

The Unequal Treatment of Animals by Species and Practice in the United States: A Moral and Legal Dilemma

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Every state in the United States of America has a complex web of laws protecting at least some animals from cruelty and neglect. Although many advocates agree that these laws do not afford legal rights to animals, as “rights” are defined under American Law, they do provide the principal (and in some cases only) legal protection available to animals in this country. Depending on the severity of the crime and other factors, state law may consider animal cruelty an infraction, a misdemeanor, or a felony.¹ Most often, the conduct encompassed by anti-cruelty laws is classified as a lower level misdemeanor offense; however, as of today, forty-six states and the District of Columbia have at least one felony anti-cruelty law. Only four states—Idaho, Mississippi North Dakota and South Dakota—currently have no felony-level anti-cruelty law.

Of more interest, however, is the fact that America’s first anti-cruelty law

¹ Infractions, misdemeanors and felonies provide varying levels of penalties, with infractions providing the lowest level penalty (usually a small fine with no jail time or other penalties) and felonies imposing the highest level of penalty (oftentimes a substantial fine, one or more years in prison, community service, restitution and/or other penalties as the court deems appropriate).

was enacted over three hundred years ago (by the Massachusetts Bay Colony in 1641), followed by the first state anti-cruelty law in 1804, but that thirty-nine (more than eighty percent) of the existing felony anti-cruelty laws were only passed in the last fifteen years. This heightened legislative activity in the 1990s and first decade of this century suggests a pronounced fundamental, and very recent, change in the level of interest and willingness of states to address more vigorously animal abuse and neglect through the legislative process.

One theory many scholars point to as forming the basis for this recent interest and activity in anti-cruelty laws is the plethora of scientific studies demonstrating that a direct link exists between animal abuse and other forms of human violence. Over the past several years, a near constant stream of newspaper and magazine articles has presented this information to the public,² causing (or maybe responding to) an increased interest in animal abuse issues in communities across the country.

Even before credible scientific research findings on the subject became generally available, the link between animal abuse and human violence made intuitive sense to most people. In 1751, the English artist William Hogarth printed

² See, e.g., Deirdre Connor, *If Done to Animals, Are People Next? Why Animal Abuse Begins and Where it Ends*, Florida Times-Union, Feb. 16, 2009, at A-1; Jack Leonard, *Officials Sic Prosecutors on Animal Abusers*, Virginian-Pilot, Feb. 14, 2009, at Q2; Editorial Pages Desk, *Cruelty Link: The Killers Who Abused Animals*, L.A. Times, Feb. 11, 2009, at A-22; Michelle Lore, *Attorneys Suggest Asking Judge in Minnesota to Extend Protection to Household Pets*, Minnesota Lawyer, Jan. 19, 2009, at News section; Phil Arkow, *National Expert Warns of Abuse Link: Law Enforcement Can Use Animal, Human Connection as Tool, He Says*, The Record (Stockton), Jan. 3, 2009, at Opinion; Don Stacom, *Judge Highlights Legal Tool Against Animal Cruelty; Mandatory Counseling*, San Bernardino County Sun, Jan. 3, 2009, at A14.

a series of four engravings, entitled “The Four Stages of Cruelty.” The engravings follow the criminal path of “Tom Nero”, starting with his torture of a dog in the first engraving, theft and murder in the next two engravings, and ending with a final engraving (entitled “The Reward of Cruelty”) that depicts Tom as a corpse being publicly dissected, having been convicted and hung for his crimes. The engravings simply illustrate in graphic fashion what we now recognize as a tragic, yet common, social “link” phenomenon. Dramatic modern day examples of this phenomenon focus on the more infamous serial killers of the past 20 years. Without exception, every serial killer in United States history has been shown to have a history of violence against animals.

Yet today, our knowledge of this phenomenon has more than anecdotal or intuitive bases. Sociologists, criminologists, psychologists and other scholars and practitioners have studied and documented the link, and there are now numerous peer-reviewed studies³ exploring the “link” and its various permutations.

The first well-documented evidence of the link resulted from a study of eighty-four prison inmates. The study, conducted in the 1960s, found that seventy-five percent of those charged with violent crimes had early records of cruelty to

³ A number of these studies can be found in: *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Randall Lockwood & Frank R. Ascione eds., 1998); *International Handbook of Animal Abuse and Cruelty: Theory, Research, and Application* (Frank R. Ascione ed., 2008); and also at the following websites: Humane Society of the United States, <http://www.hsus.org>; Humane Research Council, <http://www.humanespot.org>; American Humane, <http://www.americanhumane.org>; The Latham Foundation, <http://www.latham.org>.

animals.⁴ Twenty years later, another study found that twenty-five percent of 152 aggressive inmates had committed five or more acts of animal cruelty as children, compared to only six percent of the nonaggressive inmates.⁵ In a second study, the same researchers interviewed criminals one-on-one to obtain historical descriptions of violent acts against animals. The results provided further support for their conclusion that childhood cruelty to animals is associated with later aggressive behaviors against people.⁶ A 1988 study of serial sex killers (and the largest such study to date) found that thirty-six percent admitted to committing animal cruelty as children, forty-six percent admitted to committing animal cruelty as adolescents, and thirty-six percent admitted to committing animal cruelty as adults.⁷

There is also a high correlation between family violence and animal cruelty. A study in 1983 of New Jersey families referred to youth and family services for reasons of child abuse reported that sixty percent of the cases had at least one member of the household who physically abused nonhumans. Notably, it was sometimes the child acting out on the abuse that s/he had suffered.⁸ A study in England resulted in similar findings: eighty-three percent of families reported for animal abuse had also been identified as at-risk families for child abuse and other

⁴ Daniel Hellman & Nathan Blackman, *Enuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime*, 122 Am. J. Psychiatry 1431 (1966).

⁵ Alan R. Felthous & Stephen R. Kellert, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 Hum. Rel. §12 (1985).

⁶ Alan R. Felthous & Stephen R. Kellert, *Violence Against Animals and People: Is Aggression Against Living Creatures Generalized?*, 14 Bull. Am. Acad. Psychiatry Law 55 (1986).

⁷ Ressler et al., *Sexual Homicides: Patterns and Motives* (Massachusetts, Lexington Books 1988).

⁸ DeViney et al., *The Care of Pets Within Child Abusing Families*, 4 Int'l J. Stud. Animal Probs 321 (1983).

violations by social service agencies.⁹ The professional journal *Social Work* printed a manual for therapists designed to predict potential violent behavior from patients that, not surprisingly, includes animal cruelty as a “factor highly associated with violent, antisocial behavior.”¹⁰ And in 1997, a study by the Massachusetts Society for the Prevention of Cruelty to Animals and Northeastern University found that seventy percent of people who committed violent crimes against animals also had criminal records for violent, property, drug, or disorderly conduct crimes.¹¹ This finding was further supported in a more recent study, conducted by the Chicago Police Department, that examined 322 animal cruelty arrests and discovered that seventy percent of those arrested had other felony charges (including homicides), eighty-six percent had multiple arrests, seventy percent had narcotics charges, sixty-five percent had been charged with violent offenses, twenty-seven percent had previous firearms charges, thirteen percent had been arrested on sex crime charges, and fifty-nine percent were alleged gang members.¹²

In demonstrating the syndrome of abuse, however, the 1997 study found that fifty-six percent of animal abusers who committed other crimes, committed those crimes prior to the animal offense. This finding is interesting because it does not

⁹ James S. Hutton, Animal Abuse as a Diagnostic Approach in Social Work: A Pilot Study, in *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* 417 (Randall Lockwood and Frank R. Ascione eds., 1998).

¹⁰ Barbara Star, *Patient Violence/Therapist Safety*, 29 *Soc. Work* 25 (1984).

¹¹ Carter Luke et al., *Cruelty to Animals and Other Crimes: A Study by the MSPCA and Northeastern University* (1997).

¹² *Chicago Police Department Statistical Summary of Offenders Charged with Crimes against Companion Animals, July 2001–July 2004*, Chicago Police Department (Illinois 2008).

support the previously generally accepted premise that violent individuals start by abusing animals and then graduate to human victims. Seen in this context, animal abuse is not so much the “canary in the coalmine” as it is part of an overall scheme of anti-social, community-based violence.

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As we learn more about this link, a number of other practical and public policy considerations also take on renewed prominence, such as the problem that abused women have when trying to decide if, when, and how to leave their abusers. Research has demonstrated that oftentimes these women have companion animals who are not welcome at domestic violence shelters, but who face possible abuse if left behind. One recent study found that almost half of pet-owning battered women reported real or threatened animal abuse by their partner, and over one-quarter reported that concern for their pets affected their decision to leave or stay with the

batterer.¹⁴ Another study similarly found that vast majorities of the women residing at domestic violence shelters were distraught about abuse experienced by family pets, and that a substantial minority delayed seeking shelter because of concerns for their pet's welfare.¹⁵ When a woman in that situation either delays or simply refuses temporary shelter out of concern for her pets, she leaves herself, her pets, and possibly her children, in an environment where further abuse is likely to occur. In response to this problem, many communities have established programs that provide a safe, confidential home for the pet while the woman is in residence at a domestic violence shelter.¹⁶

The net result of this research—and its dissemination to the public—is a heightened understanding of the importance of combating violent crime wherever it occurs, and against whomever it occurs. State and federal law enforcement now routinely examine whether animal cruelty was involved in other violent criminal activity, as this information provides important clues to identifying the wrongdoer, and can provide prosecutors with additional options for criminal charging, plea-bargaining, and sentencing recommendations.

Taking animal cruelty seriously as a community crime is also consistent with the original philosophical beliefs behind the first American anti-cruelty laws. The first laws did not focus primarily on the fact that reducing animal cruelty would

¹⁴ Catherine A. Faver & Elizabeth B. Strand, *To Leave or To Stay?: Battered Women's Concern for Vulnerable Pets*, 18 J. Interpers. Violence 1367 (2003).

¹⁵ Frank R. Ascione et al., *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13 Violence Against Women 354 (2007)

¹⁶ For examples of both on-site and off-site shelter programs, see American Humane Website, *Pets and Women's Shelters (PAWS) Program*, <http://www.americanhumane.org/human-animal-bond/programs/pets-and-womens-shelters/>.

reduce animal suffering. Rather, we reasoned that animals should be treated humanely both as an expression of our own compassion and to avoid the corrupting impact violence and cruelty have on human morals. The resulting decline in animal suffering was a nice benefit, but it was certainly not the principal driving force behind the laws as originally conceived. Today, discussions about animal anti-cruelty laws place more emphasis on the goal of reducing animal suffering, but protecting man's heart from hardening continues to play a significant role in the legislative process.

Turning these philosophical beliefs into a consistent legislative scheme, however, has proven to be an elusive task. Under American law, animals are property, and this fact can have a profound impact on how the law treats a given animal, depending on the context in which we are interacting with the animal. For example, a pet mouse can receive substantial protection from cruel treatment. If that same mouse is a biomedical test subject, however, it will receive no legal protection whatsoever under state or federal law.

In practice, this dichotomy between the "haves" and the "have nots" is so stark that any underlying philosophy seeking to reduce suffering or protect the human soul from corruption becomes meaningless. We tend to apply our lofty ideals through legislative action only when convenient and only when they do not interfere with our economic advantage or property rights dogma. Nowhere do we

see this dichotomy in such stark relief as when we compare the legal treatment of companion animals and farmed animals. For example, if beating a dog corrupts the human soul, why would beating a cow not have a similar corrupting effect? And if it does, then why don't we similarly legislate against that activity? Is there something that makes farm animals inherently different from companion animals? Does a "pet" pig have any less feeling than one raised for human consumption? Again, if not, then why do they receive such different treatment under the law?

To use a real life example, under federal law, a veterinarian in the U.S. can lose her license for simply failing to provide a cat or dog with properly ventilated housing and clean bedding.¹⁷ Farmers, on the other hand, can confine a pregnant pig in a crate so small that she is unable to move, leave her there for her entire four-month pregnancy, and then return her to the crate as soon as she is impregnated again. They can force a cow to spend its entire life indoors, depriving him or her of any opportunity for fresh air, grazing, or exercise. They can slice off the majority of a chicken's beak, without anesthesia, to keep her from pecking other chickens when confined in overcrowded cages. This is because, in spite of the United States' extensive state-level animal welfare and anti-cruelty laws, the large majority of these laws specifically exclude farm animals and agricultural practices from their protection.

¹⁷ 9 C.F.R. Part 3.

In fact, there are only two points in a farm animal's life when they receive any protection under federal law: when they go to slaughter, and when they are being transported long distances. Yet even these laws only apply to certain animals. Chickens, which account for ninety-five percent of all animals raised for human consumption, receive no federal protection at any point in their life. They can be transported to slaughter in extreme temperatures with no food, water or shelter, where they are then hung upside-down in shackles, run down a conveyor belt to have their throats cut and be dumped—sometimes while still conscious—into a tank of scalding water.

While there is no federal law that protects farm animals of any kind from abuse and suffering while living on the farm, the regulatory treatment of farm animals appears to be slowly improving at the state level. In recent years, a few states have established legally enforceable minimum standards for confining animals, while others have established criminal or civil penalties for livestock abuse or neglect. A handful of states have adopted both types of regulations. California, the largest agricultural state in the U.S., recently passed the most extensive law in the U.S. governing the confinement of farm animals. Starting in 2015, calves raised for veal, egg-laying hens and pregnant pigs must all have room and the ability to turn around in their cages, stretch their legs (or wings), stand up, and lie down. If fully implemented and enforced, the law could affect the lives of

20 million animals who spend more than half of their day—and often their entire day—confined in cages or crates. A handful of other states have similarly outlawed the use of gestation crates for pregnant pigs,¹⁸ and two states¹⁹ have outlawed the use of gestation crates for veal, but so far California is the only state to extend that protection to egg-laying hens.

State laws establishing civil and criminal penalties for the cruel treatment of livestock are even more varied, and most still provide some type of exception for agricultural practices. The state of Iowa, for example, makes it a criminal offense to abuse²⁰ or neglect²¹ livestock. The more severe abuse provision, however, applies only to non-owners. In other words, it is crime to go onto someone else's property and intentionally kill or injure their livestock, but legal to do so if the animal belongs to you, or if you are acting with the owner's permission. In the state of Texas, it is a criminal offense for either a non-owner *or an owner* to torture, neglect or abandon livestock, but the law does not extend to generally accepted agricultural practices.²² This means that such practices as de-beaking chickens and branding, castrating and tail-docking cattle are all perfectly legal, regardless of the pain that these practices cause to the animal. In fact, most states that extend anti-cruelty laws to livestock include a similar exemption for common

¹⁸ Arizona, Colorado, Florida, Maine, Oregon.

¹⁹ Arizona, Colorado.

²⁰ Iowa Code § 717.1A (Livestock abuse).

²¹ Iowa Code § 717.2 (Livestock neglect).

²² Tex. Penal Code Ann. § 42.09(a)(1, 5-8) (Cruelty to livestock animals).

or standard agricultural practices,²³ even when the language of the statute suggests a clear concern for the welfare of farm animals. In the state of Louisiana, for instance, any treatment of livestock during standard transportation and processing of agricultural products cannot be a criminal offense.²⁴ The same statute, however, specifically provides that when a person intentionally abuses or tampers with more than one head of livestock, each act is a separate offense.²⁵ If Louisiana was to remove its exemption for standard agricultural practices, this could have tremendous consequences for the owners and operators of factory farms. Of course, that is not the case, and the exemption is still alive and well.

There are signs, however, that this could change. In a landmark decision, the Supreme Court for the state of New Jersey recently rejected the notion that the cruel and inhumane treatment of farm animals is acceptable simply because it is part of routine husbandry practices and conducted by “knowledgeable” individuals in a way that minimizes pain.²⁶ The court also specifically rejected the state department of agriculture’s authorization of tail docking as a humane practice, noting that it could not uphold such an inhumane practice when there is no conclusive evidence that it provides any benefit to the animal or to the agricultural operation, and when the state permits it to be performed with no particular

²³ Miss. Code Ann. § 97-41-15 (Malicious or mischievous injury to livestock; penalty; restitution); Idaho Code Ann. § 25-3518 (Beating and harassing animals).

²⁴ La. Rev. Stat. Ann. § 14:102.1 (Cruelty to animals; simple and aggravated).

²⁵ *Id.* § 14:102.1(B)(5).

²⁶ New Jersey Soc. for Prevention of Cruelty to Animals v. New Jersey Dept. of Agriculture, 196 N.J. 366 (2008)

safeguards or standards. To date, New Jersey is the only state to reach such a conclusion, but hopefully other courts and state agencies will begin to follow their lead.

The state of Maine has taken a slightly different approach to livestock cruelty. Rather than exempting farm animals from its anti-cruelty laws, it allows the owner to assert an affirmative defense if the animal is kept as part of an agricultural operation (and in compliance with best management practices for animal husbandry).²⁷ This is important because it allows lawsuits to enter the court system and shifts the burden of proof to the agricultural operation. The state of Oregon also allows for the criminal prosecution of livestock abuse, including commercially grown poultry and other animals subject to “good” animal husbandry. The plaintiff, however, has the burden of demonstrating that the abuser acted with gross negligence.²⁸

Other states have begun to establish laws for reporting livestock abuse and confiscating abused animals. The state of Arizona, for instance, requires that veterinarians report any suspected livestock abuse to the proper authority, and protects them from civil liability as long as they report their suspicions in good faith.²⁹ In Virginia and New Mexico, state officials can seize agricultural animals

²⁷ Maine Rev. Stat. tit. 7, § 4011(2)(D) (Cruelty to animals).

²⁸ Or. Rev. Stat. § 167.335 (Exemption from [animal cruelty provisions])

²⁹ Ariz. Rev. Stat. Ann. § 32-2239 (Duty of veterinarian to report suspected dog participant of dog fight or animal abuse; immunity).

without owner permission if a court finds that the animal has been abandoned or cruelly treated, or if the owner has a history of convictions for abandoning or cruelly treating agricultural animals.³⁰ In Virginia, a court can consider the owner's mental and physical condition in determining whether to impound an abused or abandoned farm animal, and can even remove all other agricultural animals in their possession.³¹

Each of these regulations goes beyond the scope of federal law; however, in each case, farm animals are still treated differently than other animals. They are provided fewer protections and—where those protections do exist—the successful prosecution and enforcement of abuse and neglect can be extremely difficult.

The enforcement of animal cruelty laws in the United States is a major hurdle for *all* types of animals, but the problem is especially severe in the case of farm animals. Some enforcement problems stem from the laws themselves. The federal Animal Welfare Act, for instance, even if it did cover farm animals, does not have a citizen suit provision that would allow private citizens and organizations to file lawsuits on behalf of the abused animals. And, violations of state anti-cruelty laws, even where they do cover farm animals, must be pursued by a state prosecutor. Unfortunately, in the grand scheme of things, especially when faced with limited budgets, the prosecution of abuses against people nearly always takes precedent

³⁰ Va. Code Ann. § 3.2-6569 (Seizure and impoundment of animals; ...); N.M. Stat. § 77-18-2 (Seizure and disposition of cruelly treated livestock).

³¹ *Id.* § 3.2-6569(H)

over abuses against animals, and lawsuits against farmers (although we must now use this term very loosely) are an especially low priority. In the limited cases where the state does pursue a lawsuit aimed at protecting the welfare of farm animals, the standards for prosecution—that the abuse was malicious, intentional, and not associated with commonly accepted farming practices—can be nearly impossible to prove.

Even more pervasive than the regulatory obstacles, however, is a lack of public support and pressure for the protection of farm animals. Historically, Americans have viewed farmers as “protectors” of the land and animals. And to a large extent this was true, because the farmer’s livelihood—and the livelihood of his family—depended on his ability to sustain his land and keep his livestock healthy. There was no reason to label products as “free range,” because that was all that existed. In such an environment, Americans felt that it was not only unnecessary to regulate farmers, but that such regulation would be contrary to our agrarian philosophy—the idea that working the land and raising food was the most honorable profession, one that deserved extra protection under the law.

Unfortunately, the majority of Americans still retain this utopian vision of farming, in spite of the fact that most of the meat produced in the U.S. (and the world) now comes from industrialized “factory” farms owned not by individual

farmers but by corporations. The pure number of animals at these operations makes it impossible to maintain humane conditions.

Although there are signs that courts (and the public) are becoming more receptive to lawsuits against agricultural operations, as demonstrated by the recent New Jersey Supreme Court decision, there are still substantial obstacles for anyone trying to fight the inhumane treatment of farm animals. At the federal level, there is still no legal mechanism aimed at ameliorating the suffering of farm animals before they enter the slaughterhouse. And while state laws are becoming stronger, they are also highly fragmented, allowing corporations simply to move into states that support their practices. The state of Maryland, for example, explicitly exempts “dehorning, castration, tail docking, and limit feeding” from its animal cruelty laws, along with any activity that “may cause unavoidable physical pain to an animal, including food processing” as long as the person performing the activity uses “the most humane method reasonably available.”³² The state of Nebraska went to the extent of adding commercial farming into its exemption, explicitly providing that the states’ anti-cruelty provisions do not apply to: “Commonly accepted practices of animal husbandry with respect to farm animals *and commercial livestock operations, . . .*”³³ Other states, such as Utah, simply exclude

³² Md. Code Ann., Crim. Law § 10-603 (Application of [crimes relating to animals provisions]).

³³ Neb. Rev. Stat. § 28-1013(7) (Sections; exemptions [from offenses against animals provisions]).

agricultural animals from their definition of “animal.”³⁴ In addition, many states have “right-to-farm” laws that prevent citizens from bringing nuisance or other complaints against agricultural operations, as long as they are located on designated farmland, and often prevent local jurisdictions from adopting stricter regulations than those enacted by the state.

One might assume (and maybe correctly) that American law allows for the cruel treatment of farm animals—but not the cruel treatment of companion animals (or pets)—because most Americans live in urban areas and have never witnessed the horrible conditions on a factory farm. Most Americans interact regularly, on the other hand, with companion animals—be it their own, a friend’s, or the dog being walked down the street by a stranger. One could also assume that we treat them differently because Americans think cats and dogs are simply “cuter” than pigs and chickens.

But neither of these assumptions explains why the federal Animal Welfare Act—the same law that completely exempts food animals from its coverage—does govern the treatment of farm animals if they are being used for research, testing, and experimentation, in spite of the fact that most Americans also never see the inside of a testing facility. They are the same animals, with the same pain sensors, but used a different purpose. So there must be another explanation for why

³⁴ Utah Code Ann. § 76-9-301(Cruelty to animals).

Americans provide farm animals with protection in a laboratory but—in most cases—not on the farm. The answer to this question may simply come back to (widespread) public awareness, combined with enduring pressure from advocacy groups.

Groups such as the Humane Society of the United States and the Animal Welfare Institute were founded in the 1950s for the sole purpose of combating the use of animals in research and experimentation. It took nearly two decades for Congress to pass the first piece of “real” legislation addressing the care of laboratory animals.³⁵ It took another 15 years—and an extensive public awareness campaign—to pass the federal animal testing legislation as we generally know it today. In comparison, efforts to combat the cruel treatment of farm animals on the farm (as opposed to in the lab) are relatively new. One other important difference is that—as noted previously—many Americans still have an idealistic view of farming, one that may contribute to their sense of identity as an American and, as such, be difficult for them to give up. Americans have never had, on the other hand, an idealistic view of how animals are treated in laboratories.

Nonetheless, Americans have generally demonstrated a low tolerance for the cruel treatment of animals, and it seems reasonable to believe that an erosion of this romanticized view of farming—as more people become aware of the

³⁵ AWI was established in 1951 (<http://www.awionline.org/ht/d/sp/i/208/pid/208>); HSUS was established in 1954 (http://www.hsus.org/about_us/); Congress amended the Laboratory Animal Welfare Act to include care of animals in research institutions (and not just handling of animals by dealers) in 1970.

inherently cruel treatment of animals on factory farms—could generate sufficient pressure for a national reform of our farm animal cruelty laws. Whether we can accomplish this goal while still taking into account all other legitimate competing interests, such as economic, philosophic, legal and societal concerns, remains an open question. Only time will tell if farm animals (or laboratory animals) will ever receive the same level of legal protection, for the same philosophical reasons, as our companion animals.