

REVISTA BRASILEIRA DE POLÍTICAS PÚBLICAS
BRAZILIAN JOURNAL OF PUBLIC POLICY

In Defense of Pro-Carceral

Animal Law: Understanding the Dichotomy Between Empirical Criminological Perturbation and Social Movement Values and Development

Em defesa do Direito do Animal pró-cárcere: entendendo a dicotomia entre a perturbação criminológica empírica e os valores e o desenvolvimento do movimento social

Mary Maerz

Sumário

A NATUREZA ECONÔMICA DO DIREITO E DOS TRIBUNAIS	13
Ivo Teixeira Gico Junior	
DAS CONDIÇÕES (OU CONTRAPARTIDAS) QUE O PODER CONCEDENTE PODE EXIGIR PARA A REALIZAÇÃO DA CHAMADA “PRORROGAÇÃO POR INTERESSE PÚBLICO” DAS CONCESSÕES DE SERVIÇO PÚBLICO	41
Felipe Montenegro Viviani Guimarães	
PACTO FEDERATIVO E A INTERVENÇÃO FEDERAL NA SEGURANÇA PÚBLICA DO RIO DE JANEIRO: O INCREMENTO DA VIOLÊNCIA E DA SELETIVIDADE PUNITIVAS	62
Maiquel Ângelo Dezordi Wermuth e Emanuele Dallabrida Mori	
POR QUE EXISTEM VIESES COGNITIVOS NA TOMADA DE DECISÃO JUDICIAL? A CONTRIBUIÇÃO DA PSICOLOGIA E DAS NEUROCIÊNCIAS PARA O DEBATE JURÍDICO	84
Ricardo Lins Horta	
A SEGURANÇA JURÍDICA COMO PARÂMETRO LEGAL DAS DECISÕES ESTATAIS	124
Cintia Barudi Lopes e Simone Tomaz	
SOCIEDAD POR ACCIONES SIMPLIFICADA (SAS). EXPERIENCIAS INTERNACIONALES Y, DESAFÍOS EN MÉXICO	140
Martha Luisa Puente Esparza, Miguel Angel Vega Campos e Guadalupe del Carmen Briano Turrent	
LA ECONOMÍA COLABORATIVA EN COLOMBIA: UNA NUEVA VÍA DE INFORMALIDAD EN LAS RELACIONES LABORALES	155
Giraldo Yanitza	
IN DEFENSE OF PRO-CARCERAL ANIMAL LAW: UNDERSTANDING THE DICHOTOMY BETWEEN EMPIRICAL CRIMINOLOGICAL PERTURBATION AND SOCIAL MOVEMENT VALUES AND DEVELOPMENT	173
Mary Maerz	
PROFISSIONAIS JURÍDICOS E ACESSIBILIDADE NA JUSTIÇA RESTAURATIVA: ALTERNATIVA REAL OU MECANISMO DE CONTROLE? REFLEXÕES DESDE A EXPERIÊNCIA DE MEDIAÇÃO PENAL NO CHILE....	190
Bianca Baracho	
A PERSECUÇÃO PENAL DO TRÁFICO INTERNACIONAL DE SERES HUMANOS NO SISTEMA DE JUSTIÇA FEDERAL	212
Luciano Ferreira Dornelas e Bruno Amaral Machado	

IMPLEMENTAÇÃO DE POLÍTICAS PÚBLICAS: DESAFIOS PARA INTEGRAÇÃO DOS PLANOS DIRETORES, DE SANEAMENTO BÁSICO E DE BACIA HIDROGRÁFICA.....	231
Maria Luiza Machado Granziera e Daniela Malheiros Jerez	
A ISENÇÃO DE LICENCIAMENTO E A APROVAÇÃO TÁCITA PREVISTAS NA DECLARAÇÃO DOS DIREITOS DE LIBERDADE ECONÔMICA: REFLEXOS NA ADMINISTRAÇÃO AMBIENTAL E URBANÍSTICA.....	250
Pedro Niebuhr	
A INTERVENÇÃO FEDERAL NOS ESTADOS UNIDOS: O EMPREGO DA CLÁUSULA DE SEGURANÇA, VIOLÊNCIA DOMÉSTICA E PODERES PRESIDENCIAIS DE EMERGÊNCIA.....	274
José Adércio Leite Sampaio	
THE CONSTITUTIONALITY OF THE EARLY PROROGATION OF THE PUBLIC SERVICE CONCESSIONS	295
Odone Sanguiné e Felipe Montenegro Viviani Guimarães	
ANÁLISE DE IMPACTO REGULATÓRIO E PROPORCIONALIDADE: SEMELHANÇAS ESTRUTURAIS, MESMOS PROBLEMAS REAIS?.....	313
Fernando Leal	
“GOVERNO VERSUS JURISDIÇÃO”: APORTES PARA COMPREENSÃO DA CRISE NAS DEMOCRACIAS CONTEMPORÂNEAS	350
Carlos Alberto Simões de Tomaz, Jamile Bergamaschine Mata Diz e Roberto Correia da Silva Gomes Caldas	
CONSENTIMIENTO LIBRE PREVIO E INFORMADO EN EL CONTEXTO DE PROYECTOS EXTRACTIVOS EN TERRITORIO INDÍGENA ¿REGLA GENERAL Y DERECHO CONSUECUDINARIO INTERNACIONAL?	373
Cristóbal Carmona Caldera	
SUÍTE MÚSICO-JURISPRUENCIAL - PEQUENAS CONSIDERAÇÕES HERMENÊUTICAS PARA VIOLINO, VIOLONCELO, PIANO E CONSTITUIÇÃO	401
Marcílio Toscano Franca	

In Defense of Pro-Carceral Animal Law: Understanding the Dichotomy Between Empirical Criminological Perturbation and Social Movement Values and Development*

Em defesa do Direito do Animal pró-cárcere: entendendo a dicotomia entre a perturbação criminológica empírica e os valores e o desenvolvimento do movimento social

Mary Maerz**

Abstract

With the increase in criminal legal actions available for violent conduct toward animals, the animal protection movement has seen increased success of prosecuting industrialized animal agriculture workers who are documented committing animal cruelty crimes via undercover investigations. With this, criticism has emerged that posits that the animal protection movement unjustifiably contributes to the mass incarceration epidemic in the United States and punishes undeserving actors. Empirical criminological research supports such criticism of a “pro-carceral” animal law. Demographics of industrialized animal agricultural facilities reflect socioeconomic and racial disparities. The alleged “link” between violence to animals and violence to humans does not rest on strong evidence. Furthermore, correlates demonstrated between slaughterhouse employment and extra-institutional community crime rates questions culpability of agricultural workers who commit animal cruelty. However, pro-carceral criticism fails to consider the core value of the animal rights movement as being apart from other anthropocentric social movements and said criticism asks the movement to put its fundamental moral and ethical imperatives aside. Furthermore, pro-carceral criticism fails to consider the role of such criminal prosecutions may play in social movement development theory.

Keywords: animal rights, animal protection, pro-carceral animal law, animal cruelty, animal crime, social movement development

Resumo

Com o aumento nas ações legais criminais disponíveis para conduta violenta em direção aos animais, o movimento da proteção animal vê sucesso crescente de processar trabalhadores da agricultura animal industrializada que são documentados cometendo crimes de crueldade animal via investigações secretas. Com isso, surgiram críticas que postulam que o movimento de proteção aos animais contribui injustificadamente para a epidemia de encarceramento em massa nos Estados Unidos e pune atores não merecedo-

* Recebido em 03/01/2020
Aprovado em 03/01/2020

** Doutoranda em Direito pela Universidade de Virginia.. E-mail: mem9tw@virginia.edu

res. A pesquisa criminológica empírica apóia essas críticas a uma lei animal “pró-carcerária”. A demografia das instalações agrícolas de animais industrializados reflete as disparidades socioeconômicas e raciais. O alegado “elo” entre violência aos animais e violência aos seres humanos não se baseia em fortes evidências. Além disso, os correlatos demonstrados entre o emprego no matadouro e as taxas extra-institucionais de criminalidade comunitária questionam a culpabilidade dos trabalhadores agrícolas que cometem crueldade com os animais. No entanto, a crítica pró-carcerária deixa de considerar o valor central do movimento pelos direitos dos animais como sendo separado de outros movimentos sociais antropocêntricos e disse que a crítica pede ao movimento que ponha de lado seus moral fundamental e imperativos éticos. Além disso, as críticas pró-carcerárias não consideram o papel desses processos criminais na teoria do desenvolvimento do movimento social.

Palavras-chave: direito dos animais, proteção dos animais, direito do animal pró-cárcere, crueldade com animais, crime animal, desenvolvimento do movimento social.

1 Introduction

A recent driving development in the animal protection movement is the utilization of undercover investigations by animal advocacy organizations in order to expose the conditions of treatment of animals within industrialized animal agricultural facilities, namely factory farms and slaughterhouses. Not only do these investigations document the general systemic suffering of these animals raised for food, but they often catch instances of egregious animal cruelty by employees of these facilities. This documentation has increasingly led to criminal prosecutions of workers where state law allows it. With the increase in such criminal actions, criticism of the animal protection movement has developed in this arena.¹

This framing of “carceral animal law”² (hereinafter “pro-carceral” animal law) as a downfall of the animal protection movement submits valid criticisms of incarceration in the United States generally and furthermore likely exposes that criminal prosecutions within the industrialized animal agriculture settings cannot be justified by criminological or empirical bases. However, criticism of pro-carceral animal law ignores fundamental philosophies and foundations of the animal rights movement specifically, and devalues the importance of criminal prosecutions to the development of the animal protection social movement as it relates to industrialized animal agriculture.

In Part I, this paper will outline undercover investigations into factory farms by animal advocates. Included in this discussion is one goal of such investigations: to criminally prosecute workers documented conducting acts of animal cruelty. In Part II, this paper will examine the empirical research underpinning much of the pro-carceral criticism with an eye specifically toward criminal punishments stemming from undercover investigations. Particularly, it will analyze empirical research concerning mass incarceration, racial and socioeconomic inequities, and the so-called “link” between violence to animals and violence to humans. Part III turns to an analysis of the validity of the animal rights movement as a movement outside of anthropocentric social movements and Part IV demonstrates how it interacts with social movement development theories and models. Ultimately, I argue that this dichotomy between empirical criminological research and the values and social movement development of the animal rights movement do not reach the same conclusion as to the legitimacy of a pro-carceral animal law. Furthermore, the tactics and strategies of the animal rights movement cannot be subdued, as critics of pro-carceral animal law would suggest, without blatantly rejecting core nonspeciesist values of the animal rights movement.

¹ Justin Marceau, *Beyond Cages: Animal Law and Criminal Punishment*, generally (2019) (“The animal protection movement is living out an untenable paradox: motivated by a vision of progressive social reform, while relying on regressive social policy.”).

² *Id.* The use of “pro-carceral” animal law is used throughout this paper to refer to the critical argument against seeking criminal punishment for animal cruelty laws.

2 Undercover Investigations of Industrialized Animal Agriculture

Extensive animal welfare or animal rights advocacy has been directed toward the industrialized animal agriculture system of modern American food production.³ These institutions—such as slaughterhouses and factory farms⁴—are fertile ground for animal abuse and cruelty. The animal abuse may be of the form that is protected by state statute, or, more generally, may be the maltreatment of animals based on moral assumptions against unnecessary suffering, pain, disease, or other harm. Due to the general secrecy of the inner day-to-day operations of industrialized animal agriculture facilities,⁵ animal rights advocacy procures a substantial amount of information on the treatment of animals in these facilities via undercover investigations which document the treatment and conditions of animals as well as activities of facility employees.⁶

Undercover investigations may be “the only meaningful way” for American consumers to understand and learn how animals in the food system are raised, treated, and killed.⁷ These investigations—which are generally initiated by members of animal protection organizations gaining employment into a factory farm or slaughterhouse facility—often reveal institutionalized as well as egregious cruelty to animals and “serve as an indispensable method of evidence-gathering for civil litigation and the prosecution of abuse.”⁸ Perhaps one of the earliest undercover investigations of this type was conducted by People for the Ethical Treatment of Animals (PETA) in 1981, which exposed the apparent suffering of laboratory monkeys at a Maryland research facility.⁹ Since the first wave of undercover investigations by animal activists in the 1980s, the targets of investigations have expanded to include roadside zoos, livestock auctions, animal training facilities, pet suppliers, livestock transport, and—most relevantly—slaughterhouse, and factory farms.¹⁰

Undercover investigators are typically attempting to document at least two different forms of animal abuse or cruelty.¹¹ On one hand, animal rights organizations seek to offer the public a glimpse into the systemic cruelty agricultural animals experience in day-to-day farming and production operations. Systemic cruelty is of particular importance to animal protection efforts due to the facts that the nature of factory farming affords some of the most acute suffering and suffering over extended periods of time.¹² However, investigators also routinely document cases of egregious cruelty, which consists of episodic actions of individual factory farm employees and involve particular acts of cruelty against animals such as beating, kicking, bludgeoning with objects, dismembering, or the like.¹³

³ For a detailed discussion on the history and workings of factory farms and their implications on animal welfare, see William Reppy, Jr. & Jeff Welty, *Farm-Animal Welfare, Legislation, and Trade*, 70-WTR Law & Contemp. Probs. 325 (2007). Animals raised to be killed for food comprise over 98% of the animals killed in the United States. Over ten billion land animals are killed in the U.S. alone for food each year. Well over 90% of these are raised in intensively confined and industrialized factory farming conditions. From a greater animal advocacy perspective, this means that all of the animals killed in vivisection, in hunting, trapping, and fur, companion animals in shelters, in entertainment, and all other types of animals killed by humans do not even comprise 2% of the overall number. Cheryl L. Leahy, *Large-Scale Farmed Animal Abuse and Neglect: Law and its Enforcement*, 4 J. Animal L. & Ethics 63, 64-65 (2011).

⁴ A factory farm is defined as a farm on which large numbers of livestock are raised indoors in conditions intended to maximize production at minimal cost; <https://www.merriam-webster.com/dictionary/factory%20farm>.

⁵ See, e.g., Pamela Fiber-Ostrow & Jarret S. Lovell, *Behind a Veil of Secrecy: Animal Abuse, Factory Farms, and Ag-Gag Legislation*, 19(2) Contemp. Just. Rev. 230 (2016) (noting that the meat and dairy industries are inaccessible to the public).

⁶ *Id.* at 231.

⁷ *Debate: After Activists Covertly Expose Animal Cruelty, Should They be Targeted with “Ag-Gag” Laws?*, DEMOCRACY NOW! (Apr. 9, 2013), https://www.democracynow.org/2013/4/9/debate_after_activists_covertly_expose_animal (quoting independent journalist Will Potter).

⁸ Sarah Hanneken, *Principles Limiting Recovery Against Undercover Investigators in Ag-Gag States: Law, Policy, and Logic*, 50 J. Marshall L. Rev. 649, 652 (2017).

⁹ *Id.* at 653.

¹⁰ *Id.* at 653-55.

¹¹ Leahy, *supra* note 3, starting at 80. Leahy divides cases and types of animal cruelty on factory farms into “day-to-day” cruelty—hereinafter referred to as systemic cruelty—and egregious cruelty.

¹² *Id.* at 65.

¹³ *Id.* starting at 80.

While systemic cruelty is undoubtedly the greater overall source of animal suffering within the industrialized animal agricultural system, it is the least likely form to acquire legal redress. In approximately 37 states, state cruelty laws contain exemption for “common” or “normal” farming practices.¹⁴ In other words, an animal could be subject to extreme suffering, but as long as that which causes the suffering is a process or activity commonly practiced within the industry, animal cruelty laws do not apply. Other states simply exclude farm animals from their statutory definitions of “animal,”¹⁵ thus precluding the use of animal cruelty laws in agricultural settings that way.

Instead, instances of egregious cruelty are acts that fall outside of general agricultural practices, and consequently may be more amenable to litigative action. Indeed, the documentation of animal agriculture facility employees committing animal cruelty violations has been relatively successful at acquiring criminal charges and convictions.¹⁶ Examples of undercover investigative efforts, their evidence produced, and subsequent criminal proceedings are presented below.

An undercover investigation into Belcross Farms Pigs in North Carolina in 1999 discovered incidents of workers beating pregnant sows on a daily basis with a wrench or iron poles, skinning pigs alive, and sawing off the legs of conscious pigs.¹⁷ As a result of this investigation, the first felony charges were brought against three employees and a manager for animal cruelty to farmed animals.¹⁸ Each of the employees was convicted, and one served jail time for the abuse.¹⁹

An investigation of Seaboard Pigs in Oklahoma, one of the largest pig factory farms in the country, two years later, revealed repeated beating, kicking, bludgeoning with metal gate rods and hammers, and other violence toward pigs by workers.²⁰ Other pigs “were left to die agonizing deaths from severe injuries, illness, and lameness...without any veterinary care.”²¹ Three counts of felony animal cruelty charges were brought against a manager, who entered a plea agreement, marking the first case in U.S. history in which a farmer pleaded to felony cruelty to animals for injuring and killing animals raised for food.²²

Widespread abuse of chickens—including workers “tearing beaks off, ripping a bird’s head off to write graffiti in blood, spitting tobacco juice into birds’ mouths, plucking feathers to ‘make it snow,’ suffocating a chicken by tying a latex glove over its head, and squeezing birds like water balloons to spray feces over other birds”²³—was documented at a Kentucky Fried Chicken supplier in 2004.²⁴ The prosecutor in this case, after being urged by PETA for the enforcement of West Virginia’s animal cruelty law, brought the case before a grand jury but the grand jury did not indict.²⁵

¹⁴ Leahy, *supra* note 3, at 77.

For example, Missouri animal cruelty law exempts with respect to farm animals, “normal or accepted practices of animal husbandry.” V. A. M. S. 578.007 (2019).

¹⁵ See, e.g., Iowa Code 717B.1(a) (2019).

¹⁶ See, e.g., Leahy, *supra* note 3, at 80-92.

¹⁷ *Investigation of North Carolina Pig Farm Results in Historic Felony Cruelty Convictions*, People for the Ethical Treatment of Animals (Apr. 2000), <https://www.peta.org/about-peta/victories/investigation-north-carolina-pig-farm-results-historic-felony-cruelty-convictions/>; see also, *Belcross Pig Farm Investigation: Narrated by James Cromwell*, available at https://www.youtube.com/watch?v=JHgj0C94_Mc; see also, Leahy, *supra* note 3, at 81.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Pig Abusers Charged with Felony Cruelty to Animals at Seaboard Farms, Inc.*, People for the Ethical Treatment of Animals (July 2001), <https://www.peta.org/about-peta/victories/pig-abusers-charged-felony-cruelty-animals-seaboard-farms-inc/>; see also, Leahy, *supra* note 3, at 82.

²¹ *Id.*

²² Leahy, *supra* note 3, at 82.

²³ Donald G. McNeil, Jr., *KFC Supplier Accused of Animal Cruelty* (July 20, 2004), <https://www.nytimes.com/2004/07/20/business/kfc-supplier-accused-of-animal-cruelty.html>; see also, Leahy, *supra* note 3, at 82-83.

²⁴ *Id.*

²⁵ Leahy, *supra* note 3, at 83.

A 2007 investigation of Smithfield Foods supplier revealed horrific cruelty to pigs including workers dragging injured pigs by their snouts, ears and legs; cutting of piglets' tailed and pulled out piglet's testicles without any pain relief; hitting and jabbing pigs in the face with metal gate rods; and a worker gouging out the eyes of four pigs with his fingers.²⁶ PETA successfully sought enforcement of North Carolina's criminal animal cruelty law against two of the workers documented, who both subsequently fled the state.²⁷

A 2010 investigation of Ohio's Conklin Dairy Farms documented sadistic abuse of cows and calves used in the dairy industry.²⁸ Abuse included routine stabbing with pitchforks in the face, legs, and stomach; punching in the udders, beating them in the face with crowbars; twisting cows' tails until the bones snapped; and workers bragged about stabbing, dragging, shooting, breaking bones, and beating cows and calves to death.²⁹ Charges were filed almost immediately against one worker, who plead guilty to six of the twelve counts of cruelty to animals—under Ohio law, however, animal cruelty crimes were misdemeanors.³⁰

While the types of egregious cruelty documented in undercover investigations are well-represented by the examples above, it is woefully under-extensive and such acts should not be viewed as isolated or part of the past.³¹ It is important to note that criminal charges and convictions under animal cruelty laws for farm animals are an incredibly recent phenomenon. This effort seems to have begun toward the end of the 20th century, and is only gaining momentum.³² On their website, farm animal advocacy organization Mercy for Animals advertises that, “[a]fter a 2017 MFA undercover exposé that revealed workers punting and throwing chickens and ripping the legs off conscious birds, 38 charges were brought against Elite Farm Services, Sofina Foods, and a chairman of Elite Farm Services.”³³ Recently, PETA touts 46 cruelty charges against an owner of a small, family-operated poultry and egg farm.³⁴ Seven workers at a Tyson factory farm in Virginia were convicted in 2017 of cruelty to animals after undercover investigation revealed egregious cruelty to chickens.³⁵

Despite such anecdotal and positive outcomes, convictions under cruelty statutes are still rare, and punishments are often minor even when the actions involve intentional acts of shocking cruelty. However, undercover investigations are ultimately effective.³⁶ Evidence obtained from these investigations has led to

²⁶ *Charges Filed After Investigation Reveals Torture of Pigs*, People for the Ethical Treatment of Animals, <https://www.peta.org/action/action-alerts/charges-filed-investigation-reveals-torture-pigs/>. See also, Leahy, *supra* note 3, at 83-84.

²⁷ Leahy, *supra* note 3, 84.

²⁸ *Ohio Dairy Farm Investigation*, Mercy for Animals, <http://ohdairy.mercyforanimals.org>; see also, Leahy, *supra* note 3, at 87.

²⁹ *Id.*

³⁰ Leahy, *supra* note 3, at 87-88.

³¹ Workers at a Tyson facility were documented striking and slamming chickens at a factory farm in 2017. Lissette Nunez, *Undercover Investigation Reveals Animal Cruelty in Tyson Farm* (Dec. 14, 2017), <http://www.wmdt.com/news/virginia/undercover-investigation-reveals-animal-cruelty-in-tyson-farm/672463736>; Workers at a dairy farm in Florida were documented in 2017 stabbing cows with spears tipped with knives and using a blow torch on cows. Howard Cohen, *Video Shows Dairy Cows Beaten and Burned at McArthur Farm* (Dec. 15, 2017), <https://www.miamiherald.com/news/state/florida/article189935934.html>. A Mercy for Animals undercover investigation into a pig farm in 2018 showed workers violently killing piglets by smashing their heads against the ground. *Pig Factory Farms: United States, 2018*, (Last visited Mar. 4, 2019), <https://mercyforanimals.org/investigations>.

³² A video taken at a dairy farm and Publix supplier in 2017 showed workers beating a cow on the head with a steel rod, as well as workers kicking, beating, and stabbing cows to force them into cramped pens. Such video led to a criminal investigation. David Fleshler & Adam Sacasa, *Criminal Investigation Opened into Abuse of Cows at Dairy Farm* (Nov. 9, 2017), <http://www.sun-sentinel.com/news/florida/fl-rcg-dairy-farm-video-20171109-story.html>.

³³ “Our Powerful Progress,” Mercy for Animals (last visited Mar. 4, 2019), <https://mercyforanimals.org/legal>.

³⁴ Michelle Kretzer, *Meet Your ‘Happy’ Meat: 46 Cruelty Charges for Owner of ‘Happy’ Farm*, PETA (Sept. 4, 2018), <https://www.peta.org/blog/46-cruelty-charges-owner-of-happy-farm/>.

³⁵ *Tyson Workers Convicted of Animal Cruelty*, Animal Welfare Institute (last visited Mar. 4, 2019), <https://awionline.org/awi-quarterly/winter-2017/tyson-workers-convicted-animal-cruelty>.

³⁶ Hanneken, *supra* note 8, at 657.

massive food recalls,³⁷ lawsuits, stronger animal-protection laws,³⁸ changes in corporate policy,³⁹ as well as criminal convictions.⁴⁰ Undercover investigations have also had an impact on consumers' buying habits.⁴¹

While these undercover investigations have become central and foundational to the animal rights movement's advocacy efforts against slaughterhouses and factory farms, they are not spared from criticism, even by those within the movement. In particular, the animal protection movement's focus on criminal punishment for those who commit animal abuse or cruelty has been criticized as contributing to the mass incarceration problem in the United States and accordingly has been attacked as racist, classist, and xenophobic.⁴² This is the foundation of the criticism and argument against pro-carceral animal law.

3 Empirical Evidence and the Pitfalls of Pro-Carceral Animal Law

Advocating for criminal, particularly carceral, punishment for animal cruelty offenses would, undoubtedly, contribute at least somewhat to the country's already problematic mass incarceration crisis. As of 2018, almost 2.3 million people are incarcerated in jails or prisons, giving the nation the distinction of having the highest incarceration rate in the world.⁴³ Approximately 13,000 people are in federal prisons for criminal convictions of violating federal immigration laws; 13,000 more are held pretrial by U.S. Marshals; and another 34,000 are civilly detained by U.S. Immigration and Customs Enforcement.⁴⁴ Furthermore, people of color are dramatically overrepresented in the nation's prisons and jails. For example, blacks make up 40% of the country's incarcerated population despite representing only 13% of U.S. residents.⁴⁵ Latinos comprise 19% of the incarcerated population while representing 16% of the nation's population.⁴⁶ In stark contrast, whites make up 64% of the U.S. population, while only comprising 40% of the incarcerated population.⁴⁷

The socioeconomic realities of those incarcerated are also disturbing. Not only are the median incomes of incarcerated people prior to incarceration lower than non-incarcerated people, but incarcerated people are dramatically concentrated at the lowest ends of the nation income distribution.⁴⁸ Specifically, the median annual income of incarcerated people was \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.⁴⁹ Such racial and socioeconomic concerns make society question whether it is morally wrong to arrest, prosecute, or incarcerate members of relatively powerless groups at

³⁷ See, e.g., Andrew Martin, *Largest Recall of Ground Beef Is Ordered*, N.Y. TIMES (Feb. 18, 2008), www.nytimes.com/2008/02/18/business/18recall.html (reporting on largest beef recall in history--143 million pounds of beef produced by Hallmark/Westland Meat Company, following an undercover investigation by the Humane Society of the United States that revealed workers on forklifts forcing "downer" cows into slaughter, a severe violation of food safety laws).

³⁸ See, e.g., *Utah Ends Mandatory Pound Seizure Following PETA's Investigation*, PETA (Jan. 2010), www.peta.org/about-peta/victories/utah-ends-mandatory-pound-seizure-following-petas-investigation/ (last visited Aug. 21, 2017) (announcing passage of Utah legislation to end the compelled sale of homeless dogs and cats from government-run shelters to laboratories for use in experiments).

³⁹ See, e.g., Matt Rice, *Progress: Walmart Announces Sweeping Animal Welfare Policy*, MFA BLOG (May 22, 2015), www.mfablog.org/progress-walmart-announces-sweeping-animal (announcing Walmart's stated commitment to improving farmed animal welfare across its entire global supply chain following a string of undercover investigations revealing egregious abuse among its pork suppliers);

⁴⁰ See, e.g., Complaint at 22, *Animal Legal Defense Fund v. Herbert*, No. 2:13-cv-00679-RJS (D. Utah July 22, 2013) (presenting litany of animal-cruelty convictions founded on evidence obtained during undercover investigations by animal-rights groups)

⁴¹ Glynn T. Tonsor and Nicole J. Olynk, *U.S. Meat Demand: The Influence of Animal Welfare Media Coverage*, Kan. St. Univ. (Sept. 2010), <http://www.agmanager.info/livestock/marketing/animalwelfare/MF2951.pdf>.

⁴² See, e.g., Marceau, *supra* note 1, at 39.

⁴³ Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative (Mar. 14, 2018), <https://www.prisonpolicy.org/reports/pie2018.html>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Policy Initiative (Jul. 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

⁴⁹ *Id.*

such high rates.⁵⁰ While the general consensus is that it is indeed morally wrong, these incarceration problems persist.

These concerns are, at the least, heightened when in context of factory farms and slaughterhouses. A large percentage of factory farm workers are people of color including migrant workers from Mexico and other parts of Latin America.⁵¹ According to the United States Department of Agriculture (USDA), approximately 52% of working in “farm labor” are Hispanic.⁵² Similarly, slaughterhouse and meat-processing workers are predominantly people of color.⁵³ Historically, blacks made up a significant percentage of the workforce. In recent decades, however, the percentage in the industry of Latino workers has increased substantially, and today approximately 38% of slaughterhouse and meat-processing workers are born outside of the U.S.⁵⁴ An unknown but presumed-to-be large⁵⁵ number of workers in both industries are undocumented. The mean annual wage, according to the Bureau of Labor Statistics (BLS), of “slaughterers and meat packers” is \$27,830⁵⁶ and \$23,730 for “agricultural workers.”⁵⁷

Given the demographics of the industrialized animal agriculture industry, advocating from criminal sanctions against the workers therein would undoubtedly risk targeting already marginalized populations. Animal advocates may argue that their primary focus is on industrialized animal agricultural facilities, and the demographics of the workers in the industry are an irrelevant—for the movement’s purposes—happenstance. The argument is undoubtedly correct, but it does nothing to defend the animal protection movement from criticism and possible friction from parallel cause movements, such as the workers’ rights movement. Indeed, much of the pro-carceral criticism focuses on the animal rights movement’s disregard for other human-centered, or anthropocentric, movements. The legitimacy of the animal movement compared to anthropocentric movements is an important consideration and will be discussed later in this paper.

Some in the animal protection movement argue that criminal sanctions should be sought and enforced for anti-cruelty laws because of the alleged link between violence against animals and violence against humans.⁵⁸ The argument posits that anti-cruelty laws should be enforced, and even strengthened, in order to identify those persons who likely cause a great threat to humans in the future. Anecdotal evidence makes such a proposition seem likely. For example, many serial killers were reported to have abused animals earlier in life.⁵⁹ In tandem with the rising popularity of such an argument for tougher animal cruelty laws, however, the legitimacy of the connection became questionable after studies struggled to consistently find this “link”.

An early example of a study⁶⁰ finding “the link” studied 152 men in Connecticut and Kansas and divided them into three groups: highly or moderately aggressive criminals, nonaggressive criminals, and noncrimi-

⁵⁰ James Forman, Jr., *Why Care About Mass Incarceration?*, 108 Mich. L. Rev. 993, 996 (2010).

⁵¹ *Temporary Farm Labor: The H-2A Program and the U.S. Department of Labor’s Proposed Changes in the Adverse Effect Wage Rate (AEWR)*, Congressional Research Service (2008), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL34739.pdf>

⁵² *Farm Labor*, U.S.D.A. Economic Research Service (last visited Mar. 10, 2019), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic>.

⁵³ William Kandel, *Recent Trends in Rural-based Meat Processing*, Economic Research Service, U.S.D.A (2009), <https://migrationfiles.ucdavis.edu/uploads/cf/files/2009-may/kandel.pdf>.

⁵⁴ *Id.*

⁵⁵ See, *Factory Farm Workers*, Food Empowerment Project (last visited Mar. 10, 2019), <http://foodispower.org/factory-farm-workers/>; see also, *Slaughterhouse Workers*, Food Empowerment Project (last visited Mar. 10, 2019), <http://foodispower.org/slaughterhouse-workers/>.

⁵⁶ *Occupational Employment and Wages, May 2017: 51-3023 Slaughterers and Meat Packers*, B.L.S. (2017), <https://www.bls.gov/oes/2017/may/oes513023.htm>.

⁵⁷ *Occupational Outlook Handbook: Agricultural Workers*, B.L.S. (2017), <https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm>.

⁵⁸ See, e.g., Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence against Humans*, 6 Animal L. 1 (2000).

⁵⁹ See, Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 Iowa L. Rev. 1, 43-44 (2001).

⁶⁰ Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 Hum. Rel. 1113, 1113 (1985).

nals.⁶¹ Through interviews, the study established a significant association between acts of cruelty in childhood and serious, recurrent aggression against people as an adult.⁶² Twenty-five percent of the aggressive criminals had abused animals five or more times in childhood whereas only 5.8% of moderate and nonaggressive criminals and none of the noncriminals had done so.⁶³ In contrast, a 2011 study found that sex with animals was the only method of childhood animal cruelty that predicted the later commission of adult violent crimes.⁶⁴

Research which surveyed evidence and studies on the link⁶⁵ question this “progression theory” that suggests there is a progression from animal abuse to interhuman violence. It found and criticized that the theory is supported not by a coherent research program but by disparate studies often lacking methodological and conceptual clarity.⁶⁶ It suggested “that the link between animal abuse and interhuman violence should be sought not only in the personal biographies of those individuals who abuse animals but also in those institutionalized social practices where animal abuse is routine, widespread, and socially acceptable.”⁶⁷ It does seem true, indeed, that any argument for the enforcement of animal cruelty laws within factory farms or slaughterhouses in order to protect humans would need to demonstrate a link between cruelty in these settings and interhuman violence.

One 2009 study⁶⁸ examined the relationship between slaughterhouse employment levels and crime rates, controlling for the variables commonly proposed in the literature as associated with crime in communities, and compared the effects of the slaughterhouse industry with other manufacturing industries that are similar in labor force composition, injury and illness rates, but different in that the materials of production are inanimate objects, rather than animals.⁶⁹ Controlling for all of the variables in the study’s model, when the number of slaughterhouse workers increases by 1, the Arrest Rate Scale⁷⁰ increases by 0.013 arrests. Using the Report Rate Scale⁷¹ instead, the coefficient for slaughterhouse employment is 0.027. None of the comparison industries demonstrated significant effects in terms of arrest rates or report rates.⁷² Furthermore, an average-sized slaughterhouse, would be expected to increase the arrest scale (for the relevant community) by 2.24 arrests and the report scale by 4.69.⁷³ “Particularly telling,” according to the study, is the fact that the expected arrest and report values in counties with 7,500 slaughterhouse employees are more than double the values where there are no slaughterhouse employees.⁷⁴ The results of the study “demonstrate that the effect of slaughterhouse employment on [the arrest and report scales] cannot be explained away by the control variable and that the comparison industries do not have similar significant effects.”⁷⁵ The study furthermore found that slaughterhouse employment has significant positive and unique effects on rate of total arrests, arrests for violent crimes, arrests for rape, and arrests for other sex offenses.⁷⁶

⁶¹ *Id.* at 1116-17. The criminals were chosen from federal penitentiaries in Leavenworth, Kansas and Danbury, Connecticut. Non-criminals were selected at random from urban, small town, and suburban areas near New Haven, Connecticut and Topeka, Kansas. Criteria for defining aggressiveness included aggressive speech, aggressive preparatory behaviors, and aggressive actions.

⁶² *Id.* at 1127.

⁶³ *Id.* at 1119-20.

⁶⁴ Christopher Hensley et al., *The Predictive Value of Childhood Animal Cruelty Methods on Later Adult Violence: Examining Demographic and Situational Correlates*, 56 Int’l Journals of Offender Therapy and Comp. Criminology 281, 292 (2011).

⁶⁵ Piers Beirne, *From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis*, 12(1) Society and Animals 39-65 (2004).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Amy J. Fitzgerald et al., *Slaughterhouses and Increased Crime Rates: An Empirical Analysis of the Spillover from “The Jungle” Into the Surrounding Community*, <https://doi.org/10.1177/1086026609338164> (2009).

⁶⁹ *Id.* at 2.

⁷⁰ The Arrest Rate Scale is made up of the following variables: rape, robbery, burglary, other assaults, forgery, possessing stolen property, vandalism, offenses against the family, and disorderly conduct. *Id.* at 9.

⁷¹ The Report Rate Scale is made up of the following variables: reports of rape, robbery, assault, burglary, motor vehicle theft, and arson.

⁷² *Id.* at 10.

⁷³ *Id.* at 11.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Controlling for the number of young men in the county, population density, the total number of males, the number of people

A 2015 study⁷⁷ confirmed this connection. The findings indicated that the location of a slaughterhouse in a county was associated with increases in the total arrest rate, arrests for rape, and arrests for offenses against the family in comparison to counties without a slaughterhouse.⁷⁸ While this research points to a relationship between the violence of killing nonhuman animals and violence towards humans, animal advocates should be mindful that the same research may work against the premise of enforcing criminal anti-cruelty provisions within industrial animal agriculture facilities.

For example, the multiple sites of violence condoned and called for in slaughterhouses and factory farms may fit into a “progression theory” of extra-institutional violence.⁷⁹ There is, first, the abrupt, unnatural, and often painful death of billions of animals in the slaughterhouse as well as the systemic cruelty witnessed and participated in within the factory farm. Less acknowledged within the animal protection movement, is the extreme physical and psychic toll on these workers who, among all private sector U.S. industries, suffer the highest annual rate of nonfatal injuries and illnesses and repeated-trauma disorders.⁸⁰ Then, there is the violence visited on those beings—human and animal—with whom slaughterhouse workers interact outside their work environments.

Whenever human-animal relationships are marked by authority and power, and thus by institutionalized social distance, there is an aggravated possibility of extra-institutional violence:⁸¹

Thus, whatever their social situation and motivation, both assaultive children and slaughterhouse workers might be so desensitized by the act of animal abuse that subsequently they have lesser compassion for the suffering and welfare of many other beings (including humans). In reducing abusers’ compassion, animal abuse might be found to increase tolerance or acceptance of pro-violent attitudes and, thereby, to foster interhuman violence. Indeed, a plausible corollary of the progression thesis, if found to be true, is that children who have, or who are taught to have, compassion for animals might be more likely to become adults who act more sensitively and more gently toward humans.⁸²

This also parallels claims made under the “brutalization hypothesis.” According to this hypothesis, instead of having a deterrent effect on homicides, the use of the death penalty—a clear example of state-sanctioned violence—increases homicides due to the legitimization of the use of lethal violence, although research has mixed results.⁸³ In the animal protection context, ethnographic accounts⁸⁴ have emphasized the contradiction faced by slaughterhouse workers between the rules that regulate the slaughter and the necessity of carrying out the killing in an efficient and routinized way.⁸⁵

The working environments of factory farms and slaughterhouses thus makes one question whether or not these employees adequately meet criminal culpability, or *mens rea*, requirements. While some criminal animal statutes do not specify a particular culpability requirement,⁸⁶ the *mens rea* elements for state animal cruelty laws generally require knowledge or willfulness in order for a person or entity to be criminally culpable. A common

in poverty, international migration, internal migration, total non-White and/or Hispanic population, the unemployment rate, and the total county population. *Id.* at 16.

⁷⁷ Jessica Racine Jacques, *The Slaughterhouse, Social Disorganization, and Violent Crime in Rural Communities*, 23 *Society and Animals* 594-612 (2015).

⁷⁸ *Id.*

⁷⁹ Beirne, *supra* note 65, at 54.

⁸⁰ *Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1997*, U.S. Department of Labor (1999).

⁸¹ Beirne, *supra* note 65, at 54.

⁸² *Id.* at 55 (internal citations omitted).

⁸³ Fitzgerald, *supra* note 68, at 6. See also, D. King, *The Brutalization Effect: Execution Publicity and the Incidence of Homicide in South Carolina*, 57 *Social Forces* 683-87 (1978); J. K. Cochran & M. Chamlin, *Deterrence and Brutalization: The Dual Effects of Executions*, 17 *Justice Quarterly* 685-706 (2000); B. Lang & D. Lester, *The Deterrent Effect of Executions: A Meta-Analysis Thirty Years After Ehrlich*, 36 *Journal of Criminal Justice*, 453-460 (2008).

⁸⁴ See, e.g., G. Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry* (1997); D. Fink, *Cutting into the Meatpacking Line: Workers and Change in the Rural Midwest* (1998); C. Rémy, *Une Mise à Mort Industrielle “Humaine”?* *L’abattoir ou L’impossible Objectivation des Animaux*, 16 *Politix* 51-73 (2003).

⁸⁵ Fitzgerald, *supra* note 68, at 6.

⁸⁶ See, e.g., MO Rev. Stat. § 578.009 (a person commits the offense of animal neglect if he or she “[h]as custody or ownership of an animal and fails to provide adequate care”). Here, knowledge or willfulness is not required to commit animal neglect.

distinction among states is requiring knowledge for animal neglect offense and willfulness for animal abuse offenses. In Missouri, for example, the crime of animal neglect is committed if one “[k]nowingly abandons an animal in any place without making provisions for its adequate care.”⁸⁷ Animal abuse, on the other hand, can be committed if a person “[p]urposely or intentionally causes injury or suffering to an animal.”⁸⁸

The type of egregious cruelty documented in undercover footage that could be used against individual employees generally fall into the animal abuse category and thus require purpose or intent by the workers. In these cases of animal cruelty—such as beating or stabbing—the *mens rea* requirements may simply be met by the mere existence of a video of such an act. It would be hard to imagine, for example, that a defendant could argue that he beat an animal with an iron rod without intent. However, it may be argued that the question of where to place liability is not answered by determining who has the guilty mind, but rather by who should be held criminally responsible in order to best serve the deterrent purpose.⁸⁹ Indeed, if legal action were directed away from individuals and toward the industry, the animal protection movement could better target the root of the problem.

A factory farm or slaughterhouse employee who commits acts of animal cruelty in the course of his or her employment may be acting within a system that is inherently cruel, and such acts of cruelty could be seen to be benefitting or working legitimately within such a system. The intensive confinement and mass production inherent of factory farming systems on their own may implicate a poor level of care for animals therein. When workers perform their jobs with the intent to support the function of such a system, cruel conduct towards animals may, at the least, promote “efficiency” in moving, confining, controlling, or slaughtering animals. For example, workers in Virginia who are paid per chicken slaughtered were documented crushing chickens with industrial machinery in order to kill as many chickens as quickly as possible.⁹⁰ It is not difficult to imagine that supervisory or managerial employees could likely have been aware of such practices and took no action. In such a case, this would be evidence that would weigh in favor of determining that this factory farm maintains an environment of sufficient systemic cruelty in which the cruel acts of the employees were in furtherance of.

But animal advocates would not disagree that targeting the “system” of animal cruelty is ideal. However, it is doubtful that the work of undercover investigators presents a true choice between attacking either the industry or the individual. On one hand, legal action is likely not possible or successful against an overarching corporation of a factory farm or slaughterhouse, whereas there has been more notable success against specific individuals. In theory, though, prosecutorial action could be brought against both an individual and the corporation for the same illegal act of animal cruelty.⁹¹ Critics of pro-carceral animal law would suggest that no legal action needs to be taken against any individual; the horrifying realities documented in undercover investigations is enough to lay the groundwork for creating change within the industry:

Prosecution provides a distraction from the arduous and seemingly impossible task of slowing the rate of animal suffering. The low-level employee becomes the sacrificial lamb offered up by the industry as proof of their commitment to animal welfare standards, and by the animal protection groups as evidence of their success in liberating animals from cruelty. There is a shameful parity between the animal protection movement and the agricultural industry in their treatment of low-level agricultural employees as expendable and as deserving targets of blame. For the movement, no less than for the industry, targeting low-level abuse for vilification is a way of vindication social norms in favor of respecting animal well-being.⁹²

⁸⁷ *Id.* § 578.009(2).

⁸⁸ *Id.* § 578.012(2).

⁸⁹ Brice Coleman, *Is Corporate Criminal Liability Really Necessary?*, 29 Sw. L.J. 908, 920 (1975).

⁹⁰ Description and evidence of factory farm employees crushing chickens to death with machinery was presented by Virginia Senior Assistant Attorney General and Director of Virginia Attorney General’s Office Animal Law Unit Michelle Welch at the 2018 Animal Legal Defense Fund Animal Law Conference. <http://animallawconference.org/wp-content/uploads/sites/7/2018/11/Welch-PPT-ALC-2018.pdf>.

⁹¹ See, e.g., A. Mitchell Polinsky, *Should Employees Be Subject to Fines and Imprisonment Given the Existence of Corporate Liability?*, 13 Int’l Rev. L. & Econ. 239, 239 (1993) (discussing how it is socially desirable to punish employees when corporations themselves face liability).

⁹² Marceau, *supra* note 1, at 252.

As seen, the prosecution of individual workers for animal cruelty stemming from undercover investigative documentation cannot be adequately justified by referencing a “link” between violence against animals and inter-human violence or by the effect of factory farm or slaughterhouse employment on the rates of crime, violent or otherwise, in the surrounding community. The focus on individual actors within this industry also can lead to friction with other cause movements, particularly workers’ rights, anti-racist or anti-xenophobic movements, or movements against mass incarceration. While these aspects of this school of criticism cannot be dismissed as invalid, a pro-carceral animal law cannot be deemed incorrect either. The criticism ignores fundamental notions of the animal rights movement being a legitimate movement of its own accord and theories of advancement of social movements.

4 How the Animal Rights Movement Relates to Anthropocentric Social Movements

Critics of a pro-carceral animal law, with respect to criminal prosecutions against industrial animal agriculture workers, are at the very least demanding that the animal protection movement or, more dangerously, the animal rights movement cater their own movement’s goals to be palatable to other anthropocentric goals. Undoubtedly the vast majority (at the very least) of society would place compelling⁹³ human interests above animal interests, but to assume that the animal rights movement should acquiesce when other interests are present runs afoul of basic premises of the movement itself.

A clarification of the animal protection movement in relation to the animal rights movement is needed. The animal rights movement is a subset of the animal protection movement; while both often seek similar real-world legal victories, the animal rights movement is unmistakably distinct in its abstract principles and goals. Simplistically, the animal protection movement can be seen to encompass two movements: the animal welfare movement and the animal rights movement.⁹⁴

The animal welfare movement seeks to prevent animals from suffering needlessly, and thereby to improve the quality of animal lives.⁹⁵ Animal welfare goals can accordingly be achieved through measures designed to alleviate the suffering of animals in settings in which humans interact with them.⁹⁶ Based on utilitarian philosophies, the welfare movement (which takes up a larger portion of the animal protection movement) recognizes that animals have interests that should be taken into account *in relation to* human interests.⁹⁷ The animal rights movement, in contrast, see nonhuman animals as creatures having inherent value, similar to humans, and therefore, their worth is not determined by their usefulness to humans.⁹⁸ This movement, therefore, is not content just to improve the conditions under which animals live (although they certainly join animal welfarists in this fight), but seek a world in which animals are never “made to suffer on account of human desires.”⁹⁹ Thus, while the criticism of pro-carceral animal law may very well apply to the animal welfare movement on account of the movement’s inherent inclusion of human interests, the criticism does not reach the animal rights camp.

⁹³ There may be more support for animal interests over human interests in areas of relatively trivial human concerns, such as cosmetics testing or gratuitous killing of animals.

⁹⁴ While there is often much overlap between these two movements, and variations thereof, the dichotomy between animal welfare and animal rights is a generally accepted grouping of ideologies within the animal movement generally.

⁹⁵ Ruth Payne, *Animal Welfare, Animal Rights, and the Path to Reform: One Movement’s Struggle for Coherency in the Quest for Change*, 9 Va. J. Soc. Pol’y & L. 587, 595 (2002).

⁹⁶ *Id.*

⁹⁷ Although there are many different branches of utilitarianism, all branches generally treat individuals as means to an end and therefore not as ends in themselves. See Gary L. Francione, *Animal Rights and Animal Welfare*, 48 Rutgers L. Rev. 397, 410-11 (1996).

⁹⁸ *Id.* at 417. Animal rightists generally believe that animals have “a right to be treated properly in our dealings with them, regardless of their value to humans as resources.” Elaine L. Hughes & Christiane Meyer, *Animal Welfare Law in Canada and Europe*, 6 Animal L. 23, 33 (2000).

⁹⁹ Helena Silverstein, *Unleashing Rights: Law, Meaning, and the Animal Rights Movement* 33 (1996).

The animal rights movement is unlike virtually all other cause movements, which place human interests front and center. The main difference between these anthropocentric movements revolves around *which* human interests—and *which* humans—are focused on. However, the close ties between the animal rights and environmental movements has secured animal rights a place in the green criminology movement.¹⁰⁰ Animal rights and environmental movements each have been “nurtured within a much larger social movement—respectively, the animal protection community and various environmentalisms(s).”¹⁰¹ Both arose at roughly the same time and under similar circumstance, “namely, the turbulence, iconoclasm and leftist political activism of the early-to mid-1960s.”¹⁰² Both movements have an underlying concern with relations of power and inequality and with the elimination of their undesirable effects; the latter include harm, exclusion, injury, and suffering.¹⁰³ However, the animal-centered movement and environmental movements have divided sharply in their respective aims, philosophies, and theoretical assumptions from their emergence. So even the animal rights movement’s closest relative is often “at best in parallel and, at worst, in vehement opposition” to it.¹⁰⁴

Since the mid-1960s support for animal rights has grown into a large-scale, well-publicized and theoretically informed social movement. In some parts of the more developed world the movement’s gains seem to have been extraordinary. In some societies among its achievement might be counted the movement’s contribution to state regulation of the production, transport, and slaughter of cattle and poultry; a gradual decline in the consumption of meat, and a concomitant rise in consumption of grains, fruit, and vegetables; stricter control on animal shelters, zoos, circuses, and aquaria; greater restrictions on the use of vivisection in scientific and commercial laboratories and in school; a drastic reduction in sales of animal skin and fur; and the protection of endangered species, especially exotica such as whales, wolves, and raptors.¹⁰⁵

Thus, it should be evident that the animal rights movement has sufficiently carved out a space for itself within social movements, placing the interests of animals outside of human uses. Without necessarily discounting the human interests surrounding the animal interests in an industrialized animal agriculture setting, the animal rights movement has asserted its philosophies since its emergence in the 1960s to be a movement focused mainly, if not solely, on advancing animal interests. To question the efficacy of this movement because of its failings as measured by separate social movements, is to fail to understand or appreciate the animal rights movement as a valid cause in of its own. While it seems commonplace to contend that animal interests should bow to any adjacent human interests, this natural notion is at odds not only with the practical legal goals of the animal rights movement, but of the theoretical underpinnings of the movement itself. Thus, while the criticism against pro-carceral animal law is unquestionably valid as an informational matter, it does little to affect the inner workings of the social movement it hopes to address.

With that in mind, calling for a withdrawal of legal action against individuals documented committing animal cruelty in undercover investigations is tantamount to asking animal organizations to refuse to use the few sources of legal action they have worked to acquire in the realm of factory farms or slaughterhouses. Anti-cruelty laws are notoriously difficult to enforcement and apply to specific scenarios.¹⁰⁶ Furthermore, while anti-cruelty laws continued to be developed and advanced through the twentieth century for other animals, farms animals gradually moved outside of legal protection, either through their exemption from the definition of animals protected or through the exemption of cruel practices in farming from the definition of cruel practices.¹⁰⁷ In that light, the emergence of undercover investigations is a way for animal protection

¹⁰⁰ *Id.* See Chapter 3: Animal Rights, Animal Abuse and Green Criminology.

¹⁰¹ *Id.* at 55-56.

¹⁰² *Id.* at 56.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 72.

¹⁰⁵ *Id.* at 65.

¹⁰⁶ David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 *Animal L.* 123, 131-132 (1996).

¹⁰⁷ Joseph Vining, *Animal Cruelty Laws and Factory Farming*, 106 *Mich. L. Rev. First Impressions* 123, 123 (2008).

organizations to have a presence in the arena arguably most potent to their cause. To ask that the movement withdraw the sliver of a grasp it legally has within industrialized animal agriculture is asking the movement to relinquish its legally valid fight against egregious cruelty in these settings.

Such a request is included in criticism against pro-carceral animal law and can follow from the assumptions made based on the empirical evidence discussed above. If one accepts that institutionalized violence against animals creates a breeding ground for violence against animals, even egregious, then prosecuting individual actors may serve no purpose in the advancement of animal welfare or rights in factory farms or slaughterhouses. Only by reforming the system as a whole will the goals of animal protection organizations be able to be met. Such a reform, in this view, could conceivably only be achieved through legislation or corporations self-reforming through consumer demand. Such a reform may be seen as a sort of social enlightenment, as the public grows more aware of the atrocities of how animals are treated in the food system, society as a whole will change to accommodate those view.

5 Pro-Carceral Animal Law Within Social Movement Development Theory

A focus on pure societal reform has long-term appeal, but it is certainly overly simplistic and idealistic. It furthermore ignores the role that specific litigative efforts and small-scale, short-term legal action likely plays in the development and advancement of a social movement. Anderson¹⁰⁸ compared the animal protection movement, specific to animal agriculture concerns, to the child labor reform movement of the nineteenth century in Britain:

Like children in the 1800s, animals caught in the agricultural revolution have been subjected to worsening conditions due to the economic pressures of industrial concentration. Moreover, animals are powerless, in the sense of having no real choice in whether to accept the conditions of their confinement, just as children were unable to reject the conditions of their employment. Neither group can seek reform directly, because they have no direct access to the political system. Neither group is able to effectively organize and protest the conditions of their confinement/employment. And both groups have been the beneficiaries of a reform movement based largely on moral concerns.¹⁰⁹

In analyzing the connections between these movements, Anderson developed a model of political economy that explains how powerless groups obtain legislative protection.¹¹⁰ In the first stage, the need for protection of powerless groups arises when conditions begin to significantly deteriorate due to the economic pressures of market industrialization; this first stage has long been reached in animal agriculture, with the industrialization of the animal food system in the twentieth century.¹¹¹

In the second stage, pressure for reform grows as a new ethical or moral imperative develops.¹¹² This ethical change is where the animal protection movement currently resides; the development of such a new norm—according to insights of new social movement theory¹¹³—to the combined influence of popular culture, triggering events, and the leadership of important historical figures. The new ethical imperative must be couple with the formation of an adequate interest group structure to achieve effective political pressure, and changes in the economic equation may be achieved by consumer action and impact litigation, adding to the pressure for reform.¹¹⁴

¹⁰⁸ Jerry L. Anderson, *Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement*, 4 Stan. J. Animal L. & Pol'y 1 (2011).

¹⁰⁹ *Id.* at 4-5.

¹¹⁰ *Id.* at 7.

¹¹¹ *Id.* at 26.

¹¹² *Id.* at 8.

¹¹³ *Id.*

¹¹⁴ *Id.* at 8-9.

As insights into any social movement can make clear, the development of a new moral paradigm is a long, difficult, and complex battle.¹¹⁵ Importantly, linking the ideology of a social movement (in this case, a moral demand for, at least, improved treatment of animals in the agricultural system) to the organization and political processes central to resource mobilization can be at least partly achieved through the concept of “framing.”¹¹⁶ Crucial to framing an issue to convince people that action is necessary, activists must construct their own narrative of events and create symbols to quickly and efficiently carry their ideas to the public and link them to “themes or values in the cultural stock.”¹¹⁷

As Anderson notes, thus far the collective story of factory farming is dominated by lingering perceptions of farmers who “care about their animals” and laissez-faire economic policy. Corporations push this story through advertising that tout the sanitary, healthy conditions for animals and the high quality of the resulting product. Legislatures confirm the story by exempting agricultural animals from cruelty laws. The courts reinforce this story by employing standing limitations, which preclude anyone from challenging industrial farming conditions.¹¹⁸ “The emergence of a new norm may depend on multiple individual experiences and stories about those experiences which begin to alter the accepted collective understanding of the situation.”¹¹⁹

Legislative reform is historically a gradual process of establishing footholds, which slowly help to re-adjust the accepted norms.¹²⁰ Considering the fact that the applicability of anti-cruelty laws within factory farms and slaughterhouses is a recent development coinciding with slow regulatory change of the systemic conditions of animals in these facilities,¹²¹ there is no reason to think that anti-cruelty laws are not such a foothold. While critics may argue that prosecutions are not impact litigation in the sense that they do not directly create legal change to the improvement of the lives or living conditions of farm animals, this criticism ignores the importance of animal organizations, through state governments no less, having a legal voice within facilities ordinarily kept out of the public eye.¹²² Furthermore, even if a litigative action is not successful as impact litigation per se—and sometimes because it is unsuccessful—it may raise public awareness regarding the issue and serve as a triggering event for legislative action.¹²³

It is even argued that animal cruelty prosecutions have served to fossilize animal rights, or impede development of the field:¹²⁴

The existence of animal cruelty laws has provided a basis of courts to refuse to extend the most basic rights of autonomy and liberty to other species. For example, in the context of denying the existence of a right for elephants and chimpanzees not to be isolated in solitary cages, judges have pointed out that such legal rights need not be recognized, because if the living conditions become too torturous for the

¹¹⁵ *Id.* at 33 (“Because protection of the powerless requires this “perfect storm” of societal developments, it is not surprising that regulation is slow, often lagging significantly behind public opinion.”).

¹¹⁶ “Framing consists of a process in which “enterprising agents within social movements draw from existing mentalities and political culture to manipulate the symbols necessary for creating action-oriented frames of meaning that will mobilize others on behalf of movement goals.” *Id.* at 16 (citing Carol McClurg Mueller, *Building Social Movement Theory*, in *Frontiers in Social Movement Theory* 3, 14 (Aldon D. Morris & Carol McClurg Mueller eds., 1992)).

¹¹⁷ *Id.* at 16-17 (citing John A. Noakes & Hank Johnston, *Frames of Protest: A Road Map to a Perspective*, in *Frames of Protest: Social Movements and the Framing Perspective*, 1, 9 (Han Johnston & John A. Noakes eds., 2005)).

¹¹⁸ *Id.* at 34.

¹¹⁹ *Id.* (citing Palma Joy Strand, *Law as Story: A Civic Concept of Law (with Constitutional Illustrations)*, 18 S. Cal. Interdisc. L.J. 603, 620-24 (2009)).

¹²⁰ *Id.* at 52.

¹²¹ In the animal welfare arena, states have taken the lead in regulation: many states have now taken action, either by legislation or ballot initiative, to ban gestation crates, veal crates, and battery cages. *Id.* at 53.

¹²² Several states have opted to enact “ag-gag” legislation which criminalizes or otherwise penalizes procuring and distributing video taken undercover on agricultural facilities. For a detail discussion of ag-gag legislation, see, e.g., Sara Lacy, *Hard to Watch: How Ag-Gag Laws Demonstrate the Need for Federal Meat and Poultry Industry Whistleblower Protections*, 65 Admin. L. Rev. 127 (2014); Sonci Kingery, *The Agricultural Iron Curtain: Ag-Gag Legislation and the Threat to Free Speech, Food Safety, and Animal Welfare*, 17 Drake J. Agric. L. 645 (2012).

¹²³ Anderson, *supra* note 108, at 55-56.

¹²⁴ Marceau, *supra* note 1, at 260.

animals, the cruelty laws may serve as a stopgap.¹²⁵

To claim that the very legislative footholds that propelled the animal rights movement forward in the first place are serving to fossilize the movement now—and suggesting that the movement retaining one of its few footholds in animal agriculture is undermining its development—disregards the development of animal law in the United States and social movement theory generally. According to Anderson, regulations to protect the powerless, once enacted, become difficult to enforce, or start to erode with exceptions, until a new norm has been firmly established.¹²⁶ Regardless of the existence of anti-cruelty laws, the judges in animal rights impact litigation cases likely would not have ruled that certain animal do indeed have actual rights. Importantly, though, the fact that criminal anti-cruelty laws exist undoubtedly has served to increase society's perception of animals as beings deserving of some moral value.

The necessity of the animal protection movement to be able to create its own ethical narrative would be diminished if organizations withdrew from pursuing anti-cruelty laws within industrialized animal agriculture. While a movement struggles to develop, and luck into, a “perfect storm” of societal developments, taking away avenues of legal access would effectively demonstrate a preference of other social movements' asserted causes over the proposed animal ethical paradigm-shift. While such a preference is valid on a societal method, it is not valid in effect, as demonstrated, to or within the animal rights movement.

As an example of an overarching narrative of animal suffering in industrialized agriculture, consider how individual prosecutions may factor into consumer action which plays an incredibly important role in impacting animal agriculture.¹²⁷ Prosecutions have been criticized for advancing a regressive animal welfare notion of corporations using individual employees as scapegoats or “bad apples”. Pushing for or publicly celebrating successful charges or convictions against workers may not on its own avoid the “bad apple” argument by corporations. However, when criminal prosecutions are brought against a myriad of defendants from different corporations in different places across the country, the aggregate of these actions may begin to tell a different story to consumers. Indeed, it has been argued that, “[t]o consumers who have seen these videos again and again—there are no bad apples anymore. The bad apple, to the consumers now, is the industry.”¹²⁸

Similarly, the light penalties and infrequent enforcement of anti-cruelty laws create the social message that animal cruelty is “marginally acceptable or a minor criminal infraction.”¹²⁹ It is posited that any system of criminal justice that purports to deter this behavior must seek to make the behavior socially unacceptable.¹³⁰ The individual deterrent abilities of these prosecutions on factory farm or slaughterhouse workers remains doubtful, but the effect of increasing the efficacy of anti-cruelty laws in this specific arena is likely incalculable. While the industrial animal agricultural system itself is likely the ideal target, removing any bla-

¹²⁵ *Id.*

¹²⁶ Anderson, *supra* note 108, at 33.

¹²⁷ See, e.g., “New Research Finds Vast Majority of Americans Concerned about Farm Animal Welfare,” ASPCA (July 7, 2016), <https://www.asPCA.org/about-us/press-releases/new-research-finds-vast-majority-americans-concerned-%20about-farm-animal> (noting a survey conducted for the ASPCA where 77% of consumers said that they are concerned about the welfare of animals raised for food); *Natural Food Labels Survey*, Consumer Reports National Research Center (Jan. 2016) (Consumer Reports' 2015 Natural Food Labels Survey found that better living conditions for farm animals is viewed as “very important” to 52% of consumers and “important” to an additions 32%); *U.S. Chicken Consumption Report*, National Chicken Council (July 2018) (finding that approximately three-quarters of respondents to a survey conducted said they were concerned about how chickens are raised for meat and bred to optimize meat production); “New Research Shows Major Global Supermarket Chains at Risk of Losing Customers over Poor Pig Welfare,” Cision PR Newswire (Apr. 17, 2018), <https://www.prnewswire.com/news-releases/new-research-shows-major-global-supermarket-chains-at-risk-of-losing-customers-over-poor-pig-welfare-300631690.html> (noting a survey commissioned by World Animal Protection in which 80% of U.S. consumers said they were concerned after learning about the treatment of factory-farmed pigs, and 89% of respondents said that supermarkets have a responsibility to source pork from higher welfare farms).

¹²⁸ This quote was written in a now-unavailable editorial, *Animal Welfare Cannot Break Down*, Feedstuffs (Sept. 28, 2009). While it has since been deleted from electronic archives, the Humane Society of the United States reported this quote in several articles between beginning in 2009. See, e.g., “More Video of Abused Calves at Vermont Slaughter Plant,” Humane Society of the United States (Nov. 2, 2009), http://www.humanesociety.org/news/news/2009/11/veal_investigation_110209.html.

¹²⁹ Livingston, *supra* note 59, at 61.

¹³⁰ *Id.*

me from individuals who engage in egregious cruelty likely fails at exploring the full narrative of an animal's plight in these facilities.

A criticism of the current strategies of the animal rights movement within factory farms cannot be adhered to without understanding the two distinct frameworks for understanding social movement actions. A criticism of the current strategies of the animal rights movement within factory farms cannot be adhered to without understanding the two distinct Criticism of pro-carceral animal law has valid empirical foundation. Criminal prosecution of anti-cruelty laws in factory farms and slaughterhouses based on undercover investigations undoubtedly forms part of the system of mass-incarceration in the United States. The demographics of workers—mostly Hispanic, increasingly undocumented, and impoverished—perpetuates the criminal justice system's unbalanced targeting of minorities and those of low socioeconomic class. Furthermore, criminal prosecutions do not have a strong enough empirical or even theoretical basis in the contention of a link between violence against animals and violence against humans. The strongest evidence connects slaughterhouse employment rates to increased rates of violent crime in a community, but such evidence can work against animal advocates by placing into doubt the culpability of factory farm or slaughterhouse workers who commit egregious act of cruelty.

While pro-carceral animal law likely cannot be justified by empirical or criminological bases, criticism of these criminal prosecutions asks the animal protection movement to place anthropocentric social movement concerns above the interests of animals in industrialized animal agriculture. While this balancing act certainly holds weight within the animal welfare movement, it does not reach the animal rights movement which, at its foundation, refuses to compromise the interests of animals over human interests.

In addition, the pursuit of criminal prosecutions holds a valid and important place in the development of the animal protection social movement. The prosecutions represent a foothold inside the walls of factory farms or slaughterhouses which was hitherto unavailable. These individual cases may also play into a greater, overarching narrative by the animal movement necessary to create a new societal moral norm. Thus, pro-carceral animal law is in tension with other human and criminal justice concerns, but animal rights philosophies and social movement development theory can justify criminal prosecutions in light of the overall goal of advancing animal conditions and treatment in industrialized agriculture.

Para publicar na revista Brasileira de Políticas Públicas, acesse o endereço eletrônico www.rbpp.uniceub.br
Observe as normas de publicação, para facilitar e agilizar o trabalho de edição.