PART IV

Challenging Captivity and Changing Carceral Thinking

Introduction

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Carceral logics are so woven into contemporary social institutions, it is often hard to imagine approaches to solving social problems that do not rely heavily on punitiveness. The chapters in this section suggest ways to think differently about captivity, its harms, its justifications, and carceral logics more broadly. One way to do that is by exploring philosophical and legal arguments that are used to justify holding prisoners captive and assessing how and when these arguments fail. Comparing these arguments to arguments that are used to justify holding animals captive is another way we can begin to think beyond the carceral. These sorts of comparisons, for example, between prisoners' rights and animal rights, are not intended to conflate two distinct forms of cause lawyering, but rather, as Amar and Chen suggest, to highlight parallels that can help identify strategies for reaching each movement's respective goals.

One of the central goals of challenging carceral thinking is to make visible the hold it has on our political imagination, the ways it negatively impacts humans and nonhumans who are trapped in the institutions it justifies, and to elevate social justice causes that condemn it. Too often, however, the causes that condemn carceral logics in the human case, like prison abolition, are dismissed because they are too radical. Attempting not to appear "too radical" has led many social justice lawyers and groups to operate within accepted legal norms, rather than challenging those norms, working instead to reform some of the more egregious practices, like solitary confinement and the death penalty. In the realm of animal law, there is a long-standing effort to avoid looking radical and to appear "mainstream"[1] by embracing, and "naturalizing" carceral thinking. The punitive impulse in animal law has

[1] Joyce Tischler, *A Brief History of Animal Law*, Part II (1985–2011), 5 STAN. J. ANIMAL L. & POL'Y 27, 59 (2012) ("Supporting the enforcement of state anticruelty laws has enabled animal law practitioners to work in a collegial manner with prosecutors, judges, and law enforcement, and has helped in the move to mainstream animal law in the legal community.").

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become so strong that one could confuse a defense of the death penalty by the Supreme Court with calls for more policing and prosecution in the animal law realm: "The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose."[2]

This section reminds us of the long history of human confinement, and the efforts by civil rights lawyers to push back against the trend of treating social problems with ever more punitive approaches. It asks us to think about what confinement means, and how, for example, our understanding of human confinement and false imprisonment might have implications for how we think about the animals living among and with us (Kysar). Equally important, the chapters in this section seek to reimagine the animal rights movement as the civil rights movement and to position the struggle of animal advocates alongside the history of great civil rights efforts (Potter). For some, the current efforts to reimagine and challenge carceral approaches through habeas corpus litigation or other rights litigation is valuable insofar as it spotlights the autonomy and dignity harms suffered by animals (Eisen). Yet some raise a concern that an uncritical celebration of rights, including habeas corpus, tends to entrench the very systems and the oppressions that are inherent to them, that ought to be challenged.

In sum, social justice activists, including animal activists, and cause lawyers, including those who work to elevate the status of animals, have often worked within the logic of the law and legal system to try to gain more expansive and inclusive results. But there is always a danger that tinkering within the system creates a sort of release valve that diffuses pressure to fundamentally reimagine the system. In the realm of animal confinement and human imprisonment, there is a risk that litigation efforts aimed at celebrating the potential of the legal system to serve as a check on itself will legitimize and confirm the very hierarchies and problematic systems in question. It does not mean that short-term litigation to address the immediate problems faced by suffering humans or animals should be abandoned. After all, our idealism is surely lost on the prisoners living in squalor or the animals being marched to slaughter at this very moment. Still, long-term thinking is a necessary part of anti-oppression efforts. Thus, research and discourse have to be focused on the project of "abolition" and what it means to think beyond carceral logics (Gruen). This section and the book end by calling for us to tap into a deep imagination about how things could be otherwise, to allow for the possibility of establishing new conceptions of justice that might provide freer ways for us to be in relationships with other animals and each other. Abolition, after all, is no more utopian than the view that through more prisons we will create less crime, or the view that animal

[2] Gregg v. Georgia, 428 U.S. 153, 183 (1976).

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confinement is a necessary feature of human thriving. There is no reason to accept on faith that our punitive impulses are protecting animals better than a new, more imaginative framework yet to be fully fleshed out. We call on scholars to imagine beyond carceral logics, and to take the next step of developing a research agenda to make concrete what that might look like.

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