

## BABY STEPS: MINNESOTA RAISES CERTAIN FORMS OF ANIMAL CRUELTY TO FELONY STATUS

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[T]he day *may* come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. . . . [A] full grown horse or dog is beyond comparison a more rational, as well as a more conversible animal, than an infant of a day, or a week, or even a month, old. But suppose that it were otherwise, what would it avail? The question is not, Can they *reason*? Can they *talk*? but, Can they *suffer*?<sup>1</sup>

- Jeremy Bentham

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1. JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 283 (J. H. Burns & H. L. A. Hart, eds., Athlone Press 1970) (1789).

## I. INTRODUCTION

The relationships between humans and animals<sup>2</sup> are complex and contradictory;<sup>3</sup> we welcome them into our homes and treat them as members of the family,<sup>4</sup> yet we inflict upon them all manner of atrocities.<sup>5</sup> Although laws prohibiting cruelty to animals

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2. Obviously humans *are* animals and drawing such a distinction creates a false dichotomy. In the interest of simplicity, however, I have adopted the standard, albeit speciesist, convention of separating humans from the rest of the animal kingdom and referring to animals other than human simply as "animals."

3. "Most survey respondents report (1) that they are concerned about the well-being of animals, and (2) that they support the selective use of animals . . ." S. Plous, *Psychological Mechanisms in the Human Use of Animals*, 49 J. OF SOC. ISSUES 11, 14 (1993). See also Clifton D. Bryant, *The Zoological Connection: Animal-Related Human Behavior*, 58 SOC. FORCES 399, 412 (1979) (discussing the influence of animals on human life); Corwin R. Kruse, *The Relevance of "Animal Issues" for Sociology*, ISAZ NEWSLETTER (Int'l Soc'y for Anthrozoology, Cambridge, U.K.), Mar. 2001, at 2 (discussing the sociological relevance sociozoological studies) [hereinafter Kruse: Relevance]; Corwin R. Kruse, *Animals and Human Society: Expanding the Sociological Imagination* 1-5 (Apr. 19, 2000) (unpublished paper presented at the annual meeting of the Midwest Sociological Society) (on file with the author) (discussing the importance of human-animal studies for sociology) [hereinafter Kruse: Expanding]. See generally ARNOLD ARLUKE & CLINTON SANDERS, *REGARDING ANIMALS* (1996) (discussing human-animal relations in a variety of contexts).

4. See generally ALAN BECK & AARON KATCHER, *BETWEEN PEOPLE AND PETS: THE IMPORTANCE OF ANIMAL COMPANIONSHIP* (revised ed. 1996) (discussing the importance of companion animals in the lives of humans). A fondness for animal companionship is not limited to industrialized societies. See James Serpell & Elizabeth Paul, *Pets and the Development of Positive Attitudes to Animals*, in *ANIMALS AND HUMAN SOCIETY: CHANGING PERSPECTIVES* 127 (Aubrey Manning & James Serpell eds., 1994).

In the majority of hunting societies, as in the west, pet animals are often named and cared for like children. As infants they may be suckled at the breast alongside human infants. As they get older they are fed and kept out of harm's way and, when they die, they are commonly mourned and sometimes honored with ritual burial.

*Id.* at 130.

5. See, e.g., DAVID WOLFSON, *BEYOND THE LAW: AGRIBUSINESS AND THE SYSTEMATIC ABUSE OF ANIMALS RAISED FOR FOOD OR FOOD PRODUCTION* (1999) (discussing the inhumane conditions in which farm animals are born, raised, and slaughtered); Robert Reisman & Cindy A. Adams, *Should Veterinarians Tell?*, in *CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE: LINKING THE CIRCLES OF COMPASSION FOR PREVENTION AND INTERVENTION* 221 (Frank R. Ascione & Phil Arkow eds., 1999) (describing examples of animal abuse seen by veterinarians); Arnold Arluke & Carter Luke, *Physical Cruelty Toward Animals in Massachusetts*, 5 SOC'Y AND ANIMALS 195 (1997) (discussing the types of cruelty inflicted upon animals in Massachusetts); Temple Grandin, *Behavior of Slaughter Plant and Auction Employees Toward the Animals*, 1 ANTHROZOÖS 205 (1988) (discussing abuse of animals by slaughter house workers).

exist in all states,<sup>6</sup> “the law in practice does little, if anything, to protect animals . . . .”<sup>7</sup> Animals, it seems, must struggle to find a place within our “scope of justice, the psychological boundary within which considerations of fairness govern our conduct.”<sup>8</sup>

Our ambivalent attitude toward other creatures seems to stem from a number of factors:<sup>9</sup> the dissociation of human consumptive practices from the infliction of harm;<sup>10</sup> the use of conflict reduction mechanisms;<sup>11</sup> in-group / out-group biases;<sup>12</sup> and our perceived lack of similarity with other animals.<sup>13</sup> Because of organized and well-funded opposition, getting more stringent animal protection laws enacted has been a slow process.<sup>14</sup>

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6. Pamela, D. Frasch et al., *State Animal Anti-Cruelty Laws: An Overview*, 5 ANIMAL L. 69, 69 (1999). A database of state anti-cruelty statutes can be found at <http://www.animal-law.org/statutes/index.html> (last visited Feb. 22, 2002).

7. GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 4 (1995).

8. Susan Opatow, *Predicting Protection: Scope of Justice and the Natural World*, 50 J. OF SOC. ISSUES 49, 50 (1994).

9. Plous, *supra* note 3 (discussing factors influencing the way people think about animals and the use thereof).

10. *Id.* at 14-25. Language is an important component of this. For example, animal-use industries and “sports” use impersonal terms such as “crops,” “tools,” or “resources” to refer to animals and speak of their killing euphemistically (e.g., “harvesting”). *Id.* at 15-17. Likewise, the remoteness of living animals from final products, both geographically and in appearance, serves to insulate consumers from effects of their practices. *Id.* at 18-19. “[T]o acquaint a customer with the knowledge that the lamb chops she has just purchased were part of the anatomy of one of those pretty little creatures we see gamboling in the fields at springtime is probably the surest way of turning her into a vegetarian.” *Meat has Many Mysteries*, MEAT TRADE JOURNAL, May 5, 1977, at 12, *quoted in* Plous, *supra* note 3, at 18.

11. Plous, *supra* note 3, at 25-29. As an example, despite substantial research to the contrary, people often deny that animals and humans feel pain in the same ways. *Id.* at 26.

12. *Id.* at 29-32. Out-group biases toward animals may manifest themselves in the much the same way as they do toward human out-groups; they are seen as inferior and relatively homogeneous. *Id.* at 29. The parallels become explicit when considering the treatment of human slaves. *Id.* at 30. *See also* MARJORIE SPEIGEL, *THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY* (1988) (exploring the similarities between the treatment of human slaves and that of animals).

13. Plous, *supra* note 3, at 32-42. Generally, people demonstrate more concern for others (human or not) who are more similar to themselves. *Id.* at 32. Animals seen as more similar to humans (e.g., apes) are thus given greater consideration than those seen as less similar (e.g., rats). Corwin R. Kruse, *Gender, Views of Nature, and Support for Animal Rights*, 7 SOC'Y AND ANIMALS 179, 194 (1999) (discussing past research examining treatment of different types of animals). *See also* Opatow, *supra* note 8 (discussing the effect of perceived similarity on scope of justice).

14. *See generally* ROBERT GARNER, *POLITICAL ANIMALS: ANIMAL PROTECTION POLITICS IN BRITAIN AND THE UNITED STATES* (1998) (discussing federal animal protection legislation and politics in the United States and Great Britain).

Slow, however, does not mean impossible.<sup>15</sup> Recently, Minnesota strengthened its anti-cruelty laws.<sup>16</sup> Under the amended statute, it is now a felony<sup>17</sup> to kill or inflict certain types of injury<sup>18</sup> to a pet or companion animal<sup>19</sup> or a service animal.<sup>20</sup> Minnesota thus joins 32 other states<sup>21</sup> and the District of Columbia, in assigning felony status to certain forms of animal abuse.<sup>22</sup>

This note begins by tracing the development of anti-cruelty statutes over the last two centuries. Part II discusses the history of anti-cruelty legislation, including the philosophical and socio-historical trends underlying these laws. Part III examines the recent changes to Minnesota's anti-cruelty statute. Part IV analyzes these changes and proposes future modifications. Finally, part V examines current scholarship on animal abuse, discusses why the issue has typically been ignored by society, and poses challenges for the future.

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15. See, e.g., Alicia Finigan, *2000 Legislative Review*, 7 ANIMAL L. 145 (2001) (reviewing 2000 state and federal legislative and administrative actions affecting animals).

16. See 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, §§ 5-13 (codified as amended at MINN. STAT. § 343.20-235).

17. Previously, a violation of the anti-cruelty law was charged as either a misdemeanor or, if the second conviction within five years, a gross misdemeanor. MINN. STAT. § 343.21, subd. 9 (2000).

18. In relevant part, Minnesota law makes it a crime to:  
overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor . . . [or] willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.

MINN. STAT. § 343.21, subd. 1, 7 (2000).

19. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 10 (codified as amended at MINN. STAT. § 343.21, subd. 9(c)-(d), (f), (h)). See *infra* notes 143-155 and accompanying text.

20. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 10 (codified as amended at MINN. STAT. § 343.21, subd. 9(e), (g)). See *infra* notes 156-158 and accompanying text.

21. The other states with felony anti-cruelty provisions are Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, and Wisconsin. Animal Protection Institute, *State Animal Cruelty Laws*, available at <http://www.api4animals.org/doc.asp?ID=47> (last revised Sept. 24, 2001).

22. *Id.*

## II. A BRIEF HISTORY OF ANTI-CRUELTY LAWS

[L]aws and the enforcement or observance of laws, for the protection of dumb brutes from cruelty, are, in my judgment, among the best evidences of the justice and benevolence of men.<sup>23</sup>

- Arnold, J.

### A. *British Beginnings*

Although restrictions on the human treatment of animals can be found throughout history,<sup>24</sup> it was not until the 19th century that animals gained legal protection in the modern sense of the term.<sup>25</sup> Cruelty to animals was not a crime at common law.<sup>26</sup> Animals were regarded as nothing more than property<sup>27</sup>, therefore they could be

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23. *Stephens v. State*, 3 So. 458, 458 (Miss. 1888).

24. *See, e.g., Deuteronomy* 5:13-14 (King James). "Six days you shall labor, and do all your work; but the seventh day is a Sabbath to the Lord your God; in it you shall not do any work, you, . . . or your ox, or your ass, or any of your cattle . . . ." *Id.*

25. *See generally* David Favre & Vivian Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DET. C.L. REV. 1 (1993) (discussing the history of modern anti-cruelty legislation).

26. *Stephens*, 3 So. at 459 (noting that "common law recognized no right in such animals and punished no cruelty to them"); *State v. Beekman*, 27 N.J.L. 124, 125 (1858) (stating the general proposition that "no injuries of a private nature [e.g., to animals], unless they some way concern the king or affect the public, are indictable at common law"); Larry Falkin, *Taub v. State: Are State Anti-Cruelty Statutes Sleeping Giants?*, 2 PACE ENV. L. REV. 255, 266 (1985) (noting that the common law provided no protections against animal cruelty); Favre & Tsang, *supra* note 25, at 5 (suggesting that cruelty to animals was not a criminal offense under English common law); Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 3 (2000) (noting that animal cruelty was not a crime at common law).

27. Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. RICH. L. REV. 201, 201-02 (1974) (discussing the concept of animals as property). *See also* Favre & Tsang, *supra* note 25, at 7-8 (discussing the property status of animals in early American law). *See generally* FRANCIONE, *supra* note 7 (discussing the history and legal ramifications of the property status of animals). Some scholars have suggested that an adequate resolution to the problem of animal cruelty will come only with the abandonment of property status. *See, e.g.,* FRANCIONE, *supra* note 7, at 260. Others have proposed that the answer lies in a reworking of the existing property paradigm. *See, e.g.,* David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473, 477 (2000) (drawing on the language of trusts and bailments, as well as guardianship status, to propose that although humans may retain legal title to animals, at least some animals could be vested with equitable title in themselves).

If an animal had equitable title, then a legal title holder would have obligations both to the state and to the equitable title holder, the self-

used or treated as the owner wished.<sup>28</sup>

Expanding urbanization following the industrial revolution brought about a shift in the way humans saw other animals.<sup>29</sup> “Victorians no longer viewed animals as commodities or tools, but as companions and even members of the family. For many, animals became objects of sentimentality rather than [simply] utility.”<sup>30</sup>

It was in this shifting cultural milieu that modern anti-cruelty statutes were born.<sup>31</sup> Sir William Pulteney introduced the first animal protection bill to Parliament on April 2, 1800.<sup>32</sup> The bill, to prevent the practice of bull-baiting, was defeated by two votes.<sup>33</sup> In 1809, a second anti-cruelty bill, proposed by Lord Thomas Erskine, was also narrowly defeated.<sup>34</sup>

It was not until 22 years after Pulteney’s attempt that the first animal protection bill, known as Martin’s Act, was passed into law.<sup>35</sup> This law made the “wanton and cruel” beating or abuse of cattle, horses, and sheep a criminal offense.<sup>36</sup> Violators could be punished by fines or imprisonment.<sup>37</sup> Enforcement of the act was aided by the formation of the first animal protection organization, the

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owned animal. . . . The nature of the duty toward the self-owned animal will arise out of two primary legal sources, anti-cruelty laws and the concepts developed for defining the parent-child relationship.

*Id.* at 494-95.

28. Friend, *supra* note 27, at 201-02. Because animals were seen as property, some acts of animal cruelty committed in public might be indictable as other offenses such as malicious mischief. Favre & Tsang, *supra* note 25, at 5-6. Such an offense could be prosecuted, however, only if the animal in question belonged to someone else. *Id.* at 6.

29. See generally JAMES M. JASPER & DOROTHY NELKIN, *THE ANIMAL RIGHTS CRUSADE: THE GROWTH OF A MORAL PROTEST* 26-41 (1992) (discussing the origins and growth of the animal rights movement).

30. Kruse, *supra* note 13, at 180. The common perception of animal protection as a “women’s issue” also seems to have its origins in this period of urbanization and industrialization. *Id.* at 180-81. As the split between public (male) and private (female) spheres of life grew, women, at least in the middle and upper classes, were expected to exert a civilizing influence upon society; part of this role included the protection of animals. *Id.* at 181. See also JASPER & NELKIN, *supra* note 29, at 58.

31. See generally JASPER & NELKIN, *supra* note 29; HILDA KEAN, *ANIMAL RIGHTS: POLITICAL AND SOCIAL CHANGE IN BRITAIN SINCE 1800* (1998) (discussing the emergence and growth of the British animal rights movement).

32. KEAN, *supra* note 31, at 31.

33. *Id.*

34. *Id.* at 33.

35. *Id.* The bill passed on June 7, 1822. *Id.* at 34.

36. *Id.* See also Favre and Tsang, *supra* note 25, at 4.

37. KEAN, *supra* note 31, at 34.

Society for the Prevention of Cruelty to Animals (SPCA), in 1824.<sup>38</sup>

Notably, the true focus of these early attempts to protect animals were not the animals themselves, but humans.<sup>39</sup> In addition to protecting property interests,<sup>40</sup> the law concerned itself with the moral character of the populace.<sup>41</sup> A popular engraving of the time, William Hogarth's *Four Stages of Cruelty*, portrayed the supposed connection between cruelty to animals and crimes against humans.<sup>42</sup> Anti-cruelty statutes were thus seen as a strike against the potential abuse of other humans.<sup>43</sup> Lord Erskine's speech to Parliament in support of his anti-cruelty bill reflects this view; "This extension of benevolence to [animals] . . . will reflect back upon our sympathies to one another . . . ."<sup>44</sup>

There was also more than a touch of class-based antipathy in these early statutes.<sup>45</sup> Indeed, Professor Tester suggests that the primary motivation for anti-cruelty statutes was to control and civilize the lower class rather than to provide for the well-being of animals.<sup>46</sup> More humane treatment of animals "became a distinguishing feature of . . . membership of a new middle class and a *respectable* working class."<sup>47</sup> The blood sports of the poor, seen as emblematic of a "violent and unrestrained culture,"<sup>48</sup> became prime candidates for reform.<sup>49</sup>

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38. *Id.* at 35-38. The SPCA became "Royal" (RSPCA) when it achieved the patronage of Queen Victoria in 1840. LAWRENCE FINSSEN & SUSAN FINSSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 31 (1994); KEAN, *supra* note 31, at 35.

39. Favre & Tsang, *supra* note 25, at 6.

40. *Id.* at 5-6.

41. *Id.* at 6. "The pain and suffering of animals was not as much of a legal concern . . . as was the moral impact of the action on humans." *Id.*

42. FINSSEN & FINSSEN, *supra* note 38, at 37.

43. STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* 44 (2000).

44. KEAN, *supra* note 31, at 33 (quoting Lord Erskine, *Cruelty to Animals: The Speech of Lord Erskine in the House of Peers, May 15, 1809 (1824)*). Such concerns are still a major factor in the debate over anti-cruelty legislation. *See infra* notes 178-182 and accompanying text.

45. *See generally* Adrian Franklin, *On Fox-hunting and Angling: Norbert Elias and the 'Sportisation' Process*, 9 *J. OF HISTORICAL SOCIOLOGY* 432, 452 (1996).

46. Keith Tester, *The Pleasure of the Rich is the Labour of the Poor: Some Comments on Norbert Elias's "An Essay on Sport and Violence"*, 2 *J. OF HISTORICAL SOC.* 161, 169-70 (1989) (discussing the class-based nature of early animal protection laws and the intricacies of social class and animal protection laws).

47. KEAN, *supra* note 31, at 24 (emphasis added).

48. Franklin, *supra* note 45, at 440.

49. *Id.* As Professor Franklin points out, blood sports enjoyed by the upper classes, such as fox hunting, were not targeted by the new anti-cruelty statutes. *Id.*

*B. The American Experience*

The first American anti-cruelty statute actually passed the year before Martin's Act became law in Britain.<sup>50</sup> In 1821, Maine made it a crime for "any person [to] cruelly beat any horse or cattle . . . ."<sup>51</sup> This impact of this law, however, was relatively minor.<sup>52</sup>

In 1829, New York passed an anti-cruelty statute that became a model for a number of other states,<sup>53</sup> including Minnesota.<sup>54</sup> The first part of the New York law made it a misdemeanor to "maliciously kill, maim or wound any horse, ox or other cattle, or any sheep, belonging to another . . . ."<sup>55</sup> The second part focused on cruelty regardless of ownership, prohibiting anyone from cruelly beating or torturing horses, cattle, or sheep, "whether belonging to himself or another."<sup>56</sup>

The second section of the law represented a step forward in that it applied regardless of ownership.<sup>57</sup> There were several substantial limitations however: the law prohibited only affirmative acts,<sup>58</sup> it applied only to a limited number of commercially valuable animals,<sup>59</sup> and it "required prosecutors to prove that the defendant acted with malice."<sup>60</sup>

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at 440-41.

50. Favre & Tsang, *supra* note 25, at 8-9.

51. *Id.* at 8 (quoting Me. Laws ch. IV, § 7 (1821)).

52. *Id.* at 9. "[T]here is no record that this law was followed by the creation of any public organization to help enforce the law or compel any change in public conduct . . . . It marked the initiation of concern, but not the birth of a social movement." *Id.*

53. Sauder, *supra* note 26, at 3.

54. *Id.* at 3 n.11. See *infra* note 95 and accompanying text.

55. N.Y. REV. STAT. tit. 6, § 26(1) (1829), cited in Favre & Tsang, *supra* note 25, at 9.

56. N.Y. REV. STAT. tit. 6, § 26(2) (1829), cited in Favre & Tsang, *supra* note 25, at 9.

57. Favre & Tsang, *supra* note 25, at 10. The different language in the two parts created some perplexing possibilities.

One result of [this] language was that it was not illegal to maliciously kill or maim your own animal. The legislature most likely presumed that financial self-interest would protect against this possibility. However, if you killed your own horse by beating it to death, the beating, but not the killing, was illegal.

*Id.*

58. *Id.* Although individuals were enjoined from committing certain acts, they were not mandated to care for animals; starving one's horse to death would not have been illegal. *Id.*

59. *Id.* at 11. Torturing a dog, for example, was not yet illegal. *Id.*

60. Sauder, *supra* note 26, at 5. This allowed defendants to absolve themselves by invoking a "good-faith effort to train" defense, thereby belying any intent to

A revised anti-cruelty law, passed in 1867,<sup>61</sup> began to address these limitations.<sup>62</sup> First, the statute went beyond simply prohibiting affirmative acts, it made it illegal to deprive an animal of “necessary sustenance.”<sup>63</sup> Imposing this duty of care may be seen as an indication of increasing concern for the well-being of animals.<sup>64</sup> Second, the new law applied to “any living creature.”<sup>65</sup> “This marvelously sweeping statement finally eliminated the limitation that protection was only for animals of commercial value. All provisions of this section applied regardless of ownership of the animal.”<sup>66</sup> Finally, the qualifier “maliciously” was removed from all of the prohibited acts.<sup>67</sup> The focus thus began to shift from the subjective mind-set of the accused to the objective harm to the animal.<sup>68</sup>

This statute was also notable for several other provisions. First, it allowed anyone to enter private premises to provide care for an animal that did not have adequate food or water.<sup>69</sup> In addition, the act provided to agents of the newly formed American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.),<sup>70</sup> the power to

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harm. *Id. See, e.g.,* State v. Avery, 44 N.H. 392, 397 (1862) (“[I]f the beating was solely for the purpose of training, however severe it might be, it would not be malicious, within the meaning of the statute, and therefore it would be no offense . . . .”)

61. N.Y. REV. STAT. tit. 6, §§ 375.2-9 (1867), *cited in* Sauder, *supra* note 26, at 5 n.30.

62. The new law provided that:

If any person shall overdrive, overload, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be overdriven, overloaded, tortured, tormented or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated, or killed as aforesaid any living creature, every such offender shall, for every such offense, be guilty of a misdemeanor.

N.Y. REV. STAT. § 375.1 (1867), *quoted in* Sauder, *supra* note 26, at 5 n.30.

63. *Id.*

64. *See* Favre & Tsang, *supra* note 25, at 10, 16-18.

65. N.Y. REV. STAT. § 375.1 (1867), *quoted in* Sauder, *supra* note 26, at 5 n.30.

66. Favre & Tsang, *supra* note 25, at 16.

67. *Id.*

68. *Id. See also* Sauder, *supra* note 26, at 5. This change limited the ability of individuals to use the “training defense.” *Id.*

69. N.Y. REV. STAT. § 375.4 (1867), *cited in* Favre & Tsang, *supra* note 25, at 16.

70. The A.S.P.C.A. was modeled on the R.S.P.C.A. and granted a charter by the New York legislature on April 10, 1866. Favre & Tsang, *supra* note 25, at 13. Its first president, Henry Bergh, was instrumental in the group’s formation and played a major role in the passage of anti-cruelty legislation in the state. *See id.* at 13-17.

enforce the provisions of the law and arrest violators.<sup>71</sup> In an innovative and pragmatic move, the statute provided that the A.S.P.C.A. was to receive all fines collected in violation of the anti-cruelty law.<sup>72</sup> Finally, as a result of substantial lobbying, the act contained the first exemption for medical research.<sup>73</sup> This exemption foreshadowed many future legislative debates.<sup>74</sup>

Thanks in large part to A.S.P.C.A. president Henry Bergh, the press took notice of the New York legislation.<sup>75</sup> Soon, a number of other states<sup>76</sup> had passed similar legislation and chartered local chapters of the S.P.C.A. to help with enforcement.<sup>77</sup> The push to enact anti-cruelty statutes continued throughout the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, and by the 1920s, such laws existed in most states.<sup>78</sup>

Discerning exactly how the courts interpreted the early statutes is difficult because the record is minimal.<sup>79</sup> It is likely that many cases never made it beyond the trial court;<sup>80</sup> the state was unlikely to appeal acquittals,<sup>81</sup> and, given the relatively small fine accompanying a conviction, few guilty defendants found an appeal worth the legal costs.<sup>82</sup> We are thus left to extrapolate from a limited number of appellate decisions.<sup>83</sup> "Each state has only a handful of decisions prior to 1900, and some have no reported decisions concerning cruelty laws."<sup>84</sup>

One of the main functions of the court in these cases was to define what was meant by the term "cruelty."<sup>85</sup> Although there was variance across courts, Professor Favre suggests that combining

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71. N.Y. REV. STAT. § 375.8 (1867), *cited in* Favre & Tsang, *supra* note 25, at 17.

72. Favre & Tsang, *supra* note 25, at 17.

73. N.Y. REV. STAT. § 375.10 (1867), *cited in* Favre & Tsang, *supra* note 25, at 18.

74. *See infra* notes 137-143 and accompanying text.

75. Favre and Tsang, *supra* note 25, at 21.

76. Among the states passing laws modeled on the New York act were Pennsylvania, Illinois, New Hampshire and New Jersey. *Id.*

77. *Id.*

78. Sauder, *supra* note 26, at 7.

79. Favre & Tsang, *supra* note 25, at 22-23.

80. *Id.* at 22.

81. *Id.* at 23.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 24. Defining cruelty remains a problem for both the legal system and criminologists. *See generally* Piers Beirne, *For a Nonspeciesist Criminology: Animal Abuse as an Object of Study*, 37 CRIMINOLOGY 117 (1999) (discussing the difficulties in defining animal abuse).

decisions leads to the following general definition: cruelty was “human conduct, by act or omission . . . which inflicts pain and suffering on a nonhuman animal . . . without legally acceptable<sup>86</sup> justifi[cation].”<sup>87</sup> Simply killing an animal was typically not enough to convict a person under these statutes, the killing needed to be done in a cruel fashion.<sup>88</sup>

A second primary task for the court was to determine which creatures came under the protection of the statutes.<sup>89</sup> Once again, there was substantial variation between jurisdictions.<sup>90</sup> The Arkansas Supreme Court, for example, felt that the statutory phrase “any living creature”<sup>91</sup> should be construed to apply to “all animate creation . . . from the largest and noblest to the smallest and most insignificant.”<sup>92</sup> In contrast, as recently as 1973, the Kansas Supreme Court held that gamecocks were not meant to be included within the statutory phrase “any animal.”<sup>93</sup>

### III. THE MINNESOTA STATUTE

The evolution of anti-cruelty laws in Minnesota in large measure mirrors that of such laws in the United States generally. The first statute prohibiting animal abuse predated statehood;<sup>94</sup> it was enacted by the legislative assembly of the Territory of Minnesota during their second session in 1851.<sup>95</sup> An early case, *United States v. Gideon*,<sup>96</sup> provides a glimpse of the attitudes

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86. Legal acceptability can be drawn from “legislative language or socially acceptable custom.” Favre & Tsang, *supra* note 25, at 24.

87. *Id.* Many atrocities could of course be “justified.” See, e.g., *supra* note 60. This issue is still problematic today. See *infra* notes 244-254 and accompanying text.

88. Favre & Tsang, *supra* note 25, at 24-25 (citing *Horton v. State*, 27 So. 468, 468 (Ala. 1900)) (holding that “the mere act of killing an animal, without more, is not cruelty”).

89. *Id.*

90. *Id.*

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

92. *Id.* at 458.

93. *State ex rel. Miller v. Claiborne*, 505 P.2d 732, 734 (1973). Early on, Minnesota took a similarly narrow approach. See *infra* notes 104-106 and accompanying text.

94. Minnesota became a state in 1858.

95. REV. STAT., ch. 107, § 18 (1851). The statute read, in its entirety, “[e]very person who shall cruelly beat or torture any horse, ox, or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars, nor less than five dollars.” *Id.*

96. 1 Minn. 292 (1856).

prevailing during this time.

In 1854, Peter Gideon shot a dog owned by George Bertram<sup>97</sup> and was indicted by a Hennepin County grand jury for “willfully and maliciously killing” the animal.<sup>98</sup> After his conviction, Gideon appealed on several grounds: first, that the facts stated in the indictment did not constitute a public offense;<sup>99</sup> second, that no value of the dog was alleged or proved;<sup>100</sup> and, third, that malice was proved only against the dog, not against Bertram.<sup>101</sup> The court agreed with the appellant and reversed the district court.<sup>102</sup>

The law under which the charges were brought provided that “every person who shall willfully and maliciously kill, maim or disfigure any horses, cattle, or other beasts of another person . . . shall be punished.”<sup>103</sup> In his decision, Judge Sherburne held that dogs were not covered by the statute as they were not included in the term “beasts.”<sup>104</sup>

[I]t is but reasonable to suppose that the intention of the law was, in using the terms “beasts,” to include such other animals as may properly come under the name of beasts, and as have an intrinsic value in the same sense that there is value in hoes, oxen and cows. The term beasts may well be intended to include asses, mules, sheep, swine, and, perhaps, some other domesticated animals, but it would be going quite too far to hold that dogs were intended.<sup>105</sup>

Because the anti-cruelty law applied only to commercially valuable animals, shooting the dog was not an indictable offense under the statute.<sup>106</sup>

In addition, the court held that the trial court had erred when it instructed the jury that they could convict if they found that the defendant had acted with malice toward either the dog or his owner.<sup>107</sup> Citing an inability to find any precedent for a cruelty

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97. *Id.* at 295.

98. *Id.*

99. *Id.* at 296.

100. *Id.*

101. *Id.*

102. *Id.* at 296-97.

103. REV. STAT., ch. 101, § 39 (1854), *quoted in Gideon*, 1 Minn. at 296.

104. *Gideon*, 1 Minn. at 296.

105. *Id.*

106. *Id.* The court also held that because “the simple word or name of dog” implied no value in and of itself, some monetary value needed to be pled for the verdict to be sustained. *Id.* at 297.

107. *Id.*

conviction based upon malice toward the animal, the Judge Sherburne ruled that for the conviction to stand, it was “necessary to prove malice against the owner.”<sup>108</sup> Even with respect to animals that had “intrinsic value,” the law was thus interpreted to protect exclusively human interests.

After statehood, the anti-cruelty statute referred to above became state law.<sup>109</sup> The location of the statute in the Minnesota code is quite telling. Many early anti-cruelty laws tended to be located in the criminal code chapters dealing with “Offences Against Chastity, Decency, and Morality,” along with such offenses as blasphemy and fornication.<sup>110</sup> Minnesota fits with this pattern; “the section after the cruelty to animals section prohibited performing labor or attending a dance on the Lords [sic] Day,”<sup>111</sup> and the section preceding it barred persons from constructing roads or railways through burial grounds without the permission of the town, religious institution or person owning the property.<sup>112</sup> It appears that the concern was still for human morality rather than animal suffering.

The current anti-cruelty statute can be traced back to 1905.<sup>113</sup> Among other things, this law made it a crime for any person to [o]verdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work the same when unfit for labor, whether belonging to himself or another;<sup>114</sup> [d]eprive of necessary food, water, or shelter any animal of which he has charge or control;<sup>115</sup> [and] . . . [w]ilfully set on foot, instigate, or in any way further any act of cruelty to animals, or any act tending to produce such cruelty.<sup>116</sup>

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108. *Id.* “Maliciously” was not given such an anthropocentric reading in all states. *See Favre & Tsang, supra* note 25, at 14-15. For example, the New Hampshire court applied the term broadly; “malice [is] not limited to ill-will to an animal, or its owner, or to wanton cruelty but [that an] act will be malicious if it results from any bad or evil motive . . . .” *State v. Avery*, 44 N.H. 392 (N.H. 1862), *quoted in Favre & Tsang, supra* note 25, at 14 n.67.

109. MINN. STAT. § 96.18 (1858), *cited in Favre & Tsang, supra* note 25, at 12 & n.52.

110. Favre & Tsang, *supra* note 25, at 11 & n.49.

111. MINN. STAT. § 96.19 (1858), *cited in Favre & Tsang, supra* note 25, at 11 n.49.

112. MINN. STAT. § 96.17 (1858).

113. REV. LAWS, ch. 102, §§ 5151-5160 (1905).

114. *Id.* at § 5152.1.

115. *Id.* at § 5152.2.

116. *Id.* at § 5152.7.

Importantly, the act defined “animal” to include every living creature other than humans,<sup>117</sup> thereby precluding decisions along the lines of *Gideon*.<sup>118</sup> In addition, the law defined “cruelty” and “torture” synonymously to refer to “every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted.”<sup>119</sup>

Until recently, and with only minor revisions, the 1905 language formed the basis of the modern anti-cruelty law.<sup>120</sup> Like the basic language, penalties for animal abuse had, until recently, changed only slightly; “[a] person who fail[ed] to comply with any provision of [the anti-cruelty statute] [was] guilty of a misdemeanor. A person convicted of a second or subsequent violation . . . within five years of a previous violation . . . [was] guilty of a gross misdemeanor.”<sup>121</sup>

In 2001, the Minnesota legislature amended the anti-cruelty law to raise certain types of animal abuse to felony status.<sup>122</sup> In doing so, the state codified new standards of injury that focus on the bodily harm to the animal,<sup>123</sup> rather than the more ambiguous criterion of “unnecessary pain and suffering.”<sup>124</sup>

“Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or

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117. *Id.* at § 5151.

118. 1 Minn. 292 (1856). *See supra* notes 103-05 and accompanying text.

119. Rev. Laws, ch. 102, § 5151 (1905).

120. *See* MINN. STAT. § 343.21 (2000). According to the current statute, “[n]o person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor, whether it belongs to that person or to another person.” § 343.21, subd. 1. “No person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.” *Id.* at subd. 2. “No person shall keep any cow or other animal in any enclosure without providing wholesome exercise and change of air.” *Id.* at subd. 3. “No person shall feed any cow on food which produces impure or unwholesome milk.” *Id.* at subd. 4. “No person shall abandon any animal.” *Id.* at subd. 5. “No person shall allow any maimed, sick, infirm, or disabled animal to lie in any street, road, or other public place for more than three hours after receiving notice of the animals condition.” *Id.* at subd. 6. “No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.” *Id.* at subd. 7.

121. *Id.* at subd. 9 (2000). In 1905, all violations were misdemeanors. REV. LAWS, ch. 102, § 5152 (1905).

122. *See* 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, §§ 5-13 (codified as amended at MINN. STAT. § 343.20-235).

123. *See id.* at §§ 7-8 (codified as amended at MINN. STAT. § 343.20).

124. *See* MINN. STAT. § 343.20, subd. 3 (2000).

impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member to a companion animal or service animal.<sup>125</sup> . . . “Great bodily harm” means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm to a service animal or a pet or companion animal.<sup>126</sup>

Significantly, these bodily harm criteria apply only to service animals<sup>127</sup> and pets or companion animals<sup>128</sup>. Other classes of animals are still subject to the more vague and subjective standard.<sup>129</sup> The law was structured this way to minimize opposition from powerful agricultural, hunting, and animal research interests.<sup>130</sup>

During the 1999-2000 biennium, Legislative Efforts for Animal Protection (L.E.A.P.)<sup>131</sup> authored a bill that would have provided increased protection for all animals.<sup>132</sup> This version of the legislation was supported by a number of organizations and individuals including the Minnesota Humane Society,<sup>133</sup> Animal Ark,<sup>134</sup> the Humane Society of Lyon County, Minnesota,<sup>135</sup> and

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125. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 7 (codified as amended at MINN. STAT. § 343.20, subd. 8).

126. *Id.* at § 8 (codified as amended at MINN. STAT. § 343.20, subd. 9).

127. “Service animal” means an animal trained to assist a person with a disability.” *Id.* at § 6 (codified as amended at MINN. STAT. § 343.20, subd. 7). In addition to “substantial” and “great” bodily harm, it is illegal to “intentionally and without justification cause [any] bodily harm to a service animal while it is providing service or while it is in the custody of the person it serves.” *Id.* at § 9 (codified as amended at MINN. STAT. § 343.20, subd. 8a).

128. “Pet or companion animal” includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion animal, or any stray pet or companion animal.” *Id.* at § 5 (codified as amended at MINN. STAT. § 343.20, subd. 6).

129. *See generally id.* at §§ 5-13 (codified as amended at MINN. STAT. § 343.20-235).

130. Interview with Cristy Gaffney Kruse, President, Legislative Efforts for Animal Protection, in St. Paul, Minn. (Oct. 18, 2001).

131. L.E.A.P. is a local non-profit organization that engages in lobbying with respect to legislation affecting animals. *Id.*

132. *Id.*

133. Letter from Erin K. Jordahl, Executive Director, Minnesota Humane Society, to members of the Senate Agriculture and Rural Development Committee (Feb. 3, 2000) (on file with author).

134. Letter from Marlene Foote, President, Animal Ark (Feb. 3, 2000) (on file with author). Animal Ark is a nonprofit, no kill animal shelter located in Hastings, Minn. with corporate headquarters in St. Paul. *Id.*

Minneapolis City Council Member Barbara Johnson.<sup>136</sup> Due to pressure from various animal use lobbies, however, exemptions were added prior to the bill's introduction.<sup>137</sup> Because the current anti-cruelty law does not include any exemptions, L.E.A.P. and a number of other organizations pulled their support from the bill.<sup>138</sup> The bill subsequently passed the Senate<sup>139</sup> but died in the House.<sup>140</sup>

The 2001 bill attempted to avoid these problems by limiting

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135. Letter from Stacy Kesteloot, Coordinator, Humane Society of Lyon County, Marshall, Minn. (on file with author).

136. Letter from Barbara A. Johnson, Minneapolis City Council Member, Fourth Ward (Feb. 9, 2000) (on file with author).

137. Interview with Cristy Gaffney Kruse, *supra* note 130. As introduced, the bill contained the following language:

Unless gross negligence can be shown, cruelty does not include:(1) commonly accepted veterinary procedures performed by a licensed veterinarian; (2) lawful slaughtering of animals; (3) scientific research activities performed in accordance with federal and state laws and regulations by licensed or registered facilities; (4) commonly accepted humane animal husbandry practices; or (5) the taking of wild animals in accordance with state, federal, or local laws. . . . The taking of wild animals in violation of federal, state, or local laws is not prima facie evidence of cruelty to animals.

S.F. 613, 81st Legislative Session (1999-2000), <http://www.revisor.leg.state.mn.us> (introduced Feb. 8, 1999). This language was also included in the companion bill in the House of Representatives. H.F. 1142, 81st Legislative Session (1999-2000), <http://www.revisor.leg.state.mn.us> (introduced Feb. 25, 1999).

The bill was quickly amended to make the exemptions even broader; many acts were excluded from the definition of cruelty even if grossly negligent.

"Cruelty" does not include (1) commonly accepted veterinary procedures performed by a licensed veterinarian; (2) lawful slaughtering of animals; (3) scientific research activities performed in accordance with federal and state laws and regulations by licensed or registered facilities; (4) commonly accepted animal husbandry practices; (5) the taking of wild animals in accordance with state, federal, or local game and fish laws; or (6) acts of God . . . .

S.F. 613, 2nd Eng., 81st Leg. Sess. (1999-2000), <http://www.revisor.leg.state.mn.us> (posted Mar. 17, 1999).

The final Senate version included the above language with one exception: it exempted "the taking of wild animals by hunting, trapping, and angling," regardless of whether such actions were in accordance with established game or fish laws. S.F. 613, 4th Eng., 81st Leg. Sess. (1999-2000), <http://www.revisor.leg.state.mn.us> (posted Feb. 7, 2000).

138. Interview with Cristy Gaffney Kruse, *supra* note 130. *See also* letter from Erin K. Jordahl, *supra* note 133 ("if this bill were to become law . . . more animals in Minnesota would be excluded from protection under the anti-cruelty laws than would be protected").

139. Minnesota Legislative Information Service, Senate Bill Status, *at* <http://www.revisor.leg.state.mn.us> (last visited Apr. 5, 2002).

140. Minnesota Legislative Information Service, House Bill Status, *at* <http://www.revisor.leg.state.mn.us> (last visited Apr. 5, 2002).

the scope of the increased penalties.<sup>141</sup> A coalition of animal protection groups was built and lobbyists met with representatives from various animal-use interests to work out acceptable language.<sup>142</sup> As a result, opposition from these groups was minimal.<sup>143</sup> Initially, some legislators were concerned with the “proportionality” of the bill,<sup>144</sup> however Senate counsel reported “that there were stricter penalties in place for bodily harm felonies perpetrated against humans.”<sup>145</sup>

The new law provides a graduated series of penalties based on (1) the level of bodily harm, (2) whether the animal is a companion animal or a service animal, (3) whether the act was done to intimidate another person, and (4) whether the accused has a prior cruelty conviction.<sup>146</sup> Punishments for acts other than those discussed below, remain at prior levels.<sup>147</sup>

First-time intentional violations of the “torture”<sup>148</sup> or “cruelty”<sup>149</sup> provisions of the anti-cruelty statute that result in “substantial bodily harm to a pet or companion animal may be [punished by] imprisonment for not more than one year or . . . a fine of not more than \$3,000, or both.”<sup>150</sup> The maximum penalty for intentionally abusing a pet or companion animal is increased to two years in prison, a \$5,000 fine, or both, if (1) the person has had a gross misdemeanor or felony conviction for animal abuse within the previous five years;<sup>151</sup> (2) the act was done “to threaten, intimidate, or terrorize another person;”<sup>152</sup> or (3) the act results in death or great bodily harm to the animal.<sup>153</sup> The potential penalties

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141. Interview with Cristy Gaffney Kruse, *supra* note 130.

142. *Id.* Among those consulted were the Board of Animal Health, the Minnesota Veterinary Medical Association, and lobbyists for the agriculture industry. *Id.*

143. *Id.*

144. *Committee Update, SENATE BRIEFLY* (Minn. Senate Publ'ns Office), Feb. 23, 2001, at 4, available at <http://www.senate.leg.state.mn.us/briefly/index.htm>.

145. *Id.*

146. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 10 (codified as amended at MINN. STAT. § 343.21, subd. 9).

147. *Id.* “[E]xcept as otherwise provided in [the amended statute],” violations remain misdemeanors or gross misdemeanors. *Id.*

148. MINN. STAT. § 343.21, subd. 1 (2000). See *supra* note 120.

149. MINN. STAT. § 343.21, subd. 7 (2000). See *supra* note 120.

150. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 10 (codified as amended at MINN. STAT. § 343.21, subd. 9(b)).

151. *Id.* (codified as amended at MINN. STAT. § 343.21, subd. 9(c)).

152. *Id.* (codified as amended at MINN. STAT. § 343.21, subd. 9(f)).

153. *Id.* (codified as amended at MINN. STAT. § 343.21, subd. 9(d)).

are still greater if both of the last two conditions apply.<sup>154</sup>

[If] the violation results in death or great bodily harm to a pet or companion animal, *and* the act is done to threaten, intimidate, or terrorize another person, [the offender] may be sentenced to imprisonment for not more than four years or to payment of a fine of not more than \$10,000, or both.<sup>155</sup>

The penalties for harming a service animal are greater than those for the same level of abuse against a pet or companion animal.<sup>156</sup> Intentionally causing substantial bodily harm to a service animal, without justification, is punishable by up to two years in prison, a fine of \$5,000, or both.<sup>157</sup> If the act causes great bodily harm or death, the maximum penalty is 4 years in prison, a fine of \$10,000, or both.<sup>158</sup>

In addition to facing fines or imprisonment, a person convicted of violating the anti-cruelty law, must turn over to the authorities any pet or companion animal in his or her custody<sup>159</sup> or control,<sup>160</sup> “unless the court determines that the person is able and fit to provide adequately for an animal.”<sup>161</sup> If there is evidence to the contrary, the burden of proof is on the offender to “demonstrate by clear and convincing evidence” the ability to adequately provide for the animal’s needs.<sup>162</sup> The court may also limit the offender’s further possession of pets or companion animals.<sup>163</sup>

Additionally, the court has recourse to other sanctions it considers appropriate.<sup>164</sup> These potential conditions include, but are not limited to:

1. imposing a probation period during which the person may not have ownership, custody, or control of a pet or

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154. *Id.* (codified as amended at MINN. STAT. § 343.21, subd. 9(h)).

155. *Id.* (emphasis added).

156. *See supra* notes 127-28 (defining “service animal” and “pet or companion animal”).

157. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 10 (codified as amended at MINN. STAT. § 343.21, subd. 9(e)).

158. *Id.* (codified as amended at MINN. STAT. § 343.21, subd. 9(g)).

159. MINN. STAT. § 343.21, subd. 10.

160. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 11 (codified as amended at MINN. STAT. § 343.21, subd. 10).

161. MINN. STAT. § 343.21, subd. 10 (2000).

162. *Id.*

163. *Id.*

164. *Id.*

companion animal;<sup>165</sup>

2. requiring periodic visits of the person by an animal control officer or agent appointed pursuant to section 343.01, subdivision 1;<sup>166</sup>

3. requiring performance by the person of community service . . . ;<sup>167</sup> and

4. requiring the person to receive psychological, behavioral, or other counseling.<sup>168</sup>

#### IV. ANALYSIS OF THE STATUTE

##### A. *Benefits of the New Provisions*

Although far from perfect, the amended statute represents a substantial improvement from the previous law. The new felony provisions are important in a number of ways.

First, they may encourage prosecutors to bring charges.<sup>169</sup> Given the competition for scarce resources within prosecutors' offices, many may be loathe to spend valuable time developing a case where the likely penalty is a small fine or community service.<sup>170</sup> The possibility of a prison term and substantial fine provide a stronger incentive to pursue cruelty cases.<sup>171</sup> Additionally, in plea

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165. *Id.* at subd. 10(1).

166. *Id.* at subd. 10(2). Section 343.01 of the Minnesota Statutes provides for the creation of "[a] state federation of county and district societies for the prevention of cruelty to animals." MINN. STAT. § 343.01, subd. 1 (2000). Minnesota Federated Humane Societies is the organization created pursuant to this statute. The federation and all county and district societies may appoint agents for the purpose of investigating or otherwise assisting lawfully empowered officials in the prosecution of persons charged with cruelty to animals. Appointed agents must have training and experience in activities relating to prevention of cruelty to animals or enforcement of laws relating to cruelty to animals.

*Id.*

167. MINN. STAT. § 343.21, subd. 10(3) (2001). The statute formerly suggested that this community service be performed "in a humane facility," but this language has been removed. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 11 (codified as amended at MINN. STAT. § 343.21, subd. 10 (3)).

168. 2001 Minn. Laws 1st Spec. Sess., ch. 8, art. 8, § 11 (codified as amended at MINN. STAT. § 343.21, subd. 10(4)). Previously the statute suggested simply "behavioral" counseling. MINN. STAT. § 343.21, subd. 10(4) (2000)).

169. Mitchell Fox, *Treating Serious Animal Abuse as a Serious Crime*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 306, 311 (Frank R. Ascione & Phil Arkow, eds., 1999)

170. *Id.*

171. *Id.*

negotiations, “tougher anti-cruelty laws provide prosecutors with a powerful bargaining tool . . . which can be used to mandate counseling, treatment, and fines.”<sup>172</sup>

Second, the increased penalties allow for better tracking of abusers.<sup>173</sup> Misdemeanors are no longer reported by the FBI;<sup>174</sup> without felony provisions, offenders who move out of state leave no criminal trail.<sup>175</sup> A felony conviction provides a history upon which future prosecutors may draw when making sentencing recommendations.<sup>176</sup>

Third, and perhaps most importantly, the enhanced penalties send a message to the public that animal cruelty is a serious offense. Many members of the public downplay the significance of abuse;<sup>177</sup> a stronger response by the legal system may help change this view.

Finally, the newly amended law may help to protect humans as well as animals.<sup>178</sup> A growing number of studies suggest that there may be a “link” between cruelty to animals and interpersonal violence.<sup>179</sup> Ideally, the presence or absence of this “link” should not affect the achievement of the goal of protecting animals, but in the real world of politics it plays a significant role.<sup>180</sup> Indeed it was important in the debate over the bill in the Minnesota legislature;<sup>181</sup>

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172. Sauder, *supra* note 26, at 17.

173. *Id.* at 16.

174. *Id.*

175. *Id.*

176. *Id.*

177. See Arluke & Luke, *supra* note 5, at 195-96. Prosecutors and judges are often among these individuals. See *infra* notes 255-267 and accompanying text.

178. See generally Sauder, *supra* note 26 (suggesting that violence against humans may be reduced through the enforcement of felony anti-cruelty statutes).

179. See, e.g., Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty toward Animals among Criminals and Noncriminals*, in CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE 194 (Randall Lockwood & Frank R. Ascione eds., 1998) (reporting that criminals were more likely than noncriminals to have abused animals as children); Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behavior*, 14 J. OF INTERPERSONAL VIOLENCE 963 (suggesting that animal cruelty is related to other antisocial behaviors); Frank R. Ascione et al., *The Abuse of Animals and Domestic Violence*, 5 ANIMALS AND SOC'Y 205 (discussing the relationship between animal abuse and domestic violence).

180. See Patrick Dougherty, *The Legislator's Perspective on Preventing Family Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 288, 295 (Frank R. Ascione & Phil Arkow eds., 1999) (advising that “[t]he more you can establish the link between abuse and violence of any kind and the destruction of our families . . . the more success you will have in changing negative attitudes . . . and positively influencing legislators' votes . . .”).

181. Interview with Cristy Gaffney Kruse, *supra* note 130. See also *Committee*

without a focus on the “link,” passage would have been impossible.<sup>182</sup>

Although methodological concerns exist regarding some of the research in this area,<sup>183</sup> the findings suggest possible connections between various forms of violence.<sup>184</sup> As a result, law enforcement has begun to take note; the FBI considers animal abuse to be a warning sign of the potential for other violent crimes.<sup>185</sup>

In light of this research, increased penalties for abusing an animal to intimidate another person may be especially important. A number of studies point to the prevalence of animal abuse in domestic violence situations.<sup>186</sup> Actual or threatened abuse of animals serves to intimidate and control human victims in a number of ways.<sup>187</sup> “Companion animals may be hostages, tools of

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*Update, supra* note 144, at 4.

182. Interview with Cristy Gaffney Kruse, *supra* note 130.

183. Two methodological issues are especially important. First, much of the research has relied on inmates in prisons and mental institutions. Arluke et al., *supra* note 179, at 966. This leads to concerns that at least part of the relationship may result from “selective disclosure for the sake of self-presentation . . .” *Id.* Second, violence is typically the sole dependent variable in the research. *Id.* at 967. This practice overlooks the possibility that the link between animal abuse and other behaviors may be more prevalent than typically thought. *Id.* “[I]f the dependent variable were antisocial behavior, including but not limited to interpersonal aggression, and if samples from the general population were studied, then society may have even more reason to pay attention to animal abuse, if connections are found here.” *Id.*

184. *Id.* The common perception is that of a “graduation hypothesis” wherein offenders begin by abusing animals and graduate to abusing humans. *Id.* at 963-64. Recent research suggests that a “deviance generalization hypothesis” may be more accurate. *Id.* at 970. “Rather than being a predictor or a distinct step in the development of increasingly criminal or violent behavior, animal abuse . . . is one of many antisocial behaviors committed by individuals . . .” *Id.* This view has also been referred to as the “constellation” hypothesis; abusers are not picky, they “lash out at whatever target is available and vulnerable.” Kruse: Expanding, *supra* note 3, at 22.

185. Randall Lockwood and Ann Church, *Deadly Serious: An FBI Perspective on Animal Cruelty*, in *CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE* 241 (Randall Lockwood & Frank R. Ascione eds., 1998).

186. See, e.g., Frank Ascione, *Battered Women’s Reports of Their Partners’ and Their Children’s Cruelty to Animals*, 1 *J. OF EMOTIONAL ABUSE* 119 (reporting threatened or actual abuse of pets by partners of 71 percent of battered women who owned pets); Ascione et al., *supra* note 179 (discussing the high incidence of pet abuse by partners of battered women); Clifton P. Flynn, *Woman’s Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women*, 6 *VIOLENCE AGAINST WOMEN* 162 (finding that almost half of battered women with pets reported that their partners had harmed or threatened to harm those pets).

187. See Clifton P. Flynn, *Battered Women and Their Animal Companions: Symbolic*

humiliation, or threatening examples of potential human pain that could be inflicted.”<sup>188</sup>

Companion animals may provide comfort and emotional support to women who are victims of domestic violence.<sup>189</sup> Similarly, abused children often turn to pets for love and solace.<sup>190</sup> Unfortunately, the bonds that exist between humans and other animals make those animals a useful instrument of domination in the hands of an abuser.<sup>191</sup> Women may delay leaving their batterers out of concern for the well-being of their companion animals.<sup>192</sup> Because of this, Sociology Professor Clifton Flynn has suggested that domestic abuse shelters should work to provide housing for pets, perhaps in conjunction with local animal shelters, to encourage women to seek help.<sup>193</sup>

The potential for using animals as a means of control remains after the victim has left her partner.<sup>194</sup> When companion animals are left behind, abusers may harm or threaten the animals “to intimidate victims into dropping charges and/or returning home.”<sup>195</sup> As an example, consider the following account from a newly-minted social worker:

My first day as a newly hired, freshly graduated, starry-eyed counselor at the local battered women’s shelter almost made me run home crying. Not because of the black eyes and bruises that shadowed the women’s faces. . . . I was prepared for that (as much as one can be) . . . . What I wasn’t prepared for were the pictures my first client brought to show me, apologetically, to explain why she had to return home. The pictures were of her “loving” husband cutting her beloved dog’s ears off with a pair of garden shears. He had sent the ears along, too, but her

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*Interaction Between Human and Nonhuman Animals*, 8 SOC’Y & ANIMALS 99, 107-13 (2000) (discussing various types of pet abuse and its effect on battered women).

188. Carol D. Raupp, *Treasuring, Trashing, or Terrorizing: Adult Outcomes of Childhood Socialization about Companion Animals*, 7 SOC’Y & ANIMALS 141, 143 (1999).

189. Flynn, *supra* note 187, at 113. The forced social isolation of many victims of abuse may make the emotional support provided by pets even more important. Flynn, *supra* note 186, at 174.

190. *See generally*, Michael Robin et al., *Abused Children and Their Pets*, in *THE PET CONNECTION: ITS INFLUENCE ON OUR HEALTH AND QUALITY OF LIFE* 111 (Robert K. Anderson et al. eds., 1984).

191. *See generally* Flynn, *supra* note 187; Raupp, *supra* note 188.

192. Flynn, *supra* note 187, at 122.

193. *Id.* at 123.

194. Flynn, *supra* note 186, at 172.

195. *Id.*

mother thankfully neglected to forward them.<sup>196</sup>

The enhanced penalties recognize the double victimization involved in such situations. They may protect human victims by providing an additional felony charge that may be brought against the abuser. Likewise, they can provide greater protection for the animal by encouraging reporting of cruelty.

### *B. A Blueprint for the Future*

Minnesota has taken some long overdue steps in modernizing its anti-cruelty statute. There are still, however, greater strides to be taken. Political reality prevents the enactment of truly sweeping changes,<sup>197</sup> but there are a number of options that lawmakers should adopt.

#### *1. Felony Provisions Should Apply to Abuse of All Animals.*

Companion animals and small wild animals are the most likely targets of cruelty, due to their availability to abusers.<sup>198</sup> Wild animals, however, run a greater risk of being the victims of the most severe and sadistic forms of abuse.<sup>199</sup> Weaker social prohibitions, combined with greater empathic distance, seem to “allow the expression of sadistic impulses among violence prone individuals.”<sup>200</sup> Expansion of felony provisions would send the message that all cruelty is to be condemned and allow more appropriate punishment of transgressors. Such action would certainly engender much opposition from various special interests.<sup>201</sup> Such hostility, however, would be unfounded. Minnesota’s anti-cruelty law currently contains no exemptions (e.g.,

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196. Jane Ann Quinlisk, *Animal Abuse and Family Violence*, in CHILD ABUSE, DOMESTIC VIOLENCE & ANIMAL ABUSE 168, 168 (Frank R. Ascione & Phil Arkow, eds., 1999).

197. See *infra* notes 239-254 and accompanying text.

198. See Alan R. Felthous & Stephen R. Kellert, *Psychosocial Aspects of Selecting Animal Species for Physical Abuse*, 32 J. OF FORENSIC SCIENCES 1713, 1714 (1987) (“A species that is well populated, lives in close proximity to people, and is easily subdued and captured will be more vulnerable to abuse than a species that is not so available to human hands and weapons”). It is quite possible that abuse of wild animals is less likely to be reported, thereby underestimating its relative prevalence.

199. *Id.* at 1716-18. Among the types of abuse were dismemberment, explosion, and indiscriminate shooting. *Id.* at 1717.

200. *Id.*

201. Various animal (ab)use industries brought substantial pressure to this effect during the previous biennium. See *supra* note 137.

hunting, research, or agricultural)<sup>202</sup> Enhancing the penalties for cruelty to all animals would not change this, nor would it abrogate currently legal activities.<sup>203</sup>

### 2. *Penalties for Abusing Companion Animals Should be Increased*

Providing greater penalties for the abuse of service animals compared to companion animals focuses primarily on the value of the animal as human property rather than the harm to the animal. A pet whose legs are broken with a baseball bat suffers no less harm than a seeing-eye dog who bears the same abuse. Both acts should be condemned and punished to the same extent. The loss to the person, in either case, could be compensated through civil damages.<sup>204</sup>

### 3. *Fines Should Support the Welfare of Animals*

Minnesota should follow the lead of Illinois and set up an Animal Abuse Fund.<sup>205</sup> Under newly enacted legislation, 50% of the fines collected for felony and class C misdemeanor violations of the Illinois anti-cruelty law, and 20% of fines collected for other misdemeanor violations of the law, are deposited into this fund.<sup>206</sup> Such a fund in Minnesota would help provide assets for enhanced enforcement. Additionally, veterinary and related bills arising from the abuse of animals could be paid from this endowment.<sup>207</sup>

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202. See MINN. STAT. § 343.21 (2000).

203. Current law reflects the paradoxical feelings that society harbors toward animals. See *supra* notes 2-8 and accompanying text. For example, a person who shoots a stray dog with an arrow and allows it to bleed to death could be charged with a felony, but a person who commits the same violent and abusive act upon a deer (with proper licensing and during the proper time of year) suffers no legal consequences. "The concept of a humane hunting law is inherently self-contradictory . . ." Friend, *supra* note 27, at 211.

204. See *infra* notes 210-16 and accompanying text.

205. See 2001 Ill. Laws 454, § 16 (codified as amended at 510 ILL. COMP. STAT. 70/16.4 (2001)) (creating "a special fund in the state treasury . . . to investigate animal cruelty and neglect).

206. 2001 Ill. Laws 454, § 10 (codified as amended at 705 ILL. COMP. STAT. 105/27.5(B) (2001)).

207. Douglas E. Beloof, *Crime Victims' Rights: Critical Concepts for Animal Rights*, 7 ANIMAL L. 19, 32-33 (2001) ("[I]t is unfair that victims . . . should bear the financial burden of the perpetrator's criminal actions. . . . [A]nimals who are victims of criminal acts should have access to these funds via their human caretakers, agencies taking over animal care, or treating veterinarians."). *Id.* at 32.

4. *Assistance in Sheltering Animals of Victims of Domestic Abuse.*

Concerns about what will happen to their pets leads some battered women to delay leaving, or causes them to return to, their abusers.<sup>208</sup> If domestic abuse shelters provided facilities, even temporarily, for companion animals, victims might find it easier to leave violent situations. Such accommodations could be made in conjunction with local humane societies.<sup>209</sup> Funds for such facilities should be provided by the state in an effort to reduce violence of all types.

5. *Enhancement of Civil Damages.*

Illinois provides statutorily for the award of attorney's fees and damages for emotional distress, as well as punitive damages of "not less than \$500 but not more than \$25,000 for *each* act of abuse or neglect to which the animal was subjected."<sup>210</sup> Historically, the Minnesota court has not awarded punitive damages for cases involving animal cruelty without personal injury.<sup>211</sup> In *Soucek v. Banham*<sup>212</sup> the court reasoned that because animals are property, punitive damages cannot be recovered for their loss, and compensatory damages are limited to fair market value.<sup>213</sup> This ruling was indirectly overruled by *Jensen v. Walsh*,<sup>214</sup> which allowed for punitive damages in cases where there is "deliberate disregard for the rights *or* safety of others".<sup>215</sup> This opens the door for the award of punitive damages in at least some animal cruelty cases. A statutory provision for such damages would further the social interests of punishment and deterrence.<sup>216</sup> Allowing an award for emotional distress would likewise recognize the substantial bonds

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208. See *supra* notes 191-196.

209. As an example, an animal shelter in Provo, Utah houses animals of battered women for up to two weeks until a permanent home can be found. Sauder, *supra* note 26, at 17.

210. 2001 Ill. Laws 454, § 16 (codified as amended at 510 ILL. COMP. STAT. 70/16 (2001)).

211. *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. App. 1994). *But, cf.*, *Wilson v. City of Eagan*, 297 N.W.2d 146 (Minn. 1980) (allowing punitive damages where animal warden killed cat in violation of municipal ordinance).

212. 524 N.W.2d 478.

213. *Id.* at 481.

214. 623 N.W.2d 247 (Minn. 2001), *rev'g* 609 N.W.2d 251 (Minn. App. 2000).

215. 623 N.W.2d at 251 (emphasis in original) (stating that it was not the intention of the court that punitive damages claims be barred in all actions where the only damage is to property).

216. See *id.* (discussing the purposes of punitive damages).

that can exist between humans and other animals.<sup>217</sup>

Minnesota's updated anti-cruelty law provides a tool in the fight against animal abuse. Such tools, however, are only effective when officials make use of them. Getting them to do so can be a formidable task.<sup>218</sup>

## V. THE REALITY AND THE CHALLENGE

### A. *Ignoring Animal Cruelty*

[N]eglect, torture and destruction of helpless and usually inoffensive animals is so widespread and chronic in both history and contemporary society that one is tempted to conclude that cruelty to animals is a basic human instinct, only lightly obscured by a veneer of hypocritical platitudes and an occasional "Be Kind to Animals Week."<sup>219</sup>

- Charles E. Friend

Assessing the extent of animal cruelty in the United States is very difficult.<sup>220</sup> The Massachusetts Society for the Prevention of Cruelty to Animals investigated about 80,000 reports of animal abuse and neglect between 1975 and 1996,<sup>221</sup> but this is likely just the tip of the iceberg.<sup>222</sup> Indeed, Sociology Professor Clifton Bryant has suggested that the violation of social norms regarding the treatment of animals "may well be among the most ubiquitous of any social deviance,"<sup>223</sup> however little comprehensive data on the subject exists.<sup>224</sup> "Because animal cruelty has traditionally been seen

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217. See generally BECK & KATCHER, *supra* note 4, at 40-62 (discussing pets as members of the family).

218. See *infra* notes 255-267 and accompanying text.

219. Friend, *supra* note 27, at 201.

220. ARLUKE & SANDERS, *supra* note 3.

221. Arluke & Luke, *supra* note 5, at 197.

222. See generally *id.*

223. Bryant, *supra* note 3.

224. Arluke & Lockwood, *Guest Editors' Introduction: Understanding Cruelty to Animals*, 5 SOC'Y & ANIMALS 183 (1997). See also Arluke & Luke, *supra* note 5, at 196. This lack of data regarding "animal issues" is not limited to criminology; with a few exceptions, sociologists generally have ignored the role of animals in human society. See Bryant, *supra* note 3; Kruse: Relevance, *supra* note 3; Kruse: Expanding, *supra* note 3. This view is changing; in 2000 the American Sociological Association approve an Animals and Society "section-in-formation." David Nibert & Anna Williams, *Section-In-Formation Status Approved for Animals & Society*, at <http://www.asanet.org/sectionanimals/introfromdav.html> (last updated Feb. 1, 2001).

as a minor crime, basic quantitative information as to the nature and extent of animal cruelty has been limited.”<sup>225</sup>

There are a number of reasons for this tendency to see the abuse of animals as an issue of little concern. Perhaps the most basic factor is the previously discussed property status of animals.<sup>226</sup> A closely related element is the legacy of Cartesian dualism that separates humans from the rest of nature.<sup>227</sup>

Defining . . . nature relationally in terms of its lack of consciousness and agency opened the door to construing all things other than the human mind as homogeneously passive, inert matter. . . . Cartesian epistemology . . . laid the groundwork for . . . hyperseparation of knower from known and subject from object. . . . [His] scientific methodology . . . made full use of these moves to cut nature off from us and strip it bare of its agency.<sup>228</sup>

As Cartesian automata, animals are presumed to feel no pain,<sup>229</sup> or in a more “modern” variant, not to experience pain in the same way as humans.<sup>230</sup> The world is thus dichotomized into human and “other”; animals, as part of the latter category, are seen as unworthy of serious consideration.<sup>231</sup>

Likewise, religious traditions have tended to minimize the problematization of animal abuse.<sup>232</sup> Especially in Western religious thought, the non-human world is simply something to be subjugated for human ends.<sup>233</sup> “[N]either Christianity . . . nor

225. Arluke & Lockwood, *supra* note 224, at 184.

226. See Friend, *supra* note 27. “The primary reason for this legal vacuum was the common law view that all animals were property belonging absolutely to the human owner and therefore subject to his slightest whim.” *Id.* at 201.

227. ARLUKE & SANDERS, *supra* note 3; Kruse: Relevance, *supra* note 3; Kruse: Expanding, *supra* note 3.

228. Ronnie Zoe Hawkins, *Ecofeminism and Nonhumans: Continuity, Difference, Dualism, and Domination*, 13 *HYPATIA* 158, 162 (1998).

229. FRANCIONE, *supra* note 7, at 38. Descartes and his followers suggested that the screams of animals were best compared to the noises that might be emitted by a malfunctioning machine. *Id.* See also Susan L. Goodkin, *The Evolution of Animal Rights*, 18 *COLUM. HUM. RTS. L. REV.* 259, 261 (1987) (discussing Descartes’ ideas regarding animals and pain).

230. Plous, *supra* note 3, at 26.

231. See Barbara Noske, *The Question of Anthropocentrism in Anthropology*, 13 *FOCAL* 66 (discussing the lack of attention paid by the social sciences to the role of animals in human society).

232. Beirne, *supra* note 85, at 120.

233. STEPHEN R KELLERT, *THE VALUE OF LIFE: BIOLOGICAL DIVERSITY AND HUMAN SOCIETY* 132-42 (1996) (discussing the differences between Eastern and Western views of nature). This does not mean, of course, that Eastern cultures have been

Judaism encourages a strong censure of animal abuse because at both their respective doctrinal centers is a rigid hierarchical Chain of Being, in which God sits atop humans and humans bestride animals.<sup>234</sup> St. Thomas Aquinas, for example, taught that the ability to reason set humans apart from other animals.<sup>235</sup> This perceived uniqueness was then used to justify human use of animals.<sup>236</sup> Perhaps because of this tradition, a number of individuals view the entire concept of cruelty to animals as little more than nonsense, and certainly nothing about which society should be concerned.<sup>237</sup> Even the deliberate torture and killing of animals is simply shrugged off.<sup>238</sup>

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uniformly kind to animals. *Id.*

234. Beirne, *supra* note 85, at 120.

235. Goodkin, *supra* note 229, at 270-71. This, of course, begs the question of how to classify those genetic "humans" who, due to accident, disease, disability, do not have the ability to reason. A similar question could be asked of Descartes. This raises the contentious issue of "personhood." See Kruse: Expanding, *supra* note 3, at 3-4 (discussing research on symbolic interaction between humans and other animals). Some scholars suggest that it is not "rationality" or "mindedness" that is a prerequisite for intersubjective relations and, hence, the presumption of personhood; rather it is the *attribution* of mindedness and intent on the part of coactors that is important. See, e.g., ARLUKE & SANDERS, *supra* note 3, at 42-52 (discussing the attribution of mindedness to animals by their human companions); R. Bogdan & S. Taylor, *Relationships with Severely Disabled People: The Social Construction of Personhood*, 36 SOC. PROBS. 135 (1989) (exploring how human identities are "assigned" to severely disabled individuals); Clinton Sanders, *Understanding Dogs: Caretakers' Attributions of Mindedness in Canine-Human Relationships*, 22 J. OF CONTEMP. ETHNOGRAPHY 205-06 (1993) (discussing the attribution of mindedness to dogs).

Understanding animals does not require us to conceive of "mind" as an "object" . . . "possessed" by nonhuman animals or people. . . . [M]ind is a social accomplishment [citations omitted]. The most appropriate route to understanding social interaction, be it human-to-human or nonhuman-to-human, is to focus on collective action as practical and premised on interactants' . . . estimates of how others understand what is going on and how they would like things to proceed.

ARLUKE & SANDERS, *supra* note 3, at 49.

236. Goodkin, *supra* note 229, at 270-71.

237. Friend, *supra* note 27, at 219-20.

238. See, e.g., Rob Zaleski, *Brutal Cat Killings Divide Town*, CAPITAL TIMES (Madison, WI), Dec. 17, 1997, at 1E. In March of 1997, two teenagers broke into the Noah's Ark animal shelter in Fairfield, Iowa and bludgeoned 16 cats to death with baseball bats. Prosecution of the case caused substantial disagreement among Fairfield residents; while some felt that the boys should be punished severely, others believed that they should not be punished at all, characterizing the incident as boys simply being boys. *Id.*; see also Joyce Tischler, *Zero Tolerance for Cruelty: An Approach to Enhancing Enforcement of State Anti-Cruelty Laws*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE 297, 299-300 (Frank R. Ascione & Phil Arkow eds., 1999) (discussing the "boys will be boys" mentality).

Economics also play a significant role; the abuse of animals is an integral part of a number of highly profitable industries.<sup>239</sup> Organizations representing these industries form immensely powerful lobbies.<sup>240</sup> In the competition with animal protection organizations, such groups have a distinct advantage.<sup>241</sup>

[Major] organizations concerned to defend the use of animals . . . either exist for reasons other than lobbying or are financed by those who so exist. As a consequence, they do not face the same kind of problems in mobilizing members and raising finance as do those animal protection groups that have been created specifically to promote the well-being of animals.<sup>242</sup>

As a result, politicians are often reluctant “to support any new law which might possibly offend any voting” constituent engaged in these industries.<sup>243</sup>

One unfortunate result is the exemption of “customary” or “accepted” agricultural practices from some state anti-cruelty statutes.<sup>244</sup> Those who are subject to the law are thus allowed to exempt from it acts that would otherwise be illegal.<sup>245</sup> This allows for the continued perpetration of inhumane acts, such as castration, branding, and debeaking,<sup>246</sup> on many of the eight<sup>247</sup> to nine billion<sup>248</sup> farm animals killed for food every year in the United States.<sup>249</sup> Some agricultural states have exempted livestock from their statutes.<sup>250</sup> In an ironic reversal, the same “commercially valuable” animals that were the beneficiaries of the first anti-cruelty laws are now often excluded from them.

“Necessity” language raises similar concerns; “[u]nder certain

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239. Friend, *supra* note 27, at 202.

240. See GARNER, *supra* note 14, at 39-67 (discussing the economic and political influence of animal-use industries in Britain and the U.S.).

241. *Id.* at 64.

242. *Id.*

243. Friend, *supra* note 27, at 202.

244. Wolfson, *supra* note 5, at 10, 23-26. Minnesota is not currently among the states with such an exemption. See MINN. STAT. §§ 343.20-33 (2000).

245. Wolfson, *supra* note 5, at 10.

246. Debeaking is the practice of using hot cauterizing blades to remove the beaks of young chickens. *Id.* at 25.

247. *Id.* at 23 (citing U.S. Dept. of Agric. statistics).

248. Beirne, *supra* note 85, at 128 (citing U.S. Dept. of Agric. statistics).

249. Wolfson, *supra* note 5, at 10, 23-26. Some courts, at least in Britain, are casting a suspicious eye toward such concepts. See *id.* at 37-43 (discussing the European concerns over the intensive farming of animals).

250. Amy Kenna, *Animal Abuse Laws that Bite*, GOVERNING, Nov. 2000, at 52, 54.

circumstances, cruelty, and even torture, are not “cruelty” in the legal sense because the activity is “necessary” or “useful.”<sup>251</sup> Everyone wants to avoid “unnecessary” suffering;<sup>252</sup> however, given the structure of our legal system as it pertains to animals, almost any type of animal exploitation can be framed as “necessary.”<sup>253</sup> It is little wonder that Criminology Professor Piers Beirne suggests that “criminal law is a major structural and historical mechanism in the consolidation and institutionalization of animal abuse.”<sup>254</sup>

### B. A Lack of Enforcement

Even when laws are on the books, they may rarely be enforced.<sup>255</sup> Police and county sheriffs’ offices typically give low priority to animal cruelty cases<sup>256</sup>, and seldom initiate prosecutions.<sup>257</sup> Much of the enforcement of anti-cruelty laws thus falls to the local S.P.C.A. or a similar organization.<sup>258</sup> Because most such groups are privately funded through donations, money is a continual problem.<sup>259</sup> Even when investigations are begun, prosecutors often shy away from trying cruelty cases.<sup>260</sup> “There is a tendency to avoid prosecution entirely, or, at best, to assign to the case the most junior assistant in the prosecutor’s office.”<sup>261</sup> In many cases, prosecutors may view animal cruelty cases as a waste of resources.<sup>262</sup>

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251. Friend, *supra* note 27, at 208.

252. FRANCIONE, *supra* note 7, at 32.

253. *Id.* at 26. Anti-cruelty laws “excuse any amount of agony if the sufferer is good to eat.” Friend, *supra* note 27, at 209.

254. Beirne, *supra* note 85, at 129.

255. Friend, *supra* note 27, at 215-20.

256. *Id.* at 216-17. Given the lack of resources many departments have to deal with criminal investigations, this low status likely arises out of necessity. *Id.*

257. *Id.* at 217. Officers are not typically trained to investigate cruelty cases. Tischler, *supra* note 238, at 297.

258. Friend, *supra* note 27, at 217.

259. *Id.* A few states provide some public funding, often from animal licensing fees or fines levied for violating laws relating to animals, but the majority of states do not. *Id.*

260. *Id.* at 218-20.

261. *Id.* at 220.

262. Tischler, *supra* note 238, at 297. There are attempts of change such views. For example, LEAP has published a guide for Minnesota prosecutors and judges entitled ANIMAL CRUELTY IN MINNESOTA: PUTTING AN END TO THE VIOLENCE. This publication is available through the LEAP website (<http://www.leap-mn.org>). As noted earlier, felony provisions may alter this calculus. See *supra* notes 169-172 and accompanying text. There are, of course, some prosecutors who strongly support the prosecution of cruelty cases. See, e.g., Boyd A. Beccue, *Criminal Prosecution of*

In cases where charges are brought, the court may be resistant. This may result in minimal punishment for the guilty defendant<sup>263</sup> or outright hostility to the prosecution.<sup>264</sup> A lack of concern by the bench for animal cruelty may exist in many places, but seems especially prone to occur in rural areas.<sup>265</sup> “Where hunting, trapping, and home slaughtering are so common as to be a way of life . . .” it is not surprising that the abuse of animals often elicits little judicial sympathy.<sup>266</sup> One can only hope that such views will someday go the way of the outdated views the legal system once had of women and people of color.<sup>267</sup>

## VI. CONCLUSION

Thanks to the efforts of many groups and individuals,<sup>268</sup> the animals of Minnesota have somewhat more protection against abuse than they previously did. It is unfortunate that the enhanced penalties apply only to crimes against service animals and pets or companion animals, but political realities make a more inclusive bill all but impossible at this time.<sup>269</sup> The success of the new law depends upon the willingness of prosecutors to bring felony charges and the willingness of the court to impose appropriate penalties.

Although strides have certainly been made in the protection of non-human animals, much more remains to be done. The words of

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*Animal Neglect: Important Practice Notes*, ANIMAL CRUELTY IN MINNESOTA: PUTTING AN END TO THE VIOLENCE § 2 (Pamela Finamore et al. eds., 2000) (“Perpetrators of animal abuse can and should be charged for each count of cruelty they commit”).

263. See Tischler, *supra* note 238, at 298.

264. *Id.* “One prosecutor told [the Animal Legal Defense Fund] of a judge who was enraged that she dared to take up his court time with such trivia as a cruelty case.” *Id.*

265. Friend, *supra* note 27, at 219-20.

266. *Id.* “Society could not long tolerate a system of laws which might drag to the criminal bar . . . every man who might drown a litter of kittens.” State v. Buford, 331 P.2d 1110, 1115 (N.M. 1958), (citing Grise v. State, 37 Ark. 456 (1881)), *quoted in* Friend, *supra* note 27, at 220. Of course, judicial views, like those of prosecutors, are not monolithic. See, e.g., *supra* note 23 and accompanying text.

267. See, e.g., Scott v. Sanford, 60 U.S. 393, 451 (1856) (“the right of property in a slave is distinctly and expressly affirmed in the Constitution”). This reference is not intended to equivocate the practice of human slavery with society’s current use of animals; it is meant merely to provide an illustration of how views change over time. See generally SPEIGEL, *supra* note 12.

268. Special thanks should be given to Senator Don Betzold and Representative James Clark, the sponsors of the bill.

269. See *supra* notes 131-141 and accompanying text.

Professor Charles Friend ring no less true today than they did a quarter century ago.

In an age which prides itself on technology, enlightenment, education, good will, and justice, we still treat the majority of the earth's living creatures in a manner which is, in most respects, worthy of a medieval torturers' guild. That we continue to tolerate inhumanities of the type discussed in this article is an indictment of us all, and one which should weigh heavily on each and every human conscience.<sup>270</sup>

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270. Friend, *supra* note 27, at 223.