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Antimony: The Use, Rights, And Regulation Of Laboratory Animals

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Antinomy:¹ The Use, Rights, And Regulation Of Laboratory Animals

I. INTRODUCTION

Dear Ann Landers:

I read recently that an animal shelter in Chicago destroyed 110 cats over a single weekend because of an unusually large overflow.

When I saw that story, I was reminded of the time dozens of pickets carrying ugly signs marched around the Chicago Sun-Times building, blasting Ann Landers because of her stand on animal experimentation.

I find it very odd that these animal lovers believe it is all right to kill cats because they can't find homes for them. Yet they raise hell with you because you advocate the use of animals to further the cause of medical research.

This does not sound rational to me. Please address the subject in your column.

/s/ Perplexed in Arlington Heights

Dear Perplexed:

Most animal lovers are rational people. Those who are not are unreachable and unteachable.

Would you believe that some readers suggested that animal experimentation be halted and prisoners, the elderly and mentally retarded be used instead?²

Without the use of animal models we could never have conquered polio, diphtheria, mumps, hepatitis and measles. Without animal models cancer research would come to a screeching halt. To me *there is little room for argument*. But the *fanatics* are out there in large numbers with plenty of money to espouse their cause. You can be sure, however, that I shall not back down an inch.³

In recent years, the problem, plight, and philosophy behind the use of animals in laboratories, schools, and industries has caused many to formulate an opinion on animal experimentation. It is simple to postulate a Monday morning quarterback philosophy — merely weigh the value of a nameless, faceless, unfeeling animal against the value

1. Antinomy is "[a] term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions." BLACK'S LAW DICTIONARY 86 (5th ed. 1979). See also C. BARNHART, THE NEW AMERICAN COLLEGE DICTIONARY 55 (1966) (defining antinomy as "the mutual contradiction of two principles or correctly drawn inferences, each of which is supported by reason"). The term was first associated with animal rights in Note, *Toward Legal Rights for Laboratory Animals?*, 10 J. LEGIS. 198, 211 (1983).

2. This author has found no published source material which espouses this view by animal advocates.

3. Landers, *Yes, Use Animals*, Thousand Oaks News Chron., Sept. 22, 1985, at 14, col. 1 (emphasis added). Interested readers may write Ann Landers at Post Office Box 11995, Chicago, Illinois 60611. *Id.*

of medical research which may eventually lead to a cure for cancer, AIDS, or some other dreaded disease. The choice seems simple.

However, there exist in the United States and other countries, places where animals are blinded, poisoned, set on fire, electrocuted, clubbed, cut, and otherwise tortured, while fully conscious, without the benefit of pain killers or tranquilizers, all in the name of scientific research. Many of these animals were once named pets. All have faces and feelings.⁴ Medical research which makes use of laboratory animals is not always conducted to find a cure for cancer, AIDS, or other human diseases; researchers may use animals for insignificant data collection—data that could be gathered through more effective, alternative methods. The value of such research, therefore, is less obvious. Yet, there persists the “little room for argument,” “fanatic”⁵ stigma in addressing the conflict between the rights of laboratory animals and the need for their experimental use.

This comment examines the nature of the arguments between animal rights advocates and those in favor of the continued use of laboratory animals for research; the parties and their positions will be identified. Consideration will be given to (1) a brief overview of the historical and philosophical basis of the animal rights movement, (2) an examination of whether animals and their particular advocates have standing to bring suit in the courts, (3) an examination of current federal and state regulations concerning laboratory animals and the effect of these laws upon recent court decisions, and (4) a discussion of proposed changes in the law and proposed alternatives to the use of laboratory animals.

I. THE BATTLE: WHO AND WHY

During the past ten years, the Animal Rights Movement, a political, moral, and philosophical movement, has grown in numbers, political clout, and aggressive voice. The recent advancement of the movement has been attributed to a variety of explanations, including a general recognition of philosophical and ethical principles contrary to current scientific and ecological insights.⁶ Although there are numerous writings on the advancement of animals' basic legal rights,⁷

4. Documented studies indicate that animals may be far less different from humans than originally supposed. One study indicates “that pigs grow faster and have more piglets if you give them something to engage their minds—like toys.” *Biological Advances Make Animal Rights Vital*, L.A. Daily J., Sept. 22, 1983, at 4, col. 4.

5. See *supra* note 3 and accompanying text.

6. ‘*New Militants’ Push to ‘Liberate’ Lab Animals Sparks Furor*, L.A. Daily J., Apr. 20, 1984, at 2, col. 3 [hereinafter cited as *New Militants*].

7. For an extensive discussion of animals' legal rights beyond the scope of medical research, see generally *ETHICS AND ANIMALS* (H. Miller & W. Williams ed. 1983); *ON THE FIFTH DAY, ANIMAL RIGHTS & HUMAN ETHICS* (R. Morris & M. Fox ed. 1978) (containing twelve chapters, each written by a different author, with a distinctive phil-

perhaps the most controversial topic,⁸ and the least addressed in legal journals, is the specific use of animals in scientific research. A forthright analysis of this topic requires a delicate balance of animal welfare against potential medical advancements which benefit man.⁹

A. *The Armies*

Animal advocates, often called anti-vivisectionists,¹⁰ are generally

osophical theme); T. REGAN, *ALL THAT DWELL THEREIN, ANIMAL RIGHTS AND ENVIRONMENTAL ETHICS* (1982) [hereinafter cited as *ALL THAT DWELL*] (a series of essays discussing the rights of animals and the effect of those rights upon environmental ethics); T. REGAN, *THE CASE FOR ANIMAL RIGHTS* (1983) [hereinafter cited as *ANIMAL RIGHTS*] (exploring various viewpoints advanced on animal rights); P. SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (1975) (considered the forerunner of later writings on the animal rights movement).

8. "The bitter confrontation between medical scientists and the protectors of animals has escalated to new heights of intensity . . ." *Animal Rights, Increasingly Intense Battle Over Lab Experiments Is Spreading*, L.A. Daily J., May 8, 1985, at 4, col. 3 [hereinafter cited as *Increasingly Intense Battle*].

This comment deals solely with the use of laboratory animals, their rights and regulation. Other potentially controversial issues beyond the scope of this comment include vegetarianism, the use of animal products and furs, zoos and other commercial forms of entertainment involving animals, hunting, trapping, and fishing. For further discussion in these and other areas of animal rights, see generally P. BATTEN, *LIVING TROPHIES* (1976) (discussing the treatment and exploitation of animals in zoos, and presenting evidence which indicates zoos may become the source for wild animals needed in laboratory experimentation in the wake of government restrictions on animal importation); P. CROWE, *THE EMPTY ARK, TRAVELS IN SEARCH OF VANISHING WILDLIFE* (1967) (addressing various issues in the conservation of animal wildlife); P. CURTIS, *THE ANIMAL SHELTER* (1984) (realistic view of how pound seizure laws affect animal shelters); K. O'CONNOR, *SHARING THE KINGDOM* (1984) (a well-rounded discussion of all topics dealing with animal rights; it is suitable for children and young adults); O. SCHELL, *MODERN MEAT, ANTIBIOTICS, HORMONES AND THE PHARMACEUTICAL FARM* (1984) (a companion book for understanding the philosophy behind vegetarianism and animal production for food; explaining how drugs, chemicals, and exotic feeds given to animals for slaughter may actually cause cancer and other health risks in humans); Fox, *USDA Animal Research Under Fire*, 35 *BIOSCIENCE* 6 (Jan. 1985) (lawsuit filed by an animal activist to stop genetic engineering research).

9. "Even as research controls are stiffened and alternatives are explored, an irreducible philosophical chasm will divide animal rights proponents from most biomedical scientists." *Increasingly Intense Battle*, *supra* note 8. Evidence of growing public awareness includes the efforts of 40,000 animal advocates who demonstrated worldwide as part of the first "World Day for Laboratory Animals." See *It's Time to Stop Treating Animals As If They Were Pieces of Property*, L.A. Daily J., June 29, 1983 at 4, col. 3 [hereinafter cited as *It's Time to Stop*]. For a source of balanced viewpoints and historical material on many of the issues raised in this comment, see generally A. ROWAN, *OF MICE, MODELS & MEN: A CRITICAL EVALUATION OF ANIMAL RESEARCH* (1984).

10. Not all those who use animals in science are "vivisectors." Not all (the literal meaning of the word) "cut living organisms." For example, many of those who test the toxicological (harmful) effects of various chemicals do not cut animals and thus are not vivisectors. This does not mean that we cannot

divided into three groups: (1) animal rights groups or animal legislators, whose general purpose is to study the issues involved, and through protests and campaigns, use peaceful methods to effect changes in the law and in society's treatment of and sentiment toward animals;¹¹ (2) animal liberationists, who generally advocate the use of such radical methods as violence, destruction, and stealing of laboratory animals¹² to draw attention to animal issues; and (3) animal welfare groups, who have a general concern for the care and treatment of animals, but usually lend only collateral support for effecting change.¹³

The opposition is also composed of basically three groups: (1) biological and medical researchers;¹⁴ (2) toxicological testing and industrial researchers;¹⁵ and (3) educational researchers.¹⁶ In this battle over the use of animals, neither side has taken a backseat, but instead, both compete in the media,¹⁷ in Congress,¹⁸ in state legisla-

raise serious moral questions about what they do, or that none of these questions can be the same as those raised about vivisection. What it does mean is that we simply speak inaccurately and in ways that are unnecessarily divisive if we continue to pose all questions about the use of animals in science in terms of "vivisection." To put the questions more clearly is a small price to pay for greasing the wheels for informed, respectful communication, and a necessary preliminary if the questions are to be answered.

ALL THAT DWELL, *supra* note 7, at 62-63. "Vivisection" is a word derived from the Latin *vivus* (living) and *sectio* (cutting), meaning the cutting of living organisms. See A. ROWAN, *supra* note 9, at 23.

11. For a comprehensive list of animal legislationist groups, see K. O'CONNOR, *supra* note 8, at 134-39.

12. See, e.g., *Animal Rights Zealots Defend Their Forays*, L.A. Times, Dec. 30, 1984, § 1, at 1, col. 3 [hereinafter cited as *Zealots*]; *New Militants*, *supra* note 6.

13. Animal welfare groups have been strongly criticized by both animal liberationists and legislationists on the grounds that their literature and publicity emphasizes the needs of dogs, cats, and other wildlife, but ignores the "rightless" animals used in laboratory research. See P. SINGER, *supra* note 7, at 241-45. "Thus people come to think of 'animal welfare' as something for kindly ladies who are dotty about cats, and not as a cause founded on basic principles of justice and morality." *Id.* at 242.

14. Medical and biological research is big business in the United States. "The annual expenditure in this country for medical research, the majority involving the use of animals, is \$10 billion made up of \$6 billion of the taxpayers' money and \$4 billion sponsored by industry." *NIH Funding of U of P Head Injury Laboratory Suspended*, INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 2 (emphasis in original) [hereinafter cited as *NIH Funding*]. Contrary to the beliefs of animal advocates, medical researchers claim that animals receive proper care, for both humanitarian and scientific reasons. *It's Time To Stop*, *supra* note 9, at 4, col. 5. However, the scientific community fears that public misunderstanding of the issue may effectively eliminate many worthwhile programs. See *Fight Over Animal Experiments Gains Intensity on Many Fronts*, N.Y. Times, May 7, 1985, at C1, col. 3.

15. See P. SINGER, *supra* note 7, at 49-54 (discussing various toxicological tests). See also *infra* notes 72 and 76.

16. See *infra* note 181. Military schools and other defense medical teams were to discuss the effects of gunshot wounds through the testing conducted on dogs. See Sun, *A Push for Animal Welfare Bills*, SCIENCE, Aug. 1983, at 633.

17. Although animal advocates have actively sought recognition over the past fifteen years, biomedical researchers and other scientific groups are now launching their own independent campaigns. The campaigns include public interviews and even the

tures,¹⁹ and in grass-roots campaigns.²⁰

"We are in an era, let's hope a brief one, of exceptionally high-intensity activism seeking to redefine man's relationship to animals," Larry L. Horton, a Stanford University Vice President, warned medical school officials at a recent meeting. "This is no time to catnap in the back of the bus."²¹

B. The Cause

Then God said, 'Let Us make man in Our image, according to Our likeness; and let them rule over the fish of the sea and over the birds of the sky, and over the cattle and over every creeping thing that creeps on the earth.'²²

All things bright and beautiful,
All creatures great and small,
All things wise and wonderful,
The Lord God made them all.²³

Although Judeo-Christian ethics establish a belief in fostering kindness in man,²⁴ commentators have interpreted Biblical refer-

production of a pro-research video entitled "Will I Be All Right, Doctor?" The video features children whose lives have been saved through laboratory research which employed animals. See *Increasingly Intense Battle*, *supra* note 8.

18. See *infra* notes 147, 148 and accompanying text.

19. California has introduced recent legislation to prohibit animal pounds and shelters from releasing lost, stolen or abandoned animals for use in laboratory experimentation. See *Ban Animal Seizures*, L.A. Daily J., May 1, 1984, at 4, col. 3 (Letters From Our Readers). Cf. *Animal Research and People Sense*, L.A. Daily J., July 13, 1983, at 4, col. 1 (against enactment). See also *infra* note 219.

20. Students in high schools and colleges are speaking out against required dissection in school laboratories. One student group is called Student Action Corps For Animals, formed for the purpose of important lobbying and grass-roots efforts. See K. O'CONNOR, *supra* note 8, at 130-33.

Tom Regan, a leading author and advocate for animal rights, has counseled students on high school and college levels to resist participation in required laboratory experiments. As a result of his efforts, North Carolina State University "became the first American university to study the effects of recognizing the rights of students to be 'conscientious objectors' to such experiments." Ecenbarger, *The Guru of Animal Rights*, *ESQUIRE*, Jan. 1985, at 66. See also *infra* note 175.

21. *Increasingly Intense Battle*, *supra* note 8. Animal advocate Henry Spira advocates a strong, programmed strategy for animal advocate groups. See Spira, *Fighting For Animal Rights: Issues and Strategies*, in *ETHICS AND ANIMALS*, *supra* note 7, at 373-77. "Power concedes nothing without effective struggle The meek don't make it. But audacity must be fused with meticulous attention to program, strategy, and detail." *Id.* at 373-74.

22. *Genesis* 1:26 (New American Standard) (footnotes omitted); see also F. Smith, *The Narrated Bible In Chronological Order* 2 (1984).

23. The Statement is attributed to Cecil Frances Alexander, who lived from 1818 to 1895. See Alexander, *Preface* to J. HERRIOT, *ALL THINGS BRIGHT AND BEAUTIFUL* (1975).

24. "And so, as those who have been chosen of God, holy and beloved, put on the heart of compassion, kindness, humility, gentleness and patience" *Colossians* 3:12 (New American Standard) (footnotes omitted).

ences as encouraging man's superiority over animals.²⁵ During the Middle Ages, Thomas Aquinas stated that animals were unreasoning and without the equivalent of a human soul.²⁶ Although kindness was encouraged, it was only to benefit the spiritual growth of man, not to acknowledge rights for animals.²⁷ Later, Rene Descartes extended the earlier philosophies of Aristotle²⁸ and Aquinas²⁹ to conclude that because animals were without the ability to reason, they were also unable to feel pain.³⁰ In the 19th century, Darwin introduced the "survival of the fittest" theory which argued that man was the fittest animal in the jungle and that his domination was necessary for a proper social order.³¹ These philosophies have developed into a current belief held by most of society that the protection of animals is only for the benefit of man as part of his ecosystem,³² and to appease our consciences to "do right" in the world. "Animals are dealt 'rights' only when humans have playing cards to spare."³³

At one time in the United States, Blacks, Chinese, women, and unborn children were all without many currently recognized rights.³⁴

25. "Christian theology, with its anthropocentric world view, reinforced the idea of human superiority." Burr, *Toward Legal Rights for Animals*, 4 ENVTL. AFF. 205, 206 (1975). In *Mark* 5:2-13, Jesus sent unclean spirits into a herd of swine, which caused the animals, about 2,000 of them, to rush into the sea and drown. Concerning this passage, St. Augustine wrote:

Christ himself shows that to refrain from the killing of animals and the destroying of plants is the height of superstition, for judging that there are no common rights between us and the beasts and trees, he sent the devils into a herd of swine and with a curse withered the tree on which he found no fruit . . . Surely the swine had not sinned, nor had the tree.

P. SINGER, *supra* note 7, at 209 (quoting ST. AUGUSTINE, *THE CATHOLIC AND MANICHAEAN WAYS OF LIFE* 102 (D. Gallagher & I. Gallagher trans. ed. 1966)). The Bible additionally segregated animals into two groups, clean and unclean, and governed man's dietary laws accordingly. See F. SMITH, *supra* note 22, at 285-88. See generally A. LINZEY, *ANIMAL RIGHTS, A CHRISTIAN ASSESSMENT OF MAN'S TREATMENT OF ANIMALS* (1976) (commentary by a British theologian upon the rights of animals as they relate to Biblical teachings).

26. See Burr, *supra* note 25, at 207.

27. *Id.*

28. *Id.* at 206.

29. For a detailed discussion of Rene Descartes, other philosophers, and how philosophy has been related to the animal rights movement, see ANIMAL RIGHTS, *supra* note 7, at 4-27.

30. "Animals are," Descartes observed, "like clocks: they are able to do some things better than we can, just as a clock can keep better time; but, like the clock, animals are *not* conscious." *Id.* at 3 (emphasis added). However, even rats quickly learn to avoid unpleasant sensations (when tested by laboratory brain researchers) and have measureable pleasure centers in their brain, as do cats, dogs, monkeys, apes, and dolphins. R. FREEDMAN & J. MORRIS, *THE BRAINS OF ANIMALS AND MAN* 61-62 (1972). See also *supra* note 4.

31. Burr, *supra* note 25, at 208.

32. Under the common law, animals were traditionally viewed merely as property and their rights were governed by property law. See *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805). See also *infra* note 152.

33. Note, *supra* note 1, at 211.

34. Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*,

Similarly, rights for animals are thought of by many to be laughable,³⁵ especially in the face of overcrowded courts and an overburdened legal system.

The fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd and frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of "us"—those who are holding rights at the time.³⁶

To eliminate the oddity of giving rights to animals it is important to recognize the value of animals simply in their existence apart from their use or validation by humans.³⁷ Such recognition, however, would require a great change in society's attitude toward animals. Some argue that a constitutional amendment would be necessary to truly protect animals.³⁸

Modernly, the animal rights movement is credited in large part to

45 S. CAL. L. REV. 450, 453-56 (1972), *reprinted in* C. STONE, SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS 3-10 (1974).

35. Perhaps humor may be an indication of the uneasy awareness of new and potentially threatening issues. *See id.* at 455 n.23a. Black humor books and paraphernalia using animals are abundant. *See* ROLLING STONE, Nov. 7, 1985, at 70, col. 3 (The advertisement states, "Earl the Dead Cat lets you say farewell to smelly cat food, litter boxes, and live cats that shed and go into heat. Earl is a cuddly, under-stuffed, and very dead toy cat complete with his own death certificate."). *See also generally* Stone, *supra* note 34.

36. *See generally* Stone, *supra* note 34, at 455 (emphasis in original).

37. Specifically, animal welfare advocates argue that animals should be granted rights including, but not limited to, the following: (1) the right to develop in a natural and stress-free environment; (2) the right of access to human guardians who would promote their legal and political positions; (3) freedom from slaughter, coerced experimentation, and cruelty; (4) the right to proper medical treatment; (5) the same right to euthanasia that humans might possess; (6) the right to legal adoption by a human desiring companionship, governed by a procedure to assure the fitness of the human for the adoption; and (7) the right to life independent of human needs. *See Note, The Rights of Nonhuman Animals and World Public Order: A Global Assessment*, 28 N.Y.L. SCH. L. REV. 377, 385-88 (1983). For a further discussion of guardianships for animals, *see* Comment, *Rights for Nonhuman Animals: A Guardianship Model For Dogs and Cats*, 14 SAN DIEGO L. REV. 484 (1977); Galvin, *What Rights For Animals: A Modest Proposal*, ANIMAL L. REP., Winter 1984-85, at 2 (a publication of the American Bar Association, Young Lawyers Division, Animal Protection Committee).

38. Courts have generally expanded the rights of animals, particularly those of endangered species, but constitutional enactments seem impractical. Under current law, animals are not given the constitutional protections that are given to humans. *See Massachusetts Society for the Prevention of Cruelty to Animals v. Commission of Pub. Health*, 339 Mass. 216, 227-29, 158 N.E.2d 487, 495 (1959); 16 U.S.C. §§ 1531-1543 (1982) (enacted for the purpose of conserving the ecosystems upon which endangered species depend). *See also Tennessee Valley Auth. v. Hill*, 437 U.S. 153 (1978) (applying the Endangered Species Act, saving a population of snail darter fish and enjoining the completion of a dam); *Mol, Inc. v. Peoples Republic of Bangladesh*, 572 F. Supp. 79, 86 (D. Or. 1983) (The court applied international law to the importation of rhesus monkeys used in radiobiological research in an alleged violation of the requirement

the Australian philosopher, Peter Singer, who in 1975 wrote the bible of the movement, *Animal Liberation: A New Ethics For Our Treatment of Animals*.³⁹ In the book Singer describes a new philosophy toward man's relationship with animals and asserts that animals have feelings and intrinsic rights.⁴⁰ Animal rights groups have used Singer's arguments to fuel their struggle to end all use of animals in laboratory research. Animals, which had historically been thought of as objects for man's use and domination,⁴¹ are now elevated to the center of the battle between animal advocates and scientific research advocates.⁴² To understand this battle, it is important to grasp the breadth of our society's love for animals,⁴³ its current use of animals,⁴⁴ and the often violent course in which the conflict over animal rights has taken us.⁴⁵

II. FOR ANIMALS: THE GOOD, THE BAD, AND THE UGLY

A. *The Good*

Society loves animals. Whether for entertainment or companionship, our love of animals is evident in books, films, television, and advertising.⁴⁶ We have made animals talk, walk, feel, love, and hurt in our depictions of them.⁴⁷ Pets in the United States are pampered and

that the monkeys be used "exclusively . . . for the benefit of all peoples of the world.").

39. See P. SINGER, *supra* note 7.

40. "Nearly all the external signs which lead us to infer pain in other humans can be seen in other species, especially the species most closely related to us—other species of mammals, and birds." *Id.* at 12.

41. See *supra* notes 22, 25 and accompanying text.

42. Preceding Singer's book, an article depicting (with graphic photographs) the mistreatment of animals sold to laboratories by "dealers" incited public outrage and prompted passage of the Animal Welfare Act of 1966. See *infra* notes 134, 135 and accompanying text; *Concentration Camps for Dogs*, LIFE, Feb. 4, 1966, at 22.

43. See *infra* note 46 and accompanying text.

44. See *infra* notes 51, 66 and accompanying text.

45. See *infra* notes 85-89 and accompanying text.

46. Throughout history, animals have held a place of honor in many societies. Myths regarding animals are historically prevalent. Ancient Egyptians, who worshipped cats and could be executed for killing one, surrendered in a state of fear and horror when Persian King Cambyses II flung cats over the walls of the city. See B. SEULING, ELEPHANTS CAN'T JUMP AND OTHER FREAKY FACTS ABOUT ANIMALS 65 (1985).

47. Motion pictures and best-selling novels have portrayed animal researchers as cruel torturers and have portrayed laboratory animals as having human characteristics. See, e.g., R. O'BRIEN, MRS. FRISBY AND THE RATS OF NIMH (1971). Walt Disney based its movie, "The Secret of NIMH," on this book, which deals with rats who gain human intelligence after being subjected to harsh laboratory experiments. The rats retold their experiences, with human emotion: "When my turn came, the door of my cage slid open just enough for Dr. Schultz to put his gloved hand through. I cowered to the back of the cage . . . I was powerless." *Id.* at 110

adored.⁴⁸ Unusual stories about animals are newsworthy.⁴⁹ Hospitals and institutions presently use animals as pets in therapy programs.⁵⁰ Additionally, animals are used as hearing dogs for the deaf, as emotional help for preschoolers, as therapy animals for troubled children at farm schools, as guide dogs for the blind, as therapeutic riding horses, and as helpers for the handicapped.⁵¹ Studies have shown that animals can help reduce blood pressure, lower stress, and increase creativity, exercise, security, communication, intimacy, and continuity for humans.⁵²

In the quest to do good for all humanity through the curing of disease, we have used animals as a convenient, economical method of gathering scientific data for medicinal, industrial, and educational purposes.⁵³ Animals are currently being used in the fight against AIDS, cancer, diabetes, and heart disease.⁵⁴ All these diseases are ob-

48. See, e.g., PEOPLE MAG., Sept. 16, 1985, at 13-20 (special advertising section featuring the richest cats in the world and how they live).

49. Most recently, newspapers have carried the story of "Humphrey" a humpback whale whose misadventures took him up the Sacramento River sixty miles from his ocean home. See *Humphrey the Errant Whale Now Wired for Sound*, L.A. Times, Nov. 9, 1985, § 1, at 3, col. 3.

50. See B. WHITE, BETTY WHITE'S PET LOVE 146-92 (1983). Dr. Aline H. Kidd, professor of psychology at Mills College, explains that animals give humans a chance to associate with a living being "who doesn't judge, doesn't argue back, doesn't have prejudices, biases, preconceptions and definitions which don't agree with yours — and, above all else, they don't tell on you." *Id.* at 20-21.

51. See generally P. CURTIS, ANIMAL PARTNERS (1983). For a history of how animals have helped man, see generally E. HYAMS, ANIMALS IN THE SERVICE OF MAN (1973).

52. See B. WHITE, *supra* note 50, at 15-28. For a general bibliography of sources dealing with pet therapy and established programs, see *id.* at 261-78. Included is a discussion of The Latham Foundation, an established research center dedicated to humane education, whose recent work has involved human/animal bond therapy. *Id.* at 240-41, 249 app.

53. In the past, Louis Pasteur used dogs in his research to develop a rabies vaccination. Researchers Banting and Best used dogs in their research leading to the control of diabetes through insulin. See *Animals in Science: Laboratory Animal Medicine*, RESEARCH NEWS, Feb.-Mar. 1978, at 1 (a publication of the University of Michigan which includes an in-depth look at the University's Unit for Laboratory Animal Medicine).

54. See *Labs Already Take Steps to Protect the Animals' Health and Welfare*, L.A. Daily J., June 29, 1983, at 4, col. 5. "Is the compassion of the vandals limited to animals? What about the humans who may not be helped as a result of the disruption of the experiments?" L.A. Daily J., Dec. 24, 1984, at 4, col. 1 (editorial). See also *California Universities Block Animal Rights Bill*, SCI. MAG., Sept. 12, 1983, at 934 (lobbying by biomedical researchers included testimony by a soap opera superstar, who campaigns for research against juvenile diabetes and heart transplant patients, extolling the benefits of research); *Vaccine Found to Prevent Herpes in Lab Animals: First Steps to Human Antidote*, L.A. Times, May 3, 1985, § 1, at 4, col. 1 (animal experimentation uncovers a genetically engineered herpes vaccine which may prevent initial and

viciously worthwhile concerns. However, it appears hypocritical that society expresses its love for animals so openly and warmly, and then allows cold, uncaring treatment of animals in disease research.⁵⁵ Perhaps this aspect of animal use is a cold reality with which society must live. Without the use of animals in research to find a cure for these diseases, there would perhaps be no cures.⁵⁶ Acknowledging some need to use animals for disease research, a world where animals are appreciated for their own intrinsic value⁵⁷ and for their lifesaving contributions to important disease research⁵⁸ remains only an ideal. There still exists a world where research is not lifesaving and animals are not respected.⁵⁹

B. The Bad

For over thirteen years, the University of Pennsylvania Head Injury Clinic has received federal funding to conduct experiments regarding the effects of brain concussions and whiplash in order to

later outbreaks of herpes). "Animals are probed, infected, and drugged to explore the causes and potential cures of unconquered diseases, including cancer, Alzheimer's disease and acquired immune deficiency syndrome." *Fight Over Animal Experiments Gains Intensity on Many Fronts*, *supra* note 14; *4 Monkeys Given Virus That Causes AIDS-Like Disease*, L.A. Times, Mar. 1, 1984, § 1, at 3, col. 1. *Contra* Friends of Animals, Inc. Actionline Newsletter, Mar. 1985, at 1, 3. The Medical Research Modernization Committee, comprised of doctors and professionals, has determined that the following experiments are unnecessary: (1) psychological research, including human behavioral and mental problems; (2) abuse and addiction studies involving alcohol, drugs, and smoking; and (3) trauma and impact studies, including burns, wounds, and poisons. MEDICAL RESEARCH MODERNIZATION COMMITTEE, RESPONSE TO THE MEDIA, MEDICAL RESEARCH QUESTION & ANSWER HANDBOOK 9-10, 14 (undated).

55. "Nobody wants to use animals when there are other alternatives," countered Dr. Estelle Ramey, professor of physiology at Georgetown University. "'But we have to give priority to human life. If I have to choose, I'd rather have on my tombstone that I was my sisters' and brothers' keeper than that I was kind to animals.'" *Increasingly Intense Battle*, *supra* note 8 (quoting Dr. Estelle Ramey).

56. *Have Those Who Stole Dogs Seen Anyone Die of Cancer?*, L.A. Times, Dec. 12, 1984, § 2, at 7, col. 4. "Have they ever seen a person die of this disease? Would they really trade a dog for a human life? Would they really save an animal in exchange for the life of a child?" *Id.*

57. See generally P. SINGER, *supra* note 7.

58. See *supra* note 54.

59. *Contra* Gates, *Saint Francis of the Catskills*, NEWSWEEK, Dec. 3, 1984, at 8. Justin McCarthy, once a high-living New York public relations man, now runs a poor farm for animals and sleeps in an unheated chicken coop with dogs that need his immediate attention. Animals that are brought to the farm are well fed and well trained, make friends, and have acres on which to run and play. McCarthy devotes his life to the healing of animals, without recompense. Concerning one of his animals, McCarthy commented,

Now I got a little dog up here . . . Mr. Wonderful . . . He'd been tied to a post in a dark basement. He couldn't see and now I've got him seein'; he was naked as a jaybird and I've got him all cleared up . . . Watch him runnin' around 90 miles an hour . . . if you could harness that energy you could power the world.'

Id.

treat patients.⁶⁰ The experiments involved the smashing of primates' skulls with a piston blow of up to 1000 g's,⁶¹ without the use of adequate anesthesia.⁶² The experimenters were filmed mocking the injured animals, flopping dazed primates around a table, and taunting an injured primate to shake hands.⁶³ After portions of the taped film were stolen⁶⁴ and shown on network television, U.S. Health and Human Services Secretary, Margaret Heckler, ordered the National Institutes of Health to suspend the clinic's funding.⁶⁵ Evidence indicates that these tests will provide little, if any, help to physicians.⁶⁶

60. See *NIH Funding*, *supra* note 14, at 1-2; *A Member Speaks Out*, INT'L. SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 6.

61. The term "g" represents the measurement of the acceleration of an object in relation to the force of gravitational attraction between that object and the earth. The measurement of the acceleration of gravity, a single "g," is equal to a gravitational constant times the Earth's mass divided by its radius squared. 8 *Encyclopedia Britannica* 287 (15th ed. 1977) (Macropedia: Knowledge in Depth).

62. *Baboons Aren't Laughing, But Neither Are Researchers — Anymore*, L.A. Times, July 23, 1985, § 2, at 5, col. 1.

63. *Id.* ("As you can see, B-10 is alive . . . B-10 wishes his counterpart well. B-10 is watching and hoping for a good result. He says, 'you're going to rescue me from this, aren't you?'"). Cruel treatment of animals, perpetrated by adults, may indicate a psychological imbalance. Studies show that cruelty to animals, especially dogs and cats, by children may represent abnormally aggressive behavior and a serious conduct disorder. See Felthous, *Childhood Cruelty to Cats, Dogs and Other Animals*, 9 BULL. AM. ACAD. PSYCHIATRY & LAW 48 (1981). "Cruelty is an important item to inquire about in the assessment of abnormal aggression: a thorough history of this behavior can serve as a diagnostic window for viewing other dimensions of aggression." *Id.* at 52.

64. The Animal Liberation Front entered University of Pennsylvania Laboratories in May, 1984 and stole approximately 60 hours of videotapes of the experiments. *NIH Funding*, *supra* note 14, at 1.

65. Experiments had been funded by \$14 million in taxpayer dollars. The National Institutes of Health report was quickly completed due to pressure exerted by People for the Ethical Treatment of Animals, led by Alex Pacheco, Chairman, who organized a sit-in at the Institute in Bethesda, Maryland. *Id.*

66. *Id.* at 6.

As an emergency physician I do not see how this particular investigation will in any way change my own evaluation of the head injured human patient, nor does it seem likely that a neuro-surgeon will find much assistance in long term management. Much of the Gennarelli work is rendered obsolete by the new CT scanners which essentially diagnose those head injuries, such as subdural hematoma, that are amenable to surgical intervention. For the type of chronic diffuse cerebral injury the U of P experiment causes, I see little chance of a breakthrough from such inelegant work.

Id.

Increasing pressure from within the medical/research community itself, resulting in a "publish or perish" philosophy, may aid the growth of future trivial research, as well as decrease the quality of patient care. "A doctor's merit is no longer rated on how many patients he cures but how many papers he publishes in learned journals. This has encouraged a great deal of trivial research and often there has been a decline in the standards of clinical care." Mayo, *Against a Scientific Justification of Animal Experiments*, in *ETHICS AND ANIMALS*, *supra* note 7, at 359.

The University of Pennsylvania scandal is the most recent of those uncovered by animal rights groups.⁶⁷ However, it is important to note that many other programs of questionable validity have been funded by the United States government.⁶⁸ Although many would agree that effective research, using animals as the only means of gathering accurate data, is legitimate, few can argue that research done with flagrant disregard for humane treatment of animals,⁶⁹ at great cost to taxpayers and without significant results, should be tolerated.⁷⁰

The second area of flagrant abuse of animals is in the toxicological/industrial testing field. Two tests, the Draize test and the Lethal Dose 50 test are most widely discussed.⁷¹ The Draize test is routinely used by pharmaceutical and cosmetic companies to test the toxicity of products such as cosmetics, shampoos, and oven cleaners.⁷² The test involves the dropping of chemical poisons into the unprotected eyes

67. For a general discussion of the University of Pennsylvania scandal, see Delgado & Francione, *Controversy at the University of Pennsylvania*, ANIMAL L. REP., Winter 1984-85, at 4; *University of Pennsylvania Head Injury Lab Closed*, ANIMAL L. REP., Summer/Fall 1985, at 6.

68. During the 1970's, the Pentagon proposed the use of "debarked" beagles to test the toxicity of rockets fuels, environmental pollutants, riot control agents, nerve gas vaccines, and other substances. See A. ROWAN, *supra* note 9, at 164. See also Friends of Animals, *The Research Modernization Act* (undated) (a pamphlet reviewing several current research projects with suggested alternatives; available from Friends of Animals, 11 West 60th Street, New York, New York 10023).

69. Dr. Joseph Spinelli, director of animal care at the University of California at San Francisco, has stated that animal advocate efforts have caused institutions to become more concerned about laboratory animals and have caused the hiring of additional veterinary personnel. *Animal Rights in the Lab, More Scientists Acknowledge Concerns, but Weigh Priorities*, L.A. Daily J., Dec. 13, 1984, at 4, col. 2 [hereinafter cited as *Animal Rights in the Lab*].

70. Live sheep at the Shrine Burns Institute in Galveston, Texas, were reportedly used in experiments to study burns and develop treatment methods. The live sheep were burned on over half their bodies, charring their backs, without the use of pain killers; smoke was blown into their lungs, until they were almost dead; then water filled their lungs, until they almost drowned. Use of available alternative research methods (such as skin cultures and simulations) could have spared these animals. Friends of Animals, Inc., *Alternatives to Research on Animals* (undated) (available from Friends of Animals, Inc., 1 Pine Street, Neptune, New Jersey 07753). Experimental investigation "flaws stem from the disparity between experimentally induced conditions and conditions in humans, from within—and between—species differences, and from confounding variables before, during, and after experimental treatment." Mayo, *supra* note 66, at 343. See also A. ROWAN, *supra* note 9, at 343. Most environmental experiments using animals relating to hypoxemia, heat injuries, and cold injuries, are obscure and therefore of little value, since humans react much differently than animals under similar conditions. See generally B. KUKER-REINES, *ENVIRONMENTAL EXPERIMENTS ON ANIMALS* (1984) (written on behalf of the New England Anti-Vivisection Society).

71. See K. O'CONNOR, *supra* note 8, at 93-94; A. ROWAN, *supra* note 9, at 203-15, 216-28; P. SINGER, *supra* note 7, at 49-54.

72. Medical Research Modernization Committee, *The Case Against the Draize Test* (undated) (available from this group at 11 West 60th Street, New York, New York 10023).

of rabbits while they are fully conscious.⁷³ Although there have been some changes in the Food and Drug Administration and other governmental agency standards for this test,⁷⁴ it is still commonly used despite its inaccuracy and the availability of alternative testing.⁷⁵

The Lethal Dose 50 (LD50) test is widely used to test the toxicity of new chemicals introduced on the market,⁷⁶ and is routinely required by governmental agencies. The test often employs as many as sixty to one hundred animals to determine the amount of a product which will kill fifty percent of the test group of animals.⁷⁷ This test, like the Draize test, is highly inaccurate and although alternatives exist, it is still widely used.⁷⁸

In addition to being subjected to flawed and inhumane scientific experimentation,⁷⁹ animals are often used by educational and other institutions for various testing.⁸⁰ In 1983, the Pentagon set up four laboratories around the country to train doctors for combat duty, with a fifth to be called the Wound Laboratory. The laboratory would be used to anesthetize and restrain up to eighty pigs and dogs. These animals would then be shot in the legs, treated, and then killed, in a simulation allegedly duplicating war conditions.⁸¹ De-

73. *Id.*

74. *See id.* at 2. New testing to develop an alternative to the Draize test includes work done by Rockefeller University's Laboratory Animal Research Center in New York and at the Medical College of Pennsylvania in Philadelphia. *See A Farewell to the Draize Test*, HEALTH, Nov. 1983, at 14. However, the test was still being used, with protest against it, as recently as October 8, 1985. People for the Ethical Treatment of Animals erected a giant thirty-by-forty-foot banner near the Capitol in Washington, D.C. depicting a rabbit with his eye blinded. *See* Thousand Oaks News Chronicle, Oct. 8, 1985, at 12, col. 3 (Associated Press photo).

75. *See* Medical Research Modernization Committee, *supra* note 72, at 3-6. *See also* K. O'CONNOR, *supra* note 8, at 93-94; A. ROWAN, *supra* note 9, at 203-28; P. SINGER, *supra* note 7, at 49-54.

76. *See supra* note 70 and accompanying text. *See also The Case Against LD-50 Test and Products Liability Litigation*, ANIMAL L. REP., Winter 1984-85, at 2.

77. *See* Friends of Animals, Inc., *The Case Against the LD 50 Test* (undated).

78. For information regarding proposed alternative tests and the Environmental Protection Agency guidelines, *see Lots of Talk About LD 50*, SCIENCE, Dec. 9, 1983, at 1106; Hubbard & Young, *The LD50 - A Tradition in Need of Change*, 252 J. A.M.A. 3249 (1984); *New EPA Rules Set to Reduce Harm to Laboratory Animals*, L.A. Daily J., Aug. 30, 1984, at 3, col. 3; *Alternatives to Test Animals Sought, Test-Tube Techniques May Satisfy Research Demands*, L.A. Times, June 16, 1984, § 1A, at 7, col. 1 (Johns Hopkins Center for Alternatives to Animal Testing has received funding from the Cosmetic, Toiletry and Fragrance Association).

79. *See supra* notes 68 and 70.

80. The Ford Motor Company used baboons to test the effect of high speed crashes. *See* Chambers & Hines, *Recent Developments Concerning The Use of Animals in Medical Research*, 4 J. LEGAL MED. 109, 111 (1983).

81. *In The Doghouse, Protest Halts Animal Killings*, TIME, Aug. 8, 1983, at 38.

fense Secretary Caspar Weinberger shut down the facility before it opened as a result of intense public pressure and outrage.⁸²

It is estimated that sixty to one hundred million animals are used in research each year.⁸³ These figures are far from accurate, since minimal reporting guidelines are enforced.⁸⁴

C. *The Ugly*

In response to the growing momentum of the animal rights movement and the public outrage over the abuse of laboratory animals, a radical, underground group known as the Animal Liberation Front has come into existence.⁸⁵ It is a guarded and anonymous group—members call you, you do not contact them.⁸⁶ The group generally strikes at night, breaking into research laboratories, destroying equipment, and vandalizing the facility, after removing all the animals.⁸⁷

A recent raid on the New York fur district left a slogan spray painted on a local synagogue, comparing the animal killings to the Nazi holocaust.⁸⁸ "There's a parallel here. Under Nazism one group exploited and tried to exterminate another. Well, that's happening to millions of foxes, lynxes and other animals today"⁸⁹ Most Animal Liberation Front members were previously involved in other movements⁹⁰ and believe that their actions are the only swift way to eliminate the inhumane treatment of animals in laboratory research.⁹¹ Researchers, however, liken the group to the Irish Republican Army (IRA) and Palestinian Liberation Organization (PLO), fearing the group's actions will set back research on cures to life-threatening diseases, such as cancer and AIDS.⁹² Public sentiment against the violent tactics employed by the Animal Liberation Front may in the long run be a detriment to the attempts of moderate legislationists who are attempting to effect change through the law.⁹³

82. *Id.* See also Sun, *supra* note 16, at 633.

83. Figures have ranged from 63 million animals to at least 200 million animals. See P. SINGER, *supra* note 7, at 32-33; *Animal Rights*, L.A. Daily J., May 8, 1985, at 4, col. 3; *It's Time to Stop*, *supra* note 9.

84. See P. SINGER, *supra* note 7, at 32-33.

85. See *Zealots*, *supra* note 12, at 1, col. 3.

86. See Starr, *Equal Rights*, AUDUBON, Nov. 1984, at 30, 34.

87. See *Zealots*, *supra* note 12, at 1, col. 3.

88. See Starr, *supra* note 86, at 34.

89. *Id.* (quoting "Sonya," an unidentified member of the Animal Liberation Front).

90. See *Zealots*, *supra* note 12. Animal advocates in the past were chiefly legislationists. See *supra* note 11 and accompanying text. However, the liberationists active now have borrowed much of their philosophy and tactics from more militant environmentalists, such as those involved in Greenpeace. See *New Militants*, *supra* note 6.

91. See *New Militants*, *supra* note 6, at 2, col. 3.

92. *Id.*

93. See, e.g., *The Misguided*, L.A. Times, Apr. 23, 1985, § 2, at 4, col. 2. See also

Assuming that safeguards are necessary, if only to protect animals against irresponsible, inhumane, or unnecessary treatment,⁹⁴ the law must respond to the changing sentiment toward animal rights and the amount of attention this issue has received. Is the law, in its present state, equipped to provide such safeguards, and if not, what changes should be made? Has the law effectively dealt with these issues in the past?

III. THE LAW AND ANIMALS

A. *Standing for Animals*⁹⁵

Enforcement of existing animal research laws occurs at both the federal and state levels. Generally, persons empowered under federal law to enforce animal protection laws are governed by the United States Department of Agriculture.⁹⁶ Several bureaucratic steps⁹⁷ exist between the notice of violation and subsequent enforcement of present federal laws, including license revocations.⁹⁸ Agents who enforce the federal law are not empowered to arrest violators; they spend most of their time with paperwork, not enforcement.⁹⁹ Although animals, in a sense, have standing through these agencies, their protection is largely ineffective and cosmetic.¹⁰⁰

The states have similar methods of enforcing state animal cruelty laws. In Massachusetts, for example, the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) is charged with enforcement of animal cruelty laws.¹⁰¹ The Massachusetts system of

University Releases Sketch of Suspect in Animal Thefts, L.A. Times, Apr. 23, 1985, § 2, at 3, col. 1 (group calls for action to make stealing animals a federal offense).

94. See, e.g., *supra* notes 64, 65, and accompanying text.

95. For a general discussion of standing as it relates to environmental issues beyond the scope of this comment, see generally Stone, *supra* note 34.

96. See 7 U.S.C. §§ 2132(b), 2146(a) (1982).

97. *The Paper Curtain*, INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 4.

98. Chambers & Hines, *supra* note 80, at 121-22.

99. *Id.*

100. In order to aid federal enforcement, states have made attempts to police the field themselves. One of the most active state campaigns to broaden state police powers to inspect research laboratories has been instituted in the California State Senate by Senator David Roberti. Proposed legislation would broaden the inspection rights of state humane officers in order to complement the work of federal inspectors. See Cal. SB 883, 1983-84 Reg. Sess. The bill is criticized by animal advocates because past state inspections, conducted since 1905, have failed to uncover any significant violations, despite evidence compiled by animal activists which revealed gross violations. See *Covert Aid For Animal Exploiters*, INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 5.

101. MASS. GEN. LAWS ANN. ch. 272, § 77 (West Supp. 1985).

enforcement is better than most state systems.¹⁰² The state agents receive specialized training but have no authority to arrest and prosecute violators.¹⁰³ Officers conserve time, money, and manpower by concentrating on flagrant violators, and issuing warnings to others. As a result the humane treatment of animals is more effectively protected.¹⁰⁴

Beyond standing to sue based on statutory grounds, animal rights groups have attempted to gain legal standing to protect the rights of animals in the courts, but have failed. The United States Supreme Court has held that standing requires a showing of an invasion of a legal right¹⁰⁵ or a "zone of interests to be protected or regulated by the statute or constitutional guarantee in question."¹⁰⁶ Animal rights advocates argue that granting them standing to sue would help protect animals against inhumane treatment. Although the courts have been unwilling to acknowledge such standing,¹⁰⁷ Justice Douglas has found nonhuman entities to have standing, based on the Court's recognition of such legal entitlement in ships and corporations.¹⁰⁸

Animal rights advocates were granted standing in *Animal Welfare Institute v. Krepes*¹⁰⁹ to challenge the lifting of a moratorium which would allow importation of baby sealskin furs from South Af-

102. *Id.* See also *infra* note 154 for a comprehensive listing of state anti-cruelty statutes.

103. See MASS. GEN. LAWS ANN. ch. 272, § 77 (West Supp. 1985).

104. See Chambers & Hines, *supra* note 80, at 122. Animal advocates, however, have criticized the Massachusetts system because no significant legal action has ever been taken by a state humane officer against any research laboratory, although inspection power has existed since 1959. See *Covert Aid For Animal Exploiters*, *supra* note 100, at 5. See also Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 ENVTL. AFF. 147 (1978).

105. See *Association of Data Processing Serv. Org., Inc., v. Camp*, 397 U.S. 150, 153 (1969) ("one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege").

106. *Id.* See also *Barlow v. Collins*, 397 U.S. 159, 164 (1969) ("personal stake and interest").

107. The New York Supreme Court, Appellate Division, reversed a former decision allowing animal welfare groups and individuals to sue certain zoos. "It is not sufficient for plaintiffs to allege, or even prove, they could do a better job than the public officials as neither they nor the courts have been given that responsibility." *Jones v. Beame*, 56 A.D.2d 778, 779, 392 N.Y.S.2d 444, 445 (1977). See also Dichter, *supra* note 104, at 150-51.

108. After discussing the law as it related to ships and corporations, Justice Douglas argued for giving standing to a river: "The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water . . . must be able to speak for the values which the river represents and which are threatened with destruction." *Sierra Club v. Morton*, 405 U.S. 727, 743 (1972) (Douglas, J., dissenting). The majority held, however, that valid interests which invoke legal standing must be those of human beings, not of the environment itself. *Id.* at 734-35.

For an extended discussion of *Morton* and its impact on the animal rights movement, see Stone, *supra* note 34; Dichter, *supra* note 104, at 147-49.

109. 561 F.2d 1002 (D.C. Cir. 1977).

rica.¹¹⁰ The advocates "alleged injury to the recreational, aesthetic, scientific, and educational interests of its members."¹¹¹ The court held that "[w]here an act is expressly motivated by considerations of humaneness toward animals, who are uniquely incapable of defending their own interests in court, it strikes us as eminently logical to allow groups specifically concerned with animal welfare to invoke the aid of the courts in enforcing the statute."¹¹² There are few courts, however, that have followed this rationale. State and federal statutory remedies remain the chief avenue for bringing suits regarding animal protection, and those suits must be brought by a limited number of agencies, granted standing by statute.

B. *New Avenues to Achieve Court Access for Animals*

The common law has historically identified animals merely as property, lacking any rights.¹¹³ Furthermore, statutory law concerning animals has been based on two assumptions that turn on human interests, and not animals' interests: (1) animal cruelty should be prevented because it is morally debasing for humans to act in an abusive manner; and (2) animal extinction will cripple a vital natural resource for man's use.¹¹⁴ Because present law is limited to this narrow perspective, reexamination of the inherent value of animals is necessary.¹¹⁵ Although human lives certainly have recognized value, animal rights advocates argue that animals are valuable in that they can value their own lives; they have feelings and thought processes similar to that of man.¹¹⁶ Recognizing the inherent value of animals, and giving animals access to the courts through legal guardians and agents, the courts could weigh the interests of animals and provide a remedy to protect them or provide compensation.¹¹⁷

110. *Id.* at 1007. The court held, however, that the clubbing method of killing the baby seals was humane.

111. *Id.*

112. *Id.*

113. See, e.g., *McCausland v. People*, 58 Colo. 303, 305, 145 P. 685, 686 (1914). See also *supra* notes 32 and 38. See *infra* note 152.

114. See *Burr*, *supra* note 25, at 228.

115. See *supra* notes 35-37 and accompanying text.

116. See *supra* notes 4 and 30.

117. This is *not* to argue that animals should be treated as humans in our courts. Humans have an almost absolute protection against death and injury, because we recognize individual human lives as having great worth. The present argument is that animals' lives have value to them, and in that sense they are closer to us than they are to rocks. We should recognize this value, and give animals at least a qualified right to protect themselves.

To achieve real legal protection for animals, courts could be convinced to establish a new tort dealing with animal protection issues.¹¹⁸ It is unlikely, however, that courts will be willing to endow a heretofore rightless class with a cause of action which supports a philosophy at odds with society's current view of animals. The court would be faced with policy questions and factual issues that require the balancing of human and animal interests: which types of animals receive which rights;¹¹⁹ do animals actually feel pain as humans do; and what does the term "cruelty" mean. Since there are few state legislatures that have specifically defined the rights of animals, the courts will likely be unwilling to tackle such a broad subject without further legislative guidelines.¹²⁰

What is needed to make animals holders of legal rights, and therefore truly protected, is a legal system which gives those who would protect them access to the full range of judicial remedies available to humans when threatened with death or injury. The question, of course, is how to obtain this access.¹²¹

C. *The Present State of the Law*

1. Historical Development

The use of laboratory animals in research dates as far back as 300 B.C. when an Egyptian scientist used birds to study the effects of

Burr, *supra* note 25, at 228.

Animals, as property, may cause injury or be injured in certain respects, thereby affecting their owners. Related topics, such as the rights, duties, and obligations of pet owners, possessors, or custodians of pets, and those who deal in the acquisition, sale, and gift of pets are beyond the scope of this comment. See generally D. EDGAR, *LAW FOR THE PET OWNER* (1960); D. FAVRE & M. LORING, *ANIMAL LAW* (1983).

118. Advocates have argued that if animal protection issues are brought before the courts by persons acting as guardians, concerned advocates will then be able to effectively enforce animal protection laws. See Hanula & Hill, *Using Metaright Theory to Ascribe Kantian Rights to Animals Within Nozick's Minimal State*, 19 ARIZ. L. REV. 242, 267 (1977). In attempting to decide difficult animal cruelty cases, within the context of ambiguous state anti-cruelty statutes, it is foreseeable that courts may attempt to change the common law by creating a new tort. See Burr, *supra* note 25, at 230.

119. In order to be entitled to legal rights, animals must be recognized by a public authoritative body which would review actions based on those rights. In order to manifest legally recognized worth, separate and apart from humans, animals must be able to institute legal actions through a designated agent or guardian whenever necessary. Courts must grant relief after taking into account the animal's injury, and the relief granted by the court must benefit the animal directly. These three conditions were originally adapted to an environmental suit on behalf of natural objects, but may easily be applied to animal rights suits. See Stone, *supra* note 34, at 458.

120. See Burr, *supra* note 25, at 231.

121. *Id.* at 229. The courts have additionally addressed an animal's inherent right to life. See, e.g., *Smith v. Avanzino*, No. 225698 (Super. Ct., San Francisco County, June 17, 1980). In *Avanzino*, the court invalidated the will of a pet owner which had provided for the animal's destruction. Immense public outcry brought about the passage of a California State Senate Bill prohibiting such destruction clauses from taking effect over the objection of the decedent's executor or administrator. See Carlisle, *Destruction of Pets by Will Provision*, 16 REAL PROP. PROB. & TR. J. 894 (1981).

starvation.¹²² In Great Britain, during the 1870s, medical students in search of subjects for vivisection would trap pets in the streets and then experiment on them with knives and poisons.¹²³ A well-known physiologist dissected live dogs, removed their stomachs, replaced them with pig bladders full of food, and then studied the effects of emetics.¹²⁴ Live horses were used to test animal heat by inserting long thermometers into their hearts without anesthesia.¹²⁵

British animal rights groups were the forerunners of what is now a worldwide movement.¹²⁶ In 1876, the British government passed the

122. See *Animal Rights in the Lab*, *supra* note 69. Animal experiments replaced those performed on the practitioners themselves, on criminals, slaves, and outlawed races. The life of a slave in the middle ages was spared when he agreed to allow a doctor to remove his kidney. "[U]sing animals for similar purposes was a sign of the general tendency to equalize the rights of man and beast, rather than of low regard for the animal world." R. LEWISOHN, *ANIMALS, MEN, AND MYTHS* 255 (1954). See also *id.* at 242-58.

123. See E. TURNER, *ALL HEAVEN IN A RAGE* 201 (1964).

124. *Id.* at 202. An early French physiologist, Claude Bernard, wrote of his experiments: "'A physiologist is no ordinary man. He is a learned man, a man possessed and absorbed by a scientific idea. He does not hear the animal's cry of pain. He is blind to the blood that flows. He sees nothing but the idea.'" *Id.* Bernard's wife did not share his sentiments. Her kitchen was made the place for his experimentation and she daily watched mutilated dogs wander in and out. She and her daughters opened an asylum for stray dogs and cats, perhaps to offset Bernard's work. *Id.* Bernard, on the other hand, was given the first French national funeral awarded to a man of science. *Id.*

125. See *id.* See also E. TURNER, *supra* note 123, at 201-18 (a historical discussion of early animal experimentation and early British animal advocates); R. LEWISOHN, *supra* note 122, at 242-51 (animal use as it relates to early inventions). Modernly, researchers estimate that 61% of experiments are not painful for animals, 31% require anesthesia, and 8% are painful and designed as experiments testing pain itself. These figures are disputed, however. Independent research organizations are now calling for tougher standards in the use of anesthesia in animal experimentation.

The Society for Neuroscience now insists on proper use of drugs and anesthesia, noting that avoiding animal discomfort should be the fundamental principle of ethical animal research The International Association for Pain Research now calls for a scientist to try pain experiments on himself before using them on animals. However, most scientists acknowledge that enforcement of that rule seems difficult.

Animal Rights in the Lab, *supra* note 69.

126. The British anti-vivisection movement has been greatly influenced by utilitarian philosophers such as Jeremy Bentham, who wrote in 1789:

[A] full grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, of a week or even a month old. But suppose the cause were otherwise, what would avail? The question is not, can they reason? Nor, can they talk? But can they suffer?

A. ROWAN, *supra* note 9, at 48 (quoting J. BENTHAM, *INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 142-43 (1962) (originally published in 1789)). See generally E. TURNER, *supra* note 123.

Cruelty to Animals Act, regulating animal experimentation.¹²⁷ Currently, however, animal rights groups are applying growing pressure on Parliament to amend the Act since, in the past, it has proven inadequate for protecting laboratory animals.¹²⁸ Federal animal protection laws in the United States are patterned after the British act.¹²⁹

In the United States the first statute prohibiting cruelty to animals was enacted in 1641 by the Puritans of the Massachusetts Bay Colony.¹³⁰ It provided that "[n]o man shall exercise any Tirrany or Crueltie towards any brutie Creature which are usuallie kept for man's use."¹³¹ In 1928, New York enacted an anti-cruelty law.¹³² The enactment of these and other statutes protecting animals, however, was not motivated by a concern for the animals, but rather as a proper means to protect public morality.¹³³

This is not to say that proponents of these statutes were not motivated by concern for the animals. The problem was that they were dealing with a legal system that did not recognize *any* rights for animals. When only humans have rights, then legislation such as the cruelty statutes [sic], which interfere with human property rights, have to be justified in human terms. A particular kind of fiction had to be developed for that purpose.¹³⁴

2. Federal Law

Under great public pressure, the Laboratory Animal Welfare Act was proposed in 1966 to deal with the problems of stolen pets, animal dealers, research laboratories, and to govern the practices used to obtain animals for research.¹³⁵ In 1970, the Animal Welfare Act was made law.¹³⁶ It broadened the 1966 Act to include regulation of a

127. See GR. BRIT. STAT., 39 & 40 VICTORIA, Ch. 77 (1876) (Cruelty to Animals). See generally E. TURNER, *supra* note 123 (discussing British anti-cruelty laws).

128. British animal rights advocates, in response to members of the British parliament seeking amendments to the 1876 Cruelty to Animals Act, have published their opposition to the government's failure to eliminate animal experimentation. See *White Paper White Wash*, INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 2.

129. See *id.*

130. Chambers & Hines, *supra* note 80, at 112-13 (quoting E. LEAVITT, ANIMALS AND THEIR LEGAL RIGHTS 13 (1968)).

131. *Id.* (quoting E. LEAVITT, ANIMALS AND THEIR LEGAL RIGHTS 13 (1968)).

132. *Id.* The current New York anti-cruelty law is codified at N.Y. AGRIC. & MKTS. LAW §§ 350, 353 (McKinney 1972 and Supp. 1985).

133. No animal [had] the right to life, or even the right to be free from needless suffering, unless the abuse of an animal constitute[d] a public nuisance or the invasion of another's property right. This total absence of legal protection was too much for many people sensitive to animal suffering, and resulted in the enactment of statutes aimed at preventing the worst of the abuses.

Burr, *supra* note 25, at 212.

134. *Id.*

135. See Laboratory Animal Welfare Act, Pub. L. No. 89-544, 80 Stat. 350 (1966). Hearings on this proposed bill described the inhumane conditions of medical research laboratories and the animal abuse committed by animal dealers. See S. REP. NO. 1281, 89th Cong., 2nd Sess., reprinted in 1966 U.S. CODE CONG. & AD. NEWS 2635, 2636. See also *supra* note 38.

136. See Pub. L. No. 91-579, 84 Stat. 1560 (1970) (codified at 7 U.S.C.A. §§ 2131-2156

larger group of animal handlers and animals,¹³⁷ and was amended in 1976 to regulate carriers and intermediate handlers of animals.¹³⁸ The Act is administered and enforced by the Department of Agriculture's Animal and Plant Health Inspection Service.¹³⁹ However, enforcement applies only to those "animals" within the Act's definition.¹⁴⁰ Although the Act regulates care, housing, and feeding of laboratory animals, it does not regulate the use of animals during research testing.¹⁴¹ The use of anesthesia is a minimum standard, required only when such use is "proper."¹⁴² Therefore, protection for laboratory animals under the Act does not include freedom from pain nor does it prevent inefficient and unnecessary experimentation.¹⁴³

A recent General Accounting Office report reveals that research sites were rarely visited, and United States Department of Agriculture employees responsible for the enforcement of the Act spent approximately six percent of their working time on its enforcement.¹⁴⁴

(West Supp. 1985)). The 1970 Animal Welfare Act provided, for the first time, basic rights for animal housing, food and water, handling, sanitation, ventilation, shelter, and veterinary care. See H. REP. NO. 91-1651, 91st Cong., 2nd Sess. 2, reprinted in 1970 U.S. CODE CONG. & AD. NEWS 5103, 5104.

137. See 7 U.S.C.A. § 2143(a) (West Supp. 1985).

138. See *id.* § 2146(a).

139. The Department of Agriculture has the authority to set standards for the "handling, housing, feeding, watering, sanitation, . . . [and] use of anesthetic, analgesic or tranquilizing drugs, when use would be proper" *Id.* § 2143(a) (emphasis added).

140. The Act defines an animal as "any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal" *Id.* § 2132(g).

141. "Nothing in this chapter shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to design, outlines, guidelines, or performance of actual research or experimentation by a research facility as determined by such research facility." *Id.* § 2143(a).

142. See *supra* note 139. If researchers determine that the experiment's objectives will be invalidated with the use of anesthetizing drugs, none will be used. "No attempt is made to assess whether these 'objectives' are sufficiently important to justify the infliction of pain." P. SINGER, *supra* note 7, at 74.

143. The Act is essentially a commerce regulation, not an anti-cruelty law, as evidenced by this statement of intent: "to prevent and eliminate burdens upon such commerce and effectively regulate such commerce." 7 U.S.C.A. § 2131 (West Supp. 1985). The three stated purposes of the Act are (1) to insure that animals for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) to assure the humane treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. *Id.*

144. See *The Paper Curtain*, *supra* note 97, at 4. The Act provides "[t]hat the Secretary shall require, at least annually, every research facility to show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during experimentation

Because of these problems and the lack of protection the Act provides, animal advocates have been active in lobbying for amendments to the Act.¹⁴⁵

Since 1966, numerous amendments have been introduced in Congress, including proposals for enlarging the definition of "animal," a plan to improve laboratory inspections, phasing in requirements for laboratory testing alternatives, and regulation of the exact uses of animals in laboratory experimentation. The amendments, however, have largely been unsuccessful and have lost in Senate and House Committee votes.¹⁴⁶ Senator Robert Dole and Representative George Brown have recently introduced companion bills which will further amend the Animal Welfare Act.¹⁴⁷ The International Society for Animal Research has largely criticized the bills, advocating the abolition, rather than the refinement, of laboratory research using

are being followed by the research facility during actual research or experimentation." 7 U.S.C. § 2143 (1982). However, in May of 1985, the audit by the United States General Accounting Office revealed that these annually required reports are rarely completed and are not audited. See *The Paper Curtain*, *supra* note 97, at 4. Copies of the report are available free of charge from the United States General Accounting Office, Document Handling and Information Services Facilities, Post Office Box 6015, Gaithersburg, Maryland 20877. See also Rikleen, *The Animal Welfare Act: Still A Cruelty to Animals*, 7 ENVTL. AFF. 129, 137-40 (1978).

145. *The Paper Curtain*, *supra* note 97, at 4-5. See also P. SINGER, *supra* note 7, at 281-84 (list of animal rights organizations who actively lobby).

146. For a detailed discussion of past legislative attempts, see Note, *supra* note 1, at 205-11.

147. See S. 1233, 99th Cong., 1st Sess. (1985); H.R. 2654, 99th Cong., 1st Sess (1985) (frequently called the Dole/Brown Amendments). H.R. 2654 would amend the Act to establish a federal penalty for damaging or destroying an animal research facility in the form of a fine of up to \$250,000 and/or imprisonment for five to twenty-five years (if a person's life is threatened by the act). S. 1233 would modify the Act; it would

(1) require research laboratories to provide annual reports of their compliance with the Act's standards of care;

(2) establish committees known as Institutional Animal Committees in all laboratories registered as federal research programs; each committee would include a veterinarian and a person not affiliated with the facility who would represent society's concerns for animal welfare;

(3) require such established committee to conduct semi-annual inspections, file an inspection report, and make such report available;

(4) require research facilities to provide training and information to all personnel involved in the care and treatment of laboratory animals;

(5) prohibit discrimination against employees who report unsatisfactory conditions at research facilities;

(6) establish a national information service to train and educate research personnel in improved methods of animal experimentation, and attempt to eliminate duplication of animal experimentation;

(7) increase the penalties for violation of the Act and add a provision penalizing the release of trade secrets; and

(8) require annual Department of Agriculture inspections at research facilities at least once a year.

animals.¹⁴⁸

It appears that in the face of governmental cut-backs in social programs, when the needs of America's children, elderly, poor, and homeless have taken a back seat to achieving economic growth and military strength, the needs and treatment of animals in the United States will likely remain an unaddressed issue. Nevertheless, groups like the Animal Liberation Front hope to draw attention to this unheralded issue and to build motivation for change through their radical actions. It is tragic and ironic that governmental inaction has prompted some to use violence against people and institutions in order to call attention to the violence perpetrated against animals.¹⁴⁹

3. State Laws

Anti-cruelty statutes of some type exist in every state in the United States.¹⁵⁰ However, these statutes have proven ineffective in

148. See *The Paper Curtain*, *supra* note 97, at 4-5. The Dole/Brown Amendments have been criticized by animal advocate groups on the following grounds:

(1) the bills fail to allow regulation of the design, outlines, or guidelines of actual research or experimentation, thereby continuing to condone animals' suffering *during* experiments;

(2) reports required by the bills will fail to provide adequate safeguards, because the U.S. Department of Agriculture has no auditing system for these reports;

(3) the member of each Institutional Animal Committee required to represent society's interest is chosen by the facility itself and must possess an animal research background; the bill thereby essentially eliminates most laypeople who might be humanely motivated;

(4) inspections by this committee, in which researchers are a part, will likely be announced and therefore fail to reveal violative conditions;

(5) no provisions for mandating the use of animal alternatives are provided in the bills, therefore, the data bank of information available could remain unused; and

(6) increases, maximum penalty limits, without *minimum* penalty limits, would continue to allow penalties of as little as one penny for violations of the Act. See *id.* at 4-5. This information is available from the International Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411. See also, Sun, *supra* note 16, at 633.

149. Advocates in other countries have responded to the animal rights movement as well. On November 30 and December 1, 1985, Swiss citizens will vote on the question of nationwide abolition of vivisection. See *Swiss to Vote on Abolition of Vivisection*, INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985, at 2.

150. See ALA. CODE § 13A-11-14 (1982); ALASKA STAT. § 11.61.140 (1983); ARIZ. REV. STAT. ANN. § 13-2910 (1978); ARK. STAT. ANN. § 41-2918 (Supp. 1985); CAL. PENAL CODE § 597 (West Supp. 1985); COLO. REV. STAT. §§ 18-9-202 (1978), 35-42-112 (1984); CONN. GEN. STAT. ANN. § 53-247 (West Supp. 1985); DEL. CODE ANN. tit. 11, § 1325 (1979 and Supp. 1984); D.C. CODE ANN. § 22-801 (1981); FLA. STAT. ANN. § 828.12 (West Supp. 1985); GA. CODE ANN. § 16-12-4 (Harrison 1984); HAWAII REV. STAT. § 711-1109 (Supp. 1984); IDAHO CODE §§ 18-2101 to 18-2116 (1979 and Supp. 1985); ILL. ANN. STAT. ch. 8, §§ 701-716 (Smith-Hurd 1977 and Supp. 1985); IND. CODE ANN. § 35-46-3-2 (Burns Supp. 1985); IOWA CODE ANN. §§ 7171-717.3 (West 1979); KAN. STAT. ANN. § 21-4310

the protection of laboratory animals in much the same way that the Animal Welfare Act has proven ineffective.¹⁵¹ By implication, the statutes require a balancing between human and animal interests to determine whether a particular act constitutes a violation. Not surprisingly, almost any human interest is sufficient to outweigh almost any animal interest.¹⁵² In the developing statutory prohibition of cockfighting, for example, courts originally held that anti-cruelty statutes did not include such "honorable sports," and that game cocks were not within the statutory definition of "any animal."¹⁵³ The courts, in interpreting these statutes, weighed the human interest in entertainment against the morality of condoning conduct that hurt animals.¹⁵⁴ The "rights" of the animals are rarely at issue.

State statutes are generally criticized in two respects: (1) for failing to sufficiently define the term "animal," thereby failing to provide certain animals with protection;¹⁵⁵ and (2) for failing to deal properly with the word "cruelty."¹⁵⁶

(1981); KY. REV. STAT. §§ 525.125, 525.130 (1985); LA. REV. STAT. ANN. § 14:102 (West 1951); ME. REV. STAT. ANN. tit. 17a, § 510 (1983); MD. CODE ANN. art. 27, § 59 (1982 and Supp. 1985); MASS. GEN. LAWS ANN. ch. 272, § 77 (West Supp. 1985); MICH. COMP. LAWS ANN. § 752.21 (West Supp. 1985); MINN. STAT. ANN. §§ 343.20-343.36 (West Supp. 1985); MISS. CODE ANN. §§ 97-41-1 to 97-41-17 (1973 and Supp. 1985); MO. ANN. STAT. §§ 578.005-578.050 (Vernon Supp. 1985); MONT. CODE ANN. § 45-8-211 (1985); NEB. REV. STAT. § 28-1002 (1979); NEV. REV. STAT. §§ 574.050-574.200 (1981); N.H. REV. STAT. ANN. § 644:8 (Supp. 1985); N.J. STAT. ANN. §§ 4:22-17 to 4:22-26 (West 1973 and Supp. 1985); N.M. STAT. ANN. §§ 30-18-1, 30-18-2 (1984); N.Y. AGRIC. & MKTS. LAW §§ 350-353 (McKinney 1972 and Supp. 1985); N.C. GEN. STAT. § 14-360 (1981); N.D. CENT. CODE § 36-21.1-02 (1980); OHIO REV. CODE ANN. § 959.13 (Page Supp. 1984); OKLA. STAT. ANN. tit. 21, § 1685 (West 1983); OR. REV. STAT. §§ 167.310 to 167.355 (1985); 18 PA. CONS. STAT. ANN. § 18-5511 (Purdon Supp. 1985); R.I. GEN. LAWS § 4-1-2 (1976 and Supp. 1985); S.C. CODE ANN. § 47-1-40 (Law. Co-op. 1977 and Supp. 1985); S.D. CODIFIED LAWS ANN. § 40-1-2 (1977); TENN. CODE ANN. § 39-3-104 (1982); TEX. PENAL CODE ANN. § 42.11 (Vernon 1974 and Supp. 1985); UTAH CODE ANN. § 76-9-301 (1978); VT. STAT. ANN. tit. 13, § 403 (1974); VA. CODE §§ 18.2-403.1 to 18.2-403.3 (Supp. 1985); WASH. REV. CODE ANN. § 16.52-070 (Supp. 1986); W. VA. CODE § 61-8-19 (1984); WIS. STAT. ANN. § 948.01-948.18 (West 1982 and Supp. 1985); WYO. STAT. § 6-3-203 (Supp. 1985). *See generally* D. MORETTI, ANIMAL RIGHTS AND THE LAW (1984) (a brief synopsis of the anti-cruelty laws in each state). The Association for Biomedical Research has compiled a booklet entitled *State Laws Concerning the Uses of Animals in Research*, containing a concise comparison of state anti-cruelty laws and their effect upon laboratory animals. It is available from that organization in Waltham, Ma. 02154. *See also* Friend, *Animal Cruelty Laws: The Case For Reform*, 8 U. RICH. L. REV. 201 (1974).

151. *See* Burr, *supra* note 25, at 212-16.

152. *See id.* at 213. Statutory provisions relating to animals have been exclusively derived from the common law, regarding animals as property, whose "rights" are only established by the interests of humans. *See generally* 3A C.J.S. *Animals* §§ 99-102 (1973); 4 AM. JUR. 2D, *Animals* §§ 5, 27 (1962).

153. *See* State v. Buford, 65 N.M. 51, 57-58, 331 P.2d 1110, 1114-15 (1958). *See also* State v. Claiborne, 211 Kan. 264, 505 P.2d 732 (1973).

154. *See* Burr, *supra* note 25, at 213. *See also* note 152 and accompanying text.

155. "There is no anti-cruelty statute in the United States which deals effectively with the distinctions between various animals." Burr, *supra* note 25, at 214.

156. "[F]ailure to deal with the word 'cruelty' is perhaps the most debilitating [error in state statutes]." *Id.*

California's statute contains language typical of most state statutes.

Every person who maliciously kills, maims, or wounds an animal, . . . cruelly beats, mutilates, or cruelly kills any animal, . . . tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated or cruelly killed; . . . subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, . . . is for every such offense, guilty of a misdemeanor.¹⁵⁷

Words like "torments," "cruelly," and "needless" are open to varied interpretation. In addition, most laboratory research facilities which use animals are exempted from state interference in "properly conducted scientific experiments or investigations."¹⁵⁸ California also provides regulations for the use of animals in research,¹⁵⁹ but advances the policy that public health and welfare depend on the *humane* use of animals in research.¹⁶⁰ The issue then revolves around the interpretation of the term "humane."

Some states have recently made advancements in amending animal protection laws regarding the seizure and use of pound animals in laboratory research.¹⁶¹ However, despite present state legislation, the laboratory animal is for the most part unprotected. Without a change in the philosophical basis of the state laws toward recognition of the value of animals and endowment of certain rights of protection, the use of laboratory animals will remain unrestricted by state law.

4. Recent Case Law Regarding Laboratory Animals

In the face of common law and statutory roadblocks, it is not surprising that only a few cases dealing directly with the use and treatment of laboratory animals have been brought before the courts. On May 11, 1931, Alex Pacheco became a volunteer in the research laboratory of Edward Taub at the Institute for Behaviorial Research in Silver Spring, Maryland. While Pacheco spent his days working in the laboratory, at night he photographed the monkeys used in Dr. Taub's experiments with a comrade standing by with a walkie-talkie. He later took primate experts on a tour of the laboratory, contacted

157. CAL. PENAL CODE § 597 (West 1970).

158. CAL. PENAL CODE § 599c (West 1970).

159. See CAL. HEALTH & SAFETY CODE §§ 1650-1677 (West 1979 and Supp. 1985).

160. See *id.* § 1650. The term "humane" is open to various interpretations. It is defined as "characterized by tenderness and compassion for the suffering or distressed." THE NEW AMERICAN COLLEGE DICTIONARY 588 (1966).

161. See *infra* note 210.

police, and began to document a legal case against Dr. Taub.¹⁶²

On September 11, 1981, police and state animal control authorities armed with a search warrant raided the laboratory and removed the animals. Subsequent veterinarian examination indicated that the monkeys had numerous unhealed wounds and sores, fractured bones, and only stubs where their fingers had been chewed off.¹⁶³

Dr. Taub was unaware that Pacheco was an officer of People for the Ethical Treatment of Animals, an animal rights group opposed to all animal experimentation.¹⁶⁴ Many animal rights activists are former laboratory assistants who uncovered inhumane treatment in the laboratories in which they worked. They often have found it necessary to leave their work to gather evidence against employers.¹⁶⁵

Under the Maryland anti-cruelty statute, research facilities were not totally exempt from criminal sanctions. Taub was found guilty of six counts of unnecessary cruelty and fined \$3,000.¹⁶⁶ The case was then automatically appealed to the Maryland Court of Appeals.¹⁶⁷ The court held that the Maryland statute was inapplicable to research institutions, and dismissed all charges against Taub. The court reasoned that because Dr. Taub was involved in a federally funded research program, subject to the Animal Welfare Act and the detailed regulations of the Department of Agriculture, Maryland statutory law did not regulate his work.¹⁶⁸

Although the Taub case was not considered a victory for the particular animal rights groups involved,¹⁶⁹ the case did receive national attention. It was the first case to bring the issue of mistreatment of laboratory animals to the attention of the legal community¹⁷⁰ and illustrated the inadequate protection that laws, like those in Maryland, offer laboratory animals in mistreatment cases.

A less publicized case, in 1966, brought to the forefront the issue of the use of animals in an educational research setting.¹⁷¹ Using the New Jersey anti-cruelty laws,¹⁷² a New Jersey animal rights group

162. See *Dr. Taub's Animal House*, 4 NAT'L L.J., July 5, 1982, at 11, col. 1. See also D. MORETTI, *supra* note 150, at app. H; K. O'CONNOR, *supra* note 8, at 90-93.

163. See *Dr. Taub's Animal House*, *supra* note 162.

164. For background information on Alex Pacheco, see Starr, *supra* note 86, at 32.

165. See K. O'CONNOR, *supra* note 8, at 97-109.

166. See *Dr. Taub's Animal House*, *supra* note 162.

167. See *Taub v. State*, 296 Md. 439, 463 A.2d 819 (1983).

168. *Id.* at 444, 463 A.2d at 821-22.

169. Dr. Taub's Institute For Behavioral Research subsequently had its \$250,000 research program suspended by the National Institutes of Health. See *Dr. Taub's Animal House*, *supra* note 162.

170. Attorneys for Animal Rights and for Animal Rights - Boston, Inc. filed amicus curiae briefs. See *Taub*, 296 Md. at 440, 463 A.2d at 819.

171. See *New Jersey Society for the Prevention of Cruelty to Animals v. Board of Educ. of East Orange*, 91 N.J. Super. 81, 219 A.2d 200 (1966).

172. See N.J. STAT. ANN. §§ 4:22-17, 4:22-26 (West 1973 and Supp. 1985).

brought suit against a city board of education for the actions of a high school student. The student, as part of a science fair project, intentionally infected two chickens with cancer, then killed and dissected them.¹⁷³ The court determined that the student was within one of the groups exempt from the statute's prohibitions; the exemptions allow the infliction of unnecessary pain, needless mutilation, and the killing of animals in the course of research, without penalty under law.¹⁷⁴ The court additionally held that the experiments, though painful for the animals, were justified.¹⁷⁵ The case was a poor test case for the New Jersey animal rights group to pick since it lacked evidence of improper care and actual pain inflicted upon the animals.¹⁷⁶

Finally, in a well publicized case in 1977,¹⁷⁷ charges were brought against Kenneth LeVasseur, an undergraduate research assistant in a marine laboratory, for releasing laboratory dolphins into the ocean.

173. *New Jersey Society for the Prevention of Cruelty to Animals*, 91 N.J. Super. at 92, 219 A.2d at 207. See also D. FAVRE & M. LORING, *ANIMAL LAW* 137 (1983).

174. Therefore, these characteristics of wantonness and cruelty and lack of any redeeming quality were probably intended to be included within the meaning of the broader prohibited act of unnecessary cruelty and needless mutilation. Accordingly, educational and scientific achievements might well represent the redeeming quality that would constitute the justification for inflicting pain or suffering on animals—to render the cruelty not unnecessary or the mutilation not needless.

New Jersey Society for the Prevention of Cruelty to Animals, 91 N.J. Super. at 91, 219 A.2d at 206.

175. "I conclude that if there is a truly useful motive, a real and valid purpose, there can, under the statute, be acts done to animals which are ostensibly cruel or which ostensibly cause pain." *Id.* at 93, 219 A.2d at 206 (footnote omitted).

High schools and universities encouraged students to experiment upon animals under the guise of increasing their scientific expertise or in the quest of scientific competition. Scientific expertise, supposedly gained through the killing and dissecting of live animals in high school laboratories, has been criticized on the grounds that it upsets many students who have little need for dissection skills in the future. Scientific competitions, many criticized as "Prizes for Torture," have encouraged high school students to attempt outrageous and atrocious animal experiments in the hope of winning the grand prize. For example, winners have performed skin grafts on 1,000 mice, dissected the brains of twenty-five mice, blinded and then starved sparrows, and analyzed suppurating holes in the heads of twenty-five squirrel monkeys. Students perform similarly gruesome experiments at the college level. See A. ROWAN, *supra* note 9, at 93-108; *ANIMAL RIGHTS*, *supra* note 7, at 364-69.

176. *New Jersey Society for the Prevention of Cruelty to Animals*, 91 N.J. Super. at 94-99, 219 A.2d at 208-10. All the equities in the case were with the defendant because it was unclear that the chickens had been improperly cared for or had experienced actual pain during the experiment.

177. *State v. LeVasseur*, 613 P.2d 1328 (Hawaii Ct. App.), *cert. denied*, 449 U.S. 1018 (1980). See also G. Daws, "Animal Liberation" as Crime, *The Hawaii Dolphin Case*, in *ETHICS AND ANIMALS*, *supra* note 7, at 361; Lubow, *Riot in Fish Tank 11*, *NEW TIMES*, Oct. 14, 1977, at 36.

LeVasseur's defense was unique. He claimed a "choice of evils" defense, deliberately choosing theft of the dolphins as an alternative to violating the United States policy for the "protection of laboratory animals."¹⁷⁸ The court ruled, however, that the harm caused by the theft outweighed the potential harm to the dolphins, and affirmed LeVasseur's six month jail sentence.¹⁷⁹

Despite creative lawyering, overwhelming evidence, and varying circumstances, the courts consistently refuse to hear the voice of animal protectionists when it comes to laboratory research involvement.

The rights view takes a very different stand. No one, whether human or animal, is ever to be treated as if she were a mere receptacle, or as if her value were reducible to her possible utility for others. We are, that is, never to harm the individual merely on the grounds that this will or just might produce "the best" aggregate consequences. To do so is to violate the rights of the individual. That is why the harm done to animals in pursuit of scientific purposes is wrong. The benefits derived are real enough; but some gains are ill-gotten, and all gains are ill-gotten when secured unjustly.¹⁸⁰

IV. A TRUCE: PROPOSED CHANGES WHICH BENEFIT LABORATORY ANIMALS

Proposed changes which will affect the treatment of laboratory animals are criticized both by scientific researchers who fear medical advancements will be thwarted,¹⁸¹ and by animal advocates who want abolition of laboratory animal use, not mere compromises.¹⁸² Extremist groups such as the Animal Liberation Front¹⁸³ have resorted to civil disobedience and violence, since they are convinced that without this kind of action, laboratory animals will continue to be abused and mistreated.¹⁸⁴ Certainly, for these groups and for many other animal advocates, there are no changes short of complete abolition of

178. *LeVasseur*, 613 P.2d at 1332.

179. [A]ppellant contended that he chose the lesser of two possible harms when he released the dolphins. Simply put, he contended that he chose to commit a lesser harm of theft in the first degree in order to avoid greater harm either to the dolphins or to the statutorily expressed policy of the United States.

Id. See also *id.* at 1335. See generally Comment, *Cetacean Rights Under Human Laws*, 21 SAN DIEGO L. REV. 911 (1984) (analyzing the Marine Mammal Protection Act of 1972 and advocating the protection of cetaceans by granting them legal rights).

180. ANIMAL RIGHTS, *supra* note 7, at 393.

181. The California Biomedical Research Association was formed to combat the militant animal rights movement. The group is composed of universities and such groups as the American Cancer and Heart Associations. See *New Militants*, *supra* note 6; *Animal Rights in the Lab*, *supra* note 69.

182. See generally INT'L SOC'Y FOR ANIMAL RTS. REP., Aug. 1985.

183. See *supra* notes 85-91 and accompanying text.

184. In 1982, Animal Liberation Front (ALF) members removed rabbits from the University of Maryland, and dogs from a UCLA research laboratory. Despite claims that heart pacemaker research would suffer a one-year setback, ALF members justified the removal of the dogs by claiming that the dogs had painful abscessed wounds.

all use of laboratory animals which would be to their satisfaction. The proposals for change made herein will be less than adequate for some, yet far too stringent for others. The nature of compromise and truce in the midst of what has developed into a sometimes violent battle over this issue requires that change be made slowly, so that neither side will rebel or be crushed in the other's victory.¹⁸⁵

The proposals can be divided into three categories: (1) improvement of federal guidelines and limitations on funding for research involving animal use; (2) promoting researchers' use of alternatives in place of laboratory animals; and (3) revising existing state statutes.

A. Improvements in Federal Funding and Guidelines

Before the Secretary of the Department of Health and Human Services suspended Dr. Thomas Gennarelli's research experiments on July 18, 1985,¹⁸⁶ the National Institutes of Health had provided Gennarelli with \$14 million. Congress, through several bills now before the House and Senate,¹⁸⁷ has the opportunity to outlaw this useless, expensive research, which sanctions the further mistreatment of animals.

The omissions and limitations of the Animal Welfare Act¹⁸⁸ provide inadequate protection for laboratory animals undergoing experimentation. However, because the language of the Act masks its limitations, acknowledgement of the inadequacy of its protection has been slow; only a careful reading of the Act reveals its limitations. Further, because the Act provides for self-regulation of actual research procedures used,¹⁸⁹ laboratory animals will continue to suffer

See New Militants, supra note 6. *But see Labs Already Take Steps to Protect the Animals' Health and Welfare, supra* note 54.

In February 1985, the ALF burglarized the City of Hope National Medical Center in Duarte, California and stole the animals. The same animals were subsequently recaptured by authorities in northern California, but were again liberated by the ALF. *See Rabbits Are 'Liberated' a Second Time*, L.A. Times, Feb. 20, 1985, § 1, at 3, col. 2. The Los Angeles Times editorial criticized the ALF actions. "If human lives are eventually saved, animal research is worth the cost of the animals. The City of Hope says that it treats the animals humanely" Ironically, nine months later, on November 9, 1985, it was announced that the City of Hope would be fined \$11,000 for violations of the federal standards for humane treatment of laboratory animals.

185. *See Animal-Rights People Are Gaining on Us*, L.A. Times, Aug. 27, 1984, § 2, at 5, col. 1 (analogizing the animal rights movement to the civil rights movement of the 1960's).

186. *See supra* notes 60-65 and accompanying text.

187. *See supra* note 147.

188. *See supra* notes 135-44 and accompanying text.

189. *See supra* note 143.

needlessly. A congressional amendment of the Animal Welfare Act to include guidelines and regulation of the specific permissible uses of laboratory animals is therefore desperately needed.¹⁹⁰

The use of laboratory animals in toxicological testing could be decreased by revising governmental guidelines and regulations that require federal approval of such testing. In August of 1984, the Environmental Protection Agency took steps to reduce the use of animals in acute toxicity testing.¹⁹¹ These steps included the introduction of new "suggested" guidelines and encouraged alternative methods of laboratory testing.¹⁹² The National Institutes of Health proposed additional guidelines at a recent research conference.¹⁹³ However, because the Animal Welfare Act fails to provide adequate enforcement of penalties for industries and other research facilities that do not choose the alternatives or that exceed the recommended uses of laboratory animals, the new guidelines serve only to demonstrate an awakened government conscience. Laboratory animals are still deprived of adequate protection.

The Animal Welfare Act needs an overhaul. Congress needs to revise the Act and agencies need to revise current environmental and health regulations to reflect a policy of humane treatment of animals. The current incentives or lack of disincentives for the continuation of cruel animal experimentation must be curtailed. A new comprehensive federal statute (together with revised and uniform state statutes¹⁹⁴) should include the following:

- 1) increased civil damages and criminal penalties for violations (including punitive damages for willful and reckless disregard for the humane treatment of animals);
- 2) increased licensing fees for all federally funded laboratory research, which funds could then be used to offset the cost of an increase in enforcement of government standards;
- 3) the creation of an independent state or federal agency that has as its sole functions the enforcement of animal protection, and the training and monitoring of personnel (including animal advocates) in the regulation of federally funded research facilities;
- 4) allocation of an increasing portion of federal and state research funds toward the development of alternative methods of research

190. See *supra* notes 147, 148, and accompanying text.

191. These guidelines discourage the use of animals solely to determine the dose rate at which 50% are killed. See *supra* notes 76-78 and accompanying text. The guidelines also encourage the use of alternative tests and set limits for animal use. See *New EPA Rules Set to Reduce Harm to Laboratory Animals*, *supra* note 78.

192. See *New EPA Rules Set to Reduce Harm to Laboratory Animals*, *supra* note 78.

193. See *Policies Governing Research Animals' Care Strengthened*, L.A. Times, May 3, 1985, § 1, at 3, col. 4.

194. One author proposes a Model Act for state statutory enactment, classifying animal rights according to animal types. See Burr, *supra* note 25.

aimed at the eventual elimination of all use of animals in laboratory research;

5) enactment of an efficient plan for frequent inspection of research facilities and their records;

6) clear definitions of the terms "animal," "cruelty," and "humane treatment," among others, so that laboratory animals are endowed with higher and broader standards of care, before, during, and after their use in laboratories;

7) the creation of a continuing program for public awareness and education in the current developments of science, research, and industry and how these developments affect laboratory animals; and

8) a stiff federal penalty for those who intentionally damage or destroy an animal research facility.

Certainly, other proposals¹⁹⁵ exist which would help to promote the humane treatment of laboratory animals. Unfortunately, most of these proposals would require the expenditure of federal funds, which some argue are better spent on human needs. Failure to deal with this issue, however, cannot be excused on economic grounds alone. Without at least some changes in the current law, medical researchers may be threatened with still further reprisals from left-wing animal rights groups that may lead to the disruption of vital medical research.

B. Advancing Alternatives to Animals in Research

The simple argument against many torturous experiments performed on animals is that viable alternatives do exist.¹⁹⁶ As proposed in H.R. 556,¹⁹⁷ entitled the Research Modernization Act, a National Center for Alternative Research would be established to develop and coordinate alternative methods of research and testing. The Center would eliminate or at least minimize the duplication of animal experiments and disseminate information to the research community. Under the Act, thirty to fifty percent of all money grants each year would go toward the development of nonanimal research methods.

The strongest argument against H.R. 556 is that the proposed thirty

195. See Chambers & Hines, *supra* note 80, at 128-29.

196. See generally D. SMYTH, *ALTERNATIVES TO ANIMAL EXPERIMENTS* (1978). See also *Alternatives to Test Animals Sought, Test-Tube Techniques May Satisfy Research Demands*, *supra* note 78; *Are Options Available?*, L.A. Daily J., Dec. 13, 1984, at 4, col. 5.

197. H.R. 556, 97th Cong., 1st Sess. (1981). Representatives Roe, Hollenback, and Richmond introduced the Research Modernization Act in the 97th Congress.

to fifty percent earmarked for nonanimal research was far too great a portion of the total funding, because "hardly any cure, vaccine, operation, drug or therapy has come about without experiments on animals."¹⁹⁸ Yet, the argument fails to recognize the numerous drugs which were tested on animals and still proved harmful to humans.¹⁹⁹ The bill, despite its drawbacks, would significantly advance the development of alternatives, yet leave room for researchers who have no viable testing alternative to the use of animals.

H.R. 556 was defeated, however, because the research community and agencies sponsoring the bill perceived the redirection of research funding as a threat to current research development and programs.²⁰⁰ Subsequently, H.R. 6928, the Humane Care and Development of Substitutes for Animals in Research Act²⁰¹ was sponsored and introduced by eight members of the House Committee on Science and Technology in an attempt to formulate a compromise bill.²⁰² This compromise bill, which was favorably reported from committee,²⁰³ would have provided increased protection for laboratory animals by instituting rigorous standards of accreditation for laboratories, review by scientific peers, and reduction of the painful methods and numbers of animals used in experiments.²⁰⁴

Even this compromise bill was defeated, however, due to arguments that it would have placed economic hardship and research restrictions on the scientific community.²⁰⁵ Current legislative attempts before Congress may meet with similar defeat in the absence of stronger public awareness of animal rights issues.

The two most controversial animal tests, the Draize test and the LD50 test,²⁰⁶ could both be halted by the use of alternative testing. In vitro testing and computer modeling are two proposed alterna-

198. Friends of Animals, *The Research Modernization Act* (undated). See *supra* note 54 and accompanying text. Recently animal use has been instrumental in the discovery of a herpes vaccine. See *Vaccine Found to Prevent Herpes in Lab Animals: 'First Step' to Human Antidote*, *supra* note 54.

199. See Friends of Animals, *supra* note 198.

200. See HOUSE COMM. ON SCI. & TECH., HUMANE CARE AND DEVELOPMENT OF SUBSTITUTES FOR ANIMALS IN RESEARCH ACT, H.R. REP. NO. 777, 97th Cong., 2d Sess. 3 (1982) (to accompany H.R. 6928) [hereinafter cited as HUMANE ACT REPORT].

201. See *id.* at 4.

202. See *id.* H.R. 6928 was proposed after the failure of H.R. 556 and a second bill, H.R. 4406, which would have amended the Animal Welfare Act to insure humane treatment and prevention of unnecessary pain in laboratory animals.

203. See HUMANE ACT REPORT, *supra* note 200, at 1.

204. See *id.* at 4-5.

205. Estimated costs for each agency inspection, as mandated by the bill, would amount to \$1,500 every three years. *Id.* at 19. Accreditation of existing research facilities would cost more than \$500 million over a ten year period. These costs would eventually be passed on to the taxpayer in increased medical expenses. *Id.* at 17 (Congressional Budget Office Cost Estimate).

206. See *supra* notes 71-78 and accompanying text.

tives.²⁰⁷ Additionally, there are other alternative methods of testing that could replace the current use of laboratory animals in other fields: data banks (to avoid repeating studies); human dummies; mathematical models; patient models; physiology laboratories; cell cultures; organ cultures; the Ames test (which uses salmonella bacteria to test for toxicity and carcinogenicity); gas chromatography and mass spectrometry; imaging techniques (such as CAT scans); ultrasound; and clinical and epidemiological studies.²⁰⁸ The varying uses of the computer in medical research is advancing rapidly and may succeed in replacing the laboratory animal in most research, sparing the animals from further infliction of pain.²⁰⁹

There are some drawbacks in using these advancements as alternatives to the use of laboratory animals. Even a gradual phasing in of the new equipment and methods will have dollar costs, but more importantly, the transition will probably slow down current advancements. In the face of life-threatening diseases, such as cancer and AIDS, any increased delay means the further loss of human life. The use of alternative methods should therefore begin with less critical research to phase out unnecessary experimentation and to ensure a continuing mode of research for those involved in vital work.

C. *Revising State Statutes*

Real progress for the rights of laboratory animals on the state level has been much slower than on the federal level. Yet, correction of inadequacies in state law is crucial to the protection of laboratory animals, because state law must fill in the gaps left by federal statutes.²¹⁰

207. See K. O'CONNOR, *supra* note 8, at 110-12; A. ROWAN, *supra* note 9, at 261-73; D. SMYTH, *supra* note 196. Scientists claim, however, that tissue cultures must still come from animals and that computer simulations have a very limited use, because computers cannot perform the surgery. See *New Militants*, *supra* note 6.

208. See Chamber & Hines, *supra* note 80, at 118-21. Beyond large scale alternatives, even small changes could benefit animals. At the Scientist's Center for Animal Welfare Conference held in November 1982, investigators reported that if scientists simply took a brief period of time to train laboratory animals to accept the experimental procedures, rather than using force, the animals would experience less distress. See Arehart-Treichel, *Animal Science From The Animals' Perspective*, SCI. NEWS, July 24, 1982, at 59, 61.

209. See *supra* note 207.

210. California State Senator David Roberti has recently proposed two bills in the California legislature. The first bill would ban the use or importation of pound animals for research in California. The Senator withdrew the bill after fierce lobbying by research groups. See Cal. S.B. 883, Reg. Sess., 1983-84 (failed in committee vote on May 30, 1984). See also *California Universities Block Animal Rights Bill*, SCIENCE, Sept. 12,

While some states have added specific provisions, most state anti-cruelty statutes fail to anticipate cruelty.²¹¹ Many statutes inadequately provide for the swift removal of abused animals and provide only ambiguous definitions of words such as "animal" or "cruelty."²¹² Delay and ambiguity result in a failure to protect laboratory animals on the state level. In response, a model anti-cruelty statute has been proposed.²¹³

The model anti-cruelty statute would divide animals into three classes, allocating treatment to each laboratory animal according to its classification.²¹⁴ In addition to the classification of animal types, the model statute would impose civil damages²¹⁵ and criminal penalties²¹⁶ for violations. It would also require laboratories to maintain detailed records of experimentation.²¹⁷

The statute, if enacted throughout the United States, would supplement federal statutory law and acknowledge full protection of laboratory animals at both the state and federal levels, thus providing a clear standard of animal care.

It appears that if animals are going to win the right to be represented in court, the right to have their, as opposed to the state's or their owners' injuries considered, and the right to have the court's remedy flow to their benefit, the impetus will have to come from the legislature. Nothing less than a complete reconsideration and revision of existing animal protection statutes is required.²¹⁸

However, any classification system valuing certain types of animals over others will certainly meet with disapproval by many animal advocates who place all animals or differing animals on a higher scale.²¹⁹ Again, looking toward compromise, distinctions between an-

1983, at 934. The second proposal would increase the inspection power of California humane officers. See *supra* note 100. See also *Ban Animal Seizures*, *supra* note 19; *Animal Research and People Sense*, *supra* note 19. Massachusetts recently enacted a similar law, effective October 1, 1985 (research facilities will be prohibited from procuring animals from state pounds) and January 1, 1986 (research facilities will be prohibited from importing animals from other states). See 70 A.B.A. J. 37 (Apr. 1984).

211. See *supra* note 150 and accompanying text.

212. See *supra* note 150 and accompanying text.

213. A proposed model state law was drafted to supplement the Federal Animal Welfare Act as amended. See Burr, *supra* note 25, at 231-44; Friend, *supra* note 150, at 225-31.

214. See Burr, *supra* note 25, at 233-39.

215. *Id.* at 240-41.

216. *Id.* at 239-40.

217. *Id.* at 242-43.

218. *Id.* at 231.

219. For instance, if for some reason a choice has to be made between saving the life of a normal human being and that of a dog, we might well decide to save the human because he, with his greater awareness of what is going to happen, will suffer more before he dies; we may also take into account the likelihood that it is the family and friends of the human who will suffer more; and finally, it would be the human who had the greater potential for future happiness. This decision would be in accordance with the principle of equal consideration of interests, for the interests of the dog get the same considera-

imals and their acceptable uses may be beneficial in forwarding the struggle for change.

Although all the proposed changes mentioned herein have drawbacks, each proposal shares two: expense and lack of political expediency. Perhaps in the face of growing media attention and the continuing use of violent alternatives, the efforts necessary to effect these changes through the legal system will seem more advantageous.²²⁰

V. CONCLUSION

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

Mahatma Gandhi²²¹

Dear Ann Landers:

There are no easy answers to resolve the conflict between animal rights advocates and the scientific community. It is the "no room for argument" approach to problem solving that has created broad divisions between both groups, thwarting legislative attempts at resolution, and promoting violent attempts for recognition. The antinomy underlying this issue pits society's desire to be humane and respectful

tion as those of the human, and the loss to the dog is not discounted because the dog is not a member of our species. The outcome is as it is because the balance of interests favors the human. In a different situation—say, if the human were grossly mentally defective and without family or anyone else who would grieve for it—the balance of interests might favor the nonhuman.

P. Singer, *Not For Humans Only: The Place of Nonhumans in Environmental Issues*, in *ETHICS AND PROBLEMS OF THE 21ST CENTURY* 191, 196 (K. Goodpaster & K. Sayre ed. 1979).

Animal advocates may sound ambivalent at times, since, though many support euthanasia, they still lobby against animal deaths and suffering. Further, many who oppose medical research would most likely use the medicines developed from it. See Starr, *supra* note 86, at 35. "[A]s flawed as some of the arguments may be, the advocates ask questions that we can't easily dismiss. After all, how certain are we that animals don't feel joy and sorrow, pleasure and pain? And how broadly should we interpret the commandment: Thou Shalt Not Kill?" *Id.*

220. Available experts and organizations which will continue to be helpful in the formulation of solutions on animal issues include, but are not limited to, The Animal Protection Committee, Young Lawyers Division, American Bar Association, Elinor Modegott, Chairperson; The American Society for the Prevention of Cruelty to Animals, 441 East 92nd Street, New York, N.Y. 10128; Attorney Joyce Tishler, Executive Director of the Animal Legal Defense Fund, 333 Market Street, Suite 2300, San Francisco, Ca. 94105; Friends of Animals, Inc., Medical Research Modernization Committee, and Committee for Humane Legislation, Membership Office, One Pine Street, Neptune, N.J. 07753.

221. Bennan, *Research Guide for Animal Welfare and Animal Rights*, 4 LEGAL REFERENCE SERVICES Q. 3, 3 (1984). This source also provides an overall guide to current research materials and cases regarding animal rights and welfare issues.

of nonhumans against its maintenance of human superiority and unrestricted use of nonhumans. Many animal advocates maintain the conviction that scientific achievements can *never* justify the experimental use of animals. Many in the scientific community are opposed to *any* further restrictions, monitoring, or alternative uses of animals in laboratory experimentation and research. These positions must be intelligently examined and strategies for compromise must be proposed. To label advocates as "fanatics" and researchers as "butchers" smacks of prejudicial ignorance. Rather, the proposals and viewpoints outlined herein are proposed to educate and form a foundation for meaningful discussions between both groups. Progress toward ending the violent destruction of laboratories and ending the animal abuse which sometimes occurs therein, depends on the willingness of both sides to compromise their convictions for the good of nonhumans and humans. Valid compromise proposals are currently before Congress and state legislatures, but they have little chance of passage unless both sides *together* lobby for adoption.

The issue of granting rights to laboratory animals will not diminish in future years; instead, it will continue to be thrust into the public light as scientific advancements expand to include more animal experiments. Further, the ability of animal welfare groups to effect political change, coupled with the radical actions of left-wing extremist groups, will continue to make the issue newsworthy. The force of increased public awareness and news coverage will eventually compel lawyers, scholars, and politicians to investigate the various factions, analyze the issues, and develop new law in this area. The days of Monday morning quarterbacking are over. All may not become vegetarians as a result, but many may well become carnivores with a conscience. For thousands of laboratory animals each year, the change is long overdue.

BRENDA L. THOMAS