

PART II

Animal Law in Context: The Limits of Carceral Strategies

Introduction

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Animals have long been undervalued in both society and in the law. Animal advocates seeking legal recognition of the capacity of animals to suffer have frequently turned to the criminal law in recent decades. More convictions and longer sentences for animal abusers have been treated as markers of success in the battle for the social recognition of animals. For his role in a dogfighting enterprise, a Black man in Virginia, Eldridge Freeman, Jr., was recently sentenced to 108 years of incarceration, with 98 of the years suspended (meaning that he will serve at least 10 years, followed by probation and the threat of an additional 98 year sentence), and a fundraising email from a national group lauded the case, explaining that “the successful prosecution and appropriate sentencing in this case demonstrates what is possible when state laws are strong and animal cruelty is taken seriously.”¹

No one can doubt the good faith efforts of these advocates to protect animals. But the notion that animals are safer because of more vigorous prosecution, or that anthropocentrism is reduced by this sort of legal intervention, is speculative, to say the least. In the past, victims of hate crimes and domestic violence, among others, have also sought to use law, in particular criminal law, to advance their social change objectives. Among other goals, Part II seeks to understand the effectiveness of carceral social change projects outside of the animal law, so that animal lawyers might learn from these histories.

For example, advocates and scholars observe that there is reason to doubt “the hopefulness with which . . . largely white, activists in the . . . movement imbued [criminal] law” (Kuennen). There is a reflexive urge to assume, for example, that mandatory arrest, felony laws, no-drop policies, and other tough-on-crime innovations will yield progressive social change. But “any expectation of a reliable, protective response by police is a product of not merely white, but also

¹ Email from Lora Dunn, *26 Dogfighting Victims* (May 25, 2021), <https://www.wric.com/news/crime/dinwiddie-man-to-serve-10-years-for-dogfighting-animal-cruelty-charges/>.

heteronormative privilege,” and the effect of investment in criminal solutions is not merely neutral; rather, the focus on carceral strategies has been shown to be “crowding out” systemic solutions (Kuennen). Scholars from outside of animal law, such as those who study domestic violence, offer lessons about the way that top-down strategies that focus on convictions and incarceration risk alienating grassroots activists, feed the mass-incarceration system, and often fail to reduce the types of conduct they hope to end.

Drawing on lessons from the war on drugs and domestic violence, the chapters in this section can help animal lawyers by highlighting the mistakes of other movements. The chapters discuss some of the unintended consequences and limitations of carceral strategies. Animal lawyers seem to imagine that their carceral advocacy occurs in a vacuum, considerably distanced from the unseemly aspects of the criminal system. The race and unfairness problems that plague the criminal system don’t have much application in the animal prosecution realm, advocates have long assumed. But scholars of criminal law find such claims of animal law exceptionalism striking: “there is no reason to think that the enforcement of laws forbidding animal abuse is likely to be more equitable than any other sort of criminal law enforcement” (Kamin). Even if the expansion of animal crime laws and policing is genuinely motivated in every state by race- and class-neutral goals, the enforcement of an expanding web of criminality will have predictably disparate impacts. For some, traffic stops might seem like quintessentially race-neutral offenses; after all, one’s guilt has nothing to do with one’s race. Yet, experts in the field have long noted that as the substantive criminal law expands (more offenses and broader definitions of crimes), the protections of the Fourth Amendment diminish proportionately. So if it is a crime to stop a car with an air freshener, then law enforcement seeking to engage in pretextual stops can (and have been documented to) use the air freshener as a justification for stopping the car of persons who look out of place or whom the officer suspects of other crimes. And when an officer approaches a car or a home, the smell of drugs inside might produce the sort of probable cause that justifies entry. Expansions in the criminal law have predictable, and proven, impacts on marginalized communities. Thus, one author makes a poignant comparison between animal law and the war on drugs: “There is genuine risk that the barking dog will become the new smell of marijuana” (Kamin).

More generally, these chapters raise challenges to carceral animal law and their pursuit of tough-on-crime legislation. Is it truly helpful for animal advocates to team up with conservative republican lawmakers to pass new felony laws that are heralded as groundbreaking? Is it appropriate to support the firing of animal control officers and prosecutors who are deemed “too soft” on animal crime and to deride “slap on the wrist” punishments in cases of neglect (Gruber)? Important parts of the animal law movement have become a caricature of 1990s style tough-on-crime rhetoric, and this message has been reinforced by the leading groups in this country for decades (Gruber). These chapters also challenge the claim that animal cruelty enforcements

are relatively rare, and mostly for affirmative abuse: “Since Libre’s Law 2017 passage, the state has prosecuted thousands of human animals – 21,206 to be exact. In 2017, the number was 967 cases, which spiked to 11,836 filings in 2018, and 8,405 in 2019. The majority of the cases (52 percent) were for neglect” (Gruber). Are these dramatic case increases a sign of animal rights on the rise or just another chapter in the nation’s mass incarceration story?

Likewise, the movement’s recent celebration of noncustodial sentences as a kinder and gentler approach to animal law is much less than it seems. “[A]nimal law is still far too carceral in its rhetoric and approach to law reform, and the pivot towards fines, fees, and probation is not nearly as salutary as the animal protection lawyers imagine” (Marceau). Simply put, “a critique of incarceration alone would actually let the movement off too easy” (Marceau).

Beyond carceral animal law and the efforts to acknowledge animal suffering through incarceration, Part II also considers the carceral logics inherent to “spectacular immigration enforcement” efforts at meat production plants (Chacon). The entanglements of meat production, poverty, and carceral strategies collide to produce a type of “violence” that is an oft-ignored feature of American meat consumption, and highlight the complex webs of carcerality that define our relations with animals (Chacon). The very prosecutors championed for bringing justice to animal victims are quick to point out that persons working in meatpacking plants without authorization “deserve prosecution,” or as the Trump Administration candidly put it, “the cruelty is the point.” Finally, another aspect of carceral thinking explored in Part II is the connection between caging humans (in prison) and caging animals. The cruel caging of monkeys for maternal deprivation studies helped fuel a “nascent animal rights movement,” and simultaneously “bolstered opposition to solitary confinement of human prisoners” (Winders). And the United States is the world leader in the solitary confinement of both humans and animals. But as this section shows, facile efforts to equate human and animal caging should be avoided, both because they are inaccurate and tend toward exaggeration (e.g., we treat humans worse than animals), and also because the comparisons inevitably result in a compassion competition that pits the interests of humans and nonhumans against each other (Winders).

This section complicates the conventional narratives about carceral strategies. Law reform in this area may not be as beneficial for animals nor as enlightened and progressive for humans as prior discourse assumes. Likewise, the perils of human incarceration and meat production should not be underestimated, but the unimaginative and anthropocentric framing of the problem as one of treating humans like animals obscures more than it illuminates. Carceral logics are everywhere in law and are increasingly saturating social consciousness. They represent a hope for simple narratives (and solutions) to complicated social problems, and Part II confronts this dilemma directly.

