animals.

A number of state animal cruelty statutes also provide that the court may prohibit a convicted defendant from having custody of any animals, including the abused animal, for a prescribed period of time.<sup>438</sup> Other state statutes should be amended to include such a provision. Restrictions on animal ownership are appropriate in cases where the perpetrator has deliberately tortured an animal or where the perpetrator has had previous convictions of animal abuse. The restriction could be limited to a suitable

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(1999); VT. STAT. ANN. tit. 13, §§ 353(b)(1), (b)(3), (c) (1998); WIS. STAT. § 951.18(4)(b) (1996 & Supp. 2000).

436. CAL. PENAL CODE § 597(f) (West 1999); DEL. CODE ANN. tit. 11, §§ 1325(c)-(d) (1995); ME. REV. STAT. ANN. tit. 17, § 1021.5.C (West Supp. 2000); R.I. GEN. LAWS § 4-1-22 (1998); TENN. CODE ANN. § 39-14-202(d) (1997); VA. CODE ANN. §§ 3.1-796.115(D)-(E) (Michie 1994); WASH. REV. CODE ANN. § 16.52.200(3) (West 1992 & Supp. 2001); W. VA. CODE § 61-8-19(c) (2000).

437. Of course, forfeiture may mean that the abused animal ends up in a county animal facility, where it is likely to be euthanized. See Anne Arundel, *Animal Shelter to Open*, WASH. POST, Nov. 27, 2000, at B3 (reporting that over half of animals at a county shelter in Maryland are euthanized); Bo Emerson, *Dying for Space: Metro Shelters Two Years Later*, ATLANTA J. & CONST., Sept. 24, 2000, at 1C (stating that twenty tons of household pets are destroyed weekly in Atlanta area shelters); Lee Leonard, *Fund Would Help Curb Unwanted Dogs, Cats*, COLUMBUS DISPATCH, Sept. 20, 2000, at 7C (stating that two-thirds of dogs and cats in animal shelters are euthanized according to 1996 Ohio State University survey); Heidi Mulik, *Friends of Animals Keep Pressure On*, RICHMOND TIMES DISPATCH, Nov. 8, 2000, at N6 (stating that 74% of dogs and cats at a county shelter in Virginia are euthanized). Ideally, the forfeited animal would be placed in a loving home or at least in a no-kill animal shelter.

438. See, e.g., FLA. STAT. ANN. § 828.073(4) (West 2000); MICH. COMP. LAWS ANN. § 750.50(6) (West 1991 & Supp. 2001); MINN. STAT. § 343.21(10) (1990 & Supp. 2001); MONT. CODE ANN. § 45-8-211(3)(b) (1999); TENN. CODE ANN. § 39-14-202(d) (1997); UTAH CODE ANN. § 76-9-301(9)(b)(c) (Supp. 1998); VT. STAT. ANN. tit. 13, § 353(b)(1)(3) (1998); VA. CODE ANN. §§ 3.1-796.115(G)-(I) (Michie 1994); WASH. REV. CODE § 16.52.200(3) (1992 & Supp. 2001); W. VA. CODE § 61-8-19(h) (2000); WIS. STAT. § 951.18(4)(c) (1996 & Supp. 2000); WYO. STAT. ANN. § 6-3-203(j)(ii) (Michie 1999 & Supp. 2000) (all stating that the court may prohibit the defendant from retaining custody of any animal).

period during which the offender could be required to complete a treatment program.

Approximately one-fifth of state anticruelty statutes currently require that fines assessed against convicted animal abusers be remitted to a special fund devoted to animal welfare.<sup>439</sup> Especially in states where general funding for animal protection is insufficient, such fines could be crucial in the establishment of humane education programs, creation of additional animal shelters, direct financial support of pets in lower income families, and the development of other programs designed to enhance the quality of life for companion animals. Courts should be able to assess punitive fines in addition to requiring that the defendant pay for the cost of caring for animals seized from the defendant.

Finally, very few shelters exist where battered spouses and children fleeing a violent family situation can bring their pets.<sup>440</sup> The absence of such shelters means either that the pet is left behind in the abusive home as the only target of the abuser's anger<sup>441</sup> or that the human victims may decide not to seek refuge in a shelter for fear of abandoning their pet. State and local legislatures should appropriate money to create specific shelters where battered victims may reside safely with their pets.<sup>442</sup> Communities that have only one shelter for victims of domestic violence should attempt to coordinate with their local humane shelter to house the victims' companion animals until the victims can resolve their domestic situation.<sup>443</sup>

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439. COLO. REV. STAT. ANN. § 18-9-201.7 (West 1999 & Supp. 2000); DEL. CODE ANN. tit. 3, § 7902 (1993 & Supp. 2000); D.C. CODE ANN. § 22-806 (1996); LA. REV. STAT. ANN. § 3:2393 (West 1987); N.J. STAT. ANN. § 4:22-55 (West 1998); OHIO REV. CODE ANN. § 959.13(C) (West 1994); R.I. GEN. LAWS § 4-1-20 (1998); S.C. CODE ANN. § 47-1-160 (Law. Co-op. 1987 & Supp. 2000); TENN. CODE ANN. § 39-14-210(d) (1997); WASH. REV. CODE § 16.52.200(5) (1992 & Supp. 2001).

440. See AMERICAN HUMANE ASSOCIATION, OPERATIONAL GUIDE: HANDLING THE PETS OF DOMESTIC VIOLENCE VICTIMS 1 (1997). For example, the metropolitan Chicago area does not have a domestic violence shelter that accepts pets. Telephone Interview by Rudolph L. Oldeschulte with Jennifer Welch, Director, Cook County Battered Women's Network, Chicago, Ill. (May 30, 2000).

441. There is evidence that batterers and molesters frequently attempt to control their spouses and children by threatening to maim or kill the family pet. See Frank Ascione, *Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals*, 1 J. EMOTIONAL ABUSE 119, 125 (1998); Elizabeth DeViney et al., *The Care of Pets Within Child Abusing Families*, 4 INT'L J. FOR STUDY ANIMAL PROBS. 321, 325-28 (1983); see also *State v. Pugsley*, 911 P.2d 761, 772 (Idaho 1996) (noting that the defendant child molester killed animals in front of the molested children to ensure their silence); *State v. Twist*, 528 A.2d 1250, 1255 (Me. 1987) (stating that the defendant child molester killed the family cat in front of the molested children to control them).

442. It would seem impracticable simply to open up existing shelters to pets since some victims of domestic violence may be allergic to cats or dogs or be afraid of them. A shelter dedicated specifically to families with pets might help to address this problem.

443. To make the arrangement satisfactory to the pet owners, the local animal shelter cooperating with a domestic violence shelter would have to provide the resources to house the pets of domestic violence victims for some period of time. Many animal shelters, of course,

## V. CONCLUSION

No doubt attitudes about animal cruelty and neglect are changing, and society is moving slowly toward realizing that a truly civilized community must care for all of its vulnerable members, including the impoverished, the elderly, children, and domesticated animals. Obviously, with the tremendous problems of poverty, crime, uneven distribution of educational opportunities, racial inequality, and family violence that our society faces, it is easy to put the issue of animal abuse on the back burner. We have only so many resources to devote to improving the lot of our fellow humans, not to mention animals.

This Article has attempted to draw out three views of the relationship between animal interests and human interests that can be gleaned from philosophical, religious, and legal literature and to trace the evolution in that literature from the view that human interests are always paramount to animal interests to the view that animal interests and human interests are interrelated to the view that animal interests are separate from but equal to human interests. Although this third view finds only limited acceptance in our culture and laws, one need not embrace it to find that our current animal cruelty statutes are inadequate in many ways. To bolster the idea that human and animal interests are intertwined, the Article explored the link between animal cruelty, particularly by children and adolescents, and adult violence and examined the law's role in prevention. Social science studies have tended to establish that a significant percentage of juvenile animal abusers progress to commit violent and nonviolent crimes as adults. Juvenile animal abuse seems to be a symptom of a severely troubled and often violent personality.

This Article has suggested that state anticruelty statutes should be amended to address more effectively the problem of animal abuse, particularly abuse by children and adolescents. The proposed animal cruelty statute would protect at least vertebrate domesticated or captive animals. It would provide felony-level penalties for second and subsequent acts of animal abuse and for deliberate torture of animals. It would require veterinarians and child welfare officers to report suspected cases of animal abuse to the law enforcement authorities. It would mandate psychiatric evaluation and, if appropriate, counseling for juvenile and adult perpetrators of animal abuse. It would afford the courts discretion to order forfeiture of the abused animal and restrictions on ownership of any animal for a given period of time.

To augment the preventative role of the criminal law, state legislatures should also fund humane education programs, treatment programs for

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make space for new animals by euthanizing the ill or unadoptable animals or by placing the healthier animals for adoption. Pet owners who hope to reclaim their pets would need assurances that their pet would be safe and available to be picked up later.

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animal abusers, and shelters for victims of family violence that allow pets. Humane education programs, especially those directed at children, can help create feelings of empathy for pets and inform pet owners of the proper way to care for their animals. Appropriate treatment programs, such as multisystemic therapy and other early intervention schemes, can divert young animal abusers from the path of deviant behavior and help them to acquire the educational and social skills to thrive as adults. Finally, creation of battered victims' shelters that accept pets will go a long way in permitting animals as well as spouses and children to escape the cycle of family violence.