

## Introduction

*All movements seem to start out with a relatively narrow focus, which then widens in response to the recognition of the interconnectedness of oppression.*

*Sistah Vegan, afterword<sup>1</sup>*

The animal protection movement is living out an untenable paradox: motivated by a vision of progressive social reform, while relying on regressive social policy. The animal protection movement's enthusiasm for criminal punishment echoes in some surprising quarters. In his Inaugural Address, President Trump described rampant crime as an "American carnage" that threatened the well-being and safety of all Americans. Attorney General Sessions has also "repeatedly hawked a nationwide crime wave," and claimed that the very "safety of the American people [is] at risk"<sup>2</sup> as a justification for more aggressive sentencing and charging practices. Sessions issued a memo in May 2017 instructing that federal prosecutors are prohibited, in the absence of explicit permission, from pursuing anything other than the "most serious" charges possible in each case.<sup>3</sup> The Brennan Center and numerous civil rights organizations have criticized as anathema to social justice this approach to criminal justice that stokes public fears in order to justify ever harsher criminal regimes. Tough-on-crime polices are a self-fulfilling prophecy because, as one scholar has noted, they are "an experiment that cannot fail – if crime goes down, prisons gain the credit; but if it goes up, we clearly need more of the same

<sup>1</sup> Pattrice Jones, *Afterword* to *SISTAH VEGAN: BLACK FEMALE VEGANS SPEAK ON FOOD, IDENTITY, HEALTH, AND SOCIETY* 187, 188 (A. Breeze Harper ed., 2010). For an even more recent and equally compelling set of observations about the animal protection movement's race and class problems see APH KO & SYL KO, *APHRO-ISM: ESSAYS ON POP CULTURE, FEMINISM, AND BLACK VEGANISM FROM TWO SISTERS* (2017).

<sup>2</sup> The Editorial Board, Opinion, *Donald Trump and the Undoing of Justice Reform*, N.Y. TIMES (Feb. 17, 2018), [www.nytimes.com/2018/02/17/opinion/sunday/donald-trump-and-the-undoing-of-justice-reform.html](http://www.nytimes.com/2018/02/17/opinion/sunday/donald-trump-and-the-undoing-of-justice-reform.html).

<sup>3</sup> Memorandum from the Office of the Attorney General to All Federal Prosecutors: Department Charging and Sentencing Policy (May 10, 2017), [www.justice.gov/opa/press-release/file/965896/download](http://www.justice.gov/opa/press-release/file/965896/download).

medicine whatever the cost.”<sup>4</sup> Moreover, tough-on-crime policies are oppressive, discriminatory on racial and class lines, unproven as tools of crime reduction, and strikingly lacking in empathy. Yet this same carceral logic – appealing to mainstream persons by exaggerating the risks of crime and the benefits of incarceration – permeates the thinking of activists, organizations, and commentators in the animal protection movement.

Animal protection groups champion the elimination of systemic violence, and yet it is not uncommon for animal advocates to label the dismissal of criminal charges or short prison sentences in the realm of animal abuse as among the most urgent problems facing the animal protection movement. Leaders of the movement have made clear that carceral animal law<sup>5</sup> polices are a critical strategic priority. The longstanding motto of one leading organization is fairly representative as a motto for the entire disparate movement, “Abuse an animal – Go to Jail!” In 2018, light sentences or leniency in the application of the criminal law are not just regarded as unfortunate, they are characterized by the leaders of the animal protection movement as, to quote a 2018 fundraising email, “injustices of the highest degree.”<sup>6</sup> As another letter to donors explained, with “your support [we can help] . . . lock up animal abusers – and keep both people and animals safe.”<sup>7</sup> This book argues that a substantial tempering of the animal protection movement’s enthusiasm for criminal punishment is overdue. Perhaps it is possible to move *beyond cages* and toward more systemic solutions. This book is a specific critique of carceral strategies pursued in the name of improving the lives and status of animals; it is also a more

<sup>4</sup> David Downes, *The Macho Penal Economy: Mass Incarceration in the United States—A European Perspective*, in MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES 51, 57 (David Garland ed., 2001). On the other hand, “[a]ny system of criminal justice that purports to deter this behavior must seek to make it socially unacceptable for any person of any age to engage in animal cruelty.” Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1, 60–61 (2001).

<sup>5</sup> Carceral animal law is the notion that increased policing, prosecution, and imprisonment are necessarily a central aspect of ensuring greater status for animals within the legal system. The phrase “carceral animal law” was inspired by commentators who have critiqued what they called carceral feminism. See generally Aziza Ahmed, *Trafficked? AIDS, Criminal Law and the Politics of Measurement*, 70 U. MIAMI L. REV. 96, 108–09 (2015); Elizabeth Bernstein, *Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights*, 41 THEORY SOC’Y 233, 235 (2012) (documenting the rise of the movement and noting its harmony with general, get-tough-on-crime politics of the era); Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 750 (2007) (describing the feminist criminal law reforms as “a product of conservative tough-on-crime ideology”); Janet Halley, et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 337 (2006). See Fredrik DeBoer, *Yes, Carceral Feminism Is a Thing*, THE ANOVA BLOG (Oct. 18, 2014), <http://fredrikdeboer.com/2014/10/18/yes-carceral-feminism-is-a-thing/> (“At the end of the most well-intentioned law in the history of laws, there’s a cop. That’s what we’re talking about here. The rest is window dressing.”); Victoria Law, *Against Carceral Feminism*, JACOBIN (Oct. 17, 2014), <https://www.jacobinmag.com/2014/10/against-carceral-feminism>.

<sup>6</sup> Email on file with the author, dated Mar. 13, 2018.

<sup>7</sup> Email on file with the author, dated Mar. 29, 2018.

general case study about the limitations of relying on the criminal law as a vehicle for progressive social reform.

The United States is the world leader in incarceration and it stands as one of the few nations to have ever made it to the “700 club” (700 or more prisoners per 100,000); in Europe there are no nations in the “200 club,” and more than half of Europe is not even in the “100 club.” As a nation we cage humans at a rate that is 53 percent higher than our closest incarceration rival (Russia).<sup>8</sup> This book challenges the accepted wisdom that efforts to cage ever more humans will lead to greater animal liberation. Social justice and ending oppression for all species requires an interest in reforms that go beyond the cage, and which require departing from the conventional wisdom of mainstream animal protection groups. Such reforms will be difficult for mainstream animal protection groups because, as one scholar has noted, true shifts in policy and behavior are “more evident at the grassroots level than within the high-profile national organizations, where there is greater resistance” to understanding the “interconnectedness of oppression.”<sup>9</sup>

To understand the rationale for pursuing criminal punishments as an important part of the animal protection movement’s strategy, it is necessary to first appreciate just how divergent, almost to the point of incompatibility, the many strains of animal protection have become. The goals of the groups and persons who wish to reduce or eliminate harm to animals often vary dramatically. For some, protecting companion animals from rogue abusers is the central and defining project of animal protection. The repulsive acts of violence directed toward pets animate this circumscribed interest in companion animal protection. For others, the interest in protecting animals extends beyond these most highly anthropomorphized creatures who share their beds and the label “family,”<sup>10</sup> and includes some of the other most charismatic creatures on earth, such as chimpanzees, cheetahs, rhinos, lions, elephants, and whales. Persons committed to the protection of charismatic wildlife recoil at images of trophy hunting or whaling, and often appreciate the connection between humans and animals in general, but may not oppose in principle zoos or aquariums, dog races and circuses, or the use of billions of animals for food each year. Polling data tends to suggest that a majority of Americans share this highly compartmentalized view of animals – they love many like family, and take for granted the instrumental value of others in satiating dietary cravings, amusement, or research interests. A Gallup poll from 2015 finds that a full one-third of Americans believe animals should have “the same rights as people,” and nearly two-thirds of

<sup>8</sup> AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT 3 (Kevin R. Reitz ed., 2018).

<sup>9</sup> JONES at 188.

<sup>10</sup> *More Than Ever, Pets Are Part of the Family*: 2015, HARRIS POLL at [www.prnewswire.com/news-releases/more-than-ever-pets-are-members-of-the-family-300114501.html](http://www.prnewswire.com/news-releases/more-than-ever-pets-are-members-of-the-family-300114501.html) (A 2015 Harris poll of 2,225 adults of whom 1,323 had a pet; 95 percent of pet owners consider their pets to be a part of the family); *How People View Their Pets*: 2016, FORTUNE & MORNING CONSULT at <http://fortune.com/2016/09/07/pets-are-basically-people/> (A 2016 Fortune-Morning Consult Poll of 2,002 voters of whom 61 percent were pet owners; 76 percent of respondents classified their pets as “beloved members of the family”).

Americans support “some rights” for animals, yet more than 90 percent of Americans consume animal products, per capita meat consumption climbs every year to a new record level,<sup>11</sup> the popularity of zoos and animals used in sports and entertainment seems to remain high, and concerns about the use of animals in research seem to be minimal. Animal protection, then, like many features of the human experience, can be shaped by motivated cognition – humans seek protection for animals and pursue policies to protect animals unless and until those policies or norms conflict with existing habits or practices.<sup>12</sup> The western repulsion against dog meat and the consistent (even growing) love for bacon or other pig meat is a microcosm of this motivated cognition. Indeed, research has shown that “while evidence for an animal’s mind is generally persuasive [evidence of moral standing], it is not compelling when a person is motivated to defend their use of the animal as food.”<sup>13</sup>

Still other persons and groups are concerned about all animals, and not just particularly beloved pets and wild animals. Yet even among those whose concern extends to the less anthropomorphically appealing species, there are notable differences in the chosen means for protecting animals, and perhaps even the goals. Persons concerned with *animal welfare* focus their efforts on ensuring the “humane” treatment of animals, but not the elimination of instrumental uses of animals in the service of human desires. The animal welfare orientation does not seek to eliminate factory farms or zoos, but rather to make them more humane; it is a pursuit not of the elimination but the enlargement of the cages. In 2018, almost no one openly opposes animal welfare protections in the abstract. Even the most persistent defenders of factory farms and research or cosmetic testing facilities acknowledge the abstract notion that, in general, “animals ought to be treated ‘humanely’ and not subject to ‘unnecessary’ suffering.”<sup>14</sup> Of course, people may disagree about the details of what animal welfare requires in a particular context – industry groups still routinely and vigorously oppose reforms as minimalist as allowing animals such as pigs to live in crates that afford them enough space to turn around. But at the conceptual level, animal welfarists have achieved a victory of almost universal proportions. But it is a pyrrhic victory; the same sort of hollow victory that Edward Bonilla-Silva has identified in the ascendance of colorblindness as America’s prevailing racial ideology – “Racism without Racists.” Bonilla-Silva has documented that only the most

<sup>11</sup> Catey Hill, *This Chart Proves Americans Love Their Meat*, MARKETWATCH (Dec. 1, 2016), [www.marketwatch.com/story/this-chart-proves-americans-love-their-meat-2016-08-15](http://www.marketwatch.com/story/this-chart-proves-americans-love-their-meat-2016-08-15).

<sup>12</sup> For a fascinating study showing this effect, see Jared Piazza & Steve Loughan, *When Meat Gets Personal, Animal Minds Matter Less: Motivated Use of Intelligence Information in Judgments of Moral Standing*, 7 SOC. PSYCHOL. & PERSONALITY SCI. 1, 1–8 (2016). The authors find that intelligence plays a critical role in determining the moral status of animals, *unless* the information showing intelligence is “self-relevant.” That is, people “disregard relevant information (e.g., intelligence) when it applies to an animal that they consume, and thus avoid a potential moral dilemma.” The authors demonstrate through a series of studies that the unique moral status of dogs in society is a product of motivated cognition.

<sup>13</sup> *Id.* at 1–8.

<sup>14</sup> Gary L. Francione, *Animal Rights and Animal Welfare*, 48 RUTGERS L. REV. 397, 398 (1996).

fringe Americans now believe in overt racial discrimination and white supremacy. And yet, racism continues to be a major problem in America. Similarly, very few Americans would seek out the label “animal abuser,” or glorify the suffering of animals, and yet the practices and institutions that cause the most suffering to animals on a daily basis persist, and some are even growing. The criminal law entrenches rather than challenges this status quo.

By contrast, a distinct group of people associated with animal rights or liberation share an orientation toward protecting animals by recognizing them as distinct living creatures who are entitled to respect and protection for their own sake. Persons associated with the animal rights as opposed to animal welfare ideology tend to reject the use of animals for the instrumental benefit of humans. The *rights* sought for animals, according to this view, are not the rights to vote or drive, or even to healthcare or participation in contemporary human society, but rather a right to be left alone, and to exist with relative autonomy and self-determination. As a practical matter, animal rights lawyers are only seeking, to date, the “liberation” from inhumane confinement of certain creatures with particularly developed and scientifically established conceptions of autonomy and self-determination.<sup>15</sup>

The widely varying conceptions of the protections deserved by animals make describing a singular animal protection movement impossible. There is no monolithic animal rights or animal protection platform. The orientation and long-term goals evolve over time, vary by group, and even within groups. This book’s use of the phrase “animal protection” throughout is meant as an imperfect shorthand for the disparate groups and philosophies that comprise a vast and multifaceted movement. As relevant to this project, persons interested in animal protection are understood to share an interest in reducing the amount of harm suffered by animals, both ones individually identified and animals as a group. Certainly, many animal protection advocates might want more than a reduction in harm – that is, they seek to influence dietary choices and abolish many, or even all institutions that exploit animals. And others who consider themselves interested in animal protection might really only care about select species, or animals they have a personal connection with. But for purposes of this book, the common denominator – from those who merely regard their dogs as family, to the welfarists, to the animal rights people – is a sincere desire to improve the lives of (some or all) animals by reducing the amount of suffering and harm they endure.

Starting from the premise that animal protection scholars and advocates are seeking a net reduction in the total amount of harm suffered by animals, this book interrogates one of the movement’s chosen tactics for pursuing this strategy: criminal punishment. Does the increased criminalization of animal cruelty – more crimes,

<sup>15</sup> JANE GOODALL, *Forward* to STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* ix, ix-vi (2000).

more enforcement, higher penalties, deportations, and offender registries, among other mechanisms – serve the goal of improving the status of animals in the legal system and reducing their suffering? Alternatively, does incarcerating those who harm animals serve critical human interests in keeping society safe from people who would progress to hurt humans? Are animals or humans better off because of the movement’s pursuit of criminal punishment, or instead are neither truly benefitted?

The punitive war on animal cruelty is a dead-end. The seeming victories of the animal protection movement in the realm of individual criminal punishment are a mirage. As Aya Gruber has insightfully observed in the context of women’s equality, tethering an interest in rights or equality to the “crime victims’ (perceived) interests in retribution” is a fool’s errand, more likely to impede than to advance a social movement.<sup>16</sup> Carceral victories do not meaningfully enhance the protection of animals, they do not make humans safer, and the efforts to align the movement, at least at a conceptual level,<sup>17</sup> with the policies and logic of mass criminalization, come at a cost. Propagating the dehumanizing violence of incarceration is not a viable solution to the inhumane treatment of animals. Such a view of the movement – that incarcerating rogue animal abusers will dislodge longstanding social norms about animals – is empirically unfounded and conceptually dangerous. Under this approach the reduction of the suffering of animals is something of a zero-sum game where the increased status of animals is in tension with a less punitive, less carceral approach to criminal justice. Creating the appearance of such a tension is untenable for a group that wants to be perceived as a burgeoning civil rights movement. It is also in tension with creative, radical advocacy within the movement. As one well-established figure explained, anonymously in an interview with me, “we are constantly looking over our shoulders to consider what prosecutors will think of us,” and the effect is to stifle some creative or avant-garde advocacy.

The animal protection movement – on an organizational and individual level – regard the fight to secure protections for animals as a civil rights issue. Analogies to women’s rights, LGBTQ legal victories, and even the abolition of slavery and the fight against racism are common tropes. But is the movement sincerely interested in civil rights and broad social change? Incarceration is a most unlikely ally for a movement that might earnestly desire far-reaching social reform. Never has a social change or civil rights cause been so thoroughly immersed in the coercive, prosecutorial arm of the State. Indeed, the animal protection movement’s commitment to ever harsher criminal punishments and more aggressive enforcement of the criminal law may serve as a case study for understanding how other movements should conceive of their relationship with the carceral state. An alliance with the

<sup>16</sup> Aya Gruber, *A Provocative Defense*, 103 CAL. L. REV. 273, 277 (2015).

<sup>17</sup> Some may argue that the concern is more conceptual than pragmatic, because it is so rare that a harsh penalty is imposed for animal cruelty. The aspirations and goals of a movement, however, should be taken seriously, and are subject to critique. The movement cannot defend its carceral priorities and then disclaim them as irrelevant insofar as they rarely obtain convictions and longer sentences.

mass criminalization movement and the discredited assumptions that more incarceration leads to less violence are not a good fit for radical social change.

Central to the view of many people connected with animal protection efforts is the notion that the aggressive prosecution of someone for animal abuse “sends a signal to other potential abusers in the community” that violence toward animals will never be tolerated.<sup>18</sup> Aggressive pursuit of incarceration, one leading animal protection group has explained, is the “blueprint” for using litigation to advance the status of animals in the law. But such prosecutions may have exactly the opposite effect. The conduct targeted by the laws is the rare, socially deviant behavior of rogue animal abusers (mostly companion animals). The ASPCA, for example, has deemed the production of foie gras to constitute animal cruelty, and yet the organization leaves unhindered (and unprosecuted) the nation’s largest corporate producer of foie gras whose operations are less than a hundred miles from the ASPCA’s headquarters in New York. Foie gras prosecutions, the organization seems to conclude, do not raise money the way that commercials about neglected pets might. More generally, the enforcement of cruelty laws against individual persons does not trigger positive changes in social attitudes toward animals and may actually distort the message that the suffering of all animals matters by reinforcing the dominant view of most Americans that they are compassionate to animals, and mindful of the need to reduce their suffering. Cruelty prosecutions allow for a collective transference or displacement of guilt from mainstream society onto the “other,” the socially deviant animal abuser. As Professor Sherry Colb has observed, it is the lack of personal sacrifice and the consistency with status quo values, not an evolving social consensus about animal protection, that explains “why so many people do support anti-animal-cruelty legislation.”<sup>19</sup> Caging cat abusers is much more acceptable than confronting zoos, much less factory farms.

A failure to imprison one who abuses an animal, under existing thinking, is a failure to recognize animals as deserving of legal consideration. If we don’t punish (and punish severely) the human who harms animals, regardless of race, age, socio-economics, or mental health, then we devalue the non-human animal. To imagine that an animal abuser should get treatment, community service, or strict probation terms instead of incarceration is regarded as tantamount to disrespecting the entire animal rights agenda. Even to suggest that one need not be deported from this country for a prior act of animal mistreatment is regarded as untenably soft-on-animal-crime. Anything short of maximalist punishments are derided as a “slap on the wrist,” and fundraising and outreach efforts have consistently reiterated the

<sup>18</sup> *No Boundaries for Abusers: The Link Between Cruelty to Animals and Violence Toward Humans*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/no-boundaries-for-abusers-the-link-between-cruelty-to-animals-and-violence-toward-humans> (last visited Apr. 23, 2016).

<sup>19</sup> See e.g., Sherry F. Colb, *Whether or Not to Prosecute Animal Cruelty*, DORF ON LAW (Jan. 21, 2015), [www.dorfonlaw.org/2015/01/whether-or-not-to-prosecute-animal.html](http://www.dorfonlaw.org/2015/01/whether-or-not-to-prosecute-animal.html).

theme to the point that increased criminalization has emerged as a reflexive dogma of the movement. There may be those who are skeptical of this trend, or conflicted about the value of incarceration as a solution to the suffering of animals, but their voices are not part of the academic commentary, much less the blog posts and outreach and press campaigns of animal protection groups.

To date, there has been little publicly vocal opposition, much less reasoned debate about the value of using the criminal law and its punitive power as a central legal tool in service of animal protection.<sup>20</sup> Instead, aggressive criminal enforcement or the lack thereof is one of the most salient themes in animal law. Some of the most important figures in the movement regard aggressive criminal prosecutions as one of the defining elements of animal protection. This book is the first comprehensive effort to subject the vast carceral priorities of animal advocates to scrutiny. By exposing the breadth of the criminal justice efforts sought by animal advocates, and juxtaposing the carceral “successes” of the movement with the well-documented reality that by the turn of this century our “justice system was [already] the harshest in the history of democratic government,”<sup>21</sup> it is possible to better contextualize the criminalization goals of animal protection scholars and advocates. In the social sciences and criminal law literature it is no longer seriously disputed that longer sentences and more punishment often produce criminogenic consequences; indeed, there is a growing body of literature taking stock of the fact that the public’s “self-interest” in safety, security, and a thriving community is best served by having lower incarceration rates and a less punitive justice system.<sup>22</sup> These insights have not been infused into the thinking or strategies of many animal protection advocates.

The point is not that animal abuse should be decriminalized; indeed, complete decriminalization would likely be a mistake.<sup>23</sup> However, lobbying and litigating for ever more severe criminal sanctions is not an obvious benefit to the long-term goals of the animal protection movement. Animal protection scholars and organizations devoting resources to the punishment of animal cruelty will likely enjoy a short-term form of masculine<sup>24</sup> (or vengeance-based) satisfaction with each criminal

<sup>20</sup> A notable exception is Wayne Pacelle, the President and CEO of the Humane Society of the United States (HSUS), who wrote a blog post questioning the utility of animal abuse registries. Wayne Pacelle, *Reservations About the Animal Abuse Registry*, HUMANE SOC’Y U.S.: A HUMANE NATION (Dec. 3, 2010), <http://blog.humanesociety.org/wayne/2010/12/animal-cruelty-registry-list.html> (last visited Jan. 22, 2018).

<sup>21</sup> WILLIAM STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 3 (2011).

<sup>22</sup> PAUL BUTLER, *LET’S GET FREE: A HIP-HOP THEORY OF JUSTICE* 29–30 (2009) (making the case that less punitive polices and policing are in the public interest). See also *id.* at 13 (“No democratic society can incarcerate such a large fraction of its poor population and retain the goodwill of that population.”); Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173 (2008).

<sup>23</sup> Existing research shows that criminalization of certain conduct does lead to a decrease in the prevalence of that conduct.

<sup>24</sup> For a well-done discussion of the problem of male dominance and control in the animal protection movement, see EMILY GAARDER, *WOMEN AND THE ANIMAL RIGHTS MOVEMENT* (2011).



punishment victory, but the long-term prognosis is much less clear. It turns out that a punitive, carceral form of animal law is not good for animals, and it may not even be good for human safety.

Chapter 1 provides an overview of the history and conceptual origins of the pro-incarceration tendencies that exist within the modern animal protection movement. Advocates who have adopted a highly punitive approach to protecting animals have not done so in a world of robust, alternative choices. There is considerable path dependence at play here. More than simple errors and oversight, the attraction to criminal punishment might be charitably viewed as an act of desperation by persons and organizations seeking a foothold in a legal world that has proven itself hostile to recognizing animals as deserving of meaningful consideration or protection. It would be facile to suggest that animal advocates have ranked incarceration as their highest priority among a menu of desirable and viable options.

Chapter 2 places the carceral priorities in context, providing a careful overview of the scholarly research on mass criminalization from other fields that have not previously been incorporated into the animal protection debate. To date, animal protection scholars and advocates have not confronted the literature documenting the failures of deterrence and the criminogenic consequences of more aggressive policing and prosecution.

Chapter 3 shifts from the general to the specific, and serves as a detailed typology of the many ways in which animal protection groups pursue more aggressive criminal justice responses to animal cruelty. The efforts are far-reaching, and to those unfamiliar with animal protection's trajectory, quite shocking. The movement has lobbied for more felonies, for aggravated felonies, pursued mandatory minimums, assisted with efforts to deport undocumented persons, and funded prosecutors, to list but a few salient examples. It is fair to describe the animal protection movement as aspiring to be, if it is not already so, a respected arm of governmental efforts to enforce criminal and immigration laws. It is a tough-on-crime movement.

Chapters 4 through 6 and identify a set of overlapping but discrete concerns with the carceral project in animal protection. Chapter 4 applies a critical lens to the overarching efforts at criminalization in this arena and demonstrates the many failures of this project, from a normative and a consequentialist perspective. For example, the success of the movement in obtaining felony cruelty laws masks the fact that many of the same bills that raised animal cruelty to the status of a felony also ushered in exemptions from all cruelty prosecutions for factory farms. Many other discrete objections to the movement's turn to criminal law are also explored in this Chapter.

Chapter 5 takes up the issue of race and the use of criminal law to facilitate the goals of the animal protection movement. This Chapter argues that, even assuming that a more punitive approach to animal law would benefit some pockets of

non-human animals by producing less crime, the focus on carceral reforms further isolates the movement from communities of color. An incarceration approach to animal law ignores the growing body of intersectional research in this field and leaves the animal protection movement vulnerable to claims that it would prefer to align itself with a system that has, in the eyes of many scholars, an indelible link to racism, rather than to pursue true anti-oppression reform. The movement risks being viewed as colonialist and racist if its efforts are not more responsive to the realities of tough-on-crime politics. If the animal protection movement truly wants to be an inclusive movement, much less one that has a civil rights orientation and is sensitive to injustice, then pursuing harsher criminal justice responses is a very poor choice of legal tools.

Chapter 6 focuses on the so-called “LINK”<sup>25</sup> as one of the dominant justifications for punishment in modern society. The link, the movement argues, demonstrates the mutuality of advantage in punishing animal abuse more severely – it keeps humans safe. This Chapter suggests that the animal protection movement’s use of the link research is critically important to the success of carceral efforts as the link is oftentimes a leading public explanation for the increased criminalization or enforcement of cruelty laws, and yet as this Chapter shows, the movement’s deployment of the link research, as with other manipulations of science in the service of criminal prosecutions (such as bogus bite-mark or bullet evidence) is insufficiently nuanced, and misleading. Moreover, even if the strongest versions of the link were accepted as infallible, the notion that human safety is increased by heightened criminal punishment is unsupported in existing criminology research.

Finally, Chapter 7 briefly anticipates and responds to criticism of the claim that incarceration is not good for humans or animals, and Chapter 8 concludes by offering some tentative possible alternatives for research.

In short, this book breaks from the dominant narrative that a highly carceral approach to animal law is an unmitigated good for the animals it seeks to protect, or good for society, and instead argues that aggressive criminal enforcement should be regarded as a relic of a more desperate, darker period in the history of animal rights. Many in the animal protection movement seek a monumental shift in the social understanding of the human–animal relationship,<sup>26</sup> but such an effort is largely at

<sup>25</sup> The term “LINK” is actually trademarked by the Animal Welfare Institute, and is often written in all-caps. For purposes of this project, the use of the lower-case word “link” means the same thing as the broadly used “LINK” typology. For a discussion of the link’s meaning and use in animal protection advocacy, including a summary of the leading research in this field, see Chapter 6.

<sup>26</sup> As Steven Wise has explained in *Rattling the Cage*, there is an impenetrable wall between animal rights and present social understanding: “For four thousand years, a thick and impenetrable legal wall has separated all human from all nonhuman animals. On one side, even the most trivial interests of a single species – ours – are jealously guarded. We have assigned ourselves, alone among the million animal species, the status of ‘legal persons.’ On the other side of that wall lies the legal refuse of an entire kingdom, not just chimpanzees and bonobos but also gorillas, orangutans, and monkeys, dogs, elephants, and dolphins. They are ‘legal things.’” STEVEN M. WISE, *RATTLING THE CAGE: TOWARD*

odds with efforts to align the movement with the prosecuting power of the State. The money, enthusiasm, and social media attention invested in the carceral project should be redeployed toward efforts that make animal protection more accessible to persons of all classes, cultures, and demographics. The animal protection movement should spend time looking for convergences of interests, affirming the dignity of humans and animals as opposed to inflicting the indignity of incarceration on humans.

Animal rights is often described by its adherents as a philosophy committed to non-violence, an opposition to systemic, institutionalized violence against sentient beings. The support for punitive policies is inconsistent with this philosophy. The critiques that follow are not personal, and they come with a great appreciation for the historically limited set of legal options to protect animals. But the ideology of animal protection via human punishment is dated, inconsistent with a civil rights orientation, and in need of being retired. Perhaps the law's power to effect radical change is limited – maybe the legal system demonstrates the insight of Audre Lourde, that one cannot use the master's tools to destroy the master's house. Or maybe there are ways to infuse legal challenges with a more radical, revolutionary form of advocacy that will shape the media and public narratives, and eventually impact legal norms. Either way, prosecutions are unlikely to be successful tools of radical reform.

LEGAL RIGHTS FOR ANIMALS 4 (2000). *See also*, Steven M. Wise, *Legal Personhood and the Nonhuman Rights Project*, 17 *ANIMAL L.* 1, 5 (2010) (“I have often written that a high, thick legal wall separates all humans from all nonhumans . . . The goal of the interdisciplinary Nonhuman Rights Project is to change this paradigm.”).