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I am proud to introduce the third issue (Volume II, Issue 2) of the Animal Liberation Philosophy and Policy Journal. This is a superb issue that takes on some very controversial topics relating to the Jewish Holocaust, the “rights” of “subsistence traditions” to kill animals, the meaning and possible consequences of the 2004 federal indictment of the “SHAC7” activists, and the relation of Kantian ethics to animal rights.

The Animal Liberation Philosophy and Policy Journal promotes open, critical, and interdisciplinary dialogue on a wide range of issues relating to animal rights and animal liberation. Whereas the “animal welfare” view seeks to reduce the suffering of animals without questioning the human right to use and kill them for various purposes, the perspective of “animal rights” rejects the hierarchy of human over nonhuman, views animals as subjects of a life rather than objects or property, and argues for the right of animals to be free of every form of human exploitation. Apart from Peter Singer’s utilitarian-welfare version, the standpoint of “animal liberation” is rooted in the abolitionist logic of animal rights, but analyzes the rationale of and/or defends various forms of direct action – legal and illegal – to achieve that goal.

CALA’s Animal Liberation Philosophy and Policy Journal seeks to explore the complex interplay among these views – as well as many others – while creating a new forum to discuss issues of animal liberation that exists nowhere else. As a professional, peer-reviewed academic journal, the Animal Liberation Philosophy and Policy Journal invites submissions on relevant topics (see our suggested topic list at: http://www.cala-online.org/Journal/topics.htm) from both scholars and activists. We also welcome reviews of recent books related to animal rights/liberation issues as well as critical commentaries on past issues.

We hope our readers enjoy the essays written specifically for our pages, and that you will help us in the goal of increasing the size of our readership, contributors, and academic board members. One of our future goals is to produce this journal in hard copy form purchased by university libraries around the world. In the meantime, we explore the opportunities and advantages of our online format which helps us to reach the largest possible audience. Animal rights/liberation is one of the key issues of the day and merits serious scholarly attention as well as radical social change.

In this issue, we are privileged to feature an essay by Karen Davis, noted author and founder of the United Poultry Concerns. “A Tale of Two Holocausts“ is a provocative analysis of the “dreaded comparison” (in Marjorie Spiegel’s words) between human and animal oppression and suffering. Specifically, Davis compares the Jewish Holocaust that transpired during the 1930s and 1940s and the ancient and ongoing Animal Holocaust that claims tens of billions of animal lives every year. By no means diminishing the tragedy experienced by millions of Jews (and others) at the hands of Hitler’s forces, Davis rejects the claim that the Jewish Holocaust was singular and incomparable with any other tragedy, such as befalls the animals. As Davis argues, every group’s experience with evil and suffering is unique, but that does not
preclude useful comparisons and analogies. When Jews and other oppressed people complain that they were treated “just like animals,” Davis focuses on the problematic fact that animal suffering is taken as a given and never questioned as a significant evil in itself. She underscores the irony that it is “acceptable to appropriate the treatment of nonhuman animals to characterize one’s own mistreatment, but not the other way around.” Along with “The Holocaust on Your Plate” exhibit developed by People for the Ethical Treatment of Animals (PETA), I hope that essays like Davis’ may help society to recognize the greater holocaust that unfolds invisibly everyday in laboratories, factory farms, slaughterhouses, and other macabre settings, and which is incorporated unthinkingly into most peoples’ everyday lives in acts such as wearing fur and leather and eating dismembered animal bodies.

Another controversial and important issue is explored in Lisa Kemmerer’s essay, “Hunting Tradition: Treaties, Law, and Subsistence Killing.” Kemmerer evaluates North American “subsistence traditions” that hunt animals as an important part of their culture and identities. Looking at rapid changes in these traditions due to modernization, Kemmerer analyzes the discontinuity between the traditional ways and the “ancient ethic” and contemporary lifestyles, worldviews, and practices. As she shows, many “subsistence tradition” cultures such as the Makah Indians have lost their original identities and only simulate the lifeworld of their distant ancestors. They hunt and fish with modern technologies as they kill animals in unsustainable ways. Kemmerer undertakes an important analysis of the meaning of “tradition,” drawing a distinction between “a continuance of old traditions” and the emergence of a “new tradition,” such that the latter requires a new legitimation for killing animals that is wanting. She concludes that in the contemporary, non-subsistence world there is no longer a need to kill, and so “harvesting” whales, shooting wolves, trapping fish and the like can no longer be justified. Kemmerer thus calls into question the validity of existing legal treaties protecting the hunting and fishing rights of “subsistence traditions” and calls for policy changes. She dispenses with romantic nostalgia for earlier cultures by showing changes in their society, the level of their killing, and often a lack of respect for life that would appall their ancestors. Kemmerer seeks to avoid ethnocentrism, but without succumbing to a relativism that strips the animal rights advocate of any grounds to criticize “traditional” hunting practices as wrong.

The moral theories of 18th century Enlightenment philosopher Immanuel Kant have not lost their attraction to philosophers over the last two centuries as they continue to be widely debated and applied to all areas of ethics, including animal rights. Kant’s “deontological” or “non-consequentialist” theory provided a direct contrast to the utilitarianism school that emerged in the 19th century. Kant emphasized reason over emotions and inclinations, and adherence to duty and moral law over calculating consequences of actions and (as it would later be put) promoting the greatest amount of happiness for the greatest number of people. Kant’s emphasis on human beings as ends-in-themselves rather than mere means to another’s end, and on the equality among moral agents in the “kingdom of ends,” proved highly influential in the development of human rights theory.

Kant’s views on animals, however, accorded with standard Western prejudices that they are inferior to humans in their “lack of rationality,” and so human beings have few if any obligations to them. Unlike with fellow humans, Kant argues, we have no “direct duties” to animals as they are not rational agents and ends-in-themselves. Rather, we have only
“indirect duties” to them insofar as they are someone’s property or because in causing them injury we could damage the moral sensibilities of human beings themselves. Kant’s views have influenced animal welfare theories that promote “responsible use” of animals, but are rejected by those who believe we have direct obligations to animals, independent of any possible human interest, and by those seeking a philosophical basis for animal rights.

Both Jeffery Sobo and Heather Fieldhouse theorize the value of Kantian theory for animal rights and animal liberation. In her essay, “The Failure of the Kantian Theory of Indirect Duties to Animals,” Fieldhouse observes that as Kant’s theories remain highly influential, they cannot be dismissed. The speciesist biases and logical errors in Kant’s philosophy must be confronted and overcome in favor of a stronger moral view that lies in the direction of direct duty and animal rights. In her illuminating discussion, Fieldhouse exposes major problems in the arguments of those who try to salvage Kant’s notion of indirect duty to animals as an adequate moral framework, and she concludes that “Kantianism cannot provide a firm basis for even minimal duties to animals.” She is open to attempts to reconstruct Kant’s theory along more satisfactory lines, but since “the connection between [human-defined] rationality and moral considerability is deeply rooted in Kant’s ethical theory, this is no small task.”

But this is precisely the task Jeffrey Sebo undertakes in his essay, “A Critique of the Kantian Theory of Indirect Moral Duties to Animals.” While sharing Fieldhouse’s reservations about the gross inadequacies of Kant’s indirect duty view, Sebo takes a very different and highly controversial approach to reading Kant. Sebo finds the resources for an animal rights ethic in Kant’s own views, and he argues that “Kantian ethics not only permits but entails the inclusion of animal rights.” According to Sebo, Kant is inconsistent with his own theory when he excludes animals from the sphere of direct moral action, and, properly understood, Kant’s ethic can and must protect animals as well as humans as ends-in-themselves. Sebo attempts to give Kant’s notion of “inclination” as important a role as his privileged view of reason and autonomy. Sebo offers an original, challenging, and thought-provoking interpretation of well-worn Kantian concepts. “I suspect that when the theoretical dust settles (and this may not happen for quite some time),” Sebo ventures, “Kantians will emerge as dedicated proponents for the animal liberation movement.”

Utilitarian Stephen Hanson constructs a challenging critique of arguments in defense of illegal direct action and the tactics of the Animal Liberation Front. Hanson begins with the claim that fundamentally, everyone is seeking the best results or consequences for animals, and thus to some extent are utilitarian in their reasoning. From utilitarian premises, then, Hanson argues against illegal direct action tactics on the grounds that the bad consequences (such as alienating public support of animal rights causes) outweigh the good, and in most cases the goal of animal liberation is better attained through education, legislation, and legally sanctioned approaches. Whereas direct activists insist substantive change for animals cannot possibly be achieved through strictly legal means in a political system dominated by corporate interests, Hanson usefully asks direct activists to carefully consider the potential drawbacks of illegal actions and ask if their ultimate objectives cannot be achieved better through creative use of education and legislation tactics.
In their timely essay, “Trial By Fire: The SHAC7, Globalization, and the Future of Democracy,” Steven Best and Richard Kahn offer an entirely new view of the Stop Huntingdon Animal Cruelty (SHAC) movement. They analyze the complex issues surrounding the 2004 arrest of seven activists associated with SHAC – the “SHAC7” -- and reflect on the implications of this case for activism and dissent in the “post-constitutional” climate of Bush and the USA PATRIOT Act. Best and Kahn take apart the demonizing portrayals of SHAC constructed by corporations, the state, and mass media, and clarify SHAC’s real intentions and goals. They argue that SHAC is not anti-science, but rather a progressive force struggling for a superior science and medicine unattainable through the vivisection research model. Offering valuable new insights and interpretations, they emphasize that the significance of SHAC and other direct action anti-vivisection groups is not limited to a “single issue” animal rights cause; rather, in their ability to impede powerful pharmaceutical and vivisection corporations, a major power in the global marketplace, they are also a potent anti-capitalist force. Moreover, Best and Kahn argue, SHAC must be seen as part of the anti-(corporate) globalization movement typically defined only in terms of human rights. In a helpful legal analysis, Best and Kahn show that SHAC’s actions, while often provocative, are legal and constitutionally protected, and therefore the government has no viable case against them. Rather, the federal indictment of SHAC on terrorist charges is a blatant attempt at repression and intimidation and should warrant the attention and solidarity of activists in every progressive movement. Similar to the “Chicago7” trial of the 1960s where issues of human freedom were on public display, the forthcoming SHAC7 trial is critical for our own times and the current struggle to extend rights to nonhuman animals.

Finally, as the Animal Liberation Philosophy and Policy Journal invites reader feedback and responses, it is with delight we present a response by Kathy Guillermo, senior writer for PETA, to Nathan Snaza’s essay, “Impossible Witness: Viewing PETA’s ‘Holocaust on Your Plate,’” (Animal Liberation Philosophy and Policy Journal, Volume 1, Issue 2). Whereas Snaza attributed to PETA the political aim of expanding the "liberal democratic notions of 'rights' to animals," Guillermo claims that PETA’s has no specific political goal other than elevating the societal view of animals from brute beasts to beings with whom we have strong commonalities. Guillermo also emphasizes the fact that the “Holocaust on Your Plate” campaign which proved so offensive to many in the Jewish community was initiated by Jewish members of the PETA staff. With Karen Davis, she rejects the “exceptionalist” argument that comparing the suffering of Jews and animals somehow demeans the Jewish community, and she promotes any means or medium that will raise more public dialogue about the true nature of animals and the horrible injustices the human species inflicts on them.

Dr. Steven Best
Chief Editor, Animal Liberation Philosophy and Policy Journal
A Tale of Two Holocausts

Karen Davis, PhD†

Abstract
An understandable resentment can come from the sense that the uniqueness of one’s own group’s experience with suffering is appropriated to fit the experience of another group. One group’s experience with suffering is unique, but not in such a way that it precludes comparisons or analogies with the suffering of other groups. For this reason, an experience of oppression, such as the Holocaust, may serve as an appropriate metaphor to reveal similarities inherent in other forms of oppression, such as the oppression of nonhuman animals by human beings.

“Holocaust victims WERE treated like animals, and so logically we can conclude that animals are treated like Holocaust victims.” – Matt Prescott, creator of PETA’s “Holocaust on Your Plate” campaign

“They are being treated as if they were animals.” International Red Cross Committee about prisoners in Iraq under American supervision.

A metaphor is a figure of speech in which a word or phrase denoting one kind of object, action, or experience is used in place of another to suggest a likeness between them. A purpose of metaphor is to provide a familiar language and imagery to characterize new perceptions. In the case of atrocity, a key purpose of these perceptions is to generate concern and inspire action on behalf of the victims. When the oppression of one group is used metaphorically to illuminate the oppression of another group, justice requires that the oppression that forms the basis of the comparison be comprehended in its own right. The originating oppression that generates the metaphor must not be treated as a mere figure of speech, a mere point of reference. It must not be treated illogically as a lesser matter than that which it is being used to draw attention to.

However, if these requirements have been met, there is no good reason to insist that one form of suffering and oppression is so

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exclusive that it may not be used to raise moral concerns about any other form of oppression. A perfect match of oppressions or calculus of which group suffered more isn’t necessary to make reasonable comparisons between them. If a person is offended by the comparisons regardless, it may be that the resentment is more proprietary than just, and thereby represents an arbitrary delimiting of moral boundaries.

That there could be a link between the Third Reich and society’s treatment of nonhuman animals is hard for most people to grasp. That nonhuman animals could suffer as horribly as humans in being reduced to industrialized products and industrial waste and treated with complete contempt—a clear link between Nazism and factory farming—contradicts thousands of years of teachings that humans are superior to animals in all respects. Not only is this a “humans versus animals” issue in the minds of most, but by this time the Holocaust has become iconic and “historical,” whereas the human manufacture of animal suffering is so “normal” and pervasive that many people find it hard even to regard the slaughter of animals as a form of violence. Yet the continuity is there. In this article I argue that comparing our systemic abuse of nonhuman animals to the Holocaust can enable us to gain some concrete knowledge about the destructive elements in human nature and what it means to be at the mercy of these elements. And I ask whether we have the ability—the will—to transform ourselves since we claim to hate violence and to value life.

Invoking the Pain of Others

Many Jewish people resent the comparisons that are currently being made by some animal advocates between the human-imposed suffering endured by millions of Jews under the Nazis and billions of nonhuman animals each year at the hands of animal exploiters. For, as Susan Sontag says in her book, Regarding the Pain of Others, “It is intolerable to have one’s own sufferings twinned with anybody else’s” (2003, 113). Tellingly, Sontag does not include animals in her book on the iconography of suffering or submit her particular claim about the intolerability of “twinned” suffering to analysis. She does, however, cite the reaction of the Sarajevans to a photo gallery of their plight that included images of the Somalians’ plight. “For the Sarajevans, it was . . . simple. To set their sufferings alongside the sufferings of another people was to compare them (which hell was worse?), demoting Sarajevo’s martyrdom to a mere instance. The atrocities taking place in Sarajevo have nothing to do with what happens in Africa, they exclaimed” (Sontag, 113).

While noting that “[u]ndoubtedly there was a racist tinge to their indignation” (113), Sontag assumes that sufferings can be legitimately compared, but she does not pursue the matter.
Nonetheless, two important issues emerge. First, members of an oppressed group often resent comparisons of their suffering with members of another oppressed group because they believe that the analogy demotes their suffering from something unique to “a mere instance” of generic suffering. Second, more than this, a group may feel that their suffering actually is more important than that of any other group. The question of just comparisons between or among different groups is important, since it is not just any suffering, but the unjust, deliberately imposed suffering one’s group has already endured (suffering intentionally imposed by humans as opposed to suffering incurred in the wake of a natural disaster such as an earthquake) which adds to the resentment one feels in having to protect one’s own group experience from appropriation by another group. The original injustice should not be compounded by the further injustice of being used, in Richard Kahn’s words, merely as “an emblem for more pressing matters” (Kahn 2004).

A problem that remains to be solved, notwithstanding, is how to win attention to sufferers and suffering that most people do not want to hear about, or have trouble imagining, or would just as soon forget. One way is to use an analogy (a logical parallel), or a metaphor (a suggested likeness) that already has meaning and resonance in the public mind. For example, oppressed people, such as slaughterhouse workers, say of themselves, “We are treated like animals,” and people who raise chickens for the poultry industry likewise compare themselves in the situation they are in to “animals.”

Matt Prescott, the creator of the controversial “Holocaust on Your Plate” exhibit for People for the Ethical Treatment of Animals (PETA), argues that the analogy works both ways. His exhibit, which consists of eight 60-square-foot panels, each juxtaposing photographs of factory farm and slaughterhouses with photographs from Nazi death camps, depicts the point made by Yiddish writer and Nobel laureate Isaac Bashevis Singer, who in his short story “The Letter Writer,” wrote, “In relation to [animals], all people are Nazis.” Prescott, who is himself a Jew with relatives who died under the Nazis, says that “when Holocaust survivors today try to relate the horrors they lived through, this is the very first analogy that comes to mind. They say, ‘we were treated like animals’” (Sept. 12, 2003).

**Treatment versus Experience**

However, the appropriation of animal suffering to express human suffering is seldom accorded the justice of reciprocity. On the contrary, at the time of this writing, many Jewish people have expressed indignation over comparisons that are being made by animal advocates between the human-imposed suffering endured by billions of nonhuman animals each year and the suffering endured by millions of Jews under the Nazis. At the same time, many Jews

support the comparisons and were sensitized to animal slaughter after experiencing or conceptualizing the massacre of Jews, as Charles Patterson demonstrates throughout his book, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (2002). My own stance on the issue appeared in a 1999 profile of my work in *The Washington Post*. In “For the Birds,” *Washington Post* writer Tamara Jones declared at the outset: “Yes, Karen Davis is serious when she says the extermination of 7 billion broiler chickens is the moral equivalent of the Holocaust” (Jones 1999, F1). After publication of the article, I received a voice-mail message denouncing my stance as anti-Semitic, even though the article stressed how my preoccupation with the evils perpetrated on innocent victims under Hitler had evolved to illuminate my awareness of humanity’s relentless institutionalized assault upon nonhuman animals (Jones, F3).

In a letter to the editor, an indignant writer justifies using animals to express human Holocaust suffering, but not the reverse: “Yes, the Nazis treated us like animals, maybe worse than animals,” she writes. “But it’s just an expression we use” (Jacobs 2003). It is acceptable, in other words, to appropriate the treatment of nonhuman animals to characterize one’s own mistreatment, but not the other way around. Advocates of this position believe that they can legitimately use the experience of nonhuman animals to characterize their own experience, even when the animals’ experience has not been duly acknowledged or imaginatively conceived of to any degree, and perhaps has been dismissed without further inquiry. If so, it may be asked why anyone would compromise the case for the incomparability of one’s own suffering by comparing it to the suffering of animals, given that nonhuman animals and their suffering are regarded as vastly inferior.

But it is precisely the distinction between “treatment” and “experience” that fuels resentment. To be “treated like animals” is an insult because the experience of animals is assumed to be vastly inferior to that of any human being, most of all one’s particular group. The worth of animals has traditionally been regarded as instrumental worth only. “Animals were put on earth for humans to use” is the standard formula, with “responsibly” or “humanely” tacked on as an afterthought. Presuming an immeasurable gulf between humans and animals allows one to appropriate animal abuse as a metaphor for one’s own mistreatment while simultaneously dismissing the metaphor, and hence the “animals,” as “just an expression.” In this figure of speech the term “animal” has no concrete or independent meaning even as “animal.” It is simply a code word for “humans badly treated by other humans,” though not necessarily in a sense that is troubling to the speaker, who may be as likely to dismiss the suffering of nonhuman animals with another formula, “They’re only animals.”
Invisible Mass Suffering

None of us knows, omnisciently, who suffers more in conditions of horror, human or nonhuman individuals. It may be that beyond a certain point, we cannot fully apprehend the reality of anyone else’s suffering. In her book The Body in Pain, Elaine Scarry says that “A person whose pain it is, knows it effortlessly, the person whose pain it is not, cannot know it even with effort.” While Scarry’s point is about human pain and the inability of other people to fathom it, what she says could apply to nonhuman animal pain and suffering as well: “It is easy to remain wholly unaware of its existence; even with effort, one may remain in doubt about its existence or may retain the astonishing freedom of denying its existence; and finally, if with the best effort of sustained attention one successfully apprehends it, the aversiveness of the ‘it’ one apprehends will only be a shadowy fraction of the actual ‘it’” (Scarry 1985, 4; quoted in Adams 1996, 183).

The problem of apprehending the pain of others is increased when the others are in a situation of mass suffering. The individual is submerged in a sea of suffering from the standpoint of onlookers. This is the opposite of the personal experience of being inside one’s private hell while engulfed by the hell of others. No wonder people who have suffered as whole populations are desperate to be seen. No wonder they resent having their suffering compared to the suffering of another group. What is felt to be even worse than being “twinned” with another group is to be indistinguishable to all forms of consciousness outside one’s own consciousness, which will be obliterated in one’s own death.1

A fundamental difficulty in drawing attention to the plight of factory-farmed animals is, similarly, that every situation in which they appear is a mass situation, one that appears to be, as in reality it is, a limitless expanse of animal suffering and horror (Davis 2004). Every factory-farm scene replicates this expanse, mirroring its magnitude of unmanageability. Except for the “veal” calf, whose solitary confinement stall and large sad eyes draw attention to him or herself as a desolate individual, all that most people see in looking at animal factories are endless rows of battery-caged hens, wall-to-wall turkeys, thousands of chickens or pigs. What they hear is deathly silence or indistinguishable “noise.” They see a brownish sea of bodies without conflict, plot, or endpoint.

To the public eye, the sheer number and expanse of animals surrounded by metal, wires, dung, dander, and dust renders all of them invisible and impersonal. There are no “individuals” and no drama on which to focus, only a scene of abstract suffering. Their horrifying pain is not even minimally grasped by most viewers, who are socialized not to perceive animals, especially “food” animals, as

individuals with feelings. These dispassionate onlookers have no concept of animals as sentient beings, let alone as individuals with projects of their own of which they have been stripped, such as their own family life and the comfort it brings, which was their birthright in nature. ²

Notwithstanding, it is reasonable to assume that animals imprisoned within confinement systems suffer even more, in certain respects, than do humans who are similarly confined. This occurs in a similar way that a mentally impaired person might experience dimensions of suffering in being rough-handled, imprisoned, and shouted at that elude a person capable of conceptualizing the experience. Indeed, one who is capable of conceptualizing one’s own suffering may be unable to grasp what it feels like to suffer without being able to conceptualize it, of being in a condition that could add to, rather than reduce, the suffering. It is in this quite different sense from what is usually meant, when we are told that it is “meaningless” to compare the suffering of a chicken with that of a human being, that the claim resonates. The biologist, Marian Stamp Dawkins, says that other animal species “may suffer in states that no human has ever dreamed of or experienced” (Dawkins 1985, 29). Matthew Scully writes in Dominion of the pain and suffering of animals in human confinement systems:

For all we know, their pain may sometimes seem more immediate, blunt, arbitrary, and inescapable than ours. Walk through an animal shelter or slaughterhouse and you wonder if animal suffering might not at times be all the more terrifying and all-encompassing without benefit of the words and concepts that for us, after all, confer not only meaning but consolation. Whatever’s going on inside their heads, it doesn’t seem “mere” to them. (2002, 7)

The 9/11 Controversy

For many Americans, the worst, most unjust suffering to befall anyone happened on September 11, 2001. Mark Slouka, in his essay “A Year Later,” in Harper’s Magazine, puzzled over “how it was possible for a man’s faith to sail over Auschwitz, say, only to founder on the World Trade Center” (Slouka 2002, 37). How was it that so many intelligent people he knew, who had lived through the 20th century and knew something about history, actually insisted “that everything is different now,” as a result of 9/11, as though, Slouka marveled, “only our sorrow would weigh in the record”? People who said they’d never be the same again never said that while watching on television or reading in the newspaper about other people’s and other nations’ calamities. In saying that the world as a result of the 9/11 attack was “different now,” they didn’t mean that “before the 9/11 attack I was blind, but now I see the suffering that is going on and

that has been going on all around me, to which I might be a contributor, God forbid.” No, they meant that an incomparable and superior outrage had occurred. It happened to Americans. It happened to them: “Rwanda? Bosnia? Couldn’t help but feel sorry for those folks, but let’s face it: Rwanda did not have a covenant with God. And Jesus was not a Sarajevan,” Slouka spoofed (39).

Following the 9/11 attack, I published a letter (Davis 2001; 2002) that raised such consternation in the mainstream media that it got me on the Howard Stern show (April 10, 2002; August 27, 2004). Without seeking to diminish the horror of 9/11, I wrote that the people who died in the attack arguably did not suffer more terrible deaths than animals in slaughterhouses suffer every day. Using chickens as an example, I observed that in addition to the much larger number of innocent chickens who were killed (more than 8.5 billion chickens in the United States in 2001), and the horrible deaths they endured in the slaughter plants that day, and every day, one had to account for the misery of their lives leading up to their horrible death, including the terror attack they had suffered several hours or days before they were killed, euphemistically referred to as “chicken catching.”

I compared all this to the relatively satisfying lives of the majority of human victims of 9/11 prior to the attack and added that we humans have a plethora of palliatives, ranging from proclaiming ourselves heroes and plotting revenge against our malefactors to the consolation of family and friends and the relief of painkilling drugs and alcoholic beverages. Moreover, whereas human animals have the ability to make some sort of sense of the tragedy, the chickens, in contrast, have no cognitive insulation, no compensation, presumably no comprehension of the causes of their suffering, and thus no psychological relief from their suffering. The fact that intensively raised chickens are forced to live in systems that reflect our dispositions, not theirs, and that these systems are inimical to their basic nature (as revealed by their behavior, physical breakdown, and other indicators), shows that they are suffering in ways that could equal and even exceed anything that we have known. Industry sources note, for example, that hens caged for egg production are so overwrought that they exhibit the “emotionality” of “hysteria,” and that something as simple as an electrical storm can produce “an outbreak of hysteria” in four-to-eight-week-old “broiler” chickens confined by the thousands in buildings (Bell and Weaver 2002, 89; Clark, et al. 2004, 2).

I wrote my rebuttal in response to comments made by philosopher Peter Singer, who in a review of Joan Dunayer’s book, Animal Equality: Language and Liberation (2001) challenged the contention that we should use equally strong words for human and
nonhuman suffering or death. He wrote: "Reading this suggestion just a few days after the killing of several thousand people at the World Trade Centre, I have to demure. It is not speciest to think that this event was a greater tragedy than the killing of several million chickens, which no doubt also occurred on September 11, as it occurs on every working day in the United States. There are reasons for thinking that the deaths of beings with family ties as close as those between the people killed at the World Trade Centre and their loved ones are more tragic than the deaths of beings without those ties; and there is more than could be said about the kind of loss that death is to beings who have a high degree of self-awareness, and a vivid sense of their own existence over time" (Singer 2002, 36).

There are reasons for contesting this statement of assumed superiority of the human suffering caused by 9/11 over that of the chickens in slaughterhouses, starting with the fact that it is not lofty "tragedy" that's at issue in Dunayer's book Singer is challenging, but raw suffering. Moreover, there is evidence that the highly social chicken, who is endowed with a "complex nervous system designed to form a multitude of memories and to make complex decisions" (Rogers 1995, 218), has self-awareness and a sense of personal existence over time. And who are we to say what bonds chickens living together in the chicken houses might or might not have formed? The chickens at United Poultry Concerns (the sanctuary that I run) form close personal attachments. Even chicken exploiters admit that they do (Davis 1996, 35, 148). The avian cognition specialist, Lesley J. Rogers, quoted above, says in her book, The Development of Brain and Behaviour in the Chicken, that modern studies of birds, including chickens, "throw the fallacies of previous assumptions about the inferiority of avian cognition into sharp relief" (Rogers, 218).

Cognitive Distance from Nonhuman Animal Suffering

But even if it could be proven that chickens and other nonhuman animals suffer less than humans condemned to similar situations, this would not mean that nonhuman animals do not suffer profoundly, nor does it provide justification for harming them. Scientists tell us, for example, that hens in transport trucks have been shown "to experience a level of fear comparable to that induced by exposure to a high-intensity electric shock" (Mills and Nicol 1990, 212). What more do we need to know? Our cognitive distance from nonhuman animal suffering constitutes neither an argument nor evidence as to who suffers more under horrific circumstances, humans or nonhumans. Even for animal advocates, words like "slaughter," "cages," "debeaking," "forced molting," and "ammonia burn" can lose their edge, causing us to forget that what have become routine matters in our minds – like "the killing of several million

chickens that occurs on every single working day in the United States,” in Peter Singer’s reality-blunting phrase – is a fresh experience for each bird who is forced to endure what these words signify.

In any case, the cognitive distance can be reduced. Vicarious suffering is possible with respect to the members of not just one’s own species but also other animal species, to whom we are linked through evolution. As Marian Stamp Dawkins says in her essay, “The Scientific Basis for Assessing Suffering in Animals,” just as the lack of absolute certainty does not stop us from making assumptions about feelings in other people, so “it is possible to build up a reasonably convincing picture of what animals experience if the right facts about them are accumulated” (Dawkins 1985, 28).

Animal Sacrifice and the Holocaust: Falsifying the Fate of Victims

In “Taking Life or ‘Taking On Life,’” Carol J. Adams and Marjorie Procter-Smith cite the following anecdote from the 19th-century women’s movement:

When Pundita Ramabia was in this country she saw a hen carried to market with its [sic] head downward. This Christian method of treating a poor, dumb creature caused the heathen woman to cry out, “Oh, how cruel to carry a hen with its head down!” and she quickly received the reply, “Why, the hen does not mind it”; and in her heathen innocence she inquired, “Did you ask the hen?” (Adams and Procter-Smith 1993, 304)

Similar to the myths circulated by US slavery owners about their human “property” during the nineteenth century, animal victimizers typically insist that their victims don’t mind their plight, or that they don’t experience it “as you or I would,” or that the victims are complicit in their plight, even, on occasion, to the point of gratitude. The victims, in other words, are not really “innocent.” Thus, for example, at his trial, Nazi leader Adolf Eichmann pleaded, regarding his deportation of tens of thousands of Jews to their deaths, that the Jews “desired” to emigrate, and that “he, Eichmann, was there to help them” (Arendt, 48). This is not exceptional psychology, as students of sexual assault – one form of rape – are well aware. Indeed, victimizers are very often likely to represent themselves, and to be upheld by their sympathizers, as the innocent parties in their orchestrations of the suffering and death of others. In Eichmann in Jerusalem, Hannah Arendt cites an Egyptian deputy foreign minister who claimed, for instance, that Hitler was “innocent of the slaughter of the Jews; he was a victim of the Zionists, who had ‘compelled him to perpetrate crimes that would eventually enable them to achieve their aim – the creation of the State of Israel’” (Arendt 1994, 20). If you want to hurt someone and maintain a clean
conscience about it, chances are you will invoke arguments along one or more of these lines: the slave/animal doesn’t feel, or doesn’t know or care, is complicit, or isn’t even there. In the latter case the victim is configured as an illusion.

This is a commonplace of victimizer psychology: the transformation of the sacrificial victim into a manifestation of something else in disguise, a being or spirit imprisoned in the manifestation that wants to be “let out,” a “vermin” or viral infection that requires a bloodletting ceremony of purgation to protect the community, “race,” or nation. In such cases, not only is the victim reconfigured to suit the victimizer’s agenda, but the victimizer too is different from what he or she appears to be – a murderer, say, as in the portrayal of Hitler is, “in reality,” the benignly-motivated liberator of a spiritual wish within the Jewish people to be free (think also of U.S. president George W. Bush as the alleged “liberator” of the Iraqi people).

To this day, animals are ritually sacrificed by Hindus whose practice is based on the idea that “the sacrifice of an animal is not really the killing of an animal.” The animal to be sacrificed “is not considered an animal,” but is, instead, “a symbol of those powers for which the sacrificial ritual stands” (Lal 1986, 201). Nor are Hindus the only ones who transmute animals rhetorically in this way. Consider the idea presented by Christian theologian Andrew Linzey, who in trying to rescue nonhuman animals from the traditional Christian opprobrium and moral indifference cites an interpretation in which animal sacrifice “is best seen as the freeing of animal life to be with God” (Linzey 1986, 130).

Indeed there is a tradition of thought in ancient Greek religion, in Judaic mysticism, and in other sectors of human culture in which nonhumans are said to benefit from being sacrificed by humans to the point of voluntarily “stretching out their necks” to assist in being slaughtered (Porphyry 1965, 36-37; Schochet 1984, 236-244; Schwartz 2001, 124-127). Advertisers tell us that pigs want to become Oscar Meyer wiener, and in the sacrificial language of Western science, animals who are but “tools of research” under one aspect stand forth as “engaged” in animal experimentation (Paul-Murphy, et al. 2004, 9). As Schochet says about the doctrine of metempsychosis (the belief that human souls can become trapped in “lower” life forms as punishment for their misdeeds), this doctrine, rather than promoting vegetarianism, “militated in favor of the consumption of flesh, for one thereby did the animal a favor” in releasing the human soul within to pursue its higher destiny (Schochet 244).

Challenges such as the “Holocaust on Your Plate” exhibit, and Charles Patterson’s book, Eternal Treblinka: Our Treatment of Animals and the Holocaust (2002), help to restore a more likely version
of the animals’ point of view. They stimulate people to confront how animals must feel being torn from their mothers at birth, mutilated, dumped in filthy dark buildings, treated like trash and brutally murdered. They force us to recognize that these animals, powerless to defend themselves, are condemned to the same excremental universe, the same abyss of abasement, loneliness, pain, and terror of imprisonment as were the Jews, Gypsies, homosexuals, and others characterized as “life unworthy of life” under the Nazis. They flout the taboos and expose the rationalizations. They puncture the solipsism in which we surround ourselves, in order to rescue billions of unacknowledged animal victims from anonymity and the ignominy and injustice of being consigned to the fate of a false and inferior existence in our minds.

The Absent Referent

The holocausts - burnt offerings – of the ancient Hebrews consisted of countless nonhuman animals, as did the religious animal sacrifices conducted throughout the ancient world by the Greeks, Hindus, Muslims, Native Americans, and other cultures (Regan 1986; Davis 2001, 33-43). Yet we are not supposed to regard those animals or their counterparts in today’s world, where the consumption of animals for food rises to ever-greater levels. We are not supposed to contemplate the experience of animals in being turned into “burnt offerings,” meat, metaphors, and other forms that obliterate their lives, personalities, feelings, and identities that we choose to confer.

The “Holocaust on Your Plate” exhibit restores what feminist writer, Carol Adams, refers to in The Sexual Politics of Meat as the “absent referent” (Adams 1990; 2000, 40-48). An absent referent is an individual or group whose fate is “transmuted into a metaphor for someone else’s existence or fate” without being acknowledged in its own right. According to Adams, “Metaphorically, the absent referent can be anything whose original meaning is undercut as it is absorbed into a different hierarchy of meaning.” The rape of women, for example, can be applied metaphorically to the “rape” of the earth in such a way as to obliterate women. As Adams explains:

The absent referent is both there and not there. It is there through inference, but its meaningfulness reflects only upon what it refers to because the originating, literal, experience that contributes the meaning is not there. We fail to accord this absent referent its own existence. (1990, 42)

In the role of absent referents, nonhuman animals become metaphors for describing human experience at the same time that “the originating oppression of animals that generates the power of the metaphor” is unacknowledged (Adams, 43), as when people say, “We’re treated like animals.” The meaning of the animals’ fate, for the animals themselves, for each individual him and her, is absorbed
into a human-centered hierarchy in which the animals do not count, or even exist, apart from how humans use, or have used, them. Our use becomes their ontology – “this is what they are” – and their teleology – “this is what they were made for.”

This process of “obscuring the face of the other,” as Maxwell Schnurer describes in his essay, “At the Gates of Hell,” is “vital to the reduction of living beings to objects upon whom atrocities can be heaped” (2004; 109, 117). And it is not species-specific. As Schnurer explains the process of obscuring the face of the other to achieve self-exoneration:

In the case of the Holocaust, it was necessary to sustain a complex infrastructure that enabled each participant to disguise his or her responsibility. In the case of animals, as Adams notes, it is essential that the acts of killing, enslaving, and torturing animals be well hidden from sight, so that the consumer only ever sees the finished “product.” For both systems of oppression, it is critical that the process be as compartmentalized as possible. The reason to obscure the face of suffering is as obvious as it is hidden – the vision of terrible actions can elicit sympathy and compassion, and often call for remedy. (117)

Who “Owns” the Holocaust?
The word holocaust is not species-specific, and therefore Jews have no ownership rights over it. From whatever source the word “Holocaust,” as it is now employed, came from, Jews have taken it over from the Greek word, bolokauston, which in ancient times denoted their own and others’ cultural practice of sacrificing animals, to designate the Nazi extermination of the European Jews. Conceivably, those animals could complain that their experience of being forcibly turned into burnt offerings (and to please or sate a god they would not necessarily have acknowledged as their god) has been unjustly appropriated by their victimizers, who are robbing them of their original experience of suffering. Through PETA’s “Holocaust on Your Plate” exhibit, the animals reclaim their experience, past, present, and future. Taking the animals’ view it may be said of them, as Bruno Bettelheim said of the millions of Jews and others who were systematically slaughtered by the Nazis, that “while these millions were slaughtered for an idea, they did not die for one” (Bettelheim 1980, 93).

In Animals in the Third Reich: Pets, Scapegoats, and the Holocaust, Boria Sax observes that the very word Holocaust “pertains to animal sacrifice.” Holocaust means “burning of the whole” (Sax 2000, 156). Sax explains that among the people of the ancient Mediterranean, the slaughter of animals was generally “a festive occasion with the inedible parts, bones, and gall bladder together with a little meat left on the altar for a deity, while the rest was consumed by human
In Hebrew sacrifice, a Holocaust was the entire animal “given to Yahweh to be consumed by fire. The prototype was the sacrifice of the shepherd Abel to Yahweh from his flock.” Use of the word holocaust for the Nazi murders, according to Sax, is “based on an identification between the Jewish people and the sacrificed animal. The imagery parallels the way Christ is traditionally represented as the sacrificial lamb. In a strange way the term Holocaust equates the Nazis, as those who perform the sacrifice, with priests of ancient Israel” (Sax, 156).

Sax says that the term holocaust was “first popularized in the 1960s by American Jews” (156). There was a felt need in the late 1950s, according to James E. Young in Writing and Rewriting the Holocaust, to distinguish between the particular Jewish experience under Hitler and the general experience of being a prisoner or killed in World War Two. Even so, the term holocaust, in being invoked to capture the essence of a unique catastrophe, was borrowed from ancient sacrificial usage and Jewish history in order “to grasp the unfamiliar in familiar terms” (Young 1988, 87).

Nor did the term holocaust arise strictly in reference to ancient history. “Holocaust” came to demarcate the experience of European Jews under the Nazis at a time when the term holocaust was used to characterize everything from World War I (“that holocaust swept over the world”) to the “holocaust of housework” (crashing glassware), as shown by numerous examples taken from the Palestine Post from 1938 to 1947 (Petrie, 2-3). According to Jon Petrie’s investigation of the etymology of the word, in the early 1960s, the most common referent of “holocaust” was nuclear war and destruction. For example, the cover of the November 4, 1961 magazine The Nation announces: “SHELTERS WHEN THE HOLOCAUST COMES.”

Petrie thinks that American Jewish writers “probably abandoned such words as ‘disaster,’ ‘catastrophe,’ and ‘massacre’ in favor of ‘holocaust’ in the 1960s” because “holocaust” with its evocation of the then dreaded nuclear annihilation effectively conveyed something of the horror of the Jewish experience during World War Two (Petrie 2004, 4).

Nobel Prizewinning author Isaac Bashevis Singer, who grew up in a Polish village where his father was a Hasidic rabbi, has one of his fictional characters, Herman Gombiner, say in the story, “The Letter Writer,” that towards the animals, all humans are Nazis, and for the animals, every day is Treblinka. (Treblinka was a Nazi death camp in Poland that began operating in 1942.) Herman, who lost his entire family to the Nazis, is thinking about a mouse he befriended whose death he believes he caused, and his sadness leads to a larger thought:

In his thoughts, Herman spoke a eulogy to the mouse who had shared a portion of her life with him and who, because of him, had left this earth. “What do they know – all those scholars, all those philosophers, all the leaders of the world – about such as you? They have convinced themselves that man, the worst transgressor of all the species, is the crown of creation. All other creatures were created merely to provide him with food, pelts, to be tormented, exterminated. In relation to them, all people are Nazis; for the animals it is an eternal Treblinka. And yet man demands compassion from heaven” (1935, 271).

Rather than trivializing “Nazi” and “Treblinka,” this usage conceptualizes these terms and the events to which they refer, making them stand for a certain type of atrocity – an extremity of inhumanity, victimization, and misery – of which there may be more than one manifestation, if not in every respect, yet in significant respects. In *Enemies: A Love Story*, the protagonist, Herman, visits a zoo. He compares the zoo to a concentration camp:

The air here was full of longing – for deserts, hills, valleys, dens, families. Like the Jews, the animals had been dragged here from all parts of the world, condemned to isolation and boredom. Some of them cried out their woes; others remained mute (Singer quoted in Rosenberger 2004).

Even animal rights author Roberta Kalechofsky declares, despite her opposition to Holocaust comparisons, that “Most suffering today, whether of animals or humans, suffering beyond calculation, whether it is physiological or the ripping apart of a mother and offspring, is in the hands of other humans. Pain is a curse, and gratuitous pain inflicted by humans on other humans or on animals is evil” (Kalechofsky 2003, 6-7).

**An Atrocity Can Be Both Unique and General**

Paradoxically, then, it is possible to make relevant and enlightening comparisons, while agreeing with the approach taken by the philosopher, Brian Luke, towards animal abuse. Luke writes: “My opposition to the institutionalized exploitation of animals is not based on a comparison between human and animal treatment, but on a consideration of the abuse of the animals in and of itself” (Luke 1996, 81).

Paradoxically, while the words “Nazi,” “Treblinka,” and “Holocaust” represent unique historical phenomena, they can also transcend these phenomena to function more broadly. And a broader approach to the Holocaust would appear to hold more promise for a more enlightened and compassionate future, surely, than attempting to privatize the event to the extent that its only permissible reference is self-reference. A broader approach also provides a more just apprehension of past and present atrocities, while connecting the
Nazis and the Holocaust to the larger ethical challenges confronting humanity.

In *A Little Matter of Genocide: Holocaust and Denial in the Americas 1492 to the Present*, Native American scholar Ward Churchill writes that the experience of the Jews under the Nazis “is unique only in the sense that all such phenomena exhibit unique characteristics. Genocide, as the nazis practiced it, was never something suffered exclusively by the Jews, nor were the nazis singularly guilty of its practice” (Churchill, 1997, 35-36). Furthermore, Churchill argues in his Forward to *Terrorists or Freedom Fighters: Reflections on the Liberation of Animals*: “Given that the key to the ‘genocidal mentality’ resides, as virtually all commentators agree, in the perpetrators’ conscious ‘dehumanization of the Other’ they have set themselves to exterminating, it follows that removal of the self-assigned license enjoyed by humans to do as they will to/with nonhumans can only serve to better the lot of humans targeted for dehumanization/subjugation/eradication” (Churchill 2004, 2-3).

Matt Prescott, who directs the “Holocaust on Your Plate” exhibit, argues that “Comparisons to the Holocaust are undeniable and inescapable not only because we humans share with all other animals our ability to feel pain, fear and loneliness, but because the government-sanctioned oppression of billions of beings, and the systems we use to abuse and kill them, eerily parallel the concentration camps.” He explains:

The methods of the Holocaust exist today in the form of factory farming where billions of innocent, feeling beings are taken from their families, trucked hundreds of miles through all weather extremes, confined in cramped, filthy conditions, and herded to their deaths. During the Holocaust, hundreds of thousands of men, women and children died from heat exhaustion, dehydration, starvation or from freezing to the sides of cattle cars. Those who arrived at the concentration camps alive were forced into cramped bunkers where they lived on top of other dead victims, covered in their own feces and urine. They were forced to work until their bodies couldn’t work anymore, and were then herded to their deaths in assembly-line fashion. Ten billion animals a year in the U.S. suffer through these same horrors every single day. We must ask ourselves: sixty years later, have we learned nothing? Why are we still transporting animals through all weather extremes, forcing them to endure extreme heat and cold? Why are we still confining them in conditions so dirty, the only way to keep them alive is through the extreme overuse of antibiotics? Why are we still ripping children away from mothers and leading them by the necks and legs to the kill floor?

Moreover, Prescott points out that the United States Holocaust Museum states in its guidelines for teaching about the
Holocaust that “The Holocaust provides a context for exploring the
dangers of remaining silent, apathetic, and indifferent in the face of
others’ oppression” (2004).

One of the many questions that emerge from the current
debate about the use of the Holocaust to illuminate humankind’s
relationship to billions of nonhuman animals is the extent to which
the outrage of having one’s own suffering compared to that of others
centers primarily on issues of identity and uniqueness or on issues of
superiority and privilege. The ownership of superior and unique
suffering has many claimants, but as Isaac Bashevis Singer observed
speaking of chickens, there is no evidence that people are more
important than chickens (Shenker 1991, 11).

There is no evidence, either, that human suffering, or Jewish
suffering, is separate from all other suffering, or that it needs to be
kept separate and superior in order to maintain its identity. But
where, it may be asked, is the evidence that we humans have had
enough of inflicting massive preventable suffering on one another
and on the individuals of other species, given that we know suffering
so well, and claim to abhor it? In Eternal Treblinka: Our Treatment of
Animals and the Holocaust, Charles Patterson concludes that “the
sooner we put an end to our cruel and violent way of life, the better it
will be for all of us – perpetrators, bystanders, and victims”
(Patterson 2002, 232). Who but the Nazi within us disagrees? If we
are going to exterminate someone, let it be the fascist within.

1 At the same time, a human or nonhuman animal’s suffering may be so extreme, so
unnatural and unbearable, that the longing arises never to be “seen” again. Take the
poem “The Snow Leopard in the MetroToronto Zoo” by Jason Gray:

He pads on grassy banks behind a fence
with measured paces slow and tense.

Beyond his cage his thoughts are sharp and white;
he lives a compelled anchorite.

A solid ghost gone blind with all the green,
he waits and waits to be unseen. (Gray 2003, 56)

2 In fact, however, when the public is exposed to some of the more “dramatic”
scenes taking place behind the scenes that are still largely hidden from view – e.g.,
force-feeding of ducks and geese to produce foie gras, artificial insemination and
masturbation of “breeder” turkeys on which the commercial turkey industry is
based, treatment of newborn chicks at the hatchery, candid-camera looks at what
really goes on inside a slaughterhouse – there is a much greater sense of the
individuality of each animal and, one hopes, greater empathy. Undercover video
investigations are starting to make this happen – to foreground individual animals
in their struggle against their abusers in the midst of the mass-suffering in which
each animal is submerged in factory-farm settings.

Karen Davis, PhD.
3 Peter Singer’s position regarding the superiority of most human adult suffering and death over the suffering and death of most, if not all, nonhuman beings may be inferred, for example, in his discussion of damming a river that will adversely affect the nonhuman animals in the area: “Neither drowning nor starvation is an easy way to die, and the suffering involved in these deaths should . . . be given no less weight than we would give to an equivalent amount of suffering experienced by human beings . . . But the argument presented above does not require us to regard the death of a nonhuman animal as morally equivalent to the death of a human being, since humans are capable of foresight and forward planning in ways that nonhuman animals are not. This is surely relevant to the seriousness of death, which, in the case of a human being capable of planning for the future, will thwart these plans, and which thus causes a loss that is different in kind from the loss that death causes to beings incapable even of understanding that they exist over time and have a future. It is also entirely legitimate to take into account the greater sense of loss that humans feel when people close to them die; whether nonhuman animals will feel a sense of loss at the death of another animal will depend on the social habits of the species, but in most cases it is unlikely to be as prolonged, and perhaps not as deep, as the grief that humans feel” (Singer 2000, 96).

4 Many Jews don’t like to use the word holocaust anymore because it has been used to apply to too many things not unique to the Jewish experience; so some scholars are opting for other words like Shoah, Churban, the Event, and the Tremendum to try to recapture some sense of singularity. See, e.g., James E. Young (1988, 85-89). See also Nathan Snaaza (2004, 12).

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HUNTING TRADITION: Treaties, Law, and Subsistence Killing

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Abstract
This paper explores “subsistence traditions” that entail killing nonhuman animals among “indigenous” peoples in North America. In light of historic “tradition,” contemporary practice, and the treaties through which these privileges are guaranteed, I challenge the appropriateness of laws permitting the continuance of “subsistence” practices.

I begin with a brief overview of the spiritual ethics behind “subsistence traditions,” then offer a concrete example from Washington State, including treaties, legal issues, and court rulings. I next elucidate the meaning of “tradition,” and compare contemporary lifestyles and practices with traditional ways. Finally, I consider whether or not current hunting, fishing, gathering, and trapping ought to be protected under the canopy of “traditional” activities.

Introduction
Terms: Early immigrants, anymals

Peoples already living in the Americas were mistakenly referred to as “Indians” by European settlers. Since that time a series of other names have been applied: American Indian, Amerindians, First Nations, Native Americans, and Early immigrants. It is currently popular to refer to these various peoples as “native,” but they are no more “native” than they are “Indian.”

“Native” suggests that these peoples were originally from American. But studies indicate that human beings migrated to the Americas from Asia into what is now Alaska, then spread south and east across the continent (Matthews 21). Some groups of early immigrants settled in their accustomed territories comparatively recently: the Navajo migrated to the Southwest just before the first Europeans arrived, somewhere between 1200 and 1400 ACE (Brown 1991: 19).† The term “native” is also pregnant with implications (especially with regard to land use); it suggests that these people hold some special title to the land because they have always been here. But they are also immigrants, and have long battled for land among themselves.

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Because the term “native” is a misnomer, and because it is laden with controversial implications of ownership, I choose to use the term “early immigrants,” or “early immigrants in North America,” abbreviated as EINA. Similarly, I use the term “anymal” to refer to all animals excluding Homo sapiens. Because people are mammals, it is incorrect to use the term “animal” as if it referred only to other species, excluding human beings. In philosophy, as in many fields, it is important to be as precise as possible with language. For this reason, I use the term “anymal” to refer to any animal (anymal) that is not Homo sapiens.

Shared Wildlife Ethic

Though the many distinct groups of people who lived in North America prior to European invasion used a variety of hunting methods in search of a plethora of wildlife across varied landscapes, early immigrants in North America shared a core wildlife ethic (Schmidt 44-48). Though all points of this ethic may not have been true for all EINA, most of them will be true for the vast majority of early immigrants. For the purposes of this paper, I present eight important elements of this ancient ethic:

- Correct behavior was “modeled on ancestral examples…” (Schmidt 102). Behaviors reached back across the centuries, patterned after what had come before.
- “Religion” was indistinct from daily life. Spirituality was “a way of experiencing life;” every act had religious significance (Schmidt 46, 45).
- There was no “division between subject and object, between landscape and people” (Kwiatkowska 1997: 276). Human communities were viewed as just one aspect of an ongoing sacred life that encompassed the entire cosmos; people maintained a “mystical identification with… the animals and plants that sustained their lives” (Schmidt 76). Both a social and spiritual relationship existed between people and wildlife (Gill 1983: 121). Anymals contained this spiritual power, and were thought to possess “consciousness, will, and other capacities… superior to those of humans" (Harrod 1987: 159). Anymals were seen as “equal to, if not more powerful than” human beings, not just physically, but spiritually (Preece 166). Early immigrants understood anymals as “guides and teachers,” as powerful sacred beings who could communicate with people (Brown 1991: 124, 119).
- Anymals, plants, and the natural world were “endowed with spirits and with spiritually based power” (R. Nelson, Make 228). All of nature was filled with a mysterious yet real power, and was potentially dangerous (Eredoes xi). Lack of respect for anymals was likely to result in starvation because anymals were in control of their own destiny, and might leave the area if people failed to
treat them with respect. (Feinup-Riordan 544). Consequently, people were dependent on harmonious relations with anymals; and they associated with these powerful personalities as spiritual powers (VanStone 65). For historic EINA, “Nature is not governed by God, nature is God” (R. Nelson, “Passage”).

- Wildlife was kin (McLuhan 1971: 56, 99); other living creatures were referred to as siblings and grandparents, and they were viewed as part of the same great family to which human beings belonged (Matthews 39). An “unbroken chain” connected all living beings (Schmidt 186).

- Wildlife was critical to subsistence. Though all beings were believed to live “together as relatives,” people hunted, fished, gathered, and snared wild animals—it was the only way they could survive (Schmidt 46). As might be expected, their mythologies reveal a constant tension “between the necessity to eat and the killing of animals, which [were] believed to possess consciousness, will, and soul” (Harrod 63, 159). Origin myths often describe a time when people did not eat anymals, and explained how this unsavory practice began (Harrod 38-65).

- The conflict caused by eating kin was resolved through a spiritual relationship—a relationship guided by religious beliefs and ritual acts. Therefore hunting and fishing were as important spiritually as nutritionally (Brown 73, 111, 120): “the food that gave them life was regarded as sacred,” and “what was eaten and how it was acquired took on an importance that transcended survival” (Schmidt 45-46). Killing wildlife was a sacred responsibility, and hunters felt obligated to uphold “a code of moral and social etiquette” that encompasses all creatures (R. Nelson, Make 228). Many indigenous peoples lived in fear of the powers of nature, in fear of reprisal, should they somehow offend those they depended on for sustenance. Anymals were viewed as powerful enough to decide whether or not to allow a hunter to eat. Anymals were thought to appreciate the needs of others, and respond accordingly, even permitting their own death (Feit 421).

- Hunting, fishing, gathering, and trapping were viewed as spiritual acts permitted only with the consent of those killed (Brown 1991: 51). Hunting success or failure were controlled by anymals. People could influence the willingness of anymals to die for hunters through rituals, taboos, and by maintaining and displaying a humble and appreciative attitude (Schmidt 74). “The hunter reveres the animal, and asks it to make a gift of itself so that humans can eat; animals comply and give themselves” to the worthy hunter (Preece 166). Wildlife could only be killed by the deserving with the permission of those killed (Preece 165).

The wildlife ethic of early immigrants, and the rituals and taboos surrounding that ethic such as fasting, prayer, and avoiding
taboos, reflects an understanding of spiritual responsibility connected with the ominous task of killing kin. Behaving respectfully toward wildlife was thought critical to survival. Hunting, fishing, gathering, and trapping were necessary, but they were restricted and controlled by a spiritually based ethic that forbid gratuitous killing. The spiritual power of wildlife, combined with the physical dependence of human beings, colored the human-wildlife relationship. If people suffered food shortages they were not apt to say, "I cannot kill deer anymore," but rather, "Deer don't want to die for me" (Heizer 1980:211).

Law And Tradition

Law

Hunting, fishing, gathering, and trapping have been secured for some early immigrant communities through legal interpretations and court rulings with regard to treaties. When they agreed to settle on reservations, some EINA groups obtained certain promises in exchange, such as the right to health care, education, protection, and permission to maintain certain important subsistence practice (Honor). Naturally, they sought to secure the continuance of practices essential to survival.

Across the United States there have been a host of legal cases, focusing on the wording and intent of the many treaties signed between the U. S. government and early immigrant communities. Litigation has attempted to outline exactly what these historic documents grant. In order to better understand these treaties, and court rulings recently passed, it is instructive to investigate details more carefully. Toward this end, I turn to specific cases in Washington State.

Based on a few key phrases in historic treaties, Washington courts have handed down a handful of divisive rulings. For instance, court proceedings established that Washington’s early immigrants are legally guaranteed 50% of harvestable fish for commercial sale, plus any fish caught on their own reservation lands, as well as off-reservation fish for “subsistence and ceremonial purposes” (Madson 7). This grants early immigrant communities greater than 50% of the total fish harvest. Similarly, they are legally entitled to 50% of all harvestable wild shellfish on Western Washington beaches (Northwest, “Shellfish”). EINA, who constitute only 1% of the population in Washington State, are now legally entitled to 50% of the fish and shellfish from Washington waters and tidelands. Furthermore, Washington’s early immigrants are legally entitled to take shellfish from privately owned tidal lands because their ancestors gathered shellfish on these same lands (Northwest, “Shellfish”). It is understandable why such rulings have created anger in the larger community; there is yet more.

The U. S. Supreme Court also ruled that methods used by early immigrants could not be qualified by any state (Madson 6). For Animal Liberation Philosophy and Policy Journal, Volume II, Issue 2, 2004, pp. 1-20. © Lisa Kemmerer, PhD.
example, certain types of nets have been prohibited, “in order to
preserve the fish,” yet these restrictions do not apply to EINA,
unless such practices endanger “resources” (Madson 7).

With regard to hunting, early immigrants are not restricted by
state laws controlling seasonal hunts, or by killing-limits for a given
hunt or season. Additionally, EINA are permitted to hunt on federal
lands such as National Forests (Northwest, “Hunting”). It is not
surprising that early immigrants killed well over 8% of deer and elk
hunted in Washington State in 1997—over 400 elk and more than
28,000 deer (Northwest, “Hunting”). They were permitted to kill this
many animals despite the fact that they comprise only 1% of the
population. Had they killed 1%, they would have taken 3,500 deer.

One group of early immigrants in Washington State, the
Makah, recently petitioned for the right to engage in a form of killing
that has been outlawed not just in North America, but increasingly
around the globe: whaling. The Makah willingly abandoned whaling
almost a century ago, when other flesh-markets were more lucrative
(Marr 25-33). Though gray whales are still protected, the U.S.
government granted the Makah the right to whale. A whale was soon
dispatched in Washington waters, with modern technologies and
without any evidence of traditional respect for nature (see below). In
the U.S. it has been illegal to harass or harm gray whales for a quarter
of a century. For those who are not Makah, whales remain
protected, and it is illegal even to approach a whale within a certain
parameter.

Interpreting Treaties
Each of these controversial Washington State rulings
stemmed from the legal interpretation of fourteen treaties signed in
the mid-nineteenth century. Many decisions revolved around a few
passages. Article III from the “Treaty of Medicine Creek,” and
Article IV from the “Treaty of Neah Bay,” signed with nine Puget
Sound groups and several Makah communities respectively, offer a
sampling of such critical selections:

The right of taking fish, at all usual and
accustomed grounds and stations, is further secured to
said Indians in common with all citizens of the
Territory, and of erecting temporary houses for the
purpose of curing, together with the privilege of
hunting, gathering roots and berries, and pasturing
their horses on open and unclaimed lands. (United,
“Medicine”)

The right of taking fish and of whaling or
sealing at usual and accustomed grounds and stations
is further secured to said Indians in common with all
citizens of the United States, and of erecting

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temporary houses for the purpose of curing, together
with the privilege of hunting and gathering roots and
berries on open and unclaimed lands. (United,
“Neah”)

Contemporary court officials struggled to interpret these
passages as signatory members would have understood their meaning
(United 356). “Accustomed” and “usual” were interpreted in the
standard dictionary manner: customary, familiar, frequent, habituated;
“common” was interpreted as “for the use of all,” and “belonging
equally to more than one individual” (United 356).
Those interpreting the treaties applied the phrase “usual and
accustomed” to include the “historical region” where a particular
group of early immigrants had hunted, fished, gathered, or trapped
(Northwest, “Shellfish”). They determined that this holds true “even
if those locations were off the reservation” (Madson 4). This phrase
was also determined to grant “usual and accustomed” methods, and
the state or nation was forbidden from legally qualifying or
challenging methods used. Any qualifications can only be applied off
the reservation, and only with regard to the “manner of fishing, and
the size of the take and commercial fishing” when such regulations
are necessary for conservation (Madson 6). As a consequence, nets
forbidden to other citizens because of the damage such nets do to
the ecosystem are permissible for EINA.

From the phrase “in common with” courts ruled that early
immigrants ought to be granted a “fair share” of the harvest. Later,
“fair share” was clearly delineated as 50% of harvestable fish and
shellfish (Madson 7).

Courts ruled that the “open and unclaimed lands” clause
entitled early immigrants to practice subsistence on state lands.
Consequently, EINA were permitted to hunt on federal lands such as

Court rulings in the past twenty-five years, based on
interpretations of these historic treaties with regard to hunting,
fishing, gathering, and trapping rights, have become increasingly
controversial as natural “resources” dwindle and swarming North
Americans compete for a piece of a sadly diminished pie.

“Tradition”

The above clauses, Article III from the “Treaty of Medicine
Creek” and Article IV from the “Treaty of Neah Bay,” reveal how
important historic treaties have been in establishing the legal
particulars of hunting, fishing, gathering, and trapping among early
immigrants in the contemporary United States. What these passages
cannot reveal is exactly what EINA intended these treaties to secure.

When these treaties were signed, what did early immigrants
understand as “hunting,” or “gathering,” “taking fish and of
whaling,” or “usual and accustomed”? Treaties granted a

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continuance of traditions that were deemed essential to the survival and identity of the group, and promised certain privileges (such as education, medical care, and cash) in exchange for land (Honor). Such treaties were intended to peacefully free land in Washington Territory for private ownership for incoming settlers (United 355).

But how are they to be interpreted one hundred and fifty years later? Because “perceived intent of the parties” was central to legal interpretations of historic treaties (Madson 4), we need to know precisely what traditions these groups intend to secure when they signed these particular treaties. We also need to compare original intent with modern-day practices and mindsets.

With regard to legal rulings and the interpretation of these treaties, much rests on the definition of “tradition.” “Tradition” is derived from the Latin traditio, the act of “handing something over to another, or of delivering up a possession” (Galef 1996: 91). A traditional act or idea is a “long established or inherited way of thinking or acting” (Webster’s 1996).

Two aspects of “tradition” emerge:

• a continuing pattern of activities
• specific methods employed for these activities, including attitudes or ways of thinking.

In common usage, as well as in scholarly works, “tradition” generally refers to methods that have been continuously maintained across generations.

Yet traditions can and do change. “Changes in traditions are incessant” (Shils 285). Traditions constantly merge with new streams of thought and action. They bend to incorporate new practices, and shift to accommodate evolving ideas, altered goals, and different circumstances. New patterns of behavior in fast-changing contemporary societies hold aspects of historic tradition, but these new patterns ultimately form altogether new traditions.

While all behaviors are in some way linked to past thought and action, obviously not all behaviors are traditional. For instance, singing Christmas carols is a traditional part of the holiday season for many Westerners, but if Karl Marx belted out “Away in a Manger” to the hammering of Led Zeppelin, his “caroling” would not qualify as “traditional,” much less as an “historic, cultural tradition.” The act of singing a Christmas carol is not enough to equate Marx’s music with tradition—a continuing pattern and methods, including a belief structure, are critical.

What does this mean for EINA? If Tlingits of Southeast Alaska give away blankets and hides in the traditional manner of a potlatch, but do so only because a group of tourists paid $10 per person to witness the event, they are not engaged in a traditional potlatch because neither their methods nor their mindset are traditional. And if a Makah goes hunting not for food, but only for the sake of maintaining a tradition, or for the sake of fostering a
certain community spirit, they are likewise not engaged in a
traditional hunt, an activity that was focused on the body of a whale
itself, and the many uses of that body. Traditionally, there was no
expectation that killing a whale might help to solve the communities
ongoing, larger problems. There was no thought of killing a whale
simply because that is what their ancestors had done. They killed
whale to acquire a whale; their end goal was the dead whale, which
they employed.

What is important about the definition of “tradition” is that
methods entail an inner quality; a mindset—the way people feel about
and envision a particular activity. For instance, caroling has
traditionally been viewed as a communal Christian expression of
religious belief and a means of worship. Karl Marx would need more
than a different back-up band to qualify as a “traditional” caroler.
Similarly, Tlingits giving away blankets to please tourists, and to
profit from tourist interest, do not engage in a traditional activity.
And a Tlingit who gives away TVs, computers, and DVDs at a
potlatch may engage in a potlatch for the same reasons as her
ancestors (with the same thinking, or mindset), but not with the same
material items. Tradition involves continuing patterns across time,
including constancy of method and mindset. An early immigrant
embarking on a seasonal hunt in the Yukon with an aluminum motor
boat imported from Oregon, a steel rifle from Wisconsin, and a
plastic compass made in Taiwan, stretches the term “traditional” to
the point of breaking because of radically different methods (physical
means) and mindsets. Hunting is no doubt a tradition of that
individual’s ancestors—as it once was for all peoples. But a hunt is
by no means “traditional” simply because one’s ancestors hunted, or
because one hunts in the same area and at the same time of year as
one’s ancestors.

Gray areas are inevitable. If a devout Catholic pop-singer
sang a Christmas carol accompanied by steel drums and electric
guitars, she might be assumed to hold all the inner aspects, but none
of the external trappings of traditional caroling, like the Tlingit giving
away TVs, computers, and DVDs. And if Karl Marx were to sing a
carol in a church accompanied by a church choir he might be viewed
as having all the proper external aspects, but none of the necessary
internal belief structures, like the Tlingit potlatch performed for
tourists.

These simple examples demonstrate the ambiguity inherent
in our current use of “tradition.” But all is not lost; it is possible to
categorize most activities as either

- **new traditions**: activities linked to historic traditions but
largely composed of methods developed in the past
century and/or lacking core spiritual or philosophical
aspects that once accompanied those actions, or

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• **a continuance of old traditions**: activities that consist largely of methods used a century ago, including core spiritual and philosophical understandings that accompanied those actions.

With this definition, actions considered “traditional” change over time. After a century of pop Christmas carols, pop caroling might qualify as a tradition. But today Madonna would be categorized as part of a *new* tradition, one born in the last few decades. Though gray areas remain, new traditions must be distinguished from old if “tradition” is to maintain any meaningful uses. If all of the above examples are considered “traditional,” without qualification, then the meaning of this word is lost. If a seasonal hunt as carried out for hundreds of years in North America is “traditional” in the same sense as the Yukon hunter described above, then “tradition” no longer entails methods handed down across generations. Such a modern, high-tech hunt is best viewed as a *new* tradition of hunting that has stemmed from an historic hunting tradition.iii

**Interpretation And Contemporary Times**

Defining tradition is the first critical step. The next is to examine contemporary practices to see whether they are best defined as “traditions,” or as “new traditions.”

The wildlife ethic of early immigrants arose when people in North America struggled to survive in an environment that was bigger and more powerful than human beings, a time when there were fewer people, only rudimentary technology, and killing wildlife was essential to human survival. Conditions have changed. Human populations have skyrocketed, and North America now specializes in sophisticated outdoor equipment, including a proliferation of high-powered weaponry. North Americans import oil, sugar, and coffee; they travel by ATV, automobile, and aircraft; and they enjoy computers and television, microwaves and freezers. From the northern tip of Alaska to the southern tip of Florida, early immigrants purchase products from across the country and around the world.

Today’s North American descendants of hunter-gatherer societies enjoy some of the best medical care in the world. Populations have grown accordingly: the Navajo, brutally reduced to eight thousand in 1868, were fifty thousand strong in 1950, eighty-five thousand in 1961, and seventy-five thousand in 1991 (Brown 1991: 19). A decimated Makah population of around 550 in 1950 has more than tripled in just forty years, to around 1,700 in 1991 (“A Brief”). The lives of early immigrants, as for all North Americans, are much less apt to be threatened by common viruses, infection, or childbirth, and have increased exponentially in the last half-century.

EINA communities have generally opted against a traditional lifestyle, yet they are legally granted the right to engage in traditional
subsistence practices—with sophisticated weaponry and high-tech fishing gear. The results have sometimes been sobering:

- In February of 1998 a single early immigrant from the Northwest Territories of Canada “chased 162 wolves to their deaths on a snowmobile in a single season,” while a dozen other early immigrants killed 500 more wolves during the same time period (Preece 166).
- In Southeast Alaska EINA trapped and shot otters nearly to extinction for the price of their pelts. Because their methods cannot be regulated, early immigrants continue to use steel-jawed leghold traps, a device outlawed by roughly 70 countries around the world, and an increasing number of U. S. states, because these traps work indiscriminately and cause extreme suffering.
- Gillnets have been judged “inexcusably detrimental to the environment—trapping even the smallest of fish” (Preece 167). Gillnets are illegal for most fishers, but early immigrants are legally protected from such legislation, and continue to choose to fish with gillnets.
- EINA hunt and kill endangered, protected species. A Seminole gunned down an endangered Florida panther for the “ritual use of panther parts;” nationally protected bald eagles continue to be shot for feathers (Schwarz 297, 293). Just a few years ago, along the Olympic Peninsula, the Makah chased and killed a gray whale, a whale listed as endangered by CITES, with the aid of high-powered boats and weapons, and a helicopter funded by the U. S. Government.

These brief descriptions of hunting, fishing, and trapping practices among early immigrants suffice to demonstrate that methods have changed from what they were one hundred and fifty years ago. They also reveal a stunning absence of the traditional wildlife ethic—evidence of an absence of traditional thinking, an absence of traditional spirituality. Each of these instances demonstrates that hunting methods have been modernized, and that a new mentality goes along with such practices. Consequently, each of these wildlife practices, if they are to be considered traditions, must be viewed as new traditions. They definitely do not qualify as ancient life-ways, or as historic traditions.

Today, instead of struggling to survive physically in a natural landscape that is large and powerful, early immigrants endeavor to survive culturally in a crowded world dominated by Western culture. To maintain their identity and a sense of community power, some early immigrants have fought for special hunting-gathering privileges based on historic traditions, historic identities: fishing rights, whaling rights, trapping rights, and hunting rights. Many such rights have been granted, based on treaties that permit the continuance of traditional means of subsistence. But there has been a “noticeable erosion” of the wildlife ethic, and of traditional practices and beliefs.
among early immigrants (Schwarz 291). In truth, almost nothing remains of “traditional means,” or of the spiritual and philosophical worldview that accompanied these activities. (Fasting, prayer, honoring taboos, and ritual acts all constitute physical evidence of a traditional mindset, but few are practiced in contemporary times.) Consequently, hunting, fishing, gathering, and trapping among early immigrants in North America in the year 2001 fails to qualify as “traditional.” In light of the overwhelmingly non-traditional beliefs and practices of early immigrants today, hunting, fishing, gathering, and trapping are best viewed as new practices, or as potential “new traditions.”

Legal Ramifications

Officials in U. S. courts attempted to interpret historic treaties as EINA would have understood these documents; they endeavored to make legislation that would protect intent. Intent cuts both ways: courts granted early immigrants those things that judges believed EINA who signed these documents anticipated gaining by adding their signatures; the courts must also deny practices that were not intended by these same signatories. Did these historic peoples believe they were protecting their “right” to locate whales with helicopters or sell hundreds of thousands of fish to the highest bidder?

Early immigrants one hundred and fifty years ago, who secured a continuance of subsistence hunting, fishing, gathering, and snaring practices via treaties, could not have foreseen the vast commercial enterprises of today. It is extremely unlikely that they intended to secure the right to half of the total “harvestable” fish and shellfish of Washington State. Wording clearly indicates that signatories, and those who drew up the treaties, wished to secure the right of EINA to subsist as they had always subsisted—to engage in traditional subsistence practices. The intent of these treaties was to protect traditional practices that provided food and clothing for signatory peoples, not to license unnecessary consumption or environmentally unsound practices.

EINA are neither the first nor the only people in the US to stretch the meaning of historic documents. The constitutional guarantee that US citizens be able to keep and bear arms was important when the nation was young, lacked an official military, and was defended by a militia. With the help of those who profit from the manufacture and sale of firearms, the original intent of citizen’s right to keep and bear arms—the protection of citizens—has been subverted by the proliferation of weaponry that endangers citizens. Interpreting historic documents is never an easy matter, and when there are profits to be had, interpretation becomes even more problematic.

Nonetheless, we benefit from examining, understanding, and honoring the original intent of historic documents. Fishing, hunting, gathering, and trapping practices that fail to qualify as traditions, as Animal Liberation Philosophy and Policy Journal, Volume II, Issue 2, 2004, pp. 1-20. © Lisa Kemmerer, PhD.
defined above, are not protected by treaties intended to preserve traditional subsistence practices. Furthermore, where such non-traditional practices have been legally protected because of these treaties, they have been wrongly protected. Signatories could not possibly have intended to protect hunting, fishing, or trapping outside of traditional practices, much less to protect practices that actually breach their traditional wildlife ethic.

Individuals engaging in traditional subsistence practices ought to be protected by these treaties. Those who no longer retain subsistence traditions, complete with traditional spirituality, ought to abide by all laws regulating hunting, fishing, and trapping for non-EINA citizens.

Appropriate to Today?

While scholars have amassed considerable material on relations between ancient peoples and animals, “they hardly ever address questions pertaining to animal welfare and the animal as subject” (Noske 183). Scholars busy recording minute details of how people interact with the natural world, have seldom questioned—let alone challenged—such behaviors. Even if the EINA wildlife ethic and the practices that once accompanied this ethic were living traditions, it is not only reasonable but essential to question whether such practices are appropriate in contemporary times. This further inquiry provides a “no” on two counts: inherent danger and lack of necessity:

1. The wildlife ethic of early immigrants in North America portrays animals as powerful, in control of their own death, perpetually self-regenerating, and as rightly killed because their death is essential to human survival, and because they willingly consent to death. The EINA wildlife ethic offers a spiritual view in which animals must be killed for people to survive, and so animals acquiesce to being killed, and then return to offer themselves yet again. In this view killing wildlife is always justified—sanctioned by the dead, and the dead never really die because they return to life. In any event, hunting cannot be avoided.

In times gone by, when early immigrants lived more closely with animals, their wildlife ethic offered some way to harmonize their discordant reality: killing one’s kin to provide sustenance. Their belief structure mitigated guilt and provided a spiritual understanding of wild animals that allowed people to both respect and kill those they viewed as close kin.

Times change, and so do people. Such spiritual practices as prayer, fasting, and the maintenance of taboos and rituals, outward signs of the ancient wildlife ethic of kinship and respect for wildlife, are now inconspicuously absent from EINA hunting. Given contemporary firepower, motorized methods, and increasing human populations, a wildlife ethic that justifies killing as necessary, and as sanctified by the one killed, is extremely dangerous.

One might legitimately argue that such a wildlife ethic never provided adequate safeguards against human misuse and abuse of animals. It is easy to list a myriad of early immigrant activities, now readily identified as cruel and environmentally unsound, that existed long before Europeans crossed the Atlantic. The Koyukon hunted down and killed rare animals on site (Nelson 1983: 28, 112-113); EINA in the Southwest ritually killed deer and eagles by suffocation (Brown 1991: 74, Preecee 193); throwing stones at birds and shooting squirrels were customary pastimes among the Sioux (Preecee 94).

James Swan, who lived among the Makah between 1863 and 1866 commented: “They however are cruel to all animals, and particularly birds, which they torture in every conceivable manner” (15).

Historically, the list of ethically suspect and environmentally unsound EINA wildlife practices is considerable.

An ethic that considers killing animals essential, that views animals as complaisant in their own killing, and as never really dying, is inherently dangerous to wildlife.

2. The EINA wildlife ethic recalls a time when people had to hunt to survive—they had no choice. Hunting, fishing, gathering, and trapping were their only means of survival; without the hides and flesh of animals, human beings in North America would have perished.

The wildlife ethic of early immigrants condoned killing when necessary, but otherwise eschewed the taking of wildlife. Unnecessary killing was a symptom of disrespect, an attitude that would cause animals to be unwilling to die. This, in turn, would result in human starvation. This spiritual vision is perfectly reasonable: I would lay down my life for my kin if there was no other way for them to survive. But I would be sorely disappointed if this generosity was later used to justify killing me when the need had passed. EINA today, like other North Americans, need nothing more than fresh-frozen, canned, and packaged foods, or the fresh produce that many groups can grow. Rather than purchase ammunition and weapons, hunting gear and outdoor paraphernalia, early immigrants can buy or grow additional plant-based food supplies. With the advent of advanced agricultural techniques, refrigeration, and extensive transportation, subsistence killing is obsolete for 99% of North Americans (Luke 33). Consequently, almost all early immigrants who hunt, fish, or trap in contemporary times abrogate the traditional wildlife ethic, an ethic based on taking only what is necessary for survival.

At the core of the EINA wildlife ethic lies a belief structure that rejects almost all hunting in contemporary times: nature as sacred, animals as spiritual guides and kin, harmony and balance, killing only when one must kill to survive. These underlying spiritual beliefs must be acknowledged as more fundamental than any actions rooted in these core beliefs, such as the historic practices of hunting, fishing, gathering, and trapping. EINA core beliefs and values reveal that the ancient wildlife ethic has become subverted in contemporary times, and that this ethic is now used to justify the raw act of
killing—killing that lacks almost every vestige of tradition because it is now unnecessary for survival.

While hunting and fishing might remain the preferred lifestyle for some, EINA who hunt, fish, gather, or trap animals abrogate their traditional wildlife ethic, one that viewed animals as spiritually powerful kin, never to be harmed unless harm was necessary. EINA today ought to view flesh-eating as inherently destructive and wasteful because there is no longer any need to eat animal products of any kind.iv

**Sound Core**

One might argue that the extensive cruelty and violence caused by Christians down through history prove that the teachings of Jesus are inherently dangerous. But people often twist or ignore spiritual beliefs to suit personal ends. The vast majority of Christians agree that the core of Christianity is an ethic of love and compassion; if one is motivated by love and compassion, then the ethic that follows, and one’s resultant actions, are not apt to damage others. The same is true for the wildlife ethic of early immigrants. The environmentally unsound behaviors of early immigrants stem from a lack of spiritual depth, rather than from an inherently deficient ethic. When taken in its entirety, with an emphasis on core beliefs that guide and regulate actions, the EINA wildlife ethic speaks against contemporary practices, against any unnecessary killing.

Kinship with animals is primary for early immigrants (Schmidt 463). The core of the EINA wildlife ethic is a worldview in which all the world, and every act within the world, is sacred, in which powerful wildlife kin, who are similar to humans in fundamental and important ways, choose to die so that humans might subsist. This core belief does not allow for gratuitous killing, for cruel and painful deaths, but does hold the inherent assumption that to kill wildlife—kin—unnecessarily is grievously wrong.

This core belief system remains strong for some early immigrants. A Koyukon living in the far north recently wrote, "Sometimes people will hunt the loon, but me, I don’t like to kill it. I like to listen to it all I can and pick up the words it knows" (Nelson 1983: 87). This contemporary EINA writer reveals a sense of camaraderie with the loon, knowledge that there is no need to kill his remarkable relative, and an unwillingness to harm his feathered kin unnecessarily.

This view is supported by some contemporary EINA. Makah elders Isabell Ides (age 96), Harry Claplonhoo (78), Margaret Irving (80), Ruth Claplanhoo (94), Viola Johnson (88), Alberta N Thompson (72), and Lena McGee (92) openly spoke out against reestablishing the Makah whale hunt. “It would be one thing if the whale meat were truly needed,” Thompson remarked, “as in the times of the ancestors... But that is no longer true today” (Dunagan, “Tribal”). Other Makah agreed, including Vivian Lawrence, Mabel Animal Liberation Philosophy and Policy Journal, Volume II, Issue 2, 2004, pp. 1-20. © Lisa Kemmerer, PhD.
Smith, Dottie Chamblin, and Jesse Ides, who asked, “What will killing a whale accomplish for the Makah?” (Watson). Environmental organizations provided space in the Peninsula Daily News, for Makah elders to speak their minds:

We are elders of the Makah Indian Nation (Ko-Ditch-ee-ot) which means People of the Cape. We oppose this Whale hunt our tribe is going to do.

…The Whale hunt issue has never been brought to the people to inform them and there is no spiritual training going on. We believe they, the Council, will just shoot the Whale, and we think the word "subsistence" is the wrong thing to say when our people haven't used or had Whale meat/blubber since the early 1900's.

For these reasons we believe the hunt is only for the money. They can't say "Traditional, Spiritual and for Subsistence" in the same breath when no training is going on, just talk.

Whale watching is an alternative we support. (Ides)

Contemporary examples such as these demonstrate how the historic EINA wildlife ethic, where people kill only out of need, can be applied consistently in contemporary times. Those who suggest that early immigrant traditions require one to hunt or fish fail to distinguish core teachings (method and mindset) from contemporary actions. Those who view the EINA wildlife ethic as condoning contemporary hunting, fishing, gathering shellfish, or trapping are focused on acts out of context—acts that were once essential to survival, acts that were shaped and controlled by the spiritual understanding of kinship. The unsatisfactory nature of having to kill one's kin to survive was evidenced by early immigrant myths that pined after an ancient time when people did not kill animals for food. An opportunity to reestablish this ancient, peaceful time has, at last, come again.

Arrogance Or Dialogue?

Subsistence killing was once critical for survival. Today, most EINA no longer need to kill animals, yet such slaughter is legally secured based on recent interpretations of historic treaties that protect traditional subsistence practices. Most hunting, fishing, gathering, and trapping in contemporary times are traditional neither in the general nor the specific sense of the word; these practices are best understood as part of a new tradition, not protected by treaties, intended to secure historic subsistence practices.

Many might think it arrogant for one person, or group of people, to find fault with another. Such “outsider” attacks are not politically correct—especially against a group of people so

beleaguered by whites. Is it right for someone of European descent to criticize EINA? Is it right for someone of Asian descent? Is it right for Protestants to criticize Catholics, for men to criticize women—or visa versa?

At least in the world of academics, critical analysis need not be concerned with race, gender, or age—or with what is politically correct. Philosophers in particular support a free exchange of ideas, encourage replies, and ongoing dialogue. If there is to be any hope of global peace, any hope for steady human advancement to better ways of living, critical analysis and dialogue across genders, races, and borderlines are essential.

Open communication becomes yet more critical when suffering and loss of life are the topic at hand. No one is beyond reproach when it comes to practices that cost the lives of any living being, no one is above criticism when they engage in behaviors that terrify or harm. It was the Northern US that freed the South from slavery, part of Europe and the US that freed the rest of Europe from Nazi rule, and outside law enforcement that many hope will free any future cult members from the grip of people like Jim Jones, David Koresh, and the duo Joseph Kibwetere and Credonia Mwerinde. It is outsiders that criticize and disrupt practices such as incest, neglect, and the battering of wives. Is it reasonable to believe that outsider ought not to intrude into the lives of families rife with violence or neglect simply because they are outsiders? Neither families nor cultures are immune to scrutiny or criticism, nor should they be if their behaviors bring misery or death to others.

For those who are informed, to bill contemporary EINA hunting, trapping, or fishing practices as “traditions,” regardless of practices used, regardless of the mindset and purpose behind these actions, is wrongheaded. The word “tradition” has a specific meaning, and anything referred to as a “tradition” ought to fit this definition. It matters little whether the person who notes this wrong use of a word is pink, tall, or foreign—such critical terms should always be exposed for scrutiny.

It is preferable if pressure for change originates from within, but this is often not the case, and the color of one’s skin, religion or nationality, gender or culture, should never prevent us from stepping up to the plate to consider and reconsider possible cases of abuse or deception. Such criticism is, after all, only criticism: it is not an end in itself, only a beginning. Criticism invites a response—an invitation to dialogue.
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ACE represents “after the common era” while BCE stands for “before the common era.” Both terms are preferable for a diverse audience as they avoid the reference to a time-frame rooted in Christian theology (BC and AD).

“Harvestable” fish are those that remain “after deducting those necessary for spawning escapement and tribal subsistence and ceremonial needs (Madson 7).

A tendency to idealize the historic lifestyle of early immigrants fuels widely held misconceptions, and is accompanied by a strong yearning for the lost lifestyle of idealized peoples. Some people try to return to this imagined, idyllic past. Current attempts to revive an idealized past can and do create new “traditions” based on what is perceived as historic (Shils 44-46). These lifeways are no less important than older ways to those who practice such new “traditions.”

A vegan diet that avoids all animal products is nutritionally sound. Modern medicine has linked the consumption of animal products to at least thirty medical problems including heart disease, cancer, and osteoporosis (Robbins). There is now a multitude of evidence demonstrating that the consumption of animal products is completely unnecessary, and even contrary to optimal human health. For more information, search “vegan nutrition” on the net, or try http://www.govegetarian.org/, http://www.eatright.org/adap1197.html, http://www.veganoutreach.org/wv/wv3.html or http://www.vegsoc.org/health/. For the purpose of this paper, my point is that it is unnecessary to exploit animals in contemporary North America for subsistence.
The Failure of the Kantian Theory of Indirect Duties to Animals

Heather Fieldhouse†

Kant famously holds that we have no direct duties to animals, but we have indirect duties with regard to them. One of his key points in this argument is that we ought not treat animals cruelly, as it damages our natural sympathies and thus can harden us in our dealings with other human beings. Thus our duties with regard to animals are actually duties to human beings. We use them as means to our ends, or even kill them, but we must avoid being cruel as we do it (6:443, 27:458-460).

These conclusions are reminiscent of what is sometimes termed an animal welfarist position, in that animals have no rights, but we still ought not to treat them cruelly and must strive to minimize their suffering. However, it is important to note that whereas an animal welfarist typically holds that the source of these duties (however minimal) is some morally relevant feature of the animal itself, Kant holds that our obligation to avoid mistreating animals is not really an obligation to the animals themselves. Instead, it is an obligation to ourselves and to other human beings, the fulfillment of which in some cases happens to involve the treatment of animals. The animals themselves are mere things without moral worth.

Such views are today widely considered to be antiquated, prejudiced, and anathema to champions of animal rights and liberation. As Kant’s theories and ethical tradition is still very influential in the contemporary arena, however, Kant cannot be easily dismissed. Kantian ethics is at its best when it deals with humans, using powerful concepts of respect, and dignity, and inalienable worth, such as are related to current notions of rights. Kant provides an appealing alternative to utilitarianism for those who hold fast to the belief that some actions are wrong regardless of the possible benefit derived from them. Utilitarianism, after all, affords no rights or fundamental protections to anyone, except the right to have one’s interests given equal consideration in the grand calculation. Although utilitarianism was a huge advance in that it made sentience not reason the basis of moral consideration, and thereby brought animals into the scope of ethical consideration, it leaves the door open for those who would claim that at least some cruel uses of animals can be justified by the greater happiness that would result for human beings.

As argued by animal rights theorists, indirect duties is grossly inadequate for the purposes of protecting animals from unjust

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exploitation. But in order to provide for direct duties to animals, a Kantian would have to substantially revise Kant’s claims about the source of moral value. Moral considerability and moral agency are closely linked in the Kantian framework; separating them would not be a trivial task. In this essay, I will argue that the attempt by Kant and his followers to establish indirect duties to animals as an adequate moral framework regarding animals is unsuccessful. Kant’s defenders have been unable to rectify its two primary flaws: that it is deeply counterintuitive, and that it rests on a dubious psychological claim. As a result of these failings, Kantianism cannot provide a firm basis for even minimal duties to animals.

Kant’s Contemporary Defenders

The basic implausibility of Kant’s indirect duty theory has led some Kantians (Christine Korsgaard and Allen Wood being two recent examples) to discard it in favor of a Kantian approach that acknowledges direct duties to animals. Their task is difficult. Kant makes moral agency, which he equates with rational autonomy, the source of all moral worth. Even if we recognize (as Kant did not) that many animals have some ability to use reason to solve problems, it would not be enough to show that they have moral value for Kant, since the type of rationality that he is concerned with is moral reasoning – the ability to set ends for oneself according to the dictates of morality. In order to provide for direct duties to animals, a Kantian would have to substantially revise Kant’s claims about the source of moral value. As moral considerability and moral agency are closely linked in the Kantian framework, separating them is a difficult task.

Faced with such a daunting alternative, some recent Kantians have tried to defend Kant’s indirect duty view against claims of implausibility, and to show that Kant’s view allows for a satisfactory level of obligation with regard to animals. Dan Egonsson, for instance, tries to show that it can go beyond just the basic prohibition against wanton cruelty, and be used to defend ethical vegetarianism.

According to Kant, being cruel to animals tends to make a person also insensitive to his fellow man; that is why apparent duties to animals are actually indirect duties, since ultimately they are duties to mankind. This argument does not seem to apply to meat-eating, however, since it is possible to eat meat without being involved oneself in the raising and slaughtering of the animal; in fact, most people are very distanced from this process. Egonsson, however, writes that we can plausibly extend Kant’s remarks to also encompass accepting cruelty to animals (477). Anyone who eats intensively-farmed meat is implicitly accepting cruelty to animals. Accepting cruelty to animals means accepting that other people are being desensitized to suffering in the way that Kant describes. This could result in their humanity being damaged, and could lead to their
treating other human beings with cruelty as a result. He concludes that a Kantian should therefore regard vegetarianism as a duty.

Egonsson shows that an indirect duty theory would not necessarily be limited to a very narrow obligation to avoid wanton cruelty. In addition to endorsing vegetarianism, such a theory could similarly show that many of our current uses of animals are wrong. The endorsement of the indirect duty view could have some rhetorical value for animal protection groups, since it would link the treatment of animals with duties to humans, thus sidestepping the more controversial and less generally-accepted claim that animals have intrinsic rights.

Although the indirect duty view has some benefits, I believe that its flaws cannot be overlooked. Attempts to reconcile the indirect duty view with contemporary sensitivity about animal issues have failed to rescue it from its two central problems.

The Problem of Counterintuitive Implications
The first of the two main problems with the indirect duty view is that it has certain consequences that are extremely counter-intuitive. If torturing animals had no effect on our attitude towards other humans, then according to the indirect-duty view, we would have no obligation to refrain from doing it. Most people would want to say that it would be wrong even if it had no effect on our treatment of human beings, but indirect-duty theorists must reject this claim. Furthermore, as noted by Wood, if it happened that somehow torturing animals made us kinder to humans (for instance, by allowing us to release aggression), then we would be obliged to do it (194-195).

Christina Hoff gives the example of a man who has always acted kindly towards his family and towards human beings in general, but who is in the habit of secretly burning stray dogs to death. According to Kant, he would not be wronging the dogs, since we have no duties to dogs. Instead, he would be guilty of wronging humanity, because such dealings with animals tend to make one hard towards human beings. The terrible suffering of the dogs is in itself of no importance. Indeed, before the arrival of mankind on the evolutionary scene, no animal suffering or happiness had any value whatsoever; and upon the awakening of rationality, it took on a merely indirect significance. Hoff regards this as implausible and counter to our moral intuitions (67).

In Hoff’s view, this implausible claim belies a deep flaw in Kantian ethics. “If there are any moral truths,” she writes, “this one is clearly among them: suffering is an evil, and gratuitously and deliberately to inflict pain and suffering is a moral evil. This needs qualification, but we must be wary of any moral theory . . . that loses sight of it” (68). Furthermore, Kant is unable to satisfactorily account for mentally impaired humans in his ethics: either they are
simply means to an end, like animals, or else some sort of leeway must be introduced to allow them moral recognition – but any such leeway is likely to make it even more difficult to exclude animals. “It is implausible that our duty to feed a hungry retarded child would turn out to be indirect and, in this respect, essentially distinct from our duty to feed a normal child” (68).

Are the counterintuitive consequences of Kant’s view a problem, aside from making the position unpalatable? Alexander Broadie and Elizabeth Pybus point out that, since Kant believed his moral system to accord with the ordinary moral intuitions of the common person, it is legitimate to criticize his framework if it does not in fact accord with these intuitions. Arguing from intuition is always fraught with peril, however, since intuitions are seldom universal. Furthermore, it is probably impossible for any consistent theory to satisfy all our intuitions. There is, however, another strong criticism of Kant’s theory which does not rest on intuitions.

The Problem with Establishing the Causal Connection

The second main problem cited against Kant’s theory is that he cannot successfully make the causal connection between cruel treatment of humans and cruel treatment of animals. Broadie and Pybus show that Kant believes this connection is founded on an analogy. Although animals are only things and not persons, Kant claimed that they have some qualities which are analogous to human qualities (377). However, “His claim that animals are analogous to persons appears to mean no more than that they behave as if they have psychological states that we take to characterize people” (378). There is no further claim being made; Kant certainly does not mean that they have anything like a faculty of reason.

Although according to Kant animals are things with features analogous to ours, they are nevertheless still things, and therefore we do not have direct duties to them. Kant refers to the mistaken notion that we have duties to beings other than men as an amphiboly of the moral concepts of reflection (6:442). Broadie and Pybus note that Kant uses the term “amphiboly” to refer to a mistake in reasoning (379). In the context of ethics, Kant defines amphiboly simply as “taking what is a human being’s duty to himself for a duty to other beings” (6:442). This means that our feeling of obligation towards animals is based on a misunderstanding.

Although Kant argues that we do not have direct duties to animals, “he holds that maltreatment of animals is wrong first because it leads us to be unsympathetic to . . . other people. In other words it leads us to treat other people merely as a means” (Broadie and Pybus 382). Second, it is wrong because it does violence to our own humanity, i.e., it leads us to treat ourselves as a means.

Broadie and Pybus regard this position as inconsistent, because Kant is claiming that in using certain things (animals) as

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means, by analogy we are led to treat people as means. Kant cannot point to any morally relevant difference between an animal and any other sort of mere thing, since the only possible morally relevant difference would be the possession of rationality, which animals do not have. Therefore, the authors claim, Kant is forced to say that nothing may be used as a means; we have an indirect duty to any thing not to use it as a means. “This is not merely absurd, but contrary to his imperative of skill” (382). They also claim that Kant cannot prove even an indirect duty to animals, because Kant’s position rests on a speculative psychological claim about human nature — that cruel dealings with animals make people hard towards other people — which, even if he could prove it true, is irrelevant because it is “a contingent matter of fact about human beings, and not a fact about rational beings” (382).

That it is a matter of fact about human beings and not about all rational beings should not be a problem for Kant. It is true that Kant regards the moral law as applying equally to all rational beings (including nonhuman rational beings, if they prove to exist), but contingent, empirical facts can affect how the moral law is expressed. For instance, lying is morally wrong according to the moral law, but in order for there even to be such thing as lying, we have to be the sort of beings who can communicate with each other, and who can express themselves falsely, and so on. The specific fact in this case involves the psychology of human beings, but the maxim (i.e. the rule according to which one acts) could be construed as “I will not perform actions that tend to harm my ability to behave morally.” This rule would apply to any rational beings, but in order to it, we do of course have to look at the empirical facts about what does tend to harm this ability in a certain type of being.

Tom Regan responds to the aforementioned article with the remark that, although Kant’s position may go against intuition, it is not internally inconsistent. Kant never claims, Regan points out, that we ought not use animals as means (as beasts of burden, for example). He claims that we ought not maltreat them, which is a narrower claim. “For we can, given Kant’s views, use an animal as a means without at the same time necessarily maltreating it, as when, for example, a blind man uses a seeing eye dog but treats him with love and devotion” (471).

Regan’s response is brief, and does not address the central problem: what does it mean to maltreat something? We cannot define it as “to use something in such a way that goes against rationality (or morality)” because that begs the question. Maltreating something cannot merely mean using it as a means, for the reasons that Regan gives.

There is a hint in the Lectures on Ethics where Kant is reported as saying, “Vivisectionists, who use living animals for their experiments, certainly act cruelly, although their aim is praiseworthy,
and they can justify their cruelty, since animals must be regarded as man’s instruments; but any such cruelty for sport cannot be justified” (27:460). So, maltreating an animal for Kant is treating it with unnecessary cruelty. Whether a given cruelty is necessary is probably dependent on whether it is required for fulfilling a direct duty (or possibly even an indirect duty) to human beings.

Broadie and Pybus’s analysis of the belief that we have direct duties to animals as an amphiboly, or mistaken analogy, raises an interesting point. If it is a mistake that leads us to connect human and animal suffering, and if it is this psychological connection that leads to the causal connection between the two kinds of cruelty, wouldn’t the solution be to train ourselves not to make that mistake? Kant’s theory seems to be aimed at damage control, rather than prevention. Rather than accept that we will make that mistake, and then try to make sure it doesn’t harm our sensibilities, it seems better to learn not to make the mistake at all.

Skidmore makes a similar point. A weak or moderate connection between cruelty to animals and inappropriate attitudes or behavior towards humans (i.e., that the former occasionally or usually leads to the latter) is not enough to establish indirect duties to animals. If the weak or moderate connection were established, it would not show that all agents have such duties; only certain agents would be so obliged, and the others could treat animals however they pleased. In order for the indirect duties to be universally applicable, it must be true that cruel treatment of animals almost always, for almost all agents, results in inappropriate attitudes or behavior towards humans (Skidmore). There is a lack of empirical evidence for this connection, and some evidence that suggests it is false. Surely some cultures have existed in which animals were treated brutally, without everyone in turn being brutal to each other. Consider Spain, for instance; blood sports such as bullfighting are traditional and popular, yet there is no evidence that the people of that country are any more brutal to each other than in countries where such events are frowned upon.

The strong connection required for the indirect duty view may not be true; but even if it is true, Skidmore argues, the connection would not be a necessary one. If, as the indirect duty theorist claims, there is a clear moral difference between humans and animals, then it should be possible for us to harm animals without harming our sympathy for fellow human beings. In fact, since sympathy for animals sometimes can distract our attention from our true duties, it is not morally ideal. Therefore, we ought to try to shape our sympathy “to reflect better the clear and crucial moral distinction (on Kant’s view) between animals and persons” (Skidmore).

The indirect duty theorist must then claim that shaping our natural sympathy in this way is impossible. This claim is very
implausible, given the variation among people and cultures. Skidmore uses the example of abortion. Some people have an acute sympathy even for embryos, whereas others see them as nothing more than inconsequential tissue. “It seems rather obvious that many people can and do shape their sympathies to reflect more adequately the moral beliefs they come to hold” (Skidmore).

An additional point along these lines (though not raised by Skidmore) is that at least some agents will, in the course of fulfilling their duties to humans, have to inflict acute suffering on animals. The researcher who must injure, poison, and inflict diseases upon animals for the benefit of humankind knows that this is his duty. It seems that he has two choices: he can unlearn his natural sympathy for animals because of his understanding that it is not morally appropriate; or he can harm animals despite his sympathy, and therefore also damage his sympathy for human beings. The latter would be immoral for the indirect duty theorist, but if the former is possible then the strong connection does not hold. Either the indirect duty theory must be abandoned, or else it must become so strong that any use of animals which causes suffering – including medical research – is forbidden. That may sound like an inviting approach, but it would no longer be plausible to regard it as an indirect duty view at that point. The idea behind indirect duties is that our improved treatment of animals is really aimed at fulfilling our obligations to humans; humans are still the center of the moral universe. Yet surely if that were true, we would be justified in harming animals in at least those few cases (probably fewer than most people, Kant among them, recognize) where it would be required to directly support human interests. Furthermore, as previously noted, the strong connection that would be required for such a view (that harming animals results in mistreatment of humans almost always) is not plausible.

**A Different Version of the Indirect Duty View**

Peter Carruthers has defended an indirect duty approach to animals, but with a shift in emphasis that allows him to avoid some of these difficulties. Whereas Kant claims that cruelty to animals tends to cause people to become hard in their dealings with other human beings, Carruthers claims that cruelty to animals reveals an existing flaw in the agent: a general indifference to suffering, which will probably also express itself in the agent’s dealings with human beings (153-154).

One advantage to Carruthers’s approach is its empirical plausibility. Animal welfare organizations often emphasize a link between violence against animals (especially in youth) and violence against humans. The implication is often that the former causes the latter; much has been made of the fact that many infamous murderers were previously caught abusing animals. It could just as
easily be said, however, that some underlying character flaw (indifference to, or even enjoyment of, others’ suffering) is responsible for both the animal and the human cruelty. Carruthers is therefore not faced with the difficulty of showing how the one type of cruelty causes the other; he only needs to show that there is a connection. Furthermore, his view better accounts for the case of the vivisectionist. The person who torments a dog for no good reason reveals something different about her character than does the person who reluctantly torments a dog because she believes it will save human lives.

The problem with Carruthers’s view is that although it may show why we have a repugnance towards animal cruelty, it does not show that these actions are immoral. If, as Kant holds, being cruel to animals causes us to be cruel to humans, then we have a duty to refrain from being cruel to animals. If the animal cruelty is only a symptom of a character flaw, rather than the cause of it, then it would be deplorable but not evil. We would have no duty to refrain from it, though we would be justified in passing unfavorable judgment upon the moral character of those who engaged in it. Carruthers gives the example of Astrid, an astronaut who has brought her cat into space with her on a one-way trip out of the solar system (thus ensuring that no other human beings will be distressed in any way by her actions). At some point in the journal, Astrid gets bored, and decides to entertain herself by hanging her cat from the wall and using it as a dartboard. According to Carruthers, “Such actions are wrong because they are cruel. They betray an indifference to suffering that may manifest itself . . . in that person’s dealings with other rational agents” (153-154). He concludes that “actions which cause suffering to animals will be wrong whenever they are performed for no reason, or for trivial reasons” (154).

Carruthers has not, however, established that Astrid’s action was wrong, only that she is an unpleasant person, and is likely to commit moral wrongs in the future. Her actions reveal something about her character, to be sure, but this does not prove that the actions themselves are wrong. By way of analogy, consider the mother who suspects that her son’s style of dress indicates that he is involved with the drug culture. This seems to be good reason for her to be concerned about his character and lifestyle, and perhaps even to find his style of dress unpleasant. However, it does not mean that his clothes are inherently harmful, and if she responds by forbidding him to wear them, most would think her prohibition is misguided. If the clothes caused the lifestyle, then the prohibition would make sense. Hence an indirect duty view, to successfully establish that we ought to refrain from being cruel to animals, must establish that such cruelty itself causes the character flaw that leads to cruel treatment of humans, as Kant maintains.
Since the causal approach is just as problematic as Carruthers’ revealed-character approach, I believe that the attempt to establish indirect duties to animals is unsuccessful. I conclude that a Kantian has two options: either accept the counterintuitive result that we have no duties at all (indirect or direct) to animals, or try to find some other way to establish duties to animals within Kant’s system. Since the connection between rationality and moral considerability is deeply rooted in Kant’s ethical theory, this is no small task. Given the enduring influence of Kantian ethics, however, it would be a worthwhile endeavor.

1. Egonsson uses the example of intensively-farmed meat presumably because humanly-raised animals that are killed painlessly would not be suffering; since animals are only means, there would be nothing wrong with killing them for food provided there is no cruelty involved with the raising and slaughtering. Nevertheless, since most of the meat which is readily available probably does not meet this ideal standard, Egonsson’s extension of Kant’s position would tend to lead to vegetarianism.

References


A Critique of the Kantian Theory of Indirect Moral Duties to Animals

Jeff Sebo†

Much has been made of the seeming incompatibility of Kantian ethics and animal rights. Kant argues that we have no direct moral duties to animals as beings with inherent value; we have only indirect duties to them insofar as our treatment of them affects the interests of other human beings. For example, in “Duties to Animals and Spirits” Kant writes, “[S]o far as animals are concerned, we have no direct duties. Animals are not self-conscious and are there merely as the means to an end. That end is man.” He reiterates this point later by writing: “Our duties towards animals are merely indirect duties towards humanity” (ibid).

In contrast, animal rights advocates argue that animals are beings with inherent value, and so we have direct duties to them whether or not our actions toward them promote the interests of other human beings. To cite just one example, Tom Regan (1985) argues that animals have inherent rights for the same reason that we do: “We are each of us the experiencing subject of a life, a conscious creature having an individual welfare that has importance to us whatever our usefulness to others” (487). We may consider this argument a direct, or intrinsic, account of duties to animals, as opposed to the indirect, or instrumental, account that Kant offers.†

The Kantian indirect-duties view has been very influential in the development of moral, political and social theory. In fact, we can still see its impact today. In the United States, for example, many state and national laws continue to regard “animal ethics issues” not as duties that humans hold towards animals, but as rules that govern conflicts over “property,” the formal legal status of animals. For example, the Texas Animal Cruelty Laws, ostensibly intended to protect animals from cruel and inhumane treatment, apply only to domesticated animals under the custody of human beings. As a result, they exclude birds, deer, rabbits, squirrels, and all other animals who have the “misfortune” not to be owned, and they protect domesticated animals only in the interest of the humans who own them. Similarly, the Animal Welfare Act, the national law on animal treatment, “excludes pet stores, ... state and country fairs, livestock

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shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences.” The U. S. Department of Agriculture, moreover, interprets the Animal Welfare Act as also excluding cold-blooded animals, warm-blooded animals not “used for research, teaching, testing, experimentation, … exhibition purposes, or as a pet, [and] farm animals used for food, fiber, or production purposes.” Thus, in the eyes of the law, animals have no intrinsic value at all; they are important solely as property to be bought and sold, as resources for human benefit. Unfortunately, animals will never gain the moral and legal status they deserve if we continue to operate within the parameters of the indirect-duties view. Therefore, if we are to progress toward the goal of animal liberation, we must first amend the principles on which the animal cruelty laws are based. To this end, I will challenge the validity of the indirect-duties view by arguing that Kantian ethics not only permits but entails the inclusion of animal rights. I recognize that this approach will put me at odds with Kant, but I can live with that. Kant is not always the best interpreter of his own theory, as his questionable “four examples” in *Groundwork II* demonstrate (*G* 222 [4: 421]). Furthermore, he is infamous for his sexism in *The Metaphysics of Morals* and his racism in “Observations on the Feelings of the Beautiful and the Sublime,” yet we do not thereby conclude that his ethical theory is sexist or racist. Rather, we simply accept that we should distinguish “Kant the man” from “Kantianism the theory.” In the same way, I will now examine whether Kant is right to exclude animals from the sphere of direct moral concern. Does his view follow from a proper application of his own theory, or is it simply the inconsistent result of uncritical prejudice?

Many have challenged Kant by pointing out that his argument rests on the assumption that animals are nonrational, whereas we now know that many animals possess significant rational capacities. For example, recent studies in cognitive ethology indicate that chimpanzees and bonobos have intellectual abilities similar to, if not greater than, those of a normal human child: they can form mental representations of themselves and other minds, communicate through language and symbols, discern cause-and-effect relationships, solve simple logical and mathematical problems and much more (Wise 179-237). Furthermore, even though not all animals are able to perform higher cognitive functions, they are nonetheless able to set ends based on inclination and pursue the necessary means for achieving them, often creatively. This research suggests that any argument for the universal moral superiority of human beings will be unsuccessful, because no matter what criteria we select, some animals will always outperform some humans. Therefore, we have good reason to reject the simplistic view of the animal mind that Kant describes in his books, and to blur the moral line he forges between humans on one hand and all other animals on the other.
While this response has merit, I do not presently intend to side with it, nor do I intend to develop this line of reasoning any further, as it is an empirical argument that tries to fit animals into the Kantian view, not an analysis of the view itself. Instead, for the sake of the argument I wish to lay out, I will actually presuppose that all animals are nonrational (granting that this point encounters substantial empirical resistance) in order to argue that the low moral value Kant extends to animals poses significant problems for his ethical theory. Specifically, I will argue that the “humanity formula” of the Categorical Imperative (CI), as presently understood, commits Kant to claiming that human beings have indirect moral status, even though he asserts that they are ends in themselves. I will then show that the humanity formula, because of this problem, clashes not only with the other formulas of the CI, but also with the very sensibilities on which the moral law is based. I will conclude by suggesting that we can solve this problem only by extending the moral radar, and that our only means for doing so will incorporate animals into it. In short, I will argue that Kantian ethics, in order to protect the vulnerabilities of human beings, must protect animals as well.

The Kantian Argument against Animal Rights

I begin by outlining exactly why Kant believes animals do not have direct moral status. First, what does it mean for something to have direct moral status? It means that one must regard that thing as an end in itself, or rather, as a being whose value commands the respect of all rational agents. In contrast, if something has indirect moral status, one must regard that thing not for its own sake, but to comply with a duty one has towards something else. In this sense we have indirect moral duties concerning inanimate objects. For instance, we are obliged not to burn down houses, smudge paintings with our fingertips, or rip the heads off teddy bears not because these things have rights, but because they have value to people who do. Of course, the fact that people care for these things is contingent. The same inanimate object can move in and out of moral standing based entirely on external factors: for example, whether a human being values it, or whether it continues to benefit humans in general. This is why Kant considers inanimate objects to be “relative ends” (ends whose value is dependent on our desires) rather than “objective ends” (ends in themselves) (G 228 [427]).

Kant argues that animals are relative ends in much the same way: we must treat them kindly not because they have rights we should consider, but because they have value to people who do have rights. In this sense, ripping the head off a kitten is no worse than ripping the head off a teddy bear: it is wrong not because it harms the kitten, but because it harms a person who cares about the kitten. Granted, Kant says that harming animals is wrong for an additional reason: though not wrong in itself, it might habituate us to become
more violent towards other human beings (as humans and nonhumans have similar behavioral responses to pain). But this reason is equally contingent and indirect, for even though it governs our treatment of animals, it does so only for our own benefit: abusing animals is wrong because it might hurt us. Of course, Kant realizes that one can have indirect moral status without thereby being a relative end; otherwise human beings would be relative ends too. After all, anything that lives in an ecosystem, let alone a social community, can be a means to other ends, but something is a relative end if and only if that thing is merely a means to other ends. Given this, why exactly does Kant believe that animals are relative ends?

Kant defends his position on animals by citing the humanity formula of the CI, which states that humanity is an end to which we hold direct moral duties. In *Groundwork II*, Kant writes:

*Rational nature exists as an end in itself.* This is the way in which a human being necessarily conceives his own existence, and it is therefore a subjective principle of human actions. But it is also the way in which every other rational being conceives his existence, on the same rational ground which holds also for me; hence it is at the same time an objective principle from which, since it is a supreme practical ground, it must be possible to derive all laws of the will. The practical imperative will therefore be the following: Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means. ([G 229–230 [4: 429]])

Kant adds that since human beings are rational, they count as objective ends: “[As] rational beings, [human beings] must always at the same time be valued as ends” ([G 230 [4: 430]). This argument, Kant believes, is what allows us to remove animals from the sphere of direct moral concern: I am obligated to you simply because you are a member of the human race: a class of beings that, due to their rational nature, are objective ends, or ends in themselves. In contrast, animal species have mere “price” instead of “dignity”, because animals are capable of responding only to inclination, and dignity stems only from the presence of humanity. Thus, Kant believes that even though animals are sentient beings capable of pleasure, pain and happiness, they are not objective ends: their value is dependent solely on the desires of humans.\textsuperscript{xii}

**The Problem with the Humanity Formula**

Importantly, under this interpretation of the humanity formula, rational nature is both necessary and sufficient\textsuperscript{xiii} for direct moral status: we are objective ends because we are rational, and animals are relative ends because they are not. Perhaps Kant interprets the humanity formula this way because he wants to avoid

suggesting that humanity is limited to human beings. As Thomas Hill, Jr. discusses in his edition of the *Groundwork*, Kant intends for the moral radar to include any being with a capacity for reason, such as angels or rational aliens (269). But while he accomplishes this goal through the humanity formula, I believe that he does so at a great price: by claiming that humanity is *necessary* for direct moral status, he imposes serious constraints on the duties we can derive from the CI. Specifically, he allows for a very limited set of duties that simply do not account for our substantial vulnerabilities as humans. In what follows, I will explain why I believe this is an important problem for Kant, and I will conclude that we can solve it only by considering humanity to be sufficient, but not necessary, for direct moral status. The implication will be that animals might just have direct moral status after all.

If, as Kant suggests, humanity is necessary for direct moral status, then our value as ends is dependant on the fact that we possess a capacity for reason. As Hill notes in his article “Humanity as an End in Itself” (1980), Kant repeatedly uses the phrase “humanity in a person” in *The Metaphysics of Morals*, suggesting that humanity is not a description of a particular species, but rather a property found in all people, whether or not they happen to be biologically human (Hill 85). Kant also supports this interpretation when he introduces the humanity formula in *Groundwork II*, writing, “Rational nature exists as an end in itself,” and, “The practical imperative will therefore be the following: Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means” (G 229-230 [4: 429], emphasis mine). This passage implies that our moral duties refer not to us, nor to those around us, nor even to the communities in which we live; rather, they refer to nothing other than *reason itself*—the rational nature that permeates us and allows us to act out of reverence for the moral law. And since humanity, which affords us dignity instead of mere price, is coextensive with, if not identical to, rational nature, *it is the rational nature in humans that possesses dignity, not the humans themselves*.

Further passages in the *Groundwork* support this analysis. For example, in *Groundwork I*, Kant argues:

> Now if an action done out of duty is supposed to exclude totally the influence of inclination, and, along with inclination, every object of volition, then nothing remains that could determine the will except objectively the law and subjectively pure respect for this practical law. … That preeminent good which we call “moral” consists therefore in nothing but the idea of the law in itself, which certainly is present only in a rational being—so far as that idea, and not an expected result, is the determining ground of the will. (G 202 [4: 400]; 203 [4: 402])

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Moreover, in *Groundwork II* Kant claims, “Autonomy is thus the basis of the dignity of human nature and of every rational nature” (G 236 [4: 436]). Kant believes that this argument grounds the claim that human beings have direct moral status yet animals do not, because only humans are connected to rational nature. However, I am not sure that this distinction holds—not because I believe that animals have direct moral status under this interpretation of the humanity formula, but because I believe that humans might not. Consider *Groundwork III*, where Kant discusses our rational nature.

He writes:

[A rational being] has two perspectives from which he can consider himself and from which he can acknowledge the laws governing the use of his powers and consequently governing all his actions. He can consider himself first so far as he belongs to the world of sense, under laws of nature (heteronomy); and secondly—so far as he belongs to the intelligible world—under laws that are not empirical but, being independent of nature, are founded on reason alone. (G 252 [4: 452])

Kant distinguishes autonomy from heteronomy to support the argument that we must imagine ourselves as transcendentally free (autonomous), for otherwise we would not be subject to the moral law. However, he grants that we must also imagine ourselves as part of the causal order (heteronomous), and that the perspective from which we are free is no more compelling than that from which we are not. It is this point that presents a problem for the notion that our moral status is based on our humanity, for it is true that we must imagine ourselves as both autonomous and heteronomous, and if it is also true that moral duty refers directly (and exclusively) to rational nature, then it follows that we have direct moral duties only to our autonomy. In other words, whereas we have a direct moral duty to cultivate and preserve our rational nature, we have, at best, an indirect moral duty to care for our physical bodies. After all, they reside in the world of sense, and so they, along with all the inclination-based ends they pursue, are subject only to the laws of physical causation. Thus, considered in themselves (apart from being empirically necessary for our agency), they have mere price, not dignity.

Accordingly, all our negative moral duties, must fall under two main categories: the duty to avoid maxims that insult or frustrate the process of reason, and the duty to avoid maxims that hinder the physical processes required for rational behavior. For example, it is always wrong to tell a lie or make a false promise, because such
behavior misrepresents the world to other rational beings and thereby
insults the dignity of rational nature. Kant argues for this conclusion
through the false promising example in *Groundwork II*, as well as
through arguments elsewhere condemning lying, mockery, and
servility. As Hill notes, “Kant is unusual, at least compared to moral
philosophers today, in stressing the moral importance of attitude and
gesture aside from their consequences. Mockery is opposed, whether
or not it is effective for the purpose of reform or deterrent, because it
reflects a disrespectful attitude toward the humanity of others” (Hill
97). Additionally, under this view, it is always wrong to consume
drugs and alcohol, because they seem to negatively impact our
capacity to perform higher cognitive functions. Kant argues for this
conclusion in many passages as well, claiming, for example, that one
should never consume opiates or alcohol because they cause one to
be temporarily irrational, with a weakened “capacity to use his powers
purposively” (MM 180 [427]).

On the other hand, we have no negative duties to avoid
maxims that do not hinder rational agency. For example, while I have
a duty not to chop off your head (because the proper functioning of
your brain is required for your agency), I have no similar duty not to
chop off your arm, because such an act would not hinder your
capacity for reason in the least. Of course, it might hinder your ability
to pursue specific moral ends (as might losing your car, job or any
other material possession), but it would not hinder your capacity to
pursue moral ends in general; you would simply have to set new ends
based on your newfound physical limitations. In fact, the amputation
of certain body parts would lead to a *decline* of the temptations
associated with inclination, thereby allowing reason to hold a firmer
grasp on your motives.\textsuperscript{iv} Granted, one could argue that our physical
nature has moral value because of its connection to our autonomy;
but why should an inclination have *direct* moral status simply because
it resides in a body that also happens to house a capacity for reason?
This would be tantamount to arguing that a dog has direct moral
status simply because he lives in a building that also happens to
house a human. In other words, the connection between our
autonomy and our physical nature is every bit as contingent and
indirect as the connection between rational agents, nonrational
animals, and inanimate objects. Consequently, the humanity formula
reduces all duties not directly concerned with reason to indirect moral
status.\textsuperscript{v} It is in this respect that the humanity formula clashes with
the other formulas of the CI, as well as with our moral sensibilities,
for it commits us to an untenable demarcation of direct and indirect
moral duties. For example, we have a direct moral duty not to
anesthetize patients prior to surgery, yet we have a mere indirect
moral duty not to rape.

This consequence, aside from being plainly ridiculous, is
inconsistent with the universal law formula of the CI, from which we
derive a direct moral duty not to rape. Since rape is an interpersonal

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act predicated on unwilling submission, it is impossible for one to rape another without failing the contradiction in conception test; for by universalizing rape, one necessarily wills to be an unwilling participant in the act. Thus, one cannot coherently imagine rape as a universal law, and so the maxim fails under the CI. This presents a problem for Kant, because he draws an equivalence between the humanity and universal law formulas in *Groundwork II*, implying that one could, in principle, use them interchangeably:

“[The] principle ‘So act in relation to every rational being (both yourself and others) that this being may at the same time count in your maxim as an end in itself’ is...basically the same as the principle, ‘Act on a maxim which at the same time embodies in itself its own universal validity for every rational being.’” (238 [4: 438])

Thus, we cannot argue that inclination has no direct moral status while maintaining that we have a direct moral duty not to rape. Not only would this argument render the CI incoherent, but it would undercut the force of the rape prohibition in the first place. After all, the desire for rape (as well as the aversion to it) is a physical and psychological drive that has no direct impact on our capacity for reason. Of course, one could argue that in the case of rape, the pain and trauma incurred renders the victim less capable of acting rationally, but this consequence is contingent and not unequivocally true. For example, people often claim that traumatic events serve as catalysts for rational behavior, helping them to reprioritize their lives and focus on what is important. Moreover, some philosophers even claim that pain and suffering is an important channel for rational development. Aristotle, for example, argues that trauma is a cathartic experience that allows us to overcome emotive impulses in the future, while Nietzsche argues that masters of morality flourish in life only by overcoming severe physical and psychological challenges.

Therefore, if we are to deem rape immoral with the humanity formula, or at least preserve the moral weight of the rape prohibition derived from the universal law formula, we need to do so based on grounds other than that it has the potential to hinder our rational agency. This demonstrates that while rational nature may be the source of the duty not to rape, it cannot be the object. The object of this duty must be an inclination-based end not to be raped, or perhaps more generally, not to be abused and exploited. But if this is the case, then rational nature is not a necessary property of all the ends we endorse (e.g. the end to not be raped); rather, it is the tool that determines whether we should endorse them in the first place. Then, once an end meets the requirements of the moral law, it commands our respect wherever it may be found—be it in a rational agent or in a nonrational animal. Therefore, we cannot maintain the duty not to rape unless we extend its scope to animals as well, since they also
desire not to be abused and exploited. And since we cannot apply the moral law arbitrarily, endorsing the end not to be raped wherever we may find it obliges us to extend the same courtesy to other inclination-based ends: how we treat one determines how we treat the rest.

We are thus faced with a dilemma: either we uphold rational nature as both necessary and sufficient for direct moral status, thereby accepting the permissibility of all acts that do not directly hinder it, or we uphold rational nature as sufficient for direct moral status but not necessary, thereby accepting that it need not be present in the objects of our duties. Our decision regarding this dilemma will be based on whether or not we choose to reconsider the moral status of inclination. On one hand, if we decide that all inclination-governed beings have the same low status ascribed to animals, then we must extend this low status to the perspective from which we view ourselves as heteronomous. On the other hand, if we revaluate inclination such that we provide a binding proscription of acts such as rape, then we must extend similar consideration to all inclination-based ends, whether or not they happen to reside in a creature with a capacity for reason. We must, in other words, establish Kantian grounds for distinguishing moral agents (those with rights and duties) from moral patients (those with rights but no duties). I believe that this second option is not only the more plausible of the two, but also the more consistent with the primary text and the secondary literature, as well as the better means for resolving other issues associated with the Kantian scheme. In what follows I will support these claims, and in doing so I will flesh out precisely what I mean when I say that animals have direct moral status.

The Kantian Argument for Animal Rights
The Primary Text

The animal rights position fits well with The Metaphysics of Morals, where Kant claims that we have a moral obligation to pursue the happiness of others. Kant writes, “When it comes to my promoting happiness as an end that is also a duty, this must therefore be the happiness of other human beings, whose (permitted) end I thus make my own end as well” (MM 151 [6:388]). Kant even specifies that this type of happiness is inclination-based happiness, or in his words, “natural happiness (which consists in satisfaction with what nature bestows, and so with what one enjoys as a gift from without)” (ibid). Thus, according to Kant, we have a moral duty to promote the permissible inclination-based ends of human beings. And given that inclination-based ends reside in animals as well as humans, the following question is raised: is the duty to pursue the permissible ends of others limited to the community of moral agents, or does it extend to all sentient beings?

The answer to this question hinges on what is required for an end to be “permissible” in the relevant sense. Interestingly, several
sections in the *Groundwork* suggest that an end can be permissible even if its possessor is not a moral agent. For example, Kant states in the *Groundwork II* that for an end to be permissible, it must be pursued not out of reverence for the CI, but only in accordance with it: “an action that is compatible with the autonomy of the will is permitted; one that does not harmonize with it is forbidden” (*G* 240 [4:439]). In other words, an end is permissible if and only if one can measure it against the moral law without exposing a fatal contradiction, either in conception or in will. This requirement, however, does not imply that the being whose end is in question must engage in such measurement, or that the end must be pursued out of respect for, or even in recognition of, the moral law. One does not render an end impermissible, after all, merely by pursuing it out of inclination. For if this were the case, then we would have a moral duty to deny ourselves and others of all ends based on inclination—up to and including happiness itself. In other words, we would have to ensure that everyone in the kingdom of ends lives the life of an ascetic. And clearly, when Kant argues that we have a duty to pursue the permissible ends of others, he does not mean that we have a duty to prevent others from being happy. Rather, he means that when the ends of others are consistent with the requirements of reason, we have a duty to pursue them. Therefore, Kantian ethics does allow for animals to have permissible ends in the relevant sense.

The Secondary Literature

The argument that moral agency is not necessary for direct moral status also has roots in contemporary Kant scholarship, especially regarding the purpose of the CI. For example, Barbara Herman (1984) writes, “I view the CI procedure as being designed to draw our attention to those features of our condition—as rational agents in this world and as members of a community of persons—that serve as the conditions of our willings” (584). Here, it is significant that Herman sets “rational agents in this world” apart from “members of a community of persons,” as it suggests that the two categories are not necessarily identical. And if Kantianism allows for an individual to be a “member of a community of persons” without also being a “rational agent,” then we might have Kantian grounds for distinguishing moral agents from moral patients—which is necessary if we are to assert that animals are objective ends.

Herman hints at this possibility when she argues that angels do not have a positive duty of beneficence towards human beings because they “are not vulnerable and dependent,” and so “the argument for beneficence could not require them to reject a maxim of nonbeneficence” (590). In other words, since angels do not require help from others, they may choose not to lend aid to others without fear of contradiction. In contrast, Herman argues, since human beings are both autonomous and heteronomous, they must reject the maxim of nonbeneficence in order to pass the contradiction of will...
test. She writes, “The CI procedure is to show that, for any of us [human beings], the availability of the help of others is not something it can be rational to forgo,” and that, “[The] argument that defeats the maxim of nonbeneficence leads, positively, to a duty of mutual aid” (584, 592).

Interestingly, this passage implies that if angels were “vulnerable and dependent,” they would have a positive duty of beneficence towards human beings. For even though they (presumably) have a superior capacity for reason, they would still be obliged to us because of our shared need for help. Let me spell out this point by emphasizing what it is not asserting. First, it is not suggesting that human ends would translate to angel duties only if the angels valued them too. Even if the angels had no respiratory systems, for example, they would still not be permitted to rid the universe of oxygen. Simply put, the angels would be obliged to help us not because they valued our ends, but because we did. Second, this point is not implying that the angels would hold duties to us only if they were dependant on us. Even if they were not in the position to benefit from us at all, they would still not be permitted to ignore our needs, or to exploit us for personal gain. This is because for them, the grounding of the duty of beneficence would not be a contractualist desire for reciprocity; it would be a logical consequence of the value they place on help in general.” In other words, they would be obliged to help us because they would be dependent on others, not because they would be dependent on us. As Herman argues:

[It] is the fact of our dependency—that we are, equally, dependent (again; not that we are equally dependent)—that is the ground of the duty to help. I may not be indifferent to others not because I would thereby risk the loss of needed help (this is not a duty of fairness or reciprocity) but because I cannot escape our shared condition of dependency. (592)

This argument carries with it important implications regarding animals, because the relationship between “vulnerable and dependent” angels and humans is analogous to that between humans and animals: humans have a superior capacity for reason compared to animals, but we are nevertheless bound to them by virtue of our shared needs—“those features of our condition…that serve as the conditions of our willing.” Thus, even though animals might never be able to return the favor, so to speak, they still have ends to which we hold direct moral duties. In this respect, Herman provides us with a Kantian precedent, or at least the beginnings of a Kantian rationale, for the claim that a being can have moral rights without having moral duties. Specifically, while heteronomy alone is not sufficient for one to be a moral agent, it is sufficient for one to be a moral patient, or to have ends that a moral agent must consider.”

So are animals objective ends? That depends on how we interpret the term. Kant writes that an objective end must “provide … universal principles, … principles valid and necessary for all rational beings and for every act of will” (G 228 [4: 427]). Animals do not seem to satisfy this criterion, because not every rational being has “principles valid and necessary” for treating them as ends in themselves. For example, God, angels, and other purely rational beings are not obliged to endorse inclination because they have none: the only objective end for them is rational nature itself. On the other hand, God, angels, and other purely rational beings are not moral agents. Kant writes in *Groundwork II* that since pure autonomy is not tempted by inclination and pure heteronomy does not have transcendental freedom, both autonomy and heteronomy are necessary for moral agency (G 245 [4: 445]; G 240 [4: 440]). Therefore, even though a strict interpretation of “objective end” excludes animals, perhaps so strict an interpretation is unnecessary when our discussion is about the scope of the moral radar. For not only is the moral perspective of non-moral agents beside the point, but it can be disastrous as well, especially if we use it to determine what deserves moral consideration. (The duty not to rape, for example, simply cannot be as contingent and indirect as the duty not to rip the head off a teddy bear—at least not if we want to remain charitable to Kant.) So for our present purposes, I submit that we should consider “objective end” as extending to all ends that provide “principles valid and necessary” for every moral agent, not every rational being. In this case, the world of objective ends includes not only rational nature, but also our physical nature, animals, and everything else that we necessarily endorse through our willings.

The Kantian Problem of “Exceptional” Human Beings

Finally, extending the moral radar to include animals provides a solution to the Kantian problem of “exceptional” human beings such as infants, the elderly, and the severely mentally retarded. As Hill notes, “a serious worry” about the humanity formula “is that it places a comparatively higher value on rational capacity, development, control, and honor than most morally conscientious and reasonable people are prepared to grant” (Hill 98). Indeed, Kantians who wish to ascribe moral status to exceptional human beings are forced to confront a serious overemphasis on rationality in the text, and any solution that preserves moral worth only for the rational is destined to fail. For example, Herman tries to resolve the issue by arguing that infants have the potential to develop a capacity for rationality, claiming, “We might regard an infant as one whose present inability to help will be overcome in the passage of time” (Herman 593). But this claim is not true in all cases, and it is not applicable to the elderly and severely mentally retarded. Besides, we have good reason to reject the argument that we can attribute rights to beings based on rights they may one day have. After all, we do not

allow law students to convict criminals in the courtroom, nor do we
permit medical interns to perform open-heart surgery. As Peter
Singer puts it, a prince, by virtue of being a potential king (and having
a high probability of actualizing this potential), does not have the
rights of a king. Given this, how can we maintain that nonrational
humans have moral rights if rationality is a necessary condition?

Laurence Thomas (2003) recognizes this problem, writing:

Could individuals [who have severe mental retardation] …
see themselves as Legislators of universal moral law or as
members of the Kingdom of Ends? Would it be reasonable
to expect them to see themselves in this way? Could they be
expected to have self-respect on the basis of reasoning? Just
what does it mean for others to have Kantian respect for
SMR persons? (Thomas 9-10)

However, Thomas offers a solution that also preserves the
logocentric nature of the humanity formula. He argues: “[In the case
of SMR persons] the mentally deficient is a person for whom
something went terribly wrong. There is something that he ought to
have (or should have had) but lacks, which is very different from
merely lacking something” (22). Thus, Thomas sets apart rational and
nonrational sentient beings by referencing teleology as the relevant
distinction: the severely mentally retarded might have the same
intellectual capacities as animals, but they were meant to be rational,
and so we should treat them as if they are. However, this argument is
even worse than the previous one, for not only does Thomas neglect
to explain the nature of this teleology, but he also refuses to explain
why it is morally relevant. After all, if I were to inject a rock with a
“rationality serum,” would it then have direct moral status even if my
experiment failed and it never gained the capacity for rationality?2

Surely not. It is not a dormant or stunted capacity for rationality that
gives exceptional humans value; it is the fact that they are sentient
creatures with the capacity for pain, pleasure, and happiness.

The Challenge Ahead

In this paper, I have argued that if rational nature is a
necessary condition for direct moral status, then we must accept that
our physical nature, and all the inclination-based ends we pursue,
have indirect moral status. The duties we hold towards one another
based on maxims unrelated to reason are no more binding than the
ones we hold towards animals. Therefore, either our physical nature
has the same low status we attribute to animals, or animals have the
same high status we attribute to our physical nature. In response to
this dilemma, I have argued that the second option is not only the
more plausible of the two, but also the more consistent with the

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primary text and the secondary literature, as well as the better means for resolving the Kantian issue of exceptional human beings.

Thus, we need to view the humanity formula as representing not a necessary condition for moral status but a sufficient one: rather than establish that humanity is the only end in itself, it establishes only that humanity is an end in itself (thus preserving space on the moral radar for nonrational beings). Consequently, while autonomy may be the source of moral obligation, it cannot be its sole object, because through our acts of willing we endorse and pledge to preserve all permissible inclination-based ends, whether we find them in other humans or in animals. This obligation is a logical consequence of the value we place on inclination in general, and it is vital to our experience as dependent beings in a world of limited resources and unlimited dangers. So are animals objective ends? To the extent that we are, yes. The domain of ends extends beyond the community of moral agents: we have a duty to promote the permissible ends of all creatures influenced by inclination and capable of pleasure, pain, and happiness.

In closing, I would like to add a word about the practical implications of my argument. I understand that a theoretical discussion about Kantian ethics does not lend itself to immediate social reform, and that no one will race to Congress with a new policy proposal upon reading it. But as I mentioned at the outset, my purpose in this argument is not to be the last word on the discussion. Rather, it is to begin the discussion anew. By addressing a foundational principle for animal-rights opponents and showing that it in fact entails animal rights, I have demonstrated the unsoundness of a position that presently defines the legal status of animals. But more needs to be said. Since my focus has been on the fact that we owe animals obligations in general, I have not yet discussed what those obligations might be, nor have I considered what legal consequences they might have. To remedy this, I will now suggest a few practical implications of my view, granting that the subject deserves a much more comprehensive treatment than I can offer here.

We know that if we are to regard animals as “exalted above all price,” then we cannot also regard them as our property. But how far does that extend? We presently buy and sell animals for food, clothing, entertainment, experimentation and more; we use them “merely as means” not only for economic sustenance, but also for the practices and traditions that shape our cultural identity. So, if animals have direct moral status, does that mean we should stop using them altogether? Some will argue that it does not, because we can always reform our institutions to accommodate the permissible ends of the animals we use (and thus treat them as ends in themselves as well as means to our own ends, which is permissible under the Kantian view). This solution seems reasonable in principle. But in practice, extending due consideration to animals would render most, if not all,
of these institutions impossible, or at the very least economically unfeasible. Therefore, by accepting that animals have direct moral status, we seem obligated to remove them from the sphere of human commerce entirely. For that reason, even though speculation at this point might be premature, I suspect that when the theoretical dust settles (and this may not happen for quite some time), Kantians will emerge as dedicated proponents for the animal liberation movement.

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1 I presented versions of this paper at the Texas Undergraduate Philosophy Conference and the First Annual Animal Liberation Student Association Conference. I would like to thank everyone there for their excellent questions and comments, particularly Julie Hunter, Jeff Casey, Anthony Nocella, II, Steve Best and Karen Davis. In addition, I am grateful to Mark Bernstein, Thomas Hill, Jr. and especially Richard Galvin for providing me with extensive and helpful notes. Finally, I would like to thank the editors and reviewers of *Animal Liberation Philosophy & Public Policy* and *Ex Nihilo*, in which a previous version of this paper (entitled “Are Human Beings Ends In Themselves?”) was published.


4 After Kant introduces the supreme moral law in *Groundwork II*, he applies it to four moral dilemmas, deriving the following conclusions: (1) We have a duty not to commit suicide. (2) We have a duty not to make false promises. (3) We have a duty to cultivate our talents. (4) We have a duty to help others. Scholars have challenged his arguments, particularly the first and third, and many have developed new ways of applying his theory that contradict him.

5 Here and throughout the rest of the paper, I will use “animal” as shorthand for “nonhuman animal.”

6 I owe this argument to Peter Singer (2002), who argues that we should reject “speciesism” for the same reason we reject racism and sexism: “The white racist claims that whites are superior to blacks, but this is false; although there are differences among individuals, some blacks are superior to some whites in all of the capacities and abilities that could conceivably be relevant” (3).

7 Kant considers the CI the supreme principle of morality. He presents several versions, or formulas, of the CI in *Groundwork II*: the universal law formula, the universal law of nature formula, the autonomy formula, the humanity formula and the kingdom of ends formula. Kant believes that each formula expresses the same supreme principle (though whether this is true is an open question that scholars continue to debate). In this paper I will focus primarily on the humanity formula, as it is most relevant to this discussion, but I will briefly touch on the universal law formula later on.

8 Here, I take “direct moral status” to be defined in terms of direct moral duty. That is, a person to whom we owe a direct moral duty can be said to have direct moral status. I take “indirect moral status” to have the same relationship with indirect moral duty.
Note that the person does not need to care for the kitten. For example, the rancher whose cattle die prematurely may suffer only economically, but he suffers nonetheless.

Kant distinguishes between dignity and price as follows: “In the kingdom of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as equivalent. Whatever by contrast is exalted above all price and so admits of no equivalent has dignity” (G 235 [4: 434]).

Barbara Herman (1984) represents this view, arguing that “objects and animals cannot respond to need as such, nor can they take my ends as their own,” and, “animals are not, strictly speaking, capable of providing help, although they may of course do things that are helpful to us” (Herman 588, 593). As a result, Herman concludes (based on Kantian grounds, no less) that the positive duty of beneficence does not apply to nonrational beings.

Other philosophers who have supported this position include Henry J. McCloskey (1979), who argues that either actual or potential moral agency is a necessary condition for moral status, and Carl Wellman (1995), who believes that the freedom to control oneself in a possible confrontation is a requirement for moral status. Neither McCloskey nor Wellman believes that nonhuman animals have moral status.

By “necessary for direct status,” I mean that if one is not rational, then one will not have direct status. In contrast, by “sufficient for direct status,” I mean that if one is rational, then one will have direct status, but one can also have direct status without being rational. Thus, sufficiency without necessity preserves room on the moral radar for nonrational beings. My argument here is that we are correct in interpreting rational nature as sufficient for direct status, but not in interpreting it as necessary.

Negative duties are duties not to perform certain actions, whereas positive duties are duties to perform certain actions.

Consider, for example, some arguments posed for forcible castration of pathological sex offenders.

I owe a debt to Tom Regan here, because my argument that the humanity formula reduces human beings to mere receptacles of rational nature is similar to his argument that utilitarianism reduces human beings to mere receptacles of pleasure. In fact, Regan and I even draw the same conclusion: people should have moral value because they are the subjects of lives that are important to them, not because their bodies are vehicles for that which does have moral value.

My implementation of the universal law formula here is based the interpretation Richard Galvin (1991) offers regarding the contradiction in conception test. Supporting a position previously argued for by Marcus Singer in Generalization in Ethics (New York, 1961), Galvin criticizes three general views of the contradiction in conception test, including the “Causal Law Versions,” the “Teleological Law Versions” and the “Inconsistency of Intentions Views.” He then defends as an alternative the “Strict Logical Impossibility View,” which derives the immorality of an act from the form of its maxim, not from the synthetic circumstances which surround it. Finally, Galvin illustrates the superiority of the “SLI” interpretation by applying it to the cases of false promising, lying, rape, slavery and stealing.

All an end needs to be permissible is this: it, along with all its necessary means, must in compliance with the CI.
Note that this argument does not preclude the possibility of there being degrees of patienthood.

Of course, I am not suggesting here that Herman agrees with my application of her view, because she most certainly does not (see fn. vi for a brief summary of her view on animals). Instead, I am suggesting that her view is consistent with, perhaps even committed to, the inclusion of animals on the moral radar.

One might argue that we ought to pursue the happiness of others not because happiness is morally valuable, but because our beneficence will influence others to be beneficent as well. Thus, the argument might go, the duty to pursue the happiness of others does not extend to nonrational animals, because they are not capable of understanding beneficence as such. But my response to this challenge is the same: the duty of beneficence is not grounded in a contractualist desire for reciprocity; it is a logical consequence of the value we place on help in general.

For further (non-Kantian) arguments regarding this point, refer to MacCormick (1976) and Feinberg (1980). MacCormick argues that to have a right is to have an interest that should be protected by the duties of others, and Feinberg contends that to have a right is to be a claimant, or to have interests on behalf of which others can speak. This interest theory of rights is compatible not only with animal rights, but also with the rights of human infants and groups of people. I should note, however, that Feinberg qualifies this claim by arguing that species of animals cannot have any rights—not even the right to survive—because they do not have collective interests. This is an important point, especially when our discussion enters the realm of endangered species preservation. For my purposes in this paper, though, I will limit our discussion to the rights of individual animals.

In support of the claim that the purely heteronomous are not subject to duty, Kant writes: "[Autonomy] of the will is unavoidably bound up with [morality] or rather is its foundation" (245 [4: 445]). Arguing that the same is true of the purely autonomous, he writes:
A will whose maxims necessarily agree with the laws of autonomy is a holy, absolutely good will. The dependence of a will not absolutely good on the principle of autonomy (that is, moral necessitation) is obligation. Obligation can thus not apply to a holy being. (240 [4: 439])

This argument owes a significant debt to Michael Tooley, who develops a similar line of reasoning in his article, "In Defense of Abortion and Infanticide." He writes:
Suppose at some future time a chemical were to be discovered which when injected into the brain of a kitten would cause the kitten to develop into a cat possessing a brain of the sort possessed by humans, and consequently into a cat having all the psychological capabilities characteristic of normal adult humans. Such cats would be able to think, to use language, and so on. Now it would surely be morally indefensible in such a situation to hold that it is seriously wrong to kill an adult member of the species Homo sapiens without also holding that it is wrong to kill any cat that has undergone such a process of development: there would be no difference. (205)
With this foundation in place, Tooley introduces a series of thought experiments in support of the thesis that killing an injected kitten would be morally equivalent to killing a normal kitten; and so potential agency—produced "naturally" or otherwise—is morally irrelevant. To this effect he argues: "It perhaps needs to be emphasized here that the moral symmetry principle does not imply that neither
action is morally wrong. Perhaps both actions are wrong, even seriously so. The moral symmetry principle implies only that if they are wrong, they are so to precisely the same degree” (ibid). Even though Tooley develops this argument as a means for addressing abortion and euthanasia, it is relevant for this discussion as well, as he grounds it on the premise that teleology is not an adequate surrogate for direct moral status.

xlv As James Rachels notes, “Cruel methods are used in the meat-production industry because such methods are economical; they enable the producers to market a product that people can afford” (505).

REFERENCES


Utilitarianism, Animals, and the Problem of Numbers

Stephen Hanson†

The question raised in this essay is whether illegal animal liberation activities can be justified by a utilitarian analysis. The form of utilitarianism I will discuss is known as act-utilitarianism, which states that an action is right when, of all the actions possible to a given agent at a given time, that action will produce the best ratio of good consequences to bad consequences for all sentient beings affected. I argue that utilitarianism can only justify illegal animal liberation activities under certain fairly uncommon circumstances. I will describe some of the difficulties in justifying any illegal act on utilitarian grounds, elaborate the sorts of circumstances under which illegal acts could be justified in a utilitarian framework, and then begin to evaluate how a utilitarian may determine whether a particular proposed illegal action can be justified.

This might seem a rather narrow objective, since utilitarianism is but one of multiple moral theories that people consider. An activist could agree with the argument herein and still feel she could ignore the conclusion because she is not utilitarian, preferring instead a rights-based or a virtue-based approach. Yet my argument may be more generally applicable to activists than it might initially seem. By definition, activists seek to effect change in the world around them, and are thus concerned primarily with their actions bringing about a desired set of results. Consequently, to argue that a utilitarian ought to act in such-and-such a fashion because that produces the best results for humans and other animals is also to argue that activists who are truly concerned about producing the best results for animals should perform the same actions. A utilitarian argument should therefore be generally applicable to many activists.

I intend this article as a challenge to those who advocate illegal forms of direct action as morally and practically appropriate means for liberation of animals. By the goal of “the liberation of animals” I mean making our society one that no longer treats sentient animals as food, tools for human use, or property of any kind. The kinds of illegal actions I mean here include, but are not limited to, things like sabotage, arson, destruction or theft of data, breaking into a site such as a laboratory or factory farm to remove animals (including “open rescues” as well as anonymous, “closed” rescues) and any kind of

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trespassing on private property, even if only to make audio or video recordings of abusive conditions. While illegal activities certainly can produce some good results, their effectiveness can also be overstated; the challenge I issue to activists is to think carefully about the long-term consequences of illegal actions to ensure that they will produce the most good in the long run, and I suggest some reasons why such a long-term approach is the right approach to take.

My key concern is that illegal actions may win a short-term victory - freeing animals, revealing the ugly truth about a lab or factory farm, or forcing the closure of a particular facility - but be counter-productive to the overall struggle fought out in the hearts and minds of the public as a whole. True, not every illegal action is counterproductive. Historically, it can be seen that even some acts of pure sabotage can serve as rallying points and lightning rods for change - consider, for example, the Boston Tea Party where in 1773 the Sons of Liberty destroyed 342 crates of British tea. But other such acts can damage one’s causes in the minds of a public whose support they need. The challenge is to ensure that the illegal action in question is truly the best option one has for the long-term goal of animal liberation.

The target of this essay is the liberationist who is considering, among various options, an illegal action as a means of furthering the cause of animal liberation. I also challenge, by extension, those who support illegal liberation activities. It should go without saying that many liberationists employ or support legal tactics as well as illegal tactics, as they realize that legal actions can be quite productive in at least some cases. In order to defend an illegal action, however, one must consider the results of one’s actions (both intended and unintended) the grounds for any possible justification of illegal actions, and the possible legal alternatives.

**Media Coverage in the Context of Fear of Terrorism**

One reason that utilitarian concerns tend to make one avoid illegal or violent actions is that our actions often have unintended side-effects, all of which must be considered when calculating what results a given action produces. Particularly (but not exclusively) given the current fear of terrorism in the United States and many other Western countries, many forms of destruction or violence against one’s own society can be perceived by the general public as being similar, and wrong. Recent terrorist actions in America, Spain, Russia, and elsewhere have made many people very wary of any destructive or illegal activities, whatever the justification. When animal rights activists employ violence, theft, destruction of property, and the like, it is possible that many members of the public will consider only the violence and not the reasons behind it.

current climate of fear and “you are either with us or against us” mentality, illegal and/or violent activities - even those in service of laudable goals - are subject to being labeled as “terrorist” and can easily produce results contrary to their intended goals. It does not follow from this that no illegal act of liberation could be viewed positively by a significant segment of the general public, but it does make it more difficult. Savvy media manipulation can make the argument to the public that a particular act of sabotage, infiltration, or animal liberation is justified. In 1985, for example, the ALF freed a baby macaque monkey named “Britches” from a gruesome experiment. Dramatic “before and after” images of Britches were documented in a PETA video that earned widespread sympathy for the activists and contempt for the experimenters. (Newkirk, referenced in Best and Nocella 22). It also matters whether one can obtain a broad audience for that media manipulation, as was done (though not without a fair amount of difficulty) in the case of the 1984 ALF raid on the head injury lab at the University of Pennsylvania (Orlans, et al Chapter 3). On the other hand, it is hard to deny the negative impact of footage of the smoking ruin of a building destroyed by arson on the eleven-o’clock news.

In her contribution to the anthology, *Terrorists or Freedom Fighters? Reflections on the Liberation of Animals*, Karen Dawn questions whether there is such a thing as bad press for animal liberation, as the animals could not be doing worse and since any press raises the issue of animal suffering for further public discussion (Dawn esp. 216-222). Others, however, dispute this. In the same volume, Tom Regan argues that bad press due to violent actions is a “tactical disaster” because it gives animal user industries free press coverage to push their anti-animal rights agendas (Regan 234). Further, though Dawn does a good job at finding the benefits even in mocking or otherwise negative media coverage (221-222), a utilitarian must do more than find some good in the spin of an action – she must look to see whether that action produced the most good possible. Even if there is no wholly bad press, there certainly is better and worse press.

In any case, certain actions may be more difficult to spin in the media. Generally, it is harder to get positive coverage for destructive actions than non-destructive ones. Actions that acquire video or audio documentation that can be used to show the public graphically why the action was performed make it easier to obtain sympathetic coverage. Such was obviously true in the cases of Britches and the U. Penn experiments mentioned above. What is being targeted also matters. Consequently, *foie gras* and veal production make for easier media spin because they involve serious visible damage to animals most people can more easily feel sympathetic towards (see Dawn

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217-220). Destruction by arson of a laboratory where experiments were performed on mice genetically modified to be affected by HIV would be a much harder sell. Finally, as Karen Davis points out in her essay in *Terrorists or Freedom Fighters?,* the “theatre” or style of how one documents a raid or illegal action, including features such as body language and clothing, can also affect how it is perceived (see Davis esp. 206-7).

At least some of these concerns are taken into account by media conscious activists. But the current social context of the action also matters, and that is currently a problem for animal liberationists. The United States Department of Justice has labeled the ELF and ALF the top two domestic terrorist organizations; this affects their ability to access mainstream media safely or effectively and to get their message through without negative spin. Much of the media is also generally conservative, corporate-controlled, and therefore business-friendly. Especially in an environment already less than willing to treat justifications from certain sources as credible, all of this must be accounted for when judging the results of an action. (More on this concern will be discussed below as the “problem of credibility.”)

The upshot of the concern about unintended consequences *vis a vis* the general public is that persons can be turned away from the reasonable goals of animal liberation if they focus on rejecting the methods instead of understanding the message, and if they feel that the animal industry is a victim rather than the animals themselves. Worse, they can be more easily guided by savvy media manipulation to ignore animal advocacy to side with those with vested interests in using and abusing animals. In this way, even a successful liberation attempt can become a long-term failure. The liberationist who, for example, breaks into a laboratory to free caged animals, may rescue some animals but risks losing many humans to the cause unless the general public can be carefully guided in its understanding of the case. This can be done in some cases, such as in the farmed animal rescue videos shot by Compassion Over Killing. Still, the current state of corporate ownership and manipulation of mainstream media can make this more difficult than it might have been at other times.

Illegal actions to liberate animals may present a rare dramatic opportunity to have the press cover atrocious animal treatment, but they can also give opponents the opportunity to mischaracterize and demonize animal liberationists as dangerous, naïve, or “terrorist.” That this is not fair - that the arguments which lead persons away from liberation are not as good as those which argue in favor of liberation - is of little import; what matters is whether an action produces the best results possible. The potential for negative side-effects must be carefully taken into account in any justification of an
illegal action.

Because of the dangers of media manipulation and negative influence on public opinion, the burden of proof is on an underground liberationist to show that illegal efforts produce more good than legal actions. Yet all this may suggest is that certain illegal actions are less likely to have the best overall effect, while other actions more directly aimed at improving the media image of animal liberation and liberationists might have a positive effect on public opinion. This will be discussed in more depth below.

In the face of this, can illegal liberation efforts be justified on utilitarian grounds? As I will argue, they may be so justified for some actions under certain circumstances but not for other actions or in other circumstances, a conclusion consistent with the act-utilitarian focus on assessing the results of specific actions. The question will become which set of circumstances is more consistent with the overall goal of animal liberation.

The Problem of Numbers and the Basis for a Utilitarian Argument for Illegal Actions

A utilitarian argument could be made for seeking direct, even possibly illegal, animal liberation under certain circumstances. But to describe those circumstances requires some groundwork. Since farmed animals constitute by far the largest number of animals used by humans, let us consider their plight. The quantity of animals raised and slaughtered for food every year is staggering. According to the US Department of Agriculture, there are about 60 million pigs, 27 million cattle, 274 million turkeys and over 8 billion chickens being raised for slaughter in the United States alone (USDA Economic Research Service). When one is debating what to do with one’s limited time and ability to influence animal lives, attempting to change, even minutely, the conditions in which animals are raised has the ability to influence literally billions of beings’ lives. Even if they would still eventually be slaughtered, the small improvement in their lives is multiplied times billions, which entails that gradual change might easily be the action that produces the most good. Call this the “problem of numbers”.

The problem of numbers might appear to show that seeking to change the status of animals raised for food via lobbying efforts, or seeking to change people’s minds through leafleting and rational argument, would be actions most likely to positively affect the most animal lives. So many animals could be affected that even minor successes could create a large amount of good. Since there are many ways to improve the lot of farmed animals while acting within the law, and since there are numerous hazards with acting outside the law, this problem might initially make one think that a utilitarian
should (under normal circumstances) hold that we ought to spend most of our limited activist time and energy seeking to positively affect these billions of animal lives in legal fashions. However, under certain circumstances, just the opposite may be true.

The issue of the number of animals affected could be used to defend the claim that illegal efforts might be morally permissible under certain conditions. The rationale for this defense comes from a long-term understanding of the problem of numbers. The argument depends on two opposing hypothetical statements: what should be done if legal actions alone can lead to complete liberation and what should be done if they cannot. The eventual aim of all animal liberation efforts is a world in which animals are not treated as food, entertainment, or unwilling experimental subjects. If this goal can be eventually obtained by operations largely within the legal system, then the arguments above suggest that the best approach to pursue would normally be engaging with the system by lobbying, demonstrating, raising public awareness, and the like. Such methods are safer and avoid the difficulties of the “terrorist” label in the media, as well as the negative publicity that can be attached to illegal and/or destructive actions. If employing only legal efforts will lead to liberation, that approach is best, since it would avoid dangerous pitfalls, may produce immediate improvements, and could still reach the eventual goal. In fact, if there is even a reasonable chance that such an approach will eventually produce liberation for a significant number of animals, a utilitarian argument holds that one ought to pursue that approach as long as it seems likely to attain that goal.

However, if it is the case that there is little to no likelihood that the larger goal of animal liberation will eventually happen as a result of employing only legally accessible methods, then the utilitarian conclusion becomes very different. If, for example, liberationists cannot get their message clearly portrayed in the corporate-owned media, or efforts to modify laws are effectively blocked by deep-pocketed lobbyists, then legal methods at modifying public opinion and law may be ineffective at achieving or even approaching the desired goal of a society that does not exploit or mistreat animals. Since that is the overall aim of the animal liberation movement, a utilitarian argument can justify illegal actions in this context if employing those actions as well could lead to overall liberation. Whatever it is that can best lead to liberation, no matter how small the chance that it will succeed, may be done if that is the only way to attain liberation. Even if using both legal and illegal liberation efforts offer only a small chance of success, if they offer some chance and all other plausible efforts to attain liberation have been exhausted, then are those the efforts a utilitarian ought to pursue. In the same vein, if illegal efforts combined with legal efforts offer a chance for

liberation, but legal efforts alone do not, then liberationists must engage in both legal and illegal actions.

Consequently, if legal efforts such as lobbying, public speaking, leafleting, protesting, and other methods of change and persuasion cannot or will not eventually lead to significant liberation, then a utilitarian must do something else. Under these circumstances, illegal liberation efforts could be supported by a utilitarian argument.

**Joshua Frank’s Proposal and the Problem of Credibility**

So the question for a utilitarian pondering what to do becomes, is it possible for an action within the system to move us closer the eventual goal of liberation? If not, then illegal actions may be justifiable. A useful tool for judging may come from Tom Regan. He gives a set of criteria for justifying what he calls violent actions which include ensuring that violence is only used when necessary to rescue innocent animals from terrible harms, and holding that violence could only be justified if all reasonable nonviolent alternatives have been exhausted (233). He claims that in many cases where violence is aimed at freeing innocent animals, nonviolent alternatives have not been exhausted and consequently the actions are not justified (234). Though Regan is obviously speaking as a rights theorist and not as a utilitarian, and though he speaks of violent actions instead of illegal ones, a similar claim could be made of illegal actions generally. Because of the concerns discussed above and elaborated below, illegal actions can generally only be justified if the legal options able to produce comparable results have been exhausted.

It is surely too early to hold that we have exhausted all plausible legal options in all areas of animal abuse. Though arguments for animals having moral value go at least as far back as Ancient Greece, the modern animal liberation movement is quite new. The very notion of a liberation movement of any sort, after all, is a relatively new concept. The initial publication of Animal Liberation in 1975 was an eye-opening experience for many people; many of the journals dealing with this relatively new concept began only as early as 1979 (Singer 85-6). The ALF was officially created in England in 1976 (Best and Nocella 20). We are no more than one generation away from the very concept of animal liberation being introduced in any fashion whatsoever to most persons. We cannot know that it is impossible or improbable that mass change cannot result simply by showing more and more people the truth, working to change laws, teaching, speaking, and so on to achieve a “critical mass” of persons who no longer wish to exploit animals. It is very early in a movement with the goal of nothing less than a radical restructuring of society to declare that working within the system has failed and that only

methods outside the system can be effective.

But it could still be the case that a particular illegal effort could be the action in a given circumstance most likely to move society towards improvement and eventual liberation. This means that persons compelled by utilitarian concerns to consider animals as morally relevant must seek to determine what, in the time and location in which they are working, will truly lead to the best results. Utilitarianism could justify some illegal actions, if those actions are likely to produce the most good, but the standard of justification which must be met is quite high, including considering some options which may seem unpalatable. As an example of how one might determine whether a given action meets this high justificatory standard, I will evaluate a recent defense of one type of illegal activism.

Joshua Frank has recently argued in this journal that illegal activities have led and can continue to lead to significant increases in public awareness about the conditions of animals in experimentation and factory farming. Frank argues that most Americans think that animals should be protected from at least some harms, and that most persons think that standard farming practices do constitute unacceptable harms (5). But if persons are to be able to “vote with their dollars” against animal cruelty, he notes, they must know what is going on behind the scenes (2). It is not that people do not care about what happens to animals, but that (generally) they do not know what happens. Finally, he argues that images and video have a significantly stronger impact than mere descriptions when it comes to making people understand what is actually going on in farming practices, etc. (6). However, there are legislative and judicial roadblocks in place which make legally obtaining such images and video difficult (7-8). From this he concludes that illegal efforts to obtain the video and images that are so influential in changing people’s views about factory farms and the like remain necessary and justified on a utilitarian framework. (Though he does not use the word “utilitarian” he argues in an essentially utilitarian fashion that we must evaluate the consequences of our actions, both positive and negative, in terms of their providing benefits to human and animal interests.)

I argue that this conclusion may not be justified. Frank rightly notes that there have been a number of successful ALF raids that have acquired video footage that has been helpful in revealing the inner workings of laboratories. The film *Unnecessary Fuss*, for example, which was made from stolen tapes shot by researchers themselves at the head injury laboratory of the University of Pennsylvania, was instrumental in shutting those experiments down. (Frank 8-9; see also Orlans, et al. Chapter 3). Anyone who has seen

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this disturbing video cannot help but recognize that Frank is right about the power of images to convince. However, it does not yet follow that, as he suggests, further raids and videos would necessarily be the best use of today’s animal activists’ time.

Though there are legal blocks in the way of obtaining video and images from the inside of factory farms and laboratories, Frank notes that these blocks are not impenetrable— it may be possible to obtain some, though not all, desired video footage via surreptitious but legal undercover methods (8). As well, the difficulties which Frank mentions with obtaining information can be connected to the very illegal actions he is promoting. He argues that many legal avenues to obtaining information have been closed down (7-8). But illegal actions such as breaking and entering tend to engender fear in those who have had their property entered. Fear breeds suspicion, which makes people more likely and willing to back measures restricting the flow of information. One must consider whether continued illegal efforts will make it even more difficult to obtain future information, legally or otherwise, before defending a given raid. Also, and very importantly, the state of the world today is different than it was when the Animal Liberation Front stole the videos from the University of Pennsylvania head injury lab. In the current political context of the “war on terror,” the general public in the US and other Western countries is arguably less likely to perceive illegal actions for a political cause as permissible, especially those involving violence or breaking and entering (as distinguished from, say, sit-ins at public places). The same actions by the ALF today might result in a very different set of consequences.

This is related to a more systemic problem with illegal actions by animal activists. Frank notes that animal activists have a credibility problem so serious that people will often believe that individual recorded instances of abuse are exceptions, or even that gruesome footage is “staged” by activists (10). This seriously interferes with the ability of animal activists, liberationist or otherwise, to achieve their goals; removing this block must be a high priority, since its being in place diminishes the value of everything activists do. The credibility problem, especially with regard to medical experiments, comes in good part from the generally positive opinion people have of scientists and medical researchers, which makes it all the more important to keep the impressions people have of activists from being negative. If the general public has to believe that someone is torturing baboons, and their choice is between scientists and animal liberationists, people’s decisions will be affected quite a lot by how the liberationists are perceived. If scientists, who are portrayed and perceived by many as respected, highly educated people working to advance medical knowledge and cure human
illnesses, are contrasted with a “shadowy network” of thieves who operate outside the law, destroy other people’s property, and won’t even show their faces, it will be much more difficult to convince people that the “animal terrorists” are actually telling the truth. This is one reason why “open rescues,” where the rescuers show their faces and accept arrest in order to make their case to the public, may often be more productive than the closed rescue tactics used by masked members of the ALF (Davis, 207-209).

The credibility gap makes denying the truth too easy. This is particularly so since knowing what goes on in factory farms or in scientific research could cause people to have to make lifestyle changes they won’t want to make; so if given any semi-plausible reason to discredit the source of disturbing footage, it is all too easy to do so. For the reasons discussed earlier, many illegal activities can provide persons a reason to ignore the evidence in front of their eyes. This is not a good reason, but again, it doesn’t matter whether reasons are good if people will use them.

Frank correctly notes that more evidence obtained from more sources, will make rejecting the activists’ conclusions less reasonable (10-11). Though true, this may leave the credibility problem itself intact. If animal activists are suffering from a credibility problem that is already not largely based in reality (what reasonable person could honestly think that animal activists are staging animal abuse? In order to prevent what? Lesser abuses than the ones they are staging?) then they must be exceptionally careful not to enable further unreasonable credibility problems. Given the legal and social reactions people have to illegal animal activism, especially of the violent variety, avoiding illegal activities unless absolutely necessary is one important way to do this.

Consider that few could (or did) criticize the source of the shocking information and images used by Henry Spira to help end mutilating experiments on cats in the American Museum of Natural History in New York, much of which was obtained through Freedom of Information Act requests (Singer 54-75). It is true that the Patriot Act has made information much more difficult to obtain through these sorts of means, but that what he did then could not be done legally now is irrelevant when what is being asked is how people perceive a particular action.

This holds animal activists to a higher standard than what is expected of proponents of many other positions. When a political activist digs up dirt on an opponent through illegal means, for example, the means are usually ignored in favor of the facts uncovered. Animal activists, however, often find their message obscured by their methods. Again, this is not fair; but again, it doesn’t matter. If being more scrupulous than others, and being

more scrupulous than one’s opponents, is what one must do to convince others of the truth, then that is what one must do.

**Considering Very Different Alternatives**

But what if illegal actions are absolutely necessary? Though possible in some cases, legal routes to obtaining footage are difficult and may be effectively blocked off by the law or defense against surreptitious recordings. If there is no reasonably possible way to legally obtain footage from a given site that one seeks to expose - or, more generally, if there is no reasonable legal way to attain some other liberationist goal - could illegal actions be justified then? Here is where seeking the best results can be very demanding. If one thinks that concerted effort, including some illegal activity, could shut down a particular experiment or facility after months or years of campaigning (as was the case with the U. Penn head experiments), one still has to ask whether that is the best way to spend that time and effort. One must also consider the possible results of very different activities (such as spending that same amount of time and effort leafleting, speaking, working with a vegan outreach plan, using older material already available, or seeking to shut down a different facility where footage might be legally obtained) which would perhaps do nothing to shut down that particular experiment but which may have a better effect on animals overall.

One could argue that these alternate efforts will do nothing to target a specific place of abuse operating at the present time. Older footage or footage from different facilities will do little to expose that particular facility. Thus, the argument would continue, one would have to use illegal means in order to obtain footage in order to shut down this facility. This is entirely correct, but it misses the point of the challenge. The goal is to achieve the best results overall for all sentient beings, not (necessarily) shutting down a particular facility. If illegal actions are required to shut down one facility, but those illegal actions have sufficient negative consequences to make that action produce poorer results overall than adopting a legal tactic against a different target, then the burden of seeking the best results require that, under those circumstances, one would have to choose those other actions. This would not help shut down that particular facility but could do more good for animals and humans as a whole.

Acting on such a belief is not easy to do. When one knows of a particular gruesome occurrence, it is natural to want to stop it, even by whatever means necessary. But achieving the ultimate goal is what matters most, not short-term successes. Illegal actions may be the best way to expose a particular site; but now what a true utilitarian must ask is whether exposing the truth at this given site is what promotes the most good. Images are exceedingly good at showing
people the truth, but they need not be new images in many cases. Films such as “Meet your Meat”, “The Witness”, “A Cow at My Table”, and “Unnecessary Fuss” are effective tools that are already in existence; perhaps showing these images to people – especially persons who’ve not yet seen any such footage – would promote as much good as the illegally obtained images, but without the risks of illegally obtaining them. Many people have no idea what goes on in creating fur and meat, or in experimental laboratories; for these people, old evidence can be as eye-opening as new evidence. As a professor, I routinely encounter students who, after no more than an initial introduction to animal ethics or the conditions on factory farms or the alternatives to animal experimentation, ask why they’d never heard of any of this before. As Frank notes, it often takes nothing more than the presentation of the facts for many people to radically change their behavior (which is perhaps why people have not been exposed to any of those facts before) (4-6). So one must not only ask whether the images one seeks can be gained by legal means, but also whether one’s time is most profitably spent obtaining those images at all.

One might respond that using only older footage could allow some persons to reply, “That’s old footage; things aren’t like that any more.” There are three replies to this criticism. First, one need not use only older footage to stay within the law. As noted by Frank, some legal methods of obtaining new footage are still available (8). Second, the importance of this critique is compounded by the credibility problem; if that problem were lessened, the reply could simply be given that things are still much the same, which can be shown by the non-pictorial data legally available in, for example, agricultural journals. The “it’s not like that any more” critique is easily rebutted, but whether the rebuttal is believed depends on the credibility of the activists rebutting it.

Finally, if a respondent continues to hold, despite the above approaches, that things are better now, a utilitarian may simply be required to ignore that person. If the only way to convince such a person would be to obtain illegal footage, then it may not be worth it to convince this person. The harms caused by obtaining illegal footage may outweigh the benefit of convincing those persons so reticent that they cannot be convinced by the methods above; especially since one of the harms (aggravating the credibility problem) may enable even more people to believe that “things aren’t really like that”.

Recall that the long-term goal is animal liberation, and that attaining this goal is the only way illegal actions could be justified in the first place. One effective way to achieve significant liberation would be to get most people to seek it. Given that people often can
be persuaded to see how animals ought not be used and abused for their trivial desires simply by showing them, for example, how modern agribusiness works, many people can be started on the path towards seeking liberation by being shown evidence that is already available. Aiming towards that may be the most profitable action an activist can take.

Of course, this oversimplifies. New projects and new images do bring in and inspire new converts and new activists, which is also good. I have no doubt that illegal undercover work can be very effective at convincing people of the shocking treatment of animals in modern agriculture and science; numerous examples of this exist (Best and Nocella, Davis, Frank, Orlans, et al). Violent and threatening acts may be quite effective, for example, in frightening people away from selling foie gras (Dawn, 218-219). A defense of such actions, however, would have to do more than just note that they were effective; it would have to weigh how effective those actions were, including all of their negative side-effects, against how effective other actions, including legal ones with fewer negative side-effects, might be.

It is possible that one could answer this challenge and conclude that, in a particular case, illegal activity could be reasonably expected to produce the most good. Certain actions are more likely to be justifiable than others: non-violent over violent actions, rescue over destruction, and so on. Even damaging behavior can be done in different ways that will have different consequences: as Wicklund notes, spray-painting fur stores with, “Fur is dead and you’re next” will have a rather different impact in the public than spray-painting, “Please go vegan” (Wicklund 249). For these reasons, the (illegally) well-documented and concisely defended open rescues of hens from battery cages performed by Compassion over Killing and described by Davis might be more productive than closed rescues, especially if they are well-received by the public and can lead to overall changes in laying hens’ conditions (Davis 208-210). Utilitarianism could potentially authorize such actions, though they involved breaking and entering; but one must consider carefully the rather stiff challenges of worsening credibility, the issue of numbers of animals, and even alternative options that leave one’s desired target alone, before such an act would be justified. The challenge for the utilitarian activist is to ensure that any illegal actions considered, with all their potential negative repercussions, will truly produce the most good.

1 I am indebted to Steve Best and Matthew Calarco for their helpful advice on improving this essay.

“Act utilitarianism” is differentiated from “rule utilitarianism”, which holds that we ought to devise a set of rules that, if we all followed them, would produce the most good. No matter what the details of a given case, a rule-utilitarian would hold that it is correct to follow those rules, even if in an extraordinary case breaking the rules would produce the most good. Peter Singer is generally understood to be an act-utilitarian; Richard Brandt is a rule utilitarian. Many (though not all) utilitarians recognize that pain and pleasure are mental states that can apply to many animals as well as humans, and thus that any calculus of consequences must include all sentient beings; this can be credited to Jeremy Bentham’s inclusion in 1789, in his *Introduction to the Principles of Morals and Legislation*, the claim that capacity for suffering was the criterion for moral standing, instead of rational ability. (Chapter 17). For a more complete discussion of utilitarianism and animal ethics, see Singer, Peter. *Animal Liberation*, New York: Ecco press. 2002, or Bart Gruzdalski’s “The Case Against Raising and Killing Animals for Food,” in *Animal Rights and Human Obligations*, 2nd ed., Tom Regan and Peter Singer, eds. Engelwood Cliffs, NJ. Prentice Hall, Inc. 1989. pp. 176-191. For a more indepth discussion of animal sentience, see DeGrazia, David. *Taking Animals Seriously: Mental Life and Moral Status*. New York: Cambridge University Press. 1996. For a more complete discussion of the different versions of utilitarianism in general, see Beauchamp, Tom L. *Philosophical Ethics: An Introduction to Moral Philosophy*, 3rd ed. McGraw-Hill, Inc., 2001.

Though not all; devoted rights theorists (such as, for example, Tom Regan) may care more about whether rights are violated than whether their actions have the best long term consequences for animals. But I believe that most activists seek primarily to produce good results, and to those persons the arguments herein should be relevant.

This would include even pacifist illegal actions like a sit-in and passive resistance, although the arguments in “Media Coverage” and “The Credibility Problem” make it clear that these actions would be much easier to justify than more destructive actions. I do not include in this argument legal direct actions such as boycotts and protests. Though the effectiveness of these actions must also be carefully calculated, most of the concerns I raise herein would not apply to them. In principle, I am also addressing more violent actions such as murder as well, though I know of no animal activist who has actually suggested such a strategy. This is a fairly common critique of act-utilitarian approaches, though: any action can, in principle, be justified. So, if murdering a number of breeders of animals used for destructive experiments could produce the most good, act-utilitarianism could allow it. It should be clear from the discussion that follows below that I believe it would not be the case in any set of circumstances we are likely to encounter that such murders would actually produce the most good, and so this is a merely hypothetical problem for a utilitarian, not an actual one. Murder would cause all the problems mentioned in this work, and much more so than the illegal actions actually discussed; consequently it is exceedingly unlikely that that will ever be the option which will produce the most good. A similar objection involving slavery instead of murder is addressed by R.M. Hare in “What is Wrong with Slavery?” in *Applied Ethics*, Peter Singer, ed. New York: Oxford University Press. 1986. pp. 165-184; and he discusses a general problem with such objections briefly but clearly in Hare, R.M. “Ethical Theory and Utilitarianism.” in *Utilitarianism and Beyond*, Amartya Sen and Bernard Williams, eds. New York: Cambridge University Press. 1982. pp. 23-38.

5 One might also note that eliminating *foie gras* and veal does not radically change most persons’ diets. Again, what one targets can affect persons’ reactions to it.

6 The fact of and problems with corporate media ownership and manipulation are described at, among other sources, www.freepress.net and www.outfoxed.org.

References


Trial By Fire: The SHAC7, Globalization, and the Future of Democracy

Steven Best and Richard Kahn†

"The FBI has made the prevention and investigation of animal rights extremists and eco-terrorism ... a domestic terrorism investigative priority." -- John E. Lewis, Deputy Assistant FBI Director in Counterterrorism, speaking to the U.S. Senate Judiciary Committee, May 2004

“Ah, but in such an ugly time, the true protest is beauty.” -- Phil Ochs, Songwriter

Since 1999, Stop Huntingdon Animal Cruelty (SHAC) activists have waged an aggressive direct action campaign against Huntingdon Life Sciences (HLS), an insidious UK animal testing company notorious for its extreme animal abuse (torturing and killing 500 animals a day, 180,000 a year), sloppy research methods, and manipulated data.¹ By combining a shrewd knowledge of the law, no nonsense direct action tactics, savvy use of new media like the Internet to coordinate campaigns, and a singular focus on eliminating HLS as a chief representative of the evils of the vivisection industry, SHAC has proven itself to be not only a leading animal rights organization, but also a contemporary model of anti-corporate resistance on a global level. As such, SHAC’s strategy and methodological approach must be understood as highly relevant for all manners of contemporary political struggle, be they for human rights, animal rights, or the environment.

From email and phone blockades to raucous home demonstrations and sabotage strikes, so-called “SHACtivists” have demonstrated vigorously against HLS and likewise pressured over 100 other companies to abandon their financial ties to the vivisection firm. In this way, by 2001, the SHAC movement drove down HLS stock values from $15/share to less than $1/share, threatened it with

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imminent bankruptcy, and sent the company looking for capital overseas in the United States. There HLS re-founded itself as the “untarnished” parent company, Life Sciences Research, Inc., and began making business alliances with other corporations like the investment banking firm Stephens Inc., that backed a 5-year deal designed to keep HLS financially solvent. Meanwhile, SHAC too migrated to the United States (as well as to Japan, throughout Europe, and elsewhere), set up websites like stephenskills.com, and started new grassroots movements against HLS and its affiliates. SHAC’s indefatigable pressure tactics caused Stephens to dissolve their relationship to HLS within a year’s time, and other companies related to HLS still fall like dominoes. Today, HLS continues to operate only due to special considerations granted by the UK and US governments. Yet, the loans that have thus been procured for the company are set to come due in 2006 and as SHAC’s campaign continues to result in rising expenditures for security, insurance, and property damage, many believe that the future of HLS is generally bleak.

While SHAC’s campaigns in the UK and US, along with the Animal Liberation Front (ALF) and UK groups SPEAK (formerly named Stop Primate Experimentation at Cambridge) and SNGP (Save the Newchurch Guinea Pigs), arguably represent the leading edge of the direct action anti-vivisection struggle, the politics of the movement are increasingly global in nature. This is unavoidable as the corporations the anti-vivisection direct action movement attacks are fluid transnational entities. SHAC’s primary goal is to undermine the economic base of pharmaceutical, biomedical, and vivisection corporations like HLS, Chiron, GlaxoSmithKline, and Novartis. Additionally, through its use of global media like the Internet, SHAC demonstrates how a type of alternative globalization can be constructed around a radical pedagogy concerned with a normative vision of peace and justice for the oppressed, to whatever species they belong.

Unlike other global activists who attempt to affect policy and practice through the occasional spectacle of mass protest, or through the lobbying power of state legislatures, international institutions such as the UN, or Non-governmental Organizations (NGOs), anti-vivisection groups like SHAC favor high-pressure tactics that take the fight directly to corporate-state power. This has resulted in SHACTivists and “SHAC USA” -- the incorporated, aboveground legal organization that provides leadership for the underground “SHAC movement” that often resorts to illegal sabotage actions (see below on this distinction) -- being subjected to modes of state repression ranging from racketeering and conspiracy lawsuits under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act.
Act to charges of political and economic terrorism. Recently, however, the US state considerably upped the ante. On May 26, 2004, a police dragnet rounded up seven prominent animal rights activists associated with SHAC in New Jersey, New York, Washington, and California. With guns drawn and helicopters hovering above, agents from the FBI, Secret Service, and other law-enforcement agencies stormed into the activists’ homes at the crack of dawn.

Known as the “SHAC7,” those arrested were Kevin Jonas, Lauren Gazzola, Jacob Conroy, Darius Fullmer, John McGee, Andrew Stepanian, and Joshua Harper. The US government issued a five count federal indictment that charged each activist (and SHAC USA as the parent organization) with assault, vandalism, death and physical injury threats, and impeding HLS business operations through demonstrations and jamming their communication systems. Additionally, SHAC USA, Jonas, Gazzola, and Conroy were charged with conspiracy to stalk HLS-related employees across state lines, along with three counts of interstate stalking with the intent to induce fear of death or serious injury in their “victims.” All of the charges bring a maximum $250,000 fine each. The main accusation of animal enterprise terrorism (see below) carries a maximum of three years in prison, while each count of stalking or conspiracy to stalk brings a five-year maximum sentence. In Fall 2004, the government tacked on an additional federal charge to four members of the SHAC7, alleging that each violated the Federal Communications Decency Act for teaching other activists how to send black faxes designed to clog the machines receiving them.

Clearly, the state is now playing hard ball with animal rights activists. Following the arrests, Christopher Christie, United States attorney for New Jersey, described the government’s intention behind the round-up in ironic and perverse terms: “Our goal is to remove uncivilized people from civilized society.” The federal indictment against the SHAC7 is a potential watershed in the history of the animal rights movement, for it represents the boldest governmental attack on activists to date, and it likely augurs a new wave of political repression in response to the growing effectiveness of militant animal liberation politics. Increasingly, the corporate-state complex responds to legal forms of animal liberation politics with surveillance, harassment, intimidation, arrests, and grand jury summons. But the arrest and forthcoming June 2005 trial of the SHAC7 should not be understood as merely an “animal rights” or “animal liberation” issue, as the legal implications that arise from the attempt to criminalize SHAC by branding it as a “terrorist” organization threaten all manner of grassroots activism. Therefore, the US government’s attempt to kneecap SHAC’s ability to directly challenge oppressive forces in society demands a serious response.

from the entire spectrum of progressive activists -- those struggling for human rights, animal rights, and the environment. “USA v. SHAC” should be a serious wake-up call to everyone: this is post-Constitutional America, an era of creeping fascism.

All the Lies Fit to Print

“In our time political speech and writing are largely defense of the indefensible.”

-- George Orwell

"I abhor vivisection with my whole soul. All the scientific discoveries stained with innocent blood I count as of no consequence." -- Mahatma Gandhi

Unable to stand without huge amounts of corporate aid and state support, HLS is appropriately grateful to the United States for arresting the SHAC7. In their media statement, HLS intoned: “The Company is heartened...to see justice done. So many people have been victimized by this lawless [SHAC] campaign. These indictments are in keeping with this nation’s long tradition of standing up to bullies and demonstrate the United States’ continued determination to insure the safety of its people.” Similarly, US Attorney Christopher Christie remarked for the state: “This is not activism. This is a group of lawless thugs attacking innocent men, women and children...Their business, quite frankly, is thuggery and intimidation.”

The statements made by HLS and Christie are self-serving distortions of SHAC, the US political system, and the vivisection industry as a whole. HLS is more appropriately cast as victimizer than victim. The fact that the company perpetuates its well-documented ethical crimes against the most unfortunate and defenseless victims of all -- the animals enslaved in its research cages -- hardly gives it the moral authority to claim the status of a bullied innocent. Thus, when the US government protects and underwrites animal exploiters like HLS and demonizes animal activists like SHAC as a mob bent upon a reign of terror, one should question who is served and protected by the rule of law. As documented in the 2003 film, The Corporation, it has become increasingly clear to many that the true criminals are powerful corporations that exploit and devastate humans, animals, and the earth in a virtually unchecked manner, and are to the social world what a malignant cancer is to a fragile body.

Far from insuring “the safety of its people,” the state’s fundamental mission is to protect the property and profits of the corporations that control the vast majority of economic wealth, no

matter the political, social, or ecological costs, the toll to the
institutions of “democracy” (such as they are), or the impact on
dissidents exercising their rights. US wars in Afghanistan and Iraq,
abuse of prisoners at Abu Ghraib prison and Guantanamo Bay, and
religious extremists like Bush and Ashcroft who want to plunge their
own nation into the same authoritarian abyss as their avowed enemy
Al Qaeda are ample evidence of the bankruptcy of the “civilized
society” myopically upheld by US Attorney Christie and other ruling
elites.

In order to portray anti-vivisectionists as violent and
barbarous fanatics, corporations, politicians, journalists, and media
pundits routinely denounce them as anti-scientific, as hostile to
medical progress, and as all-around misanthropic enemies of the
people. As SHAC has demonstrated, however, these accusations are
far more applicable to those hurling the charges once their real
motivations are exposed. Contrary to the claims made against them
by mainstream powers, SHAC and other anti-vivisection groups
strongly favor medical research so long as it has a sound ethical and
scientific basis. From the ethical standpoint, anti-vivisectionists argue
that even if relevant knowledge were derived from animal
experimentation, the use of animals is nevertheless unjustified. From
the sound premise that animals have rights and therefore are ends-in-
themselves, it follows that vivisection violates their rights (such as the
right to bodily integrity and freedom of choice) and reduces them to
a mere means to someone else’s end, which constitutes exploitation.
Whatever useful knowledge might be gleaned from experimenting on
animals, therefore, is an “ill-gotten” gain no more morally defensible
than experiments on humans at Auschwitz or Tuskegee.5

As important as the “external” ethical critique of vivisection
is, the stronger argument stems from the “internal” critique that
challenges the vivisectionist’s own premises, specifically the claim
that vivisection is sound science and vital to medical progress.
Following a line that is common to animal rights and anti-vivisection
advocates, but is rarely heard in the mainstream, SHAC points out
that vivisectors attribute key breakthroughs in medical progress to
the use of animal experimentation, whereas credit really belongs to
improved sanitation, epidemiology (human-based studies), and other
factors that have nothing to do with confining, blinding, burning,
maiming, poisoning, and killing animals.10

Yet, far from accelerating medical progress, there are
overwhelming grounds to believe that biomedical (animal-based)
research impedes it as, for example, drugs tested “safely” on animals
frequently are harmful or fatal to human beings and the predictive
value of vivisection is comparable to flipping a coin.11 Thus,
ironically, groups like SHAC, and not the vivisection establishment,
are the catalysts for genuine scientific advancement in their ability to
criticize the false premises and failed outcomes of biomedical
research and their championing of viable alternatives the vivisection
industry will not embrace given their slavery to outmoded animal
models and addiction to the copious research money this travesty
continues to draw.

A Frontline documentary that aired on November 17, 2003
highlighted the well-known fact that scores of drugs tested “safely”
on animals cause serious injury and death to patients. The show
exposed the politics behind pharmaceutical “science,” revealing how
the FDA dances to the tune of the drug industry -- the country’s top
grossing business sector. As Frontline discovered, the FDA’s
process to approve drugs as “safe” for humans most questionably
relies on the research of the drug companies themselves. Worse still,
FDA drug reviewing whistleblowers report that the agency often
ignores, or covers up, revealed contraindications and deadly side
effects of poorly-tested and rushed-to-approval drugs in order to give
favorable reviews to products with large profit potential. Infamously, this is just what happened with Aspartame (aka
NutraSweet), when Donald Rumsfeld used his status as former CEO
of Searle (now Monsanto) and Washington-insider connections to
ram FDA approval through for this huge money-maker, despite the
fact that numerous animal tests consistently ended in brain tumors.

In 2004, considerable media attention was given to the failure
of high-profile drugs such as the painkillers Vioxx and Celebrex.
Vioxx, produced by Merck, was pulled from the market after
mounting evidence it doubled the risk of heart attack and stroke and
was implicated in tens of thousands of such cases. The FDA’s
corrupt nature got a rare but well-deserved spotlight after evidence
surfaced that for years it ignored data showing the deadly dangers of
Vioxx and allowed it to stay on the market due to corporate pressure
to suppress the damning reports on the drug. Immediately after the
Vioxx scandal, similar findings showed another leading painkiller,
Celebrex, manufactured by Pfizer, increased cardiovascular risks. The
pro-corporate agenda of the FDA is again clearly revealed in its role
as an aggressive force preventing older Americans from getting
affordable drugs from Canada instead of the astronomically-priced
US equivalents. The rationale that US drugs are safe whereas those
produced in Canada are potentially hazardous is as chauvinistic as it is
false, and the FDA’s attempt to position itself as protector of the
poor, sick, and aged rather than the obscenely rich and powerful US
corporations is as laughable as it is insulting to the American public.

The capitalist flip-side of fast-tracking poorly tested and
unsafe drugs to consumers demanding blockbuster name-brand
drugs as a result of intense advertising stimulation is that the FDA
aggressively works to undermine consumers’ access to safe and effective herbal and dietary supplements such as colloidal silver and hemp seed and oil. The perverse irony of a federal agency that tends to protect corporations over consumers and approve unsafe drugs while it assails health-promoting supplements can only be explained via the economic logic that pervades the corporate-state complex that instituted the functionary role that the FDA plays as the enforcement arm of the drug industries. Pharmaceutical industries have a strong interest in discrediting alternative medicine, holistic therapies, and nutritional supplements that in many cases are better for the treatment of disease and medical problems, and work to prevent disease rather than to treat it after the fact.

As groups like SHAC peer into research cages, then, what consistently leaps out are not just terrified animals, but the suppressed truths of widespread governmental corruption, the politicization of research and medicine, the fraudulent nature of animal research and the deadly drugs it often produces, and the merciless production of animal suffering and death as the foundation for medical profits. In a situation where, according to genetic researcher, and GlaxoSmithKline vice-president, Dr. Allen Roses, “The vast majority of drugs only work in 30 or 50% of the people,” and prescription drugs are one of the leading causes of death, the larger agenda and significance of SHAC becomes clear. A 1998 study found that more than 100,000 hospitalized patients die annually in the US because of adverse drug reactions, making prescription drugs the fourth leading cause of death in America, behind cancer, heart attacks, and stroke. Another source claims that the number of prescription drug-induced deaths is 227,000 deaths per year.

Therefore, while those who have the most to suffer financially from the liberation of animals caricature uncompromising activists as lawless agents of chaos, history will be better served when SHAC, and other outspoken critics of the vivisection and animal cruelty industries, are portrayed as leading the fight for animal and human rights, for moral and medical progress.

Globalization and the Political Economy of Animal Rights

“I have been following the animal rights movement for 25 years and I’ve never seen anything like [SHAC].” -- Frankie Trull, head of the National Association for Biomedical Research

“We can be the world leader in stem cell research and biotechnology, but if we are to achieve this vision, we must

redouble our efforts to tackle animal rights extremists.”
   -- Tony Blair

“We view the United Kingdom as the Afghanistan for the
growth of animal rights extremism throughout the world. The
animal rights movement that we are dealing with in the
United States is a direct import from the United Kingdom.”
   - - Patti Strand, the National Animal Alliance, an animal exploitation lobby group

In the vast literature on capitalist globalization, it is clear that there is
not one but two co-evolving dynamics: globalization-from-above,
comprised by mainstream and hegemonic forces, and globalization-
from-below, comprised by alternative and counter-hegemonic
forces. The current political dynamics that play out on a planetary
scale, in other words, involve not just capitalist mega-corporations
imposing their will on governments and peoples of all nations but
also the popular resistance movements that arise as a response to
their machinations. Since various world trade treaties and
organizations such as the North American Free Trade Agreement
(NAFTA), the General Agreement on Tariffs and Trade (GATT), the
World Trade Organization (WTO), and the Free Trade of the
Americas (FTAA) have emerged in the last decade or so, all designed
to facilitate the goal of political and economic dominance by
transnational corporations, one also finds the growth of the (arguably
mismamed) “anti-globalization” struggle that seeks to combat
rapacious capitalism, imperialism, and war with protest and
alternative visions of emancipated life. Everywhere global trade
organizations meet, the people and political organizations associated
with anti-(capitalist) globalization also assemble to challenge the
multinational corporate megamachines. Further, as was evident in the
1999 Battle of Seattle protest, diverse groups such as labor and
environmental interests are now forming new coalitions that seek to
transcend single issues and even national boundaries.

Although direct action anti-vivisectionists have not
constructed formal alliances with human rights organizations, the
consequences of their struggle transcend the single-issue animal
rights cause in at least four significant ways. First, and most narrowly,
their struggles affect human health interests and can potentially
change how future medical testing and research is done in a way that
reduces or eliminates animal exploitation while generating safer, more
effective, and less expensive drugs to treat or cure human disease.
Second, SHAC and other direct action animal rights groups have
pioneered new and highly effective activist strategies and tactics that
could be used by groups fighting for human rights and social and

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ecological justice. Third, and more generally, the direct action anti-
vivisection movement has immediate implications for democracy as it
challenges the corruption of governments that protect the interests of
corporate profit. In this, the anti-vivisection movement should be
thought alongside the ongoing project to democratize science and to
make scientific knowledge accountable to people and relevant to their
medical, cultural, and political needs. Finally, SHAC and related
groups have become so effective that they now profoundly threaten
national and international economic structures and have become a
serious anti-capitalist force on a global scale.20

Unlike SPEAK and SNGP, whose members work in England
alone, SHAC has planted roots in a half-dozen countries. As its
financial papers reveal, HLS is a fluid global force and SHAC must
follow its trail of blood and money across vast distances in order to
take down the corporation and drive away those who assist its
pogrom against animals. Hence, SHAC UK grew into SHAC USA
and has broadened its reach from there to include operational bases
in Germany, Italy, Portugal, Switzerland, and Japan. Both SHAC and
SPEAK are global in a second sense whereby their direct or indirect
opponents are transnational corporations such as HLS,
GlaxoSmithKline, and Novartis. Although SNGP besieges the Hall
family guinea pig farm in rural England, and SPEAK haunts the
blood-speckled ivory towers of Cambridge and Oxford (where they
have so far succeeded in stopping all work to build new animal
research centers), they are monkeywrenching the planetary
vivisection machine fuelled by lab animal breeding farms. The
consequences of the actions of SNGP and SPEAK transcend their
local and national boundaries and reverberate throughout the global
web of capitalist exploitative relations. Though direct action anti-
vivisection groups are not “terrorists” -- a charge we certainly dismiss
as ludicrous and Orwellian -- they appear to rival, if not surpass, Al
Qaeda and other Muslim extremists as potent threats to the British,
European, and even world economy.

In a competitive global marketplace where the vivisection,
pharmaceutical, and biotechnology corporations are major sources of
capital development, the UK is trying to position itself as a cutting-
edge center for biomedical research and wants to draw scientists and
industries from all over the world. The highest levels of British
government -- including Prime Minister Tony Blair, recently resigned
Home Office Secretary David Blunkett, and Science minister Lord
Sainsbury -- are strong supporters of animal research and the
pharmaceutical and biomedical industries. The state is fully
committed to protecting breeders, HLS, and beleaguered laboratories
such as at Cambridge and Oxford, and has pledged to do whatever it
takes to protect the operations and assets of the vivisection industry.

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Consequently, the UK government and Home Office are vehemently opposed to animal rights “extremists” and “terrorists,” see them as the serious threat to their empire that they are, and are taking increasingly Draconian measures against them (see below).

The partisanship of government and the vivisection industry is no surprise, as drug testing, drug development, and animal research pump critical blood into the British economy. According to the Association of the British Pharmaceutical Industry (ABPI), about 65,000 people work in the pharmaceutical industry and a quarter million more jobs depend on it. “Drug-makers added £2bn to Britain's economy last year. They generated exports of £7bn and a trade surplus of £2.3bn, the third highest after power generation and oil products.”

Moreover, about one third of pharmaceutical jobs involve sophisticated research posts, and the industry claims to play a major role in backing universities and medical training. According to one report, up to £16 billion in the pharmaceutical and biotechnology research and development industries is at stake.

Yet, beleaguered by animal rights activists, the entire vivisection complex is in dire trouble. In July 2004, John-Paul Garnier, chief executive of GlaxoSmithKline, the largest drug-maker in the UK with global sales of £21 billion, warned of huge losses of investment money as investors were steering clear of Britain for fear of protests, costly property damage, and high security expenditures. ABPI says that its member companies spend a combined £28-66 million a year for security. Between April and June 2004, 24 companies severed ties with UK-based commercial or college research facilities. According to one estimate, anti-vivisectionists cost the British economy £1 billion a year in damages and lost revenues.

Given that the development of new drugs involves a ten-year commitment, companies are highly reluctant to plant roots or to remain in a hostile, unstable, and costly climate. Consequently, 5,000 directors of medical researchers and their customers have asked the UK for protection. Global giants such as Novartis have sent a loud warning to the British government that the political climate is potentially too unstable for investment and that they intend to explore other nations in the global marketplace that are considerably more attractive given the cheap labor and lack of a well-organized and militant animal rights presence. “The UK is the worst,” said Novartis chairman Daniel Vasella, “it is scaring our people.”

Pharmaceutical giants such as GlaxoSmithKline, AstraZeneca, and Merck already are exporting research and development work to South America, India, China, Singapore, Poland, and other “low-cost countries.”

According to a December 2004 report released by the London-based Aegis Defense Services, the towering “twin threats” to Britain’s economy are al-Qaeda and animal rights “extremists.” Aegis paints the latter force, however, to be a far more sinister threat. As reasoned by Dominic Armstrong, director of research and intelligence, “I suppose an al Qaeda terrorist attack in London might cause damage worth £16 billion, but with animal rights extremism we’re talking about potentially losing £16 billion of investment every year.”\(^{26}\) Interestingly, Armstrong fails to note any difference between those who fly loaded passenger jets into high-rise buildings and those who protest against cruelty to animals while mitigating for sound science and safe medicine.

Time will tell how effective the anti-vivisection struggle in England can become, but the direct action tactics pioneered during the 1990s in the battle to close Consort Kennels and Hillgrove Farm and the siege against HLS have spread to other countries and likely will provoke similar crises in the US and elsewhere. Indeed, if SHAC is to be effective and attain its ultimate goal of shutting down HLS, it will have to continue to develop a presence in every country in which HLS attempts to flee or grow. It is significant, therefore, that there already are SHAC groups in countries like Japan (where Japanese customers produce 20% of the animals killed in HLS labs) and that SHAC lists targets in Australia, Austria, Belgium, the Czech Republic, Finland, France, Germany, Holland, Ireland, Italy, New Zealand, Portugal, Sweden, and Switzerland -- wherever HLS and/or its suppliers try to re-establish or root themselves.

Given the centrality of pharmaceutical, biomedical, and vivisection corporations to contemporary economies, the effects of the direct action anti-vivisection resistance movement must be understood not merely as relevant to a “single-issue” animal rights cause (such as it is typically framed), but rather as a forceful attack on capitalism itself, a system rooted in exploitation and slavery. The growing sociological literature on “anti-globalization” movements must now take into account the transnational battle being waged by animal liberationists in the form of direct action against the planetary vivisection complex.

Animal liberationists are waging war against the oldest and last form of slavery to be formally abolished -- the exploitation of nonhuman animals. Just as the modern economy of Europe, the British colonies in America, and the United States after the Revolutionary War were once entirely dependent on the trafficking in human slaves, so now the current global economy would crash if all animal slaves were freed from every lab, cage and other mode of exploitation. Animal liberation is in fact the anti-slavery movement of the present age and its moral and economic ramifications are as

world-shaking, possible more so, than the abolition of the human slavery movement (which of course itself still exists in some sectors of the world in the form of sweatshops, child sex slavery, forced female prostitution and the like). Thus, the growing effectiveness of direct action anti-vivisection struggles will inevitably bring a reactionary and retaliatory response by the corporate-state complex to crack down on democratic political freedoms to protest, as well as new Draconian laws that represent a concerted effort by power brokers to crush the movement for animal liberation -- a dynamic we will now trace.

**The Corporate-State V. Animal Rights**

"Prison is a weapon used by the State to crush individuals who step out of line"

-- Michael Collins, former Mayday 2000 prisoner

In the United States, animal rights advocates have had to rely upon the enforcement of three main animal protection statutes: the Animal Welfare Act (AWA), the Agricultural Research Act (ARA), and the Endangered Species Act (ESA). Historically, while these laws have provided some measure of relief for animals, their inability to grant activists the right to file suits on their behalf, to mandate enforcement of the statutes they proclaim, to defend animals from egregious forms of cruelty and exploitation, or to deliver significant jail terms and fines for convicted violators has left many animal rightists cynical about the importance of such legislative protections. In the words of legal scholar Gary Francione, “Although there are laws that supposedly protect animals, just as there were laws that supposedly protected slaves, these laws require that we balance the interests of right holders, and, in particular, holders of property rights, against the interest of their property.” As Francione describes in great detail, whenever there is a “conflict” between human and animal interests, the former always trump the latter, however trivial the justification, such as exploiting animals for “entertainment” in rodeos and circuses.

Notoriously, the Bush administration has further undermined all three pieces of animal welfare legislation during its stolen tenures. While the AWA was created to protect the very research animals for whom groups like SHAC now militate, the law spuriously fails approximately 95% of them by excluding rats, mice, and birds from its nominal protections. In 2002, Sen. Jesse Helms (R-NC) snuck an amendment into the Farm Bill that made these exclusions permanent to the AWA upon the Farm Bill’s passage into law.” Meanwhile, lawful amendments were also being made to increase federal grant funding for animal research through the ARA, and Bush has allowed

laissez-faire commercialization of endangered species and their habitats through an amendment that he claims will benefit “conservation” amidst his Orwellian plan for a “New Environmentalism.”31 In response to such developments, animal activists are rising with an increasing sense of urgency to meet these neoliberal cutthroat challenges and the ghastly specter of omnicide.

On the other hand, in the name of corporate and state security, there are a number of major federal and state-level laws on the books designed to criminalize animal rights activism, a legal assault in the making for over a decade. In 1992, the federal government enacted Title 18, the Animal Enterprise Protection Act (AEPA), under which the SHAC7 and SHAC USA now stand charged. This legislation was the first to connect animal rights protest activity with the rhetoric of “terrorism,” as it contains subsection 43 on “Animal enterprise terrorism.” Specifically, the law targets anyone who “intentionally damages or causes the loss of any property (including animals or records) used by the animal enterprise, or conspires to do so.” In exquisite bureaucratic language, it also seeks to make an offender of whoever “travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility in interstate or foreign commerce for the purpose of causing physical disruption to the functioning of an animal enterprise.”32

In late October 2001, six weeks after 9-11, the Bush administration pushed a lengthy tome through Congress, the USA PATRIOT Act, allegedly to grant the state emergency powers to fight foreign terrorists. Passed with no debate, indeed almost no one in Congress even read it, the (obscene) Patriot Act eviscerates constitutional rights for foreigners and citizens alike. Creating the new category of “domestic terrorism,” the Patriot Act specifically stigmatizes activists who attack or criticize exploitative corporations as potential terrorists and escalates legal penalties and fines for sabotage. According to the amorphous wording of the law, the emergent crime of “domestic terrorism” occurs when a person’s action “(1) involves a violent act or an act dangerous to human life, property, or infrastructure; and (2) appears to be intended to intimidate or coerce a civilian population [or] to influence the policy of government by intimidation or coercion.”33

As the government has sought to stifle radical protest and activism with new federal laws, a corporate lobby group, the American Legislative Exchange Council (ALEC), in alliance with the US Sportsmen’s Alliance, has been pushing their own version of anti-“terror” legislation in state legislatures throughout the country. Their “Animal and Ecological Terrorism Act” (AETA) proposal singles out animal and environmental industries for special legal protection and seeks to criminalize not only acts against these industries, but even
financing, “assisting,” or “encouraging” such acts. Similar to the Animal Enterprise Protection Act and the Patriot Act, AETA defines an “animal rights or ecological terrorist organization” as “two or more persons organized for the purpose of supporting any politically motivated activity intended to obstruct or deter any person from participating in any activity involving animals or an activity involving natural resources.”

Following measures that have been attempted in states such as Texas, Illinois, Missouri, and New York, the AETA bill classifies the photographing or videotaping of animal abuse in a facility such as a puppy mill, factory farm, or slaughterhouse as a felony “terrorist” action. Further, it becomes a Class D felony to unlawfully enter any animal facility for the purpose of taking photographs or using a video recorder “with the intent to defame the facility or facility’s owner.” A Missouri version of the bill declares it a felony offense “if a person photographs, videotapes or otherwise obtains images without the express written consent of the animal facility, from a location not legally accessible to the public.” AETA bills could take effect in any state at any time. The Missouri bill attempting to outlaw photographing animal facilities died in committee in May 2003, but a similar bill passed the Ohio senate during the same month and won approval in the Oregon senate a month later. On January 1, 2004, a new California state law went into effect that banned activists from trespassing on animal farms. The law significantly raised the trespassing penalties from a citation and a $10 fine to a misdemeanor punishable by six months in jail and/or a $1,000 fine.

Once groups like SHAC, the ALF, or even PETA are identified as terrorists in this prefab discourse, the FBI has unprecedented powers to monitor and repress them, as well as anyone suspected of being members, supporters, or collaborators of these groups. Before the political act of repression there must be a semantic act of definition. Current “anti-terror” laws and proposals clearly demonstrate the truth of the Marxist thesis that the state, for all intents and purposes, is the political and legal arm of corporations and the ruling elite. In both federal and state legislation, we find purposely vague and elastic definitions of terrorism that the corporate-state complex can exploit to criminalize any protest tactic used against it -- not only sabotage actions, certainly, but also attempts to document animal abuse, pressure governmental officials into political action, or even organize a boycott.

As defined by corporations and the US state, “terrorism” has two separate components, political and economic, such that if one category doesn’t suffice to stifle and punish constitutionally protected rights another will. On the political definition, anyone who “coerces” or “intimidates” a “civilian population” or government is a terrorist;

on the economic definition, a terrorist is anyone who interferes with the operations and profit of an “animal enterprise” or business reliant on “natural resources.” Taken together, the corporate-state complex shields itself from potentially damaging protest activities as it Tasers and demonizes any individual who tries to encroach on their territories, for morally and politically sound reasons or not. Clearly, animal rights and environmental activists are becoming a serious threat, and corporate exploiters will go to any length—from shredding the Constitution to creating a fascist police state—to protect their profits and plunder. Michael Ratner, a human rights lawyer and vice president of the Center for Constitutional Rights, claims that the AETA bill is unprecedented in its assault on freedom. “This is unique. Even under the definition of domestic terrorism in the Patriot Act, you have to at least do something that arguably threatens people’s lives. The definitional sections of this legislation are so broad that they sweep within them basically every environmental and animal rights organization in the country.”

Indeed, the Bush administration’s track record has been characterized by repeated attempts to pass more stringent laws against activism and dissent. For instance, the covert Patriot Act II, uncovered by the Center for Public Integrity, seeks to post activists’ pictures and information on the Internet and, shades of Emma Goldman, to go so far as to expatriate those it designates as State enemies. The public expose of Patriot Act II was a momentary setback for the Bush administration and champions of the new Security State, but hardly a fatal blow, as they have been able to sneak key elements of the Act into other legislation. In this manner, for instance, and while the nation was focused on the capture of Saddam Hussein, Bush surreptitiously signed into law the Intelligence Authorization Act for Fiscal Year 2004 on December 13, 2003. Similarly, on June 12 of 2002, Bush approved new “bioterrorism legislation” containing provisions that increased penalties against attacks on animal facilities. In December 2004, the American Civil Liberties Union warned that in ten states the FBI, local police departments, and the Joint Terrorism Task Force are uniting to surveil legal protest organizations such as Greenpeace, the Campaign for Labor Rights, the American Friends Service Committee (a Quaker group), and PETA. The new Intelligence Reform Bill Bush signed into law in December 2004, ostensibly to improve national security against potential terrorist attacks, included provisions that had less to do with reforming the abysmal US intelligence network than with expanding FBI powers for surveillance and search warrants of citizens unconnected to foreign governments and alleged terrorist groups.
Thus, constitutional freedoms are under massive attack, and the corporate-state complex is using the animal rights movement, in particular, as an experimental laboratory to unleash deadly viruses against democracy and disseminate toxic gases of social fear and intimidation.

**The Kangaroo Courts of Capitalism**

“The political motivation of these indictments should be clear...rich and powerful people are now using their connected and influential friends...in order to retaliate against us, and worse, to send a message to anyone else who would dare stand in the way of speciesism.” -- Josh Harper, SHAC7 defendant

"This trial is a travesty. It's a travesty of a mockery of a sham of a mockery of a travesty of two mockeries of a sham." -- Woody Allen, Bananas

“[The government indictment of the SHAC7] is as broad and unspecific as any indictment I’ve seen in years.” -- Mark Vermeulen, lawyer for Kevin Jonas

While the Western legal system cloaks itself in the trappings of rationality and enlightened justice, the simple truth is that law, of its own will and dynamic, does not generally evolve in order to better accord with ethics. Rather, the legislative system constantly changes within a contested terrain, where a wide range of interested parties struggle for power and position. For instance, in response to Paul Watson’s direct action efforts to rescue thousands of baby Harp seals from the bloody clubs of sadistic hunters masquerading as “harvesters,” the Canadian legislature passed the “Seal Protection Act.” Perversely named, this “animal welfare” measure was created for the benefit of sealers, not seals, by making it illegal for anyone not involved with the massacre of hundreds of thousands of seals to approach, videotape, or witness the carnage.

The co-evolutionary battle over policy and law is hardly evenly matched or wholly fair, for as dictated by the Golden Rule of capitalism, those with the gold make the rules. Increasingly, the powerful factions who drive the direction of legislation are the secretive, well-protected, massive corporate entities that Noam Chomsky characterizes as “private tyrannies.” The efforts of the corporate-state complex over the last decade to criminalize animal rights activism and dissent in general are coming to fruition in the kangaroo courts of contemporary capitalism. However, the ongoing successes of activist organizations such as SHAC demonstrate that,
even in a battle with Goliath, David can still hope to win if armed with enough smarts and determination.

The SHAC movement has been enormously effective in large part due to its strategy of demonstrating against secondary targets, those companies and people that support HLS and which help it to operate (such as investors, insurers, and suppliers), but which are not technically themselves “animal enterprises.” As present law only allows for the prosecution of activists when they physically disrupt the process of directly exploiting animals, the corporate-state complex felt compelled to respond by proposing amendment of old legislation and enacting new laws. It is no coincidence, then, that little more than a week before the May 26, 2004 raid on the SHAC7, a phalanx of high-level vivisectors, security officials, and animal industry representatives marched into the Senate Committee on the Judiciary in order to carp about the inadequacy of existing regulations to crush SHAC and other militant animal rights groups.

On May 18, 2004, Chair of the Judiciary Committee, Sen. Orrin Hatch (R-UT) took opinions from US Attorney McGregor Scott; the FBI Deputy Assistant Director for Counterterrorism, John E. Lewis; the Senior Vice Presidents of Chiron Corporation (a noxious puppy killer associated with HLS) and Yum! Brands Inc. (the super-sized parent company behind many major fast food chains), William Green and Jonathan Blum; and the Director of the Yerkes Primate Center, Dr. Stuart Zola. One after another, these animal exploitation apologists shamelessly tried to cast themselves, their colleagues, and their family members as innocent victims of animal rights hooligans, as they appealed for assistance in stopping what they claimed amounts to “terrorism.” Indeed, to listen to their combined testimony, the United States of America is a sort of uncontrolled Baghdad or Kabul war zone, besieged by marauding animal militias, rather than a highly centralized network of power bent on repressing dissent and regulating everyday life for the profit mongers.

William Green of Chiron Corporation typified the whining before the Judiciary Committee when he asked Congress to open the door to greater surveillance of animal rights and environmental activists by federal, state, and local officials. Even though Chiron’s revenue grew to $1.8 billion in 2003, apparently the $2.5 million in lost earnings caused by SHAC, along with the tarnishing of the corporation’s reputation, makes the SHAC movement enough of a threat that biotechnology companies and vivisectors want Congress to gut the Constitution to protect assumed corporate “rights” to profit from animal cruelty and scientific fraud. Thus, Green asked Congress to impose harsh 10-year sentences on the anti-vivisection “terrorists” and to define “animal enterprise” in broader terms that include, not only all manner of organizations that use animals, but the

secondary non-animal enterprises that contract with these outfits as well. 45

Again, the reason for this conspiratorial blowback is plain -- to date, SHAC has outwitted the corporate-biased legal system by carefully utilizing the First Amendment and Internet technology to coordinate economic strikes against its targets. By maintaining a vital distinction between SHAC USA, as an incorporated group that legally serves as a news/information clearing house, and the “SHAC campaign,” that represents all manner of endeavors (be they legal or not) aimed at contributing to SHAC’s efforts, SHAC has pushed the political envelope as a movement while technically remaining within its rights as an organization. Yet corporate cries about being terrorized by animal rights marauders, combined with a security-obsessed legislative and judicial climate, threaten to erode SHAC’s carefully orchestrated legal distinctions, as the government moves to nullify the gains being made by the animal rights community.

Importantly, though, not everyone in government is moved by such hysterics. The Judiciary Committee’s own minority leader, Sen. Patrick Leahy (D-VT), refused even to be present for the May 18th corporate conspiracy masked as a Senate hearing. Instead, Leahy wrote a statement for the public record that vilified the proceedings, wherein he remarked that “most Americans would not consider the harassment of animal testing facilities to be “terrorism,” any more than they would consider anti-globalization protestors or anti-war protestors or women’s health activists or terrorists.” As he wondered aloud why not a single animal rights advocate was brought before the Committee in a hearing supposedly designed to investigate “Animal Rights: Activism vs. Criminality,” Leahy also repeated his request for an oversight hearing with Attorney General John Ashcroft, who had dodged questioning from the Committee for over a year. 46

Leahy’s frustration at not being able to oversee the nation’s top prosecutor is perhaps aimed directly at Committee Chairman Hatch, a sort of Dr. Evil to John Ashcroft’s Mini-Me. Hatch, like Ashcroft, was a primary drafter and supporter of the Patriot Act, and both have a penchant for writing nationalistic Christian music that eerily conflates healing our land with obeying an ambiguous power that is both Christ and Bush. 47 But Hatch alone, the soft-spoken Mormon from the Great Salt Lake, has distinguished himself recently as the pharmaceutical industry’s leading spokesman in the closed chambers of legislation. Besides operating his own “nutritional” corporation, Pharmies, Inc., Hatch has been given a great deal of money (in 2000, nearly twice as much as the next congressperson) from an industry laden with animal research and deeply threatened by committed animal advocates. 48 As Chair of the Senate’s Judiciary

Committee, he has been well positioned to lobby for and draft statutes specifically designed to neutralize the political gains made by groups like SHAC.  

First Amendment Controversies

“Bush's War on Terrorism is no longer limited to Al Qaeda or Osama Bin Laden… The rounding up of [SHAC] activists should set off alarms heard by every social movement in the United States: This "war" is about protecting corporate and political interests under the guise of fighting terrorism.”

-- Will Potter

“Let Freedom Ring the Doorbell!” -- SHAC campaign ad

The key issue for American citizens in the indictment of the SHAC concerns the defendants’ First Amendment rights to freedom of speech and association. Critics of direct action protest, such as those who testified before the Senate Judiciary Committee, invariably claim that they respect the right to dissent, distinguishing “legitimate” (and easily contained) expressions of criticism from those involving alleged criminal action. In this respect, according to US Attorney Christie, the SHAC defendants were "exhorting and encouraging” actions not protected by the constitution.

The strategy of the corporate-state is to define SHAC-styled direct action as beyond the scope of constitutional protection. They seek to narrow the meaning of the First Amendment, and therefore to subject SHAC and other activists to an increasingly broad scope of criminal prosecution. Key questions, then, emerge from the US government’s attempt to prosecute SHAC: Do corporations and the state, as they claim, really respect the First Amendment and the democratic political sensibilities behind it? Are SHAC actions legal or illegal expressions of dissent? If they are illegal, do they constitute a special form of terrorism deserving of federal injunction, or are the myriad of extant laws capable of penalizing specific acts of civil disobedience sufficient?

The latitude of the First Amendment is broad but, as widely understood, rights are not absolute. The First Amendment does not grant individuals unqualified freedom to say or do anything they desire as a matter of civic right. According to classical liberal doctrine, such as formulated by J.S. Mill, liberties extend to the point where one’s freedom impinges upon the good or freedom of another. Thus, no one has the right to injure, assault, or take the life of another endowed with rights. That, of course, is the theory; in

American political practice, restrictions on liberty are frequently applied to consumers and citizens alike, but rarely to corporations who -- capitalizing on the predatory logic of property rights -- systematically exploit humans, animals, and the environment to their own advantage.

Some major contested First Amendment cases have involved hate speech, slanderous and libelous remarks, religious references in secular institutions such as public schools, and the production or sale of pornography and other material declared “obscene” by the government. According to the Constitution, there are clear cases where free speech is protected (public criticism of the government), where it is not protected (inciting others to violence), and then there are also a large body of cases that fall within a contested grey zone that require legal interpretation and judicial decisions.

While there have been some strong defenses of the First Amendment by the US Supreme Court, such as the protection of the Ku Klux Klan’s use of hate speech, there have also been severe lapses of judgment. Indeed, the entire last century is scarred by egregious Constitutional violations, ranging from the Red Scare of the 1920s, the loyalty oaths of the 1930s, and Sen. McCarthy’s witch hunts in the 1950s, to the FBI COINTELPRO operations of the 1960s and 1970s, and the passage of the Patriot Act in 2001.51 US history is riddled with precedents that demonstrate systematic and sweeping violations of First Amendment rights, such that freedom of speech might be considered the exception to the rule of life in the United States. The recent indictment of the SHAC7 is just one of many clear indicators that we have entered into yet another chilling period of social repression and the quelling of dissent. While the media have largely focused public attention on Bush’s imperial Pax Americana, domestic police and federal agents have violently repressed demonstrations, wrongly arrested individuals and seized their property, surveilled legal organizations, collected and disseminated information on activists, and summoned individuals to grand juries in the attempt to intimidate and coerce information. Within this conservative social climate, as people are besieged by monopolistic capitalism, quasi-fascistic patriotism, religious ranting, homophobia, sexual repression, and cultural paranoia, the corporate-state complex is using SHAC to launch its latest attack upon the Bill of Rights.

Despite the complaints of vivisection-friendly corporations, SHAC has the right to post communiqués and provide information about illegal actions taken by others, be they unknown SHACtivists, members of the ALF, or even more extreme cadres from militant groups like the Revolutionary Cells or the Animal Rights Militia. In this capacity, SHAC spokesperson Andrea Lindsey says that the SHAC website “functions as a newsletter not an advocacy board.”

Critics, however, argue that SHAC’s website goes beyond providing information in order to incite others to violence, thereby blurring the line between information and agitation. The key controversy centers around two issues. First, critics are challenging SHAC’s legal right to post “inflammatory” material such as the alleged “top twenty terror tactics” used against vivisectors and the home addresses and phone numbers of individuals associated with HLS.52 Second, SHAC’s opponents in the vivisection industry and the government are contesting SHAC’s right to conduct home demonstrations against targeted individuals on the grounds that the tactic constitutes stalking and harassment. Some landmark cases decided by the Supreme Court are directly relevant to the SHAC7 indictment in this regard. We will briefly cite four such cases: Brandenburg v. Ohio (1969), NAACP v. Claiborne Hardware Co. (1982), Frisby v. Schultz (1988), and NOW v. Scheidler (1994).

1) In Brandenburg v. Ohio, the court held that Ku Klux Klan hate speech and pro-violence remarks are protected under the First Amendment up to the point of inciting others to violence and criminal action. The court upheld an important distinction between advocacy and incitement, finding that “Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”53

Thus, even if SHAC goes beyond reporting incidents against HLS to openly advocate illegal actions against it, they are still within their legal right so long as they do not “incite” others to criminal actions -- clearly a vague term in need of careful interpretation.54

Well aware of the legal boundaries between constitutionally protected and unprotected speech, the SHAC website makes the following disclaimer:

“The SHAC USA web site and e-newsletter, its hosts, designers, contributors, and sponsors, are not responsible for actions on the part of any individual which prove defamatory, injurious or prejudicial to the individuals or entities named herein, their families, or acquaintances. This publication is provided for informational purposes only, and is not intended to incite any criminal action on the part of its readers, visitors, or recipients. Links are placed for educational purposes only. SHAC USA Inc. is not responsible for the content posted on outside sites.”55
Consider, however, a case where SHAC goes beyond providing information and purposely is provocative. The back cover of a SHAC USA newsletter (Volume 4, Issue 1, Spring 2004) features an image of a brick and enthusiastically describes how bricks are an excellent tool to smash windows in the war for animal liberation. While reprehensible from the standpoint of their critics, one cannot plausibly read this satire as likely to incite or produce illegal actions, as much as SHAC might applaud them.

And what of SHAC’s now infamous “top 20 terror tactics” page that stokes the ire of vivisectors and prosecutors alike? According to the federal indictment, SHAC “listed” direct actions tactics such as home demonstrations while using a loudspeaker, vandalism against cars and homes, chaining and blocking gates, bomb hoaxes, threatening letters and phone calls, phone blockades and black faxes, and arranging for an undertaker to call to collect a body. However, critics have failed to note that SHAC had merely re-posted an attributed page from the website provided by the anti-SHAC British Research Defense Society (RDS), and that SHAC had removed the page over two years ago. Additionally, far from promoting terror, at the bottom of the page SHAC impishly wrote, “Editors’ Note: Now don’t get any funny ideas, folks.” Therefore, the operative term in the federal indictment is not “incited” but rather “listed,” for all SHAC in fact did was to list tactics already provided on the RDS’s own website.

Moreover, even if SHAC had published a call to use “terror tactics” against vivisectors associated with HLS, SHAC would still have been within its First Amendment right unless its action was done in a manner that incited illegal actions. Again, it is a stretch to interpret SHAC’s re-posting of an RDS webpage as an example of inciting others to violence. This same principle applies to posting the names and addresses of HLS employees, shareholders, and service providers. SHAC’s opponents claim that they allegedly encourage followers, as in the words of the indictment, to “operate outside the confines of the legal system.” Yet, as SHAC notes, such information is often easily available from phone books and internet sites, or is otherwise potentially public record.

SHAC intentionally makes such posts with no accompanying call to arms so as not to transgress the law. SHAC’s information, then, is just that and the view that witnessing such information results in violence is typical only of the arch-conservative ideology that believes censorship is necessary to preserve social order. While the construction of a critical consciousness is no doubt important in leading citizens to become more politically active, this does not imply that knowledge incites action. Plato had great wisdom, but to know the good does not require doing the good; neither does knowledge of
the HLS’s many evils thusly produce illegal actions to stop them. Animal rightists can only wish that such were the case. Doubtless, there is a relationship between information and political action but it is hardly a direct causal mechanism and should instead be thought of as complex and mediated by numerous unpredictable factors.

2) SHAC USA is not itself directly responsible for actions taken by the SHAC movement, or any particular SHAC follower. In the case of NAACP vs. Claiborne, the Supreme Court ruled that an organization cannot be held accountable for the actions of its members or followers. Critics never trouble themselves with the crucial distinction between SHAC USA Inc., an aboveground, legal, and non-violent organization, and the larger SHAC movement as a whole, comprised of a wide-range of activists united against HLS that sometimes use illegal tactics and may have an underground presence. SHAC USA posts information about strikes on HLS, and openly supports illegal actions against the company as an exercise of free speech, but the organization does not itself violate the law or incite others to do so. In its economically and politically motivated confusion, the corporate-state complex has targeted SHAC USA rather than the shadowy SHAC movement. Yet, despite the high visibility provided by SHAC USA as a parent organization, the illegal acts (such as sabotage) taken against HLS are done by the decentralized and relatively amorphous grassroots base of activists who act in SHAC’s name but not as a direct result of its goals or posted information.

3) Finally, two recent cases have direct relevance to the constitutionality of SHAC’s use of home demonstration tactics. Since SHAC USA and the SHAC movement alike conduct protests not only at places of business, but also at the homes of target individuals, critics have argued that this form of protest is not protected free speech but rather illegal actions that constitute a form of conspired harassment. Home demos push the boundaries of free speech and have so far received mixed reviews from the courts. In Frisby v. Schultz, the Supreme Court found that a Brookfield, Wisconsin citywide ban against anti-abortionists’ demonstrations at the residence of an abortion provider were in fact constitutional. The court also ruled that demonstrations within a residential neighborhood were permissible, but argued that the State’s interest in protecting the privacy of the home is “of the highest order in a free and civilized society.”

Similarly, in NOW v. Scheidler, the Supreme Court ruled in favor of the National Organization for Women’s attempt to use the RICO Act against anti-abortionists. RICO was applicable, the Court

decided, because acts of extortion and harassment (behavior commonly prosecuted under RICO) could be conducted for the sort of non-economic reasons that would have been held by pro-life demonstrators who are interested, not in gaining Planned Parenthood monies, but in shutting down abortion clinics. However, in a major second counter-hearing of the case that took place in 2003, Schiedler v. NOW, the Supreme Court importantly found that since the anti-abortionists were not seeking to obtain any property from the women who desired abortions, the doctors who desired to grant them, or the clinics who desired to provide them, that a claim of extortion could not be substantiated and so the RICO law was not in fact violated by harassing protests. Further, the Court ruled that extortion often overlaps with the act of coercion, but that it is for the legislature to more strictly define this relationship and not the courts. While many activists perceived this Supreme Court ruling as a pro-life ruling from a conservative body of judges, and therefore as a setback for the progressive purposes of right groups such as NOW, groups like PETA and the Southern Christian Leadership Conference supported Schiedler in his appeal because his victory overturned the ability of the state to quell rowdy public protest through the liberal application of anti-racketeering law. Thus, this recent ruling has also worked to the benefit of SHAC, whom the government had sought to prosecute under RICO. This, then, explains the strategy and decision by the federal government to prosecute the SHAC7 through the little-used, and less appropriate, AEPA instead.

Another recent ruling may be pertinent to the upcoming SHAC7 trial. In October 2002, Boston police arrested and charged a dozen SHAC activists with stalking, criminal harassment, and attempted extortion for home demonstrations against an executive of Marsh Insurance, a corporation that no longer provides services to HLS because of SHAC pressure. In Feb 2004, however, a Boston superior court judge dismissed all 39 charges against the activists, arguing that their actions were constitutionally protected free speech, and that, while illegal actions had occurred in SHAC’s name, these could not then be prosecuted upon organization members without direct proof of wrongdoing on their part. Due to the eerily similar nature of the charges in this case to the federal charges against the SHAC7, this recent ruling provides some reason to believe that activists can still find absolution if forced to plead their cases in court. Still, as SHACtivists explore the boundaries of legality and free speech, the ongoing and conflicted nature of court rulings concerning the legality of home demonstrations means such tactics will continue to be struggled over and contested for some time to come. Although UK SHACtivists abandoned home demonstrations two years ago,
and US SHACtivists use them less frequently, those influenced by SHAC continue to use home demos as an effective tactic.

The more such strategies become a potent political and economic force, the more courts have begun to enforce ever-greater restrictions against political groups like SHAC. US and UK courts, under suit from companies like Chiron and HLS, have imposed numerous injunctions, restraining orders, and “protest-free” or “no harassment” exclusion zones against activists that now prevent them from coming within 100 yards of plaintiffs’ homes or businesses under penalty of arrest and prison sentences. In many cases, new rulings allow only a maximum of 25 people at a time to protest, within a set time limit such as four hours, and in a marginalized area. In October 2004, Oxford University won an unprecedented injunction against SPEAK activists that prevents them from coming within 50 yards of university buildings and 100 yards of university employees. England also seeks to make it a criminal offense to return to a banned protest area for a period up to three months. At the same time, HLS has obtained a UK court order serving SHAC a £200,000 legal bill for the costs it incurred while applying for High Court injunctions against its protestors.

In addition, HLS and the British government began action to force SHAC’s leadership out of their home and threatened the owner who donated it to them with heavy tax penalties, as the UK state is beginning to scrutinize and challenge the numerous sources that fund SHAC campaigns. The British government has progressed from demanding animal rights groups remove personal phone numbers and addresses of targeted individuals from their websites to pressuring them to remove information related to the ALF and direct action. Similar to the AEPA law in the US, Tony Blair seeks to introduce a new “economic sabotage” law in the UK that criminalizes actions that interfere with industry profits, as government officials say new powers would be granted to police under the rubric of the Serious Organized Crime and Policing Bill. The UK formed a new police department, the National Extremism Tactical Coordination Unit, in order to deal with the animal rights threat. To further placate their science base, the British government promised that it would use the military if necessary to protect the research compounds draped in barbed wire, an appropriate symbol for concentration camps.

Measures such as those that control the number of people who can protest at one time, restrict areas in which they can protest, and censor website content clearly violate free speech rights. As aboveground activists fight it out in the courts, and underground activists continue to strike regardless of moot legal meanderings, states do what they always do in the face of opposition -- repress

rights and restrict liberties. In a tense co-evolutionary dance, the law and the “outlaws” continue to change and adapt to one another.

The fact that current laws do not exist to prosecute US SHACivists in a manner in which the authorities desire -- due to SHAC’s unique strategy of attacking secondary targets and waging new forms of cyberwar -- raises the question as to whether the SHAC7 arrest spectacle of May 26, 2004 is simply the latest in a repressive legacy of irrational state responses to grassroots political action,65 an attempt to limit SHAC’s effectiveness by binding it to Byzantine judicial processes, or a strategic measure designed to intimidate other activists who may not be as committed to their cause as those involved with SHAC have proven to be. One final possibility is that the US Attorney’s office has pressed forward with the expectation that it will lose this case, but that the government will profit thereby as it can then use the ruling to facilitate a congressional response that outlines how SHAC-style activism constitutes felonious behavior and AETA-style judicial penalties need to be made law and enforced.

Steal This System!

“Our strategy was to give Judge Hoffman a heart attack. We gave the court system a heart attack, which is even better.” -- Jerry Rubin, Member of the Chicago7

“Whatever they throw at us, we just flow like a river.”
-- Heather Avery, SHAC UK activist

“HLS is the domino.” -- Kevin Jonas

“Our fight for the animals will require nothing short of this shedding of blood, sweat, and tears in the war for animal liberation. Just as the Paul Reveres’, the Minute Men, and the Sons of Liberty took both to the streets and the night to agitate for their rights, we as animal activists must also let the nobility of our cause guide us and defend us from libelous and fear-charged accusations of our adversaries.” -- SHAC USA

Just as the Chicago7 represented the battle for human rights in the 1960s, so the SHAC7 dramatizes animal rights as a key struggle of our day and as the logical extension of modern democratic traditions. Stigmatized as “terrorists,” the only crime these activists have committed is to defend innocent animals from barbaric exploitation.


Steven Best and Richard Kahn.
and to uncompromisingly demand an end to corporate evil and scientific fraud. Like the Chicago7 before them, the corporate-state complex casts the SHAC7 as ugly hoodlums and a threat to “civilized” values, even though in their unflinching commitment to actualize a better and more peaceable world for humans and animals alike, these activists represent what is best about the US political system. For all those who will not rise from the couch, or even vote, due to a long developing political apathy or cynicism, may SHAC and the SHAC7 re-ignite their hope for progressive change. Armed with little more than a website, a bullhorn, and the will to make a difference with their lives, SHACtivists have rocked an industry juggernaut, rattled a global economic structure, and sent a loud message to every animal exploitation industry that eventually they will reap what they sow.

These are difficult times for free speech. Bush’s phony Terror War and its many cheerleaders instituted a fascist mandate against dissent and political action across the country, along with an apology for the status-quo that only the most blatant failures in the war against Iraq were able to dent. Meanwhile, conservative outrage at media incidents such as Janet Jackson’s “wardrobe malfunction” and Howard Stern’s sexual and political antics resulted in the Federal Communications Commission bringing staggering fines for “obscenity,” a move designed to send a message to everyone but Clear Channel that staying within the straitjacket of “free speech” is enlightened self-interest. Undaunted by state repression, SHAC continues to hammer away at HLS while defending constitutional rights. Unafraid to use its grassroots power like a weapon of mass destruction, SHAC may appear intimidating or criminal to some for no other reason than it does the apparently unthinkable: it refuses to surrender its rights to those so deeply mired in what is wrong.

The point of the present federal indictment has less to do with a viable case against SHAC than with sending a chilling message to anyone who dares to assert their First Amendment rights in meaningful protest against Machiavellian powers. While SHAC has never been the sort of outfit, like the Humane Society of the United States, to “go to Washington” and plead its case amidst suits, ties, and stars-and-stripes lapel pins, the SHAC7 now relish the opportunity to further expose HLS in the hypocritical halls of law.

During the greatest political trial of the 1960s, Chicago7 members like Abbie Hoffmann freely showed their contempt for the court through subversive comic theater, such as when Hoffman arrived dressed in judge’s robes, which he then stomped upon. Black Panther member Bobby Seale was bound, gagged, and then tried separately after refusing the court’s right to treat him as anything but an uncooperative prisoner of war. Meanwhile, defense attorney
William Kunstler dragged the proceedings out for months by bringing a virtual “who’s who” of the counterculture into the trial to testify as witnesses against the state.

The SHAC7 have promised no less a challenge for what might well become one of the great domestic political trials of this era. They intend to convert crisis into opportunity by turning the tables against their accusers and exposing the real criminals and terrorists. In a far more visible public setting than typically accorded to them, SHAC welcomes the indictment in order to expose the heinous crimes of HLS, the fraud of vivisection, and the corruption of the state and legal system, as they will champion constitutional rights and the just cause of animal liberation. In their words:

We welcome these indictments with open arms as we are going to show this politically corrupt US Attorney office the real meaning of the first amendment. Our legal defense will be an exercise in genuine patriotism as we stand up for and uphold free speech and association rights in this constitutionally troubled republic. The courtroom will become yet another venue to expose the crimes inside of Huntingdon Life Sciences, and to inspire a stand of resistance against such violence. If the FBI and the US Attorney’s office have learned anything from their three years of surveillance and office raids it really should be that this campaign has never once been deterred by crooked legal assaults, and this current abuse will fare no differently. We encourage every SHAC USA supporter to lawfully fight back against such an encroachment on our civil liberties -- by exercising yours! Proudly speak out against HLS and all forms of animal cruelty. To be silenced now does a disservice to these most important of freedoms, and the advocacy animals suffering everywhere so depend.54

Just as McDonald’s foolishly took on British activists Heather Steel and Dave Morris for the crime of exposing the company’s lies in pamphlets, so too may the intimidation tactics of HLS and the state backfire dramatically. In the ongoing war against HLS, successive waves of arrests in Pennsylvania, California, New York, and elsewhere demonstrate that the SHAC movement has redoubled its efforts as a blowback to the corporate-state repression directed against it, and that HLS and the vivisection industry may be in for a sustained PR bruising.

In our view, the assault on the SHAC7 -- in this era of the Patriot Act and “domestic terrorism” -- is a monumental event in the

history of the animal rights movement, both for the movement proper but also for how it now represents the frontline of the battle for the liberation of all beings from the domination by global powers. Let there be no mistake: the federal prosecution of the SHAC7 is an attack on everyone who militates for the ideals of democracy, rights, freedom, and justice. As such, all those fighting for progressive causes of any kind should come now to SHAC’s defense.

Already, there are signs of solidarity and evidence of a wider recognition of the significance of the SHAC7’s indictment by a range of animal advocates. Animal rights activists -- both critics and supporters of SHAC -- are organizing speaking tours and fundraisers to help pay for legal expenses. Lisa Lange, communications director for PETA, told the New Jersey Star-Ledger that the SHAC7 were “long-time activists and well-respected” as she defended the need for militant action where legal systems are unresponsive to calls for justice. Representatives from the Center on Animal Liberation Affairs and Syracuse Animal Rights Organization embarked on a North American speaking tour that in addition to the topic of the ALF addressed the issues at stake in the SHAC7 trial. Lauren Ornelas of VivaUSA organized a drive to raise funds to cover legal expenses. An even more important sign, because it emerged from the social justice community, was a recent Z-Magazine article that grasped the relevance of the SHAC7 indictment for all protest movements. As stated by author, Will Potter: “Their only chance is for activists of all social movements -- regardless of their political views -- to support them, and oppose the assault on basic civil liberties. Otherwise, in Bush's America, we could all be terrorists.”

Colonialism, imperialism, and slavery have been the burning moral issues of modernity since its inception five centuries ago, and their scourge on the planet and human civilization include environmental ruination, destruction of biological and cultural diversity, genocide, and world wars. In the US, millions of blacks were enslaved, and countless numbers of people were tortured and murdered through burning at the stake and lynching, whether from plantation owners, law authorities, or the Ku Klux Klan. After the Emancipation Proclamation and end of the civil war, blacks were formally free, but in reality remained trapped in violent systems of hatred, exploitation, poverty, and segregation that to this day scar the nation and its collective psyche.

As black Americans continue to struggle for justice and equality, and anti-racist movements advance throughout the planet, the moral and political spotlight is now thrown on another ancient and violent form of slavery, that involving the domination of the human species over other animal species. As with human slaves, the enslavement and exploitation of animals historically has been central
to the development of advanced economies. As starkly revealed by
the anti-vivisection direct action struggles in England, animal
exploitation is as vital to the 21st century global economy as human
exploitation was to modern economies in Europe and the US. As
economic utility is not a moral justification for exploitation, the
animal liberation movement builds on the arguments and dynamics
of prior human liberation movements and so too demands the
abolition of animal slavery and human supremacy.

Given the powerful economic interests involved in enslaving
animals, however, the animal liberation movement is rightly skeptical
that their freedom can be won through persuasion or legal means
alone. As Fredrick Douglass noted, “Power concedes nothing
without a demand. It never did and it never will.” The only question
is: what forms must this new counter-power against the global
machines of animal exploitation take?

SHAC has matured into a powerful animal liberation
movement on a global scale, but it cannot hope to topple a major
capitalist (vivisection) complex without significant support and
solidarity. It remains to be seen if activists involved in other causes
will truly understand the indictment of the SHAC7 in its broadest
social and historical context, thereby showing solidarity with the
myriad of SHACtivists and other direct action militants on the front
lines of protest, making sure that their voices are anything but a
whisper. Meanwhile, the animal liberation cause continues to grow
throughout the world, establishing itself as both an heir of the great
human liberation movements and a transcendent force that carries
the fight for rights, justice, and equality toward its logical fulfillment.

1 For critical exposes on HLS and video documentation of the
extreme cruelty they have inflicted on animals, see

2 Throughout this article, we refer to the “vivisection industry” or
“vivisection complex.” By these terms, we mean the whole range
of operations involved in exploiting animals for drug/chemical
testing and for medical “research” (a word that quite deservedly is
put in quotation marks given its typically cruel, senseless, and
unscientific nature). These operations include the breeding farms
that supply and distribute animals for testing and research; the
pharmaceutical, chemical, and biotechnology companies that test
drugs and products such as household cleaners on animals; the
corporate and university laboratories that carry out their testing
mandate and do their own work on animals; and the government
officials that defend and legislate for all the companies and institutions involved in the vivisection process that brings lucrative gains for national and transnational economies. Similarly, the term “corporate-state complex” is meant to underscore the implosion between government and corporations such that they share the same ideology and interests -- in this case, “free”-market neoliberal capitalism --and traffic back and forth through a revolving door of plutocracy and nepotism.


4 The RICO Act and subsequent charges of “animal enterprise terrorism” will be covered in more detail later in this paper.


6 “LSR Announces Indictments of Animal Rights Extremists,” Business Wire (May 26, 2004), available online at: http://www.findarticles.com/p/articles/mi_m0EIN/is_2004_May_26/ai_n6044502. (LSR stands for Life Sciences Research, Inc., the newly incorporated United States company that controls what was previously Huntingdon Life Sciences.)


8 On the way the vivisection industry and its supporters co-opt and manipulate language so that it will coalesce with their ideological underpinnings, see the book by the former-vivisectionist-cum-animal-rightist Joan Dunayer (2001), Animal Equality: Language and Liberation, 103-123. Supplementing Dunayer’s analysis is another former vivisectionist, Michael Allen Fox, who points out that the vivisection industry’s ideology relies on “rationalizations” and not rationality. See Fox, “The Case Against Animal Experimentation,” Organization & Environment, Vol. 13, No. 4 (December 2000): 463-467.


11 For a strong critique of the scientific flaws and failures of vivisection, see Ray and Jean Swingle Greek (2002), Sacred Cows and Golden Geese, London and New York: Continuum, and Specious Science (2003), London and New York: Continuum.

12 On the economics of the pharmaceutical industry, see Marcia Angell, M.D. (2004), The Truth About Drug Companies, New York: Random House.


19 Some recent sociological literature has begun to note that the progressive forces grouped together under the banner of “anti-globalization” are not in fact committed on the whole to an anti-global philosophy or politics, see Douglas Kellner (2002), “Theorizing Globalization,” Sociological Theory 20(3): 285–305. That is to say that even the anti-globalization motto, “Think global, act local,” demonstrates that the project involves a global vision that is largely about challenging a particular form of economic and political globalization -- neoliberal capitalism -- by replacing it with alternative global visions based upon planetary ethics.


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available online at:

21 Mary Hennock, “Pharma firms take on the extremists,” BBC News (July 30, 2004), available online at:
http://news.bbc.co.uk/1/hi/business/3933939.stm. For purposes of conversion, the US dollar is worth approximately .52 of the British pound.

22 Michael Evans, “Extremist animal rights activists pose main threat to economy,” The Times UK (Dec 10, 2004), available online at: http://www.timesonline.co.uk/article/0,,2-1396891,00.html.

23 Mary Hennock, “Pharma firms take on the extremists,” (July 30, 2004).

24 Hennock (July 30, 2004).

25 Jonathan Watts, “Animal rights activists force drug firm to rethink UK role,” Guardian UK (Nov 15, 2004), available online at:
http://www.guardian.co.uk/animalrights/story/0,11917,1351445,00.html.

26 Michael Evans, “Extremist animal rights activists pose main threat to economy.”


34 For info about the AETA see online at: http://environment.about.com/library/pressrelease/blALECa.htm.
35 See note 33.
36 See online at: http://www.senate.mo.gov/04info/summs/intro/SB882.htm.
37 Strategic Lawsuits Against Public Participation (SLAPP) suits are still viable corporate weapons of intimidation created to sue citizens for exercising their free speech rights of criticizing a corporation or business. The most famous incident of such repression was the lawsuit leveled against Oprah Winfrey and Howard Lyman in 1996 by the Texas Cattlemen’s Association for remarks made during one of Winfrey’s shows. When Lyman warned the American public of possible mad cow disease in the US, and Winfrey exclaimed she would never again eat another hamburger, the cattlemen sued them under the Texas False Disparagement of Perishable Food Products Act, a “food disparagement law” that exists in thirteen states including Texas. The cattlemen lost the suit, but won the propaganda war by sending out an effective message of intimidation to others considering public criticism of the meat industry. See “Oprah Winfrey and mad cows,” online at: http://www.disinfopedia.org/wiki.phtml?title=Oprah_Winfrey_and_mad_cows.
39 For the text of the law, see Public Law 107-188 at: 42 USC 201, available online at: http://www.fda.gov/oc/bioterrorism/PL107-188.html.


45 The issue of penalties is important to those who experiment upon animals because, at present, the AEPA only allows for a maximum of 3 years imprisonment for those who cause economic damage to an animal enterprise exceeding $10,000. Those causing less than $10,000 cannot be imprisoned for longer than 6 months. Green’s testimony at the proceedings is available online at: http://judiciary.senate.gov/testimony.cfm?id=1196&wit_id=3462. All transcripts are available online at: http://judiciary.senate.gov/hearing.cfm?id=1196.

46 Leahy’s statement can be found available online at: http://judiciary.senate.gov/member_statement.cfm?id=1196&wit_id=2629.

47 Listen to some of Hatch’s music available online at: http://www.hatchmusic.com/songs.html.

48 In the Senate, Orrin Hatch has raised more money ($307,524) from pharmaceutical manufacturers that any of his colleagues since 1999, according to Capital Eye (http://www.capitaleye.org/inside.asp?ID=113). OpenSecrets.org lists Hatch’s pharmaceutical contributions as having dwindled to $11,500 in 2004, but, importantly, President un-elect Bush received some $961,210 and Senator Kerry himself pocketed $501,772 as part of their election runs. Further, expected incoming Senate Judiciary Committee leader, Arlen Specter (R-PA) was second only to Kerry amongst Senators in receiving pharmaceutical donations at $194,462. For a listing of 2004 pharma contributions, see: http://www.opensecrets.org/industries/recips.asp?Ind=H04&cycle=2004&recipdetail=A&sortorder=U.

49 Note that Hatch’s donations appear to have been targeted at incoming Judiciary leader Specter instead, as per Note 48.
53 See the opinion, as archived on SHAC USA’s website, available online at: http://www.shacamerica.net/supreme_brandenburg.htm.
54 Courts have generally interpreted the legal idea of “incitement” to be connected to some measure of causal immediacy in this regard. For example, the recent Feb 2004 court opinion on Commonwealth of Massachussetts vs. Lauren Gazzola, et al., which found that Gazzola and other SHACTivists were not in violation of the First Amendment because their actions -- though inflammatory -- only implied future violence and were not directly producing violent acts during the time of the protest itself. Text of the opinion is available online at: http://www.socialaw.com/superior/supFeb04c.html.
55 See SHAC USA’s website at: http://www.shacamerica.net/.
56 Per a news release of the indictment against SHAC, the US Department of Justice accused that SHAC-USA “recommended and publicized on its websites: invading offices, vandalizing property and stealing documents; physical assault, including spraying cleaning fluid into someone's eyes; smashing windows of a target's home or flooding the home while the individual was away; vandalizing or firebombing cars and bomb hoaxes; and threatening telephone calls or letters, including threats to kill or injure someone’s partner or children.” The news release is available online at: http://www.usdoj.gov/usao/nj/publicaffairs/NJ_Press/files/shac0526_r.htm.
57 A list of the tactics can be found on SHAC’s site at: http://web.archive.org/web/20010830091646/www.shacusa.net/news/3-6-01.html. It can be found elsewhere on line, such as at: http://www.tatblatt.net/181/181HLS2.htm.

As noted, SHAC itself often speaks of the movement as the “SHAC campaign.”

See a summary and text of the opinion available online at: http://www.casp.net/naacp-1.html.

Text of the Court’s opinion can be found available online at: http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/frisby.html.

Recently, the UK High Court imposed the 100-yard protest exclusion, though it did deny the plaintiffs request for an exclusion zone in the rural town of Staffordshire that would have covered some 11.5 square miles. Such requests demonstrate the lengths that those involved in vivisection, or animal exploitation are willing to go to towards curtailing democratic rights to protest unethical activities, and it also demonstrates how courts can in fact curtail liberties further under the political guise of appearing to represent forces of compromise and moderation. See “Village Exclusion Zone Bid Fails,” BBC News (Dec 2, 2004), available online at: http://news.bbc.co.uk/1/hi/england/staffordshire/4061961.stm.


Taken from SHAC USA’s website at: http://www.shacamerica.net/indictments/index.htm.

Will Potter, “Protest Torture of Animals, Get Arrested as a ‘Terrorist’,” originally for ZMag, archived online at: http://www.animalliberationfront.com/ALFront/AgainstALF/Terrorists_one_and_all.htm.
I appreciate Mr. Snaza's thoughtful discussion of our exhibit, but wish to differ with him on an important point. Snaza asserts that the "ultimate political aim of PETA" is "the expansion of liberal democratic notions of 'rights' to animals." In fact, our ultimate goal is apolitical and can be best described in terms Snaza himself employs, namely, we seek an evolution in the societal view of animals from *zoe* to *bios*, that is, the elevation of our concept of animals as beings who merely live to beings who share with humans "the form or manner of living peculiar to a single individual or a group."

This aside, Snaza's explanation of PETA's constructivist approach, in which history is viewed as "cumulative and progressive" is enlightening, particularly when one considers the response from some in the Jewish community who bristle at the suggestion that the Holocaust is anything but an "historical singularity." That the "Holocaust on Your Plate" exhibit was conceived of and carried out by members of our staff who are Jewish and whose relatives died in concentration camps is a fact that is largely ignored by those with the exceptionalist point of view, as well as by many in the media, suggests that the constructionist approach is somehow obscene or insulting to Holocaust victims.

To take this point a step further, some have suggested that merely to compare the suffering of Jews victimized by Nazis (and let us not forget that millions of non-Jews were persecuted and murdered) to the suffering of animals is somehow insulting, thus perfectly illustrating the necessity of changing our view toward animals. Disturbingly, some have criticized the exhibit on the grounds that "animals are products, just like soybeans" without acknowledging, or apparently even realizing, that the view of Jews as somehow "less than human" was the mindset that preceded the Holocaust.

Snaza's discussion does much to explain what underlies some of the reactions to the exhibit, and I hope that those who have most vigorously criticized it will consider his points, as well as his "plea for an ethical duty toward 'naked life' in all its forms that is not rooted in universality or systems of thought." While Snaza does not without reservation support the exhibit, I am heartened by much of what concerned him -- that he was troubled by it for various reasons, that he thought about it for many days, and that he worries about the importance of tactics and is often irritated by those of PETA. PETA certainly could confine our public efforts to "acceptable" photographs that are in and of themselves abhorrent. We could have avoided the entire controversy. But we would rather "trouble" people in the hope that they may consider that there is not a hierarchy of suffering.

Sincerely,
Kathy Guillermo
Senior Writer
People for the Ethical Treatment of Animals

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Taken from: http://www.animalliberationfront.com/ALFront/Response_Letter_Snaza.htm