

Not Alone Here: Improving the Lives of American Non-Human Citizens

A critique of the Animal Welfare Act

Abstract: The A.W.A (Animal Welfare Act) has well-documented short-comings as the primary bill addressing animal suffering in the American political/legal system. Throughout the decades since its passage in 1967, this single bill, especially a flawed one, cannot hope to protect the diversity of life within the US. A better system for protection within the American legal system would be a department of the government concerned with animal welfare. This would merge the Endangered Species Program (E.S.P.), E.P.A, and other related departments under one head, to allow for better management of resources, and create a coherent stance on animal cruelty for the nation. With support from research into the connection between human and animal abuse, the overwhelming affection to companion animals demonstrated by the American people, and public opinion polls, this paper seeks to address the lack of a coherent stance by the U.S. government and how to change it. A department of the government would bring all resources and attention together into one focus, with a better social outcome for non-human and human animals alike.

I. Introduction

Prior to the 1800s, no laws existed regulating the interactions between humans and non-human animals throughout the Western world¹. As industrialization took the globe by force, legislation was increasingly used to identify incorrect patterns of behavior towards the voiceless. Over the decades, great strides have been made towards the equalization of races within Westernized nations, equality for all, and better treatment of children. However, a consistent failing within the legal system has been in regards to the welfare and treatment of animals. In 1966, the United States Congress passed the Laboratory Animal Welfare Act, based on social pressure, to attempt to regulate the cruelty faced by laboratory animals in the name of research. An additional Act in 1967, the Animal Welfare Act, attempted to bolster the L.A.W.A. and also curtail cruelty. Despite the initial benevolent intentions of these two acts, the legal system has directly failed to improve the lot of animals within the United States. By identifying the flaws and mistakes in the L.A.W.A. and A.W.A., it is crucial to develop new legal aid for non-

¹ For the scope of this paper, the Western world refers to Europe, the Americas, northern Africa, and the near East. This is not a reflection of the Far East, sub-Saharan Africa, and other areas.

human animals who share the same country. In this regard, an ideal solution would be the creation of a federal government department to regulate the treatment of non-human animals by human animals. As animals “depend for their protection entirely on those willing to act on their behalf and have, literally, no voice in the political process”², improvements must be made to the current legal system which leaves animals forgotten at best and actively hurt at worst. Within this paper, the failures of the A.W.A. are examined not as defeatist or pessimistic opinion, but as a confirmation that more must be done regarding animal welfare within American society; I propose the creation of a federal department with specific interests in animals and the environment. The creation of a single federal department would better refine resources currently spread between multiple departments, increase focus on the welfare of animals for the sake of animals and not based on human concerns, and work to improve social issues directly caused by or related to the mistreatment of animals. A coherent statement and focus on the abolition of cruelty to one party will facilitate the reduction of cruelty elsewhere in society, which benefits the citizens of the United States, making a federal department a worthwhile use of resources³.

II. How We Got To The A.W.A. of 1966

Before endeavoring to find a solution to the cruelty faced by animals by humans within Western society, it is critical to understand the larger framework of the world. While it is true that no laws existed regulating the treatment of animals (within the Western world) prior to the 19th century, it should not be inferred that there was absolutely no framework for the treatment of non-human animals prior to the 1800s. As laws were less enforced, infrequently documented in a sustainable manner, and more arbitrary through much of early human history, historians often turn to the religion of the region for a more accurate reflection of the regulations every day individuals followed. However, there is little direct regulation of treatment within the texts of the three major Western religions: Judaism, Christianity, and Islam. Religious texts, such as the Torah, the Bible, and the Qu’ran respectively, had limited commentary on the subject; for

² Anderson, J. L. *Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement*, 4 *Stanford Journal of Animal Law and Policy* (2011) 6.

³ Cusack, C.M. *Animals and Criminal Justice*. (2015) New Brunswick, NJ: Transaction Publishers. 153-157.

example, the Torah gives humans dominion over animals, but it is a later addition to Judaic law, as written by Rabbi Samson Raphael Hirsh in his teachings *Horeb*, that the righteous are “not only to refrain from inflicting unnecessary pain on any animal, but to help and, when you can, to lessen the pain whenever you see an animal suffering”⁴. Similarly, the Qu’ran instructs followers that “man and nature [are] inseparable”⁵, but it is within the *Hadith*, or the collected traditions of Mohammed, which instructs humans to treat animals with compassion, such as refraining from animal torture⁶. Within Christian doctrine, Jesus is seen as both a dove and the lion of Judah, indicating reverence for nature; while certain Christian scholars such as Locke advocated complete ownership of animals with no moral regard to their well-being, notable exceptions within Catholic hagiography such as St. Basil and St. Francis of Assisi are well-remembered voices on the stewardship of good Christians to the natural world around them⁷.

Beyond religious tradition and scholarship, there was no legal standing and limited concern for the plight of animals within human society until the 1800s. The United Kingdom passed the first codified law in 1867 regulating the treatment of animals, and from there, regulations to animal activities focused largely on the criminality of the humans involved, such as creation of anti-cock fighting laws which were larger reflections on gambling activities⁸ and less concerned with the treatment of the animals involved. Laws restricting outright cruelty to animals were couched in other issues, such as dog fighting and gambling, and offered limited protection. This protection was largely towards companion animals, and as the Industrial Revolution rolled through the world, animals caught in industrialized farming, industrialized medicine making, and industrialized production were largely forgotten⁹, due to focus on higher production. It was not until the 1960s that the United States saw a significant public press towards the

⁴ *Horeb*, Chapter 60, Line 416

⁵ Huss, R. *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 Marq. L. Rev. 47 (2002). 59.

⁶ *Shama'il at-Tirmidhi*, Book 9

⁷ *The Hexaameron*, a collection of nine sermons by St. Basil, and *Little Flowers*, a 14th century work on the life of St. Francis, both refer extensively to animals.

⁸ Cusack, *Animals and Criminal Justice*, 30-31.

⁹ Anderson, *Protection for the Powerless*, 21-22.

reduction of cruelty in production (in this case, the production of medicine and scientific advancement), which manifested as the Laboratory Animal Welfare Act.

III. A Brief History of the A.W.A.

The Laboratory Animal Welfare Act of 1966 was a combination of eight pending Congressional Bills¹⁰; it was pushed through Congress after public outcry in response to an article in *Life* magazine, noting the popular purchasing practices of laboratory animals by laboratories from pet-thieves¹¹. During hearings on the proposed bill, Congress also received information on the condition and treatment of these animals within medical facilities, which further emboldened the movement. In 1966, the Act was passed. Upon passage, the L.A.W.A. regulated humane treatment for particular animals, as well as changing the manner laboratories received animals; however, criticisms of L.A.W.A note that the original purpose of the 1966 Act was merely to “reduce theft of companion pets”¹². Initially, the Department of Labor was given the authority to regulate and enforce the L.A.W.A.¹³, but that was a brief assignment. In 1970, Congress passed the A.W.A., the Animal Welfare Act, which alleged to strengthen the “administration of the 1966 Act as well as to expand its protection”¹⁴, as well as switching the burden of enforcement and regulation to the U.S.D.A. The Act of 1970 set an important precedent that animals are entitled to certain basic necessities¹⁵, as well as broadening the Secretary of Agriculture’s enforcement powers. However, the A.W.A. contained specific language that “in no manner authorizes the disruption or interference with scientific research or experimentation”¹⁶. Essentially, if a researcher could prove their endeavors had vague scientific merit, they had a blank check, as long as they were not stealing cats or dogs from citizens.

¹⁰ Rikleen, L. *The Animal Welfare Act: Still a Cruelty to Animals*, 7 B.C. Envtl. Aff. L. Rev. 129 *1978), <http://lawdigitalcommons.bc.edu/ealr/vol7/iss1/7>

¹¹ Wayman and Stan, *Concentration Camps for Dogs*. *Life Magazine*, Feb 4, 1966. Cited in Rikleen, *The Animal Welfare Act: Still a Cruelty to Animals*.

¹² Ritter, M. *Standing in the Way of Animal Welfare: A Reconsideration of the Zone-of-Interest Gloss on the Administrative Procedures Act*, 29 Tex. L. Rev 951 (2010). 303.

¹³ Rikleen, *The Animal Welfare Act*, 131.

¹⁴ Rikleen, *The Animal Welfare Act*, 132

¹⁵ 7 U.S.C. – 2143(a) (1976)

¹⁶ H. Rep. No. 91-1651, 91st Cong., 2nd Sess. 2.

In theory, the L.A.W.A. and the A.W.A. demonstrated a desire in post-war America to restrict cruelty to animals within the scientific community. A 1976 amendment to the A.W.A. introduced legislation that first banned participation in, sponsorship of, and attendance to animal fighting events (particularly dog fighting). Everything espoused in both pieces of Congressional legislation is valuable and reflects the sentiments of animal welfarists. However, despite the good intentions of the L.A.W.A. and A.W.A., both Acts are, in practice, ineffective and problematic. As described by Paul Waldau in his lecture at Madonna University, “The A.W.A. went from a compass point to a fig leaf.”¹⁷

IV. The Failure of the A.W.A. from 1976 to 2016

Writing in 1978, Lauren Rikleen criticized the A.W.A. For her, the Act was relatively new, and yet she already noted multiple examples of ineffectiveness. She does not dismiss the good intentions of the A.W.A., saying it is “a comprehensive piece of legislation which, in twelve years, should have curbed abusive practices.”¹⁸ However, even within the time she analyzed the bill (little over a decade), she noticed the issue of enforcement. Within the L.A.W.A. and the A.W.A., it fell to the United States Department of Agriculture to enforce the legislation; however, in 1966 the Secretary of the USDA expressed reluctance to enforce the Act, which Rikleen cites: “There is a question as to whether it would not be desirable that a law such as that in question be administered by a Federal agency more directly concerned” with the affairs of animals¹⁹. Within the first few months of creation, already it was suggested that the USDA should not enforce the A.W.A. and a different organization, one more aligned specifically to animals, is recommended. Again in 1970, the USDA attempted to remove themselves from the enforcement side of the A.W.A., and failing their removal, instituted increasingly complicated paths for laboratories to follow that proved unsustainable – by becoming unsustainable, it was left to laboratories to self-regulate²⁰. Rikleen also addresses the

¹⁷ Paul Waldau, “Animal Law: Past, Present, and Future”. Student Seminar Series. Madonna University, Apr 13, 2016.

¹⁸ Rikleen, *The Animal Welfare Act*, 134.

¹⁹ Letter from Secretary of Agriculture, 1966. As cited in Rikleen, *The Animal Welfare Act*, 135.

²⁰ Rikleen, *The Animal Welfare Act*, 135-6.

specific failure of the anti-animal fighting provisions, noting again the lack of enforcement, which is directly linked to the fact that “prior to 1978, no funds had ever been budgeted for enforcing this aspect of the Act”²¹. With a department unwilling to enforce the Congressional Acts, no funding available for enforcement even if the department was willing, a bureaucratic maze instituted by the aforementioned department, and no training for enforcement authorities, Rikleem concludes the impossibility of the A.W.A. getting off the ground²². As time passed, her assumptions were accurate.

While many laws improve through time, the A.W.A. has had no such good fortune and has instead decayed over time. Fast-forwarding nearly 20 years from Rikleem’s perspective, Joseph Mendelson III’s position in his 1997 article “Should Animals Have Standing? A Review of Standing under the Animal Welfare Act” is similarly scathing. He notes the legal difficulties associated with the A.W.A., particularly in regards to legal standing. The court systems have, in his critique, found “animals and other third parties often do not have standing to seek redress of their claims”²³. He notes the case of *International Primate Protection League v. Institute for Behavioral Research*, after which standing and rights for animals and animal welfare groups attempting to use the A.W.A. were rejected, with the court decision largely regarded as “third parties may not use the AWA [sic] to sue researchers who violate the Act”²⁴. Within his article, he points out the paradox: the A.W.A. does not directly protect animals, yet it has been used in court cases saying third parties who wish to speak for animals cannot do so. The animals, largely recognized to be voiceless, must somehow use a human-crafted Act to literally speak for themselves. In this manner, the A.W.A. is actively detrimental to animal welfare, as it created precedent to allow only the impossible to happen.

Further issues are exposed both in Rebecca Huss’s 2002 article and Michael J. Ritter’s legal discussion in 2010. Huss points out that while animals have limited

²¹ Ibid, 140.

²² Rikleem, *The Animal Welfare Act*, 145.

²³ Mendelson, J. *Should Animals Have Standing? A Review of Standing Under the Animal Welfare Act*. 24 B.C. Envtl. Aff. L. Rev. 795 (1997). 801.

²⁴ Mendelson, *Should Animals Have Standing*, 808.

standing within the law, as they are more frequently considered property instead of persons, corporations have been designated as a “person, within the meaning of the Fourteenth Amendment”²⁵. Thus, corporations, though they are “limited to scope”²⁶ as persons, have more rights than and legal standing than an individual animal; this issue is further reinforced by the decision in *Citizen’s United v. F.E.C.* in 2009 which expanded the considerations of personhood for corporations (both for- and non-profit)²⁷. Reinforcing Huss’s notation about the standing of corporations, who can prove zone of interest, Ritter’s analysis of the legal standing of animals agrees that corporations have more personhood than animals, no matter how intelligent or similar to humans.

One suggestion has been using the Administrative Procedure Act to sue the U.S.D.A. for failure to enforce the A.W.A.²⁸; however, Ritter notes the “zone-of-interest” issue: the plaintiff must demonstrate they are a part of the “zone of interest”, and as animals cannot speak for themselves, this becomes difficult and caused the ruling of *ALDF v. Espy* to turn in favor of Espy²⁹; the human animals involved could not prove their own zone of interest was violated, and the non-human animals could not prove anything at all. With the issue of zone-of-interest doctrine, Ritter notes that the A.W.A. and similar legislation is “a large barrier to organizations and individuals alike who wish to sue under federal animal welfare statues that lack citizen suit provisions.”³⁰

An important fact to remember in the discussion of the A.W.A. is that it does “not regulate the use of animals *during* research” as the A.W.A.’s primary concern is not “animal welfare”.³¹ It is primarily public outcry and awareness “about the treatment of animals used in research facilities [which] is a powerful source of change”³² and not the current legislation (which has been criticized as “human-focused, inadequate, and

²⁵ Southern Ry. Co. v. Greene, 216 U.S. 400, 412 (1910), cited in Huss, *Valuing Companion Animals*, 73

²⁶ Huss, *Valuing Companion Animals*, 73.

²⁷ Dunbar, J. “The Citizen’s United Decision and Why It Matters”. *The Center for Public Integrity*, 18 Oct 2012, <https://www.publicintegrity.org/2012/10/18/11527/citizens-united-decision-and-why-it-matters>

²⁸ Ito, S., Comment, *Beyond Standing: A Search for a New Solution in Animal Welfare*, 46 Santa Clara L. Rev. 377 (2006). 393.

²⁹ Ritter, *Standing in the Way of Animal Welfare*, 969-974.

³⁰ Ritter, *Standing in the Way of Animal Welfare*, 980.

³¹ Shrengohst, K. *Animal Law – Cultivating Compassionate Law: Unlocking the Laboratory Door and Shining Light on the Inadequacies and Contradictions of the Animal Welfare Act*, 33 W. New Eng. L. Rev. 855 (2011) 872-3.

³² Shrengohst, K. *Cultivating Compassionate Law*, 859.

wrought with contradictions”³³) that is currently enacted. Even scientists writing in 2012 note that particular pieces of the A.W.A. are “still unclear”³⁴.

With the zone-of-interest, loop holes, excessive exceptions within statutes, “areas of inadequate protection and contradictory legislative language”³⁵ and “vague terminology and phrases”³⁶ complications of the A.W.A., the legal system offers inadequate protections to animals. Speaking in 2016, Paul Waldau, head of the Anthrozoology department at Canisius College in New York, describes the A.W.A. as “speaking from the past”. This statement expresses the sentiment that animals have no intrinsic value or inherent worth, which is expressed throughout the A.W.A.; the Act reflects the Cartesian philosophy that animals are unthinking, soulless objects. The A.W.A. exists to regulate cruelty to “prevent humans from becoming generally desensitized and committing cruelty against humans”³⁷, as opposed to stopping it, and is a prime example of “reflexive centering of concern upon human interests.”³⁸ This corresponds with the common consensus that “our judicial system has consistently served as a barrier for animal welfare plaintiffs seeking to bring their cases before a federal court”³⁹; Hersini vents similar frustrations in attempting to prosecute animal plaintiff cases⁴⁰. Court case precedents, such as *Lujan, ALDF v. Secretary of Agriculture*, and *Yuetter*, have restricted third party groups such as the Animal Legal Defense Fund, HSUS, and other animal welfare groups from making significant federal progress. Altogether, the American judicial system has failed animals.

V. The Importance of Animals

Though most major religions advocate a custodial attitude towards animals, and most individuals, when questioned, will say they like animals, animal welfare groups

³³ Ibid, 861.

³⁴ Cardon, A. D., Bailey, M. R., & Bennett, B. T. (2012). The Animal Welfare Act: From Enactment to Enforcement. *Journal of the American Association for Laboratory Animal Science* : JAALAS, 51(3), 304.

³⁵ Shrengohst, K. *Cultivating Compassionate Law*, 860.

³⁶ Ito, *Beyond Standing*, 404.

³⁷ Nowicki, C. *The Animal Welfare Act: All Bark and No Bite*. 23 *Seton Hall Legis. J.* 443. (1999) 477.

³⁸ Bartlett, S. J. *Roots of Human Resistance to Animal Rights: Psychological and conceptual blocks*. 8 *Animal L.* 143 (2002) 4.

³⁹ Ito, *Beyond Standing*, 414.

⁴⁰ Deawn A. Hersini, Comment, *Can't Get There From Here... Without Substantive Revision: The Case for Amending the Animal Welfare Act*, 70 *UMKC L. Rev.* 145

have a significant challenge when addressing their core beliefs to the greater populace. In Arluke's book "Just A Dog," Arluke relates that a singular abuser must be considered not just on "personality" but on the "social context" which created an abuser⁴¹. Arluke considers cruelty a natural part of human development, in which we learn about ourselves; however, dismissing animal cruelty as individualized, typical of children, or singularly sociopathic dismisses the overall cruelty that animals face within the United States.

In order to press the need for better federal regulation of the care of animals, within laboratories and within the general population, it is critical to address the psychological barriers animal welfare organizations must face. In his 2002 article "Roots of Human Resistance to Animal Rights: Psychological and Conceptual Blocks," Steven Bartlett addresses the core issues which create barriers for better animal reform; together with the failure of legislation such as the 1966 and 1970 Welfare Acts and the difficulty faced by groups attempting to lobby on behalf of animals, these conceptual/psychological blocks create an almost impassable road.

Bartlett's discussion of the psychological framework that blocks animal welfare movements is relevant to the discussion of the A.W.A. because, as he says, all legislation "and the common law are the products of human activity, and they bear the unavoidable imprint of human mentality."⁴² Human mentality, in Bartlett's argument, is naturally self-serving and parasitic to the host (i.e. the planet), and it is outside the nature of a parasite to consider anything beyond "the immediacy of self interest"⁴³. Instead of urging altruism and compassion, it is best for animal welfarists instead to focus on the "vocabulary of ideas [humans] use"⁴⁴ and shift the natural human outlook, which has a "manifest tendency to unduly limit the scope of what mankind will accept as having importance and moral value"⁴⁵, towards the benefits of animal welfare.

⁴¹ Arluke, A. *Just a Dog: Understanding Animal Cruelty and Ourselves*. Philadelphia, PA: Temple University Press (2006). 56.

⁴² Bartlett, S. J. *Roots of Human Resistance to Animal Rights: Psychological and conceptual blocks*. 8 *Animal L.* 143 (2002) 2.

⁴³ Bartlett, *Roots of Human Resistance to Animal Rights*, 14.

⁴⁴ Bartlett, *Roots of Human Resistance to Animal Rights*, 15-16.

⁴⁵ *Ibid*, 17.

Essentially, humans are naturally parasitic and self-serving creatures, so the best method of overcoming the conceptual barriers to animal welfare concerns is to present the welfare of animals in a manner that benefits humans. Thus, while the A.W.A. is criticized for attempting to regulate cruelty as opposed to stopping it, it would be better to produce immediate and negative consequences to the injury of animals; immediate legal consequences, which will in turn alter the social conditioning of the average citizen, will further reinforce the rejection of animal cruelty. This suggestion, which negates the “too hopeful” attitude that the current “restricted scope of [animal welfare activist’s] focused efforts” will change current tragedies, reflects the final suggestion and conclusion of this paper.

However, before turning to a solution to the problem, it is important to understand why the average American should care about the plight of animals. If Bartlett is to be fully embraced, his assumption of a human with no self-control and limited empathy must be acknowledged and studied in the terms he presents: parasitic self-interest. Why then should a citizen care how the country treats non-human animals?

In Carmen M. Cusack’s book “Animals and Criminal Justice,” chapter 12 discusses what she terms the generalizability of abuse. Multiple studies have documented the interconnected relationship of animal abuse and human abuse, with Duncan, Miller, Thomas citing childhood animal cruelty as “directly related to childhood sexual and physical abuse,” and the FBI reporting that the “most serious offenders have a history of animal abuse” – history in this context generally beginning in childhood years⁴⁶. As animals are generally more accessible to a violent individual, or the abuse will be less noticeable, a violent individual will typically start abusive activities with a non-human animal, or continue violent activities using an animal when their human victim is not at hand – this is especially common in sexual homicide offenders (100% previously abused animals) and serial killers (who practice intended abuse on non-human animal targets)⁴⁷. Even less immediately lethal offenders, such as domestic violence perpetrators, have firm patterns of animal abuse⁴⁸. This correlates to the

⁴⁶ Cusack, C.M. *Animals and Criminal Justice*. (2015) New Brunswick, NJ: Transaction Publishers. 153.

⁴⁷ Cusack, *Animals and Criminal Justice*, 154.

⁴⁸ *Ibid*, 154-55.

growing acceptance of pets at domestic violence shelters – often times, even if an individual leaves, any companion animal left with the abuser is likely to be abused or killed⁴⁹. Children who witness abuse in their homes, whether domestic and/or animal, are “ten thousand times more likely to inflict domestic violence in the future”⁵⁰. If Bartlett’s view of the human as a parasitic individual, the natural desire for self-preservation objects to this consequence; while sexual gratification can exist within humans which finds release in violence⁵¹, the need for survival free from a harmful society will typically overrule the gratification potential. For instance, if children witness animal abuse and become abusers themselves, the next generation can quite quickly become self-destructive, which is anathema to the “malignant narcissism”⁵² of a parasite.

It can be difficult to think of oneself as a member of a parasitic species, so even if Bartlett’s assumption on the state of humanity is to be rejected, this does not invalidate the statement that non-human animals must be treated better within society. For a logical or a moral argument, Gary L. Francione and Peter Singer are the leaders in such discussions. For instance, in Singer’s *Speciesism and Moral Status*, he does not start with the assumption that animals are lesser creatures; instead, he questions why that is the automatic assumption. If it is based on intellectual capacity and criterion, the argument follows that particular great apes who have learned to sign are more entitled to moral status than individuals with profound retardation who cannot communicate at all⁵³. This becomes untenable, for it seems unlikely an individual arguing for human primacy over animals will accept such a conclusion. The next common argument is religious in nature, arguing that God gave superiority to humans over animals. Given that there is an alleged separation of church and state in the United States, this becomes an untenable conclusion as well. Additionally, God has no true voice for legal standing even if He did grant such power to homo sapiens alone.

⁴⁹ Randour, M.L. *Facts and Myths about Domestic Violence and Animal Abuse*, Animal Welfare Institute, retrieved from <https://awionline.org/content/facts-and-myths-about-domestic-violence-and-animal-abuse>.

⁵⁰ Ibid, 155.

⁵¹ Cusack, *Animals and Criminal Justice*, 183

⁵² Bartlett, *Roots of Human Resistance to Animal Rights*, 18.

⁵³ Singer, P. *Speciesism and Moral Status*. 40 *Metaphilosophy*, 3-4 (2009). 569-570.

The next argument that is often presented is couched in speciesist terms. Speciesism refers, as most –isms such as sexism and racism do, to the belief that one core group is above another based on a morally arbitrary delineation⁵⁴. As Williams says in “The Human Prejudice,” since humans are doing the judging, “you can’t really expect anything else but a bias or prejudice in favor of human beings”⁵⁵; however, Singer argues this is a dangerous method of arguing, as it is similar to a racist arguing “Why not favor our own kind?”⁵⁶ Further into the speciesist argument is the concept that only “humans and no others have intrinsic worth and dignity”⁵⁷, but where does that worth and dignity come from? Is that worth lost when a human commits a crime and is sentenced with capital punishment? The argument quickly devolves until the argument is reminiscent of the film scene in *I, Robot* in which the detective argues robots are unworthy of being classed with humans, asking “Can a robot write a symphony? Can a robot turn a canvas into a beautiful masterpiece?” Sonny, the robot, returns the question “Can you?”⁵⁸ This scene reflects the artificial delineations the human species has created; by denigrating animals (or in this case robots) because they cannot perform particular actions, the logic follows that any human incapable of such an action (the mentally retarded, the non-artistic, whichever particular argument is at hand) is equally invalid. Such is the difficulty with strained arguments for homocentric world views. In this, Singer reflects the utilitarianism idea, generally attributed to Jeremy Bentham, that “the ability to talk or to reason is irrelevant to the importance of avoiding suffering and facilitating an enjoyable life”⁵⁹.

VI. Why Should the Average American Care?

With the number of issues currently plaguing the United States federal system, an important question to address is: why should the average American support better regulations on the welfare of animals through the government? The average American

⁵⁴ Francione, G. L. *Animal Welfare and the Moral Value of Nonhuman Animals*, Law, Culture and the Humanities 6 (1), 2009, 1-13.

⁵⁵ Williams, B. *The Human Prejudice*, cited in Singer *Speciesism and Moral Status*, 572.

⁵⁶ Singer, P. *Speciesism and Moral Status*, 572.

⁵⁷ Singer, P. *Speciesism and Moral Status*, 573.

⁵⁸ *I, Robot*. Dir. Alex Proyas. Perf. Will Smith, Bridget Moynahan, Alan Tudyk. Twentieth Century Fox, 2004, DVD.

⁵⁹ Singer, P. *Speciesism and Moral Status*, 575

would be hard-pressed to identify the A.W.A. or L.A.W.A., and the idea of medical labs where vivisection is common and animals cry in pain and fear sounds to the average citizen more like the plot of a strange 1960s science fiction film. At the same time, a 2015 survey by The Guardian suggests that a third of Americans believe animals should have same rights as people⁶⁰; YouGov, a third-party polling organization, estimates that 74% of Americans believe animals have certain inalienable rights⁶¹. Bartlett, despite his dim attitude towards humanity, summarizes it neatly by asking “a great number of people in this country today treat their pets as family members.”⁶² These polls reflect a different social mentality than the legal framework demonstrates because of the emotional, social, and physical distance between a medical laboratory or a slaughterhouse and the average citizen; there is a disconnect from the reality of the United States and the desired social environment humans describe in polls. As Schrenghorst opines, the laboratory door should be “unlocked” and a light shone in; after all, “public awareness about the treatment of animals used in research facilities is a powerful source of change.”⁶³ By correlating the treatment of animals in laboratory facilities with known statistics generated by reputable sources such as the FBI in regards to the prevalence and interrelated nature of human violence/animal violence in the view of the public will help demonstrate that though the average American professes to love their animals, the U.S. government has been ineffective and vague in the battle against cruelty.

VII. Solution – A Federal Department

There is a popular witticism in the animal welfare community that says “There are more pet lovers than either Republicans or Democrats”. As previously noted, the A.W.A. is simply not enough. In a nation whose citizenry spent over \$28.5 billion in 2001 on

⁶⁰ Yuhas, A. *A third of Americans believe animals deserve same rights as people, poll finds*. The Guardian, May 19 2015.

⁶¹ Moore, P. *Majority endorse animal rights*. YouGov, April 29, 2015.

⁶² Bartlett, *Roots of Human Resistance to Animal Rights*, 3.

⁶³ Schrenghorst, *Cultivating Compassionate Law*, 859.

their companion animals⁶⁴, the proper treatment of animals is a common discussion. So what can be done, if two Acts of Congress have withered and died?

In 2006, Shigehiko Ito, in the *Santa Clara Law Review*, proposed a “new subdivision within the USDA or a new agency with rulemaking, adjudicatory, and investigative authority” to serve the interest of animals⁶⁵. Ito argues that presently, “our legal system does not offer an adequate solution to the problem of animal abuse and protection”⁶⁶ and that a new organization, which he refers to as ‘New Entity’, could institute “dramatic changes,” which are necessary to “effectively protect the welfare of animals, particularly in the scientific research context. It is dangerous to leave decisions completely in the hands of researchers without considering the interests of others in society.”⁶⁷

While Ito’s consideration of the legal system and the proposed change (the creation of the New Entity) is in-depth, well-researched, and sound, it is possible to push such an agenda a step further. For instance, the USDA is notoriously under-funded and short-staffed⁶⁸, so the creation of a new agency beneath the USDA would add a heavy brick to a crumbling wall. Alternatively, the creation of a new entity under federal jurisdiction as a new department would solve a myriad of problems. To start, the Endangered Species Program (E.S.P.), Environmental Protection Agency (E.P.A.), and other environment/animal organizations could be better grouped beneath one umbrella. This would allow for direct funding to these organization, and a complete focus that enables other departments of the federal system to function with more success. For instance, the Department of Education, once a sore spot between Republicans and Democrats, has managed to pass 20 significant pieces of education legislation, from IDEA (Individuals with Disabilities Education Act) to ESSA (Every Student Succeeds Act) in 50 years. While a department dedicated to animals and the environment may present initial backlash, the Department of Education is a prime example of how, with enough time, such an institution can be assimilated into the fabric of the United States - the

⁶⁴ Huss, *Valuing Man’s and Woman’s Best Friends*, 48.

⁶⁵Ito, *Beyond Standing*, 380.

⁶⁶ Ito, *Beyond Standing*, 402.

⁶⁷ Ito, *Beyond Standing*, 418.

⁶⁸ Huss, *Valuing Man’s and Woman’s Best Friends*

Department of Education has now officially received support from Democrats such as Jimmy Carter to Republicans such as George W. Bush, indicating the acknowledged benefits of a federal education department⁶⁹.

Another feature of creating one department to handle all such issues would be to relieve the overburdened court systems⁷⁰. From rural Alabama to major cities such as Detroit, both civil and criminal courts are backlogged with never-ending cases. While this may seem to be blending executive and judicial powers, the Department of Homeland Security has been given the ability to hold court on the topic of immigration, which sets precedent for a department to retain a “chief legal officer of the Department” to oversee a legal staff; there is a staff of 1,800 attorneys solely for Department of Homeland Security needs⁷¹. Even a fraction of that number of attorneys to either aid animal welfare organizations in pursuing legal claims or to seek justice through their own department would reduce the number of animal welfare cases on individual dockets, relieving some of the congestion of legal cases suffered by most areas of the United States.

While it may seem counter intuitive to create a new department while the Department of Agriculture is currently in place, the Department of Agriculture has been underfunded and understaffed for decades, as well as being boldly unwilling to bear the burden. By relieving some of the duties of the United States Department of Agriculture, such as regulation of the A.W.A. and agricultural farm animals, to a new department would allow the USDA to better focus on farming needs and the FNS. The FNS, or Food and Nutrition Service, already takes roughly 80% of the USDA budget, which leaves the Department of Agriculture low on funds for the many other tasks they have been assigned⁷². As the USDA can clearly not enforce the A.W.A. properly, among the many other duties they are held responsible for, it makes sense to separate that need for labor into a new entity which can have, as Ito notes, “the authority to make rules and

⁶⁹ <http://www2.ed.gov/legislation/GOALS2000/TheAct/index.html>

⁷⁰ Bendery, J. *Federal Judges are Burned Out, Overworked and Wondering Where Congress Is*, The Huffington Post, Sept 30, 2015.

⁷¹ Office of the Secretary, *Office of the General Counsel*, DHS, <https://www.dhs.gov/office-general-counsel>.

⁷² FNS, *History of FNS*, USDA, <http://www.fns.usda.gov/sites/default/files/HISTORY%20OF%20FNS.pdf>

regulations concerning all aspects of animal care and treatment in the context of scientific research”⁷³. Though there is always a question of funding for such a department, the U.S. Army mismanaged nearly \$2.8 trillion dollars in 2016 alone – if there is money enough to be lost by the military, the logical conclusion would be there is money available for a socially beneficial department⁷⁴

VIII. Conclusion

In no manner is this paper meant to disregard or remove the A.W.A. and focus solely on a federal Department. Instead, the suggested department may do best coming into fruition with the L.A.W.A. and the A.W.A. as weapons in its enforcement arsenal. As departments take time to develop, staff, and function, removing both the 1966 and 1970 Act would delay enforcement even further as new Acts with new language must be passed. While neither Act is the best solution for the suffering of animals in the United States, with the proper enforcement and strength, they have the possibility of creating true change. As the Secretary of Agriculture himself noted in 1966, it would be better “administered by a Federal agency more directly concerned and having greater expertise with respect to the subject”⁷⁵.

As Anderson notes in his comparison between child labor and animal welfare laws, it is difficult for a few dedicated welfare activists to pursue real change individually; he assigns much of the credit for the reduction of child labor in the United Kingdom to Parliament in their “regulations designed to alleviate” terrible conditions⁷⁶. By reflecting on other historical movements, such as child labor, in which the naturally powerless and overtly disenfranchised gained legal recognition, it is clear that the best manner for daily suffering to non-human animals to be alleviated is within the systematic and systemic power held within governments. Studies have indicated repeatedly the link between animal and human abuse, which creates a social need to fill inadequate protections towards animals currently in place. The L.A.W.A. and A.W.A. have proved to be insufficient legal protections, due to loopholes, insufficient regulation, and a lack of

⁷³ Ito, *Beyond Standing*, 416.

⁷⁴ Crawford, J. “Audit Reveals Army’s trillion-dollar accounting gaffes”. 23 Aug 2016. CNN.

⁷⁵ Cited in Rikle, *Animal Welfare Act*, 135.

⁷⁶ Anderson, *Protection for the Powerless*, 7.

enforcement; a federal department eliminates loopholes as they appear, will have focused resources for regulation, and the power of enforcement. While “reform in the case of powerless groups is never easy and never quick”⁷⁷, the social benefits of reduced human-to-human violence⁷⁸, the recognition of the moral status of animals insofar as logical correlation for humanity⁷⁹, and better legal reflection of social desires⁸⁰ cannot be overlooked. Animals share the planet with humans, and it is time for humanity to be a better roommate.

⁷⁷ Anderson, *Protection for the Powerless*, 9.

⁷⁸ Cusack, *Animals and Criminal Justice*, 153.

⁷⁹ Singer, *Speciesism and Moral Status*, 579.

⁸⁰ Huss, *Valuing Man’s and Woman’s Best Friend*, 67.

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