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LEGAL DEFINITIONS OF CRUELTY AND ANIMAL RIGHTS

Anita Dichter*

I. INTRODUCTION

Legal definitions of cruelty to animals reflect the ethics of our society with respect to animal rights. In particular, such definitions reveal prevailing attitudes toward animal suffering. Omissions in the law which permit abusive treatment of animals without legal sanction indicate society's tacit acceptance of such abuse. Even when our society has recognized the need for animal protection statutes, animal welfare is generally not the true concern of such statutes. The underlying motivation for such legislation is too often a human interest in protecting property or preventing malicious behavior. The language of anti-cruelty statutes, construction of these laws in the courts, and specific statutory exemptions which result in a lack of legal standards for activities such as laboratory experiments on animals all point to an inescapable conclusion: animals may enjoy certain kinds of protection, but they do not possess legal rights. Until the law recognizes more than the human interests in preventing cruelty to animals, animals will have no right to be free from pain and suffering at the hands of humans.

In his essay, Should Trees Have Standing?, 1 Law Professor Christopher D. Stone notes that there is no generally accepted standard for the term "legal rights." Consequently, Stone posits a set of basic criteria for possessing legal rights against which to measure the rights of natural objects. Applying Stone's criteria to animal law will help point out the distinction between mere protection, such as that provided by anti-cruelty legislation, and the possession of legal rights.

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According to Stone, a fundamental requirement of being a "holder of legal rights," is that some public authoritative body will review actions inconsistent with that right.² Animals may meet this minimal criterion toward holding legal rights since anti-cruelty statutes define prohibited behavior against animals, and such behavior is subject to judicial review and punishment. However, as Stone points out, "for a thing to be a holder of legal rights, something more is needed than that some authoritative body will review the actions and processes of those who threaten it."³ He proposes three additional criteria, each of which must be satisfied: "All three, one will observe, go towards making a thing count jurally—to have a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit 'us' (whoever the contemporary group of rights-holders may be)."⁴ The three additional criteria are: "[F]irst, that the thing can institute legal actions at its behest; second, that in determining the granting of legal relief, the court must take injury to it into account; and, third, that relief must run to the benefit of it."⁵ For purposes of this discussion, it may be useful to rephrase these criteria substituting the following legal terminology. In order to be a holder of legal rights: (1) the animal must have standing to institute legal action; (2) substantive laws must be based on injury to the animal itself; and (3) the remedy or relief must benefit the animal. Each of these aspects will be analyzed in relation to current anti-cruelty legislation and judicial application of these laws.

II. Standing

The possession of legal rights is meaningless unless one has standing to vindicate those rights in court. The fundamental importance of the relationship between standing and the possession of rights was demonstrated in the Supreme Court decision, Sierra Club v. Morton.⁶ Sierra Club, an environmental group, sought to challenge proposed construction by Walt Disney Enterprises in Mineral King Valley, California, an area of great natural beauty. The plaintiff, however, was denied standing because there was no allegation that Sierra Club members made use of the area. The Court ruled that unless specific activities and interests of the plaintiff would be

¹ Id. at 11.
² Id.
³ Id.
⁴ Id.
⁵ Id.
adversely affected by the Disney development, the plaintiff could not maintain the suit. Clearly, an interest was being invaded, but it was not a demonstrable human interest. Mr. Justice Douglas dissented, and argued that the environmental issues should "be tendered by the inanimate object itself," and that the action might be properly labeled "Mineral King v. Morton." If ships and corporations have legal personality, he continued, then "[s]o it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. . . . The river as plaintiff speaks for the ecological unit of life that is part of it. . . ."9

In refusing to grant standing to the environmental group, the Sierra Club majority relied on the test for determining standing as set forth in Association of Data Processing Service Organizations, Inc. v. Camp.10 This two-part test requires (1) a showing of actual injury;11 and (2) an indication that the interest sought to be protected is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee. . . ."12 Such interests, although traditionally economic, may also be aesthetic, conservational or recreational.13 However, according to the Sierra Club majority, the interests invaded must be those of a human being, not the environment itself.14

Although at first glance animals appear to be the object of protection in anti-cruelty laws, in many instances animals (or their representatives) are unable to seek relief in court. As subsequent discussion will reveal, these laws actually protect human interests rather than the animal itself. This distinction is important in determining whether animals are within the zone of interests protected by the statutes and thus whether they have standing to bring an action in court.

Under the common law, animals were without rights.15 Cruelty to animals was dealt with as an invasion of the owner's property rights in the animal. Pain and suffering to the animal was not a considera-

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7 Id. at 752.
8 Id. at 742.
9 Id. at 743.
11 Id. at 152.
12 Id. at 153.
14 See Sierra Club v. Morton, id. at 734-35.
15 See McCausland v. People, 58 Colo. 303, 305, 145 P. 685, 686 (1914).
tion, and furthermore, only the owner could seek a remedy for the animal's injury or destruction. In no sense can it be said that an action for such injury was instituted on the animal's behalf or for the protection of its rights.

Anti-cruelty statutes have now superseded the common law and make certain behavior toward animals actionable in itself. No longer is it necessary for an animal's owner to show invasion of a property right in order for abusive treatment of an animal to be subject to judicial scrutiny. Query then whether animals are within the "zone of interests" to be protected by the anti-cruelty statutes, or in other words, whether they have standing under those statutes.

The final disposition of a case such as Jones v. Beame suggests that anti-cruelty statutes do not vest animals with standing to sue. In that case, a primary issue was whether standing should be granted to various individuals and animal welfare organizations who, on behalf of zoo animals, sought an injunction against operation of the Central Park and Prospect Park Zoos and the compulsory transfer of the animals to the Bronx Zoo. The plaintiffs alleged that poor environmental conditions in the zoos resulted in emotional damage and poor health to the animals. The plaintiffs proceeded, inter alia, under anti-cruelty statutes. The defendant, the City of New York, challenged the plaintiffs' standing to sue and also argued that the statutes, being criminal in nature, did not provide a civil remedy. The lower court held that enforcement of the statutes by civil action was implicit in the legislative mandate and intent, even though the relevant sections contained only criminal sanctions and enforcement procedures. The court also held that the plaintiffs had standing to bring the suit, observing that plaintiffs' allegations, if true, established cruelty to the animals in violation of the provisions of the statute. Dismissal of the action for lack of standing, the court noted, would have erected an impenetrable barrier to judicial scrutiny of the lawfulness of the City's maintenance of its zoos. As the court stated, "This case presents issues of importance and significance to our society. And justice required that judicial inquiry and resolutions of the grave questions not be thwarted."
By refusing to dismiss the suit and by emphasizing the allegations of cruelty to the animals in light of the statutory prohibition, the lower court, in effect, ruled that the animals were within the "zone of interests" protected by the statute. Had not this decision been reversed on appeal, it would have established a truly significant precedent in the area of animal law. However, the New York Appellate Division reversed the lower court decision, holding that plaintiffs did not have standing to bring suit for a declaratory judgment against the City for improper maintenance of a public facility.²¹ The court summarily stated that citizens could not challenge the management of a public enterprise. The substantive issues raised were not addressed or considered and the alleged violation of the anti-cruelty laws and the plight of the zoo animals thus went unheeded in court.

If substantive claims regarding treatment of animals never reach adjudication because plaintiffs lack standing, the protection offered by anti-cruelty statutes is greatly diminished. Since standing depends largely on the "zone of interests" protected by the statutes, further scrutiny of anti-cruelty statutes may reveal deficiencies which ultimately prevent animals from having standing to assert rights under the statutes. Under Stone's criteria, the law must focus on injury to the animal itself. Unless statutes have such a focus, animals have no rights under the statutes.

III. SUBSTANTIVE LAWS

Anti-cruelty statutes have been enacted in every state. At first glance they appear to promote humane treatment of animals as a value in itself, apart from rights of ownership in the animal. However, almost all of the anti-cruelty statutes either except certain classes of owners or activities from the statutory mandate or require an exacting standard of degree, knowledge, or intent before the statute applies.²² Additionally, courts have construed a requirement of such standards where they are not explicitly mentioned in the statute.²³ Such statutory language and construction indicates that it is not the intrinsic value of rights of the animal which motivates and guides our courts and legislatures. Instead, the property interest in the animal and the moral value that society attaches to certain types of human behavior are controlling.

²² See text at notes 25-52, infra.
²³ See text at note 53, infra.
Some states have followed the common law notion of property rights in animals by restricting protection only to "domestic" or "owned" animals. Where classes of animals are distinguished by virtue of ownership, the property rights of human beings are the protected interests and the rights of animals are at best secondary.

Certain classes of animals are either exempted or not included in many statutes because their inclusion would conflict with some human interest. That interest may be economic, the desire to advance knowledge, or simply an amusement. Nowhere are such distinctions and exemptions more unfortunately demonstrated than with respect to experimental animals. In a number of states, experimental animals in scientific institutions are specifically exempted from protection under the anti-cruelty statutes. Even where this specific exemption is not written into the law, researchers seem to enjoy limitless discretion in terms of setting objectives for research and conducting experiments.

Some federal regulation of laboratory animals is provided by the Animal Welfare Act of 1970. The original statute, the Federal Laboratory Animal Welfare Act, was written with the stated purpose of protecting the owners of dogs and cats from theft of their pets for use in research facilities. A secondary purpose was to insure that "certain animals intended for use in research facilities are provided humane care and treatment. . . ." It was not until the law was amended for the second time in 1976 that the purpose of providing humane care and treatment for laboratory animals was given priority in the law's statement policy.

The Animal Welfare Act provides for the registration of research facilities and for the marking and identification of animals. It sets standards for the housing, transportation, and handling of animals intended for use in research as well as for animals intended for exhibition or sold as pets. The law directs the Secretary of Agriculture to "promulgate humane standards" including minimum requirements with respect to handling, housing, feeding, watering,

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29 Id.
sanitation and ventilation. However, the Animal Welfare Act specifically excludes the application of humane standards to the actual experiments. As the Act states, "Nothing in this chapter shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to design, outlines, guidelines, or performance of actual research or experimentation by a research facility as determined by such research facility." 33

In other words, so far as actual experimentation is concerned, the researcher is not restricted at all by the statute. The Act also provides for the "appropriate use" of anesthetic drugs in conformity with the opinion of the attending veterinarian. 34 However, if the researcher determines that the objectives of the research project preclude the use of anesthetizing drugs, the experiment may proceed accordingly. "No attempt is made," one critic of the law points out, "to assess whether these 'objectives' are sufficiently important to justify the infliction of pain." 35 The assumption is that virtually any experiment is reasonable in relation to animal suffering. The researcher apparently has unlimited discretion in determining the value of the experiment, the necessity of inflicting pain on animals, and the advisability of using anesthetizing drugs.

Although periodically public furor is aroused when particular experiments, usually those involving cats or dogs, come to the public's attention, the nature and purpose of most of the estimated millions of animal experiments conducted in the United States every year are not common knowledge. They are generally considered to be justified on the basis of their contribution to medical science. Yet Peter Singer, a philosopher who examines this subject extensively in his book, Animal Liberation, concludes that most of the experiments are "trivial and obvious," 36 motivated by a "general goalless curiosity." 37 Singer believes that much of the research in the long run "turns out to have been quite pointless." 38 He postulates that if those experiments "serving no direct and urgent purpose" were to stop immediately, enormous numbers of animals would be spared pain, deprivation, and death. 39 Gerald Carson, in his book Man, Beast, and Gods, writes:

32 Id. at § 2143(a).
33 Id.
34 Id.
35 Id. at § 2143(a).
36 P. Singer, Animal Liberation 74 (1975).
37 Id. at 42.
38 Id. at 54.
39 Id.
40 Id. at 34.
Today painful procedures are carried out routinely in fields of inquiry that have nothing to do with the conquest of disease. Many of them raise, or should raise, questions of conscience. Permanent-wave lotions are injected into the eyes of rabbits held rigid in stocks, and at the Ohio State University, as this is written, rabbits are wearing contact lenses in search for softer materials, although softness can be measured mechanically in other ways than by punishing rabbits. The Ford Motor Company used baboons, strapped in sleds, as high-speed crash victims, because for precise data on impact and stress there is, apparently, nothing like a baboon. The Air Force has conducted experiments on pregnant monkeys in crash tests. Results are encouraging, but as is so often the case, the findings are only “preliminary” and will have to be repeated over and over. How many pregnant women are expected to fly military aircraft has not yet been disclosed.40

If, as Carson and Singer suggest, the most trivial experimentation is justified on the basis of satisfying mere intellectual curiosity, serious doubts are raised about the consideration of injury to the animal as an underlying motivation of our substantive laws. As we have seen, experimental animals as a class are virtually excluded from the protection of the anti-cruelty laws, and the Animal Welfare Act41 which applies to such animals, gives researchers almost limitless discretion in determining whether the nature and purpose of the experiments warrant animal suffering.

Descriptions from the journals of experimental research, cited by Singer in Animal Liberation,42 support the conclusion that the inadequate protection given to animals in this area is based on selfish human interests, and that the rationalization of “necessity” has little basis in fact.43 The vivid descriptions contained in these scien-

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40 G. CARSON, MEN, BEASTS, AND GODS 197 (1972).
42 P. SINGER, supra, note 35.
43 The citations in this note list the journal containing the information used by Singer, followed by the page reference to Animal Liberation.

Some of the most trivial experimentation is performed in the field of psychology. A typical kind of experiment is directed toward finding out how animals react to different kinds of punishment, usually varying degrees of pain. Electric shock is a familiar means of administering punishment, probably because the intensity of the shock, as well as its duration, can be regulated and measured. In one experiment, shock was administered to dogs’ feet through a grid floor; not surprisingly, the dogs reacted by jumping over a barrier to escape the shock. The passage over the barrier was later blocked with a piece of plate glass, the dogs in attempting to jump smashed their heads against the glass. As reported by Singer, the experimenters described themselves as “impressed” by the result that the dogs eventually ceased to resist the shock, and conclude that a combination of foot shock and the plate glass barrier was effective in eliminating jumping by dogs. 48 J. ABNORMAL & SOC. PSYCH. 291 (1953), P. SINGER at 38. In another experiment, researchers administered shocks to dogs in harnesses from which they had no means of escape, and afterwards placed these dogs in a shuttlebox
tific journals are a shocking reminder that in our society animals do not possess the right to be free from inflicted pain and suffering so long as the end or objective of the experimental activity is arguably reasonable.

Not only is experimentation often trivial and unnecessary but, even in the cases of substantial justifiable research, animal welfare is often subservient to human economic interest. Beyond the experimental context, trapping by the leg-hold steel trap is still permitted even though these traps cause acute and prolonged suffering which would, to most objective observers, constitute cruelty. More humane traps have been successfully opposed by those who profit from trapping. Factory farm animals are raised in miserable conditions, but they are outside the protection of the law. The Animal Welfare

where up to “50 seconds of severe, pulsating shock on each trial” was administered. This experiment produced the conclusion that a dog previously exposed to inescapable shock eventually “seems to ‘give up’ and passively ‘accept’ the shock.” 73 J. ABNORMAL PSYCH. 256 (1968), P. SINGER at 39. Giving chickens inescapable shock is more distressing than escapable shock. 78 J. COMP. & PHYSIOLOGICAL PSYCH. 22 (1972), P. SINGER at 40.

Researchers are also interested in the results of various kinds of deprivation, even where the results seem very obvious. Often, such deprivation involves food or water. In one such experiment, pigeons were starved to 70 percent of their normal weight so that researchers might conclude that “prolonged periods of food deprivation are typically followed by an increased responsiveness to food. . . .” 76 J. COMP. & PHYSIOLOGICAL PSYCH. 468 (1971), P. SINGER at 42. Experimenters caused rats to die from thirst and starvation and reported that “under conditions of fatal thirst and starvation young rats are much more active than normal adult rats given food and water.” 78 J. COMP. & PHYSIOLOGICAL PSYCH. 202 (1972), P. SINGER at 42. Producing psychological deprivation apparently requires more ingenuity: a well-known series of experiments conducted at the Primate Research Center in Madison, Wisconsin, involved the removal of baby monkeys from their natural mothers and, in an attempt to induce psychopathological behavior, substitute cloth monkeys were provided which could “become monsters” in a variety of ways. First, these substitute “mothers” would “eject high-pressure compressed air” which would “blow the animal’s skin practically off its body;” another model would “rock so violently that the baby’s head and teeth would rattle;” a third had a wire frame which could spring forward and eject the infant from its surface; and finally, the researchers devised a “porcupine mother” which would “eject sharp brass spikes over all of the ventral surface of its body.” In all these instances, the infants continued to cling to the surrogate mothers, or where ejected from the surface, would return to cling to the surrogate. These results the experimenters themselves found not too surprising, since as Singer notes, “the only recourse of an injured child is to cling to its mother.” 33 ENG. & SCI. 8 (1970), P. SINGER at 43-45.

Another major area of experimentation involves the testing of new substances before they are released. These experiments, according to Singer, rarely involve potentially life-saving drugs (as commonly supposed), but rather new cosmetics, non-essential food additives (such as colorings) and industrial and household goods. P. SINGER, ANIMAL LIBERATION, 49-51 (1975). The justification for inflicting pain on these animals may be said to be commercial rather than scientific. Many of these tests involve animals’ eyes to determine toxicity, irritation, and damage. In a typical experiment, the substance is applied to rabbits’ eyes, sometimes repeatedly over a period of several days. The damage is measured according to the “size of the area injured, the degree of swelling and redness, and other types of injury.” Id. at 50-51.
Act,\textsuperscript{44} which provides minimal space requirements for caged animals, as well as standards in housing, ventilation, feeding, and sanitation, specifically excludes “farm animals” from its designation of “animals.”\textsuperscript{45} According to Singer, factory farm animals are confined in stalls or cages with barely room to turn around for their entire existences.\textsuperscript{46} In addition to the physical discomforts of crowding and confinement, most units provide slatted floors for ease in maintenance, which damage the feet and legs of such animals as pigs.\textsuperscript{47} In the case of hens, wire floors damage the birds’ feet and sometimes result in their toenails becoming permanently entangled in the wire.\textsuperscript{48} Such conditions are apparently justified by economic convenience, with little or no consideration of the animal’s suffering.

Even where statutes do not specifically exclude certain kinds or classes of animals, courts may create exemptions by statutory interpretation. In 	extit{State ex. rel Miller v. Claiborne},\textsuperscript{49} for example, the court refused to enjoin the practice of cockfighting on the basis of the Kansas anti-cruelty statute. The statute provided:

(1) Cruelty to animals is:

(a) Subjecting any animal to cruel mistreatment; or
(b) Having custody of any animal and subjecting such animal to cruel neglect.\textsuperscript{50}

After a brief review of the history of the sport of cockfighting, the court concluded that gamecocks were not animals, therefore, they did not come within the prohibitions of the anti-cruelty statute. Such laws, the court noted, “have traditionally been directed toward protection of the four-footed animal, especially beasts of the field and beasts of burden.”\textsuperscript{51}

The court’s comment reflects old common law notions which equate animal protection with the owner’s propriety interest. Moreover, the court’s action demonstrates that even the human interest in amusement may override a seemingly explicit statute promoting animal welfare.

In addition to exemptions (either explicit or arising from judicial interpretation) for certain classes of animals or certain behavior

\textsuperscript{44} 7 U.S.C. §§ 2131-2156 (1976).
\textsuperscript{45} Id. at § 2132(g).
\textsuperscript{46} See generally P. Singer, Animal Liberation chapter 3 (1975).
\textsuperscript{47} Id. at 122.
\textsuperscript{48} Id. at 111.
\textsuperscript{49} 211 Kan. 264, 505 P.2d 732 (1973).
\textsuperscript{50} KAN. STAT. § 21-4310 (1974).
\textsuperscript{51} 211 Kan. at 268, 505 P.2d at 735.
with respect to animals, the anti-cruelty laws usually contain language which qualifies the statutory proscriptions. According to most statutes, not every act which results in pain or suffering to an animal constitutes cruelty. The ultimate standard seems to be the moral culpability of the actor rather than the right of the animal not to be subjected to pain. Malevolent purpose appears to be an essential requirement for commission of a crime under the anti-cruelty laws. Most crimes require a criminal or guilty intent, however, legislatures and courts seem to require more than the normal criminal intent in the area of animal cruelty. Often a deliberate and purposeful decision to cause the suffering itself is required to constitute cruelty. This requirement frequently results in a toothless statute, under which conviction is extremely difficult.

Even where a requirement of willfulness, malice, or intent is not written into the statute, the courts may construe the law with such a requirement. For example, in *People v. O'Rourke* New York City's Criminal Court considered proof of a hansom cab driver's mental culpability in driving a limping horse essential to the finding that the driver had violated the Agriculture and Markets Law. The

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82 Where the statutes stipulate that "beating" an animal is a prohibited act, the word "beating" is almost invariably qualified by the adverb "cruelly" which implies malice. Tormenting or torturing an animal is usually prohibited without qualifying words, but these terms already indicate maliciousness. Moreover, a number of states explicitly require that cruel treatment be willful. "Intentionally" or "willfully" means something more than acting with awareness. For example, Delaware defines cruelty as "intentionally or recklessly" subjecting an animal to "cruel mistreatment," Del. Code tit. 11, § 1325 (1974); intentionally, in this context, seems to mean that a deliberate and purposeful decision to cause suffering is required to constitute cruelty. Kentucky law contains the phrase, "intentionally or wantonly" before the prohibition against causing an animal "cruel or injurious mistreatment" by such acts as beating, torturing, tormenting, mutilating, abandoning, or neglecting an animal or causing it to fight. Ky. Rev. Stat. § 525.130 (1975). Louisiana requires behavior to be "intentional or criminally negligent" to violate the statute. La. Rev. Stat. Ann. § 14:102 (West 1974). Missouri and Oklahoma law add the qualification that actions be willful or malicious. Mo. Ann. Stat. § 563.670 (Vernon Supp. 1977); Okla. Stat. Ann. tit. 21 § 1685 (West 1951).


83 Misc. 2d 175, 369 N.Y.S.2d 335 (1975).

84 The applicable provisions of the New York Agriculture and Markets Law provide:
evidence in the record was "sufficient to support the conclusion that the horse was not given proper medical attention to alleviate the pain." However, the court stated, the "mere act of driving a sick, sore, lame or disabled horse is not, per se, torture intended to be prevented by the statute." The court added:

In order to convict a defendant under section 353 of the Agriculture and Markets Law, the defendant must have a culpable state of mind. Although the statute does not contain words requiring culpability, unless there is clear legislative intent to impose strict liability, a criminal statute should be construed as requiring mental culpability.

Under such a standard, problems of proof arise. Where the abusive act itself is not actionable, human corroboration may be necessary in order to prove the requisite degree of criminal intent. The fact that the driver continued to work the limping horse in O'Rourke was apparently insufficient in and of itself to show that the driver had a culpable state of mind. This was true even though limping is a physical manifestation of pain and the driver should have known that the horse was injured. The requirement of mental culpability was ultimately satisfied in O'Rourke because of evidence that an American Society for the Prevention of Cruelty to Animals inspector had warned the defendant that the limping horse was in no condition to be worked. On the following day, the horse, still limping, was driven again. The case is offered to question whether the court's requirement that the defendant have a "culpable state of mind" is a requirement which effectively precludes conviction except in the most extreme or unusual circumstances. It is urged that a more appropriate standard in a custodial relationship between an animal and a human being is one which would impose sanctions if the actor knew or should have known the consequences of his act or neglect.

The extent to which proof of culpability may legally sanction obvious cruelty to animals is demonstrated by State v. Fowler. In this case, a witness testified that she had observed the defendant

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A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal . . . or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed . . . is guilty of a misdemeanor . . .

N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1965). "Torture" or cruelty is defined as: "[e]very act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted." N.Y. AGRIC. & MKTS. LAW § 350 (McKinney 1965).

_people_ v. _O'Rourke_, 83 Misc.2d 175, 180, 369 N.Y.S.2d 335, 341 (1975).

_id_. at 179, 369 N.Y.S.2d at 340.

_id_.

beating his dog, then tying it up. She also stated that the defendant and his wife submerged the dog's head in a hole filled with water, and that the process was repeated for about 15 or 20 minutes, causing the dog to gag and choke. The witness testified that the defendant and his wife then untied the dog, hit it and kicked it, and tied it to a pole near the water-filled hole.

The defendant was charged with violating the North Carolina anti-cruelty statute which requires "willful" mistreatment of an animal. The court stated, "Willful means more than intentional. It means without just cause, excuse, or justification." According to evidence presented by the defendant, he and his wife were professional dog trainers, and their treatment of the dog was motivated by their desire to stop the dog from a habit of digging holes in the yard. The defendant argued that "a beating inflicted for corrective or disciplinary purposes without an evil motive is not a crime, even if painful and even if excessive." The court agreed. Citing an early New Hampshire case, the court noted that "punishment administered to an animal in an honest and good faith effort to train it is not without justification and not willful." Therefore, the court ordered the lower court's verdict of guilty set aside and ordered a new trial with instructions to be given to the jury that if it found that the defendant inflicted the punishment in a good faith effort to train the dog, it should return a verdict of not guilty.

Aside from such a criminal intent requirement making conviction virtually impossible except in the most unusual circumstances, it also reflects the notion that injury to the animal is not the focus of anti-cruelty legislation. The indication in Fowler that "reasonable" or "justifiable" injury to animals is permissible suggests that the moral culpability which society attaches to certain human behavior, rather than an ethical predisposition against animal suffering, is controlling.

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34 Id. at 147, 205 S.E.2d at 751.
35 Id. at 146, 205 S.E.2d at 751.
36 State v. Avery, 44 N.H. 392 (1862).
38 Id.
39 Id.
40 The case points out a further limitation on protection offered by anti-cruelty statutes. In jurisdictions which only protect domestic or "owned" animals, if the reasoning in State v.
Inconsistencies in the laws themselves with respect to classes of animals, standards of reasonableness and necessity, and requirements for culpability, preserve and support the attitude that animals exist for the use and benefit of human beings. One cannot deny that anti-cruelty statutes are important, both in practical terms and because they express generally the proposition that torturing animals is morally repugnant. At present "cruelty" is rather narrowly defined, and the laws are designed to discourage sadistic behavior and conserve the public morals rather than confer upon animals the inherent right not to be hurt. The conclusion compels a finding that animals are not within the "zone of interests" protected by the law, and thus do not possess standing to institute legal action. Consequently, the first of Stone's three criteria for possessing legal rights is not met. Without such rights, the gaps in our legal framework of animal protection will continue to exist.

IV. Remedy

According to Stone's third criterion, an animal cannot be said to be a "holder of legal rights" unless the relief for infringement of such rights benefits the animal. The typical punishment for violating the anti-cruelty laws is a fine, which may vary from $5 to $1000, but which usually seems to be within the $100 to $200 range. Such fines cannot be said to constitute relief in recognition of injury to the animal nor is the relief granted for the animal's benefit. Rather, such a remedy for cruelty to animals is a penalty imposed by the state for violation of its mandates. The remedy is thus consistent with the underlying purpose of the substantive laws, which is to discourage sadistic behavior and establish a public standard of morality.

In addition to criminal sanctions such as fines, civil actions with liberalized standing requirements should be possible. Interested citizens or animal protection organizations should be able to bring such civil suits on behalf of abused animals. Money damages based on harm to the animal could be awarded to the representative plaintiff in place of a fine paid to the state. Such money damages not

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Fowler, supra, note 50, controls (essentially allowing any act by the owners except reasonless cruelty), all animals are subject to abuse. The only effective statutory proscription applies solely to acts by non-owners against domestic animals.


**E.g.,** La. Rev. Stat. Ann. § 14:102 (West 1974). An appropriate class of animals for such relief would be, for example, the class of research animals.
applied directly toward the care and maintenance of the injured animal could be devoted to projects benefiting animals as a class. Such a plan would constitute relief on behalf of and in recognition of the harm to the animal.

Another kind of remedy that would directly benefit the animal is specific relief, such as injunction. Such relief is particularly appropriate where the cruelty is of an ongoing nature or where the injury cannot be remedied by money damages directed at one animal or a class of animals. This kind of relief was unsuccessfully sought by the plaintiffs in Jones v. Beame in their suit to enjoin operation of the New York City zoos on grounds of cruelty. In a case such as Jones, specific relief, such as transfer of the animals, would have effectively prevented further injury and continued suffering.70

V. CONCLUSION: A POLICY ARGUMENT—TOWARD NEW LEGAL STANDARDS

Under present law animals do not possess legal rights. The limitations of anti-cruelty statutes and the narrow construction of such laws in the courts compel the conclusion that the law is not based on injury to the animal. Animals are merely the indirect beneficiaries of minimal protection from harm because society wishes to curb malicious and cruel behavior. Anything that is reasonable, that is, appropriate to human interests, is apparently permissible, without regard for the actual pain or injury to the animal.

In order to confer rights upon animals, a fundamental shift in attitude is required with respect to the relationship of human beings to the rest of the natural world. Basically, our vision of the natural world is egocentric and utilitarian: the world exists for the use and benefit of "us." The primary justification for preserving the natural environment, for example, even among staunch environmentalists, is its present and continuing value to us. Indeed, the phrase "natural resources" incorporates the notion of something which is valued primarily for its use and benefit to human beings, whether that benefit be economic or aesthetic.71

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70 See note 17 and text at note 17, supra.
71 While money awards may have been used to improve the conditions in the zoo, any improvements would not have been made quickly enough to afford adequate relief to the animals.
72 The majority opinion in Sierra Club v. Morton, 405 U.S. 727 (1972), demonstrates the legal implications of defining our relationship with the natural world in such a manner. The environmental group was denied standing to sue because it failed to allege "use" of the area which it sought to protect.
An argument that animals have the right not to be mistreated may be based upon the same moral considerations that give human beings certain fundamental rights. The criterion for our recognition of certain rights is not merely a utilitarian one. For example, we do not tolerate slavery, although as oppressed persons, slaves are not in a position to challenge those who are holders of rights. According to a utilitarian perspective, it would be more beneficial, at least economically, to keep slaves in the fields. But our society considers the exploitation of certain groups of people by others to be morally reprehensible, and the law recognizes this fundamental injustice.

However, animals are not humans. The correlation between oppressed persons and animals strikes many as ridiculous. As Professor Stone points out, whenever there is a movement to confer rights on some new “entity,” the proposal seems absurd. "This is partly because,” Stone notes, “until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of ‘us’—those who are holding rights at the time.” Children were not always “persons” under the law, Stone points out, nor were blacks, women, slaves, or aliens. There is, as Stone suggests, something of a “seamless web involved” in proposing rights for entities which have no rights: “[T]here will be resistance to giving the thing ‘rights’ until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it ‘rights’—which is almost inevitably going to sound inconceivable to a large group of people.”

One basis for distinguishing between the rights of humans and animals is intelligence. If we followed this argument to its logical extreme, certain “necessary” cruelty to infants or mentally defective adults would be permissible. But in fact, we recognize that human beings possess certain fundamental rights by virtue of their humanity, regardless of their intellectual capacity or usefulness to society. Peter Singer’s argument for recognizing certain animal rights follows similar reasoning:

[T]here can be no reason—except the selfish desire to preserve the privileges of the exploiting group—for refusing to extend the basic principle of equality of consideration to members of other species . . . .

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72 See, C. Stone, supra note 1, at 8.
73 Id. at 8.
74 Id. at 4.
75 Id. at 9.
Attitudes to members of other species are a form of prejudice no less objectionable than prejudice about a person's race or sex. Singer makes an important distinction between extending equal or identical treatment to other groups or species and equal consideration according to needs, interests, or capacities. The differences between humans and animals would obviously give rise to different treatment and different rights, just as the differences between children and adults may give rise to different kinds of rights. Thus, it would be ridiculous to give infants the right to vote or dogs the right to free speech, since these rights would be meaningless in terms of capacity to utilize the rights.

Humans and animals share the capacity to suffer. Thus, animals should share with humans the right to be free from cruel abuse. The philosopher Jeremy Bentham made the following argument nearly two hundred years ago:

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. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of the legs...[is an] equally insufficient reason for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer?

The appropriate standard, then, is not intelligence, but consciousness. It is well recognized that animals possess a capacity to feel pain that is not demonstrably different from that of human beings. Indeed, one justification for research that involves animal responses to pain is that such responses have application to human pain.

Thus, the law should reflect at least two fundamental principles in defining cruelty to animals: first, that natural entities have intrinsic value simply by virtue of their existence, and this intrinsic value gives rise to certain rights; and second, that the capacity to suffer is the appropriate consideration in determining that animals

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77 Id., chapter 1.
78 J. Bentham, *An Introduction to the Principles of Morals and Legislation* 311, n.1 (1789) (Hafner ed.).
have basic rights in terms of that capacity.79

The idea that animals should possess legal rights seems radical today. However, civil rights movements have historically been viewed with analogous political skepticism. Law responds to the social conscience; changing attitudes have been reflected in legislation, court opinions, and legal scholarship. As forward-looking legislation and judicial opinions emerge in response to society’s changing ethics, legal recognition of certain rights will precede social change. Legal changes have not only influenced behavior, but have affected attitudes underlying such behavior. Thus, it is important that law, in all its aspects, take an active role in advancing the rights of rightless beings, such as animals.

79 The result of applying these principles to the substantive laws would be anti-cruelty statutes which focus on the harm to the animal—first, because the animal is a thing of value in itself and second, because pain is impermissible whether or not such pain is the result of evil intent. Such qualifiers as “maliciously,” “wantonly,” “reasonably,” or “necessarily” would be eliminated; these qualifiers have the effect of depicting the quality of the act in terms of the human actor, rather than in terms of pain to the animal. Thus, for example, beating an animal would be presumptive of cruelty, but since no rights are absolute, justifications such as self-defense, mental distress, and so on would be available as they are in crimes against human beings.