Introduction

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The American system of criminal law and punishment is racist, classist, destructive, and ineffective in preventing harm and promoting justice. This isn't an extreme view, nor is it a secret. Indeed, more than half of the country has concluded that aspects of our system of punishment are unfair according to recent polling. Nonetheless, many Americans reflexively seek out punitive interventions in response to vexing social problems. We operate in a realm of dissonance recognizing in the abstract the dysfunction and cruelty of the system, but also endorse criminal interventions in support of the social goals we support. These complicated, contradictory views about the system of law, policing, and imprisonment have been, until quite recently, relatively unexamined. This book encourages reflection on these complex issues of progressive carceralism.

In particular, this book focuses on the connection between our complicated, contradictory views about crime and punishment and our complicated, contradictory views about nonhuman animals. We love dogs, but eat pigs. Birdwatching is a popular pastime, but birdwatching while Black can and has led to police intervention, while eating wild and domesticated birds is simultaneously commonplace. Pitbulls and animal fighting are overwhelmingly associated with urban life and Black men, but killing wild animals for sport is celebrated as a great (primarily white) American pastime. In general, there is also willingness among Americans to overlook, abuse, and cage nonhuman animals. We cage them for our entertainment, because they are deemed a nuisance, or because we plan to eat them or otherwise use their bodies for our human ends. Animal suffering is often invisible under the law or irrelevant as a matter of morality. Leading scholars and activist groups have sought to improve the status of animals in law and society in a variety of ways. Indeed, there is likely more disagreement than agreement about effective legal interventions in animal law. But one of the tactics for promoting justice for animals – perhaps a central focus of animal "law" in the minds of many – is the use of the criminal law as a cudgel to make an example out of certain forms of animal cruelty

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and abuse. Through prosecution and policing, it is imagined, that animal suffering can achieve an appropriate level of social condemnation.

Strikingly, the law permits most forms of cruelty to evade criminal scrutiny, either through de facto procedures or de jure exemptions. But the forms of individual abuse and neglect that can be prosecuted are the subject of considerable fanfare. It is the injured, abused, or mistreated companion animal (often a dog or cat) that makes its way into TV commercials and mailers about why animal protection matters. An e-mail in April of 2021 from David Rosengard of the Animal Legal Defense Fund to potential donors opens with the following paragraph:

> Franky, a beloved family dog, was stolen from his home in Maine. He was beaten, shot for "target practice," and drowned. Justin Chipman was found guilty of aggravated cruelty to animals for his role in Franky's torture and death. He was sentenced to just one year in prison and ordered to pay only $100 in restitution.

The email goes on to note that because animal cruelty laws are "poorly enforced, the violent criminals responsible all too often get inadequate sentences." The message of this type of communications is twofold: (1) animal abuse is underpoliced, and underprosecuted; and (2) by punishing the individual abuser, the status of animals is improved, and the victimhood of animals finally acknowledged. To engage in this sort of propaganda while pretending that carceral animal law has nothing to do with mass incarceration is an untenable obfuscation.

We live in a world where both humans and nonhumans are suffering because of oppressive carceral logics that rely on scapegoating and othering. This book pulls two seemingly separate concerns – the harmfulness of our system of mass incarceration and the harm that humans do to nonhumans – together. It is an effort to begin an academic dialogue between experts who have more in common than they previously understood. This book puts some of the leading thinkers on human incarceration in discourse with some of the big thinkers on animal confinement. The point is not to equate all carceral conditions, but the hope is to think critically about the role of carceral logics across human and animal spheres. What might those concerned about animals learn from social change and civil right lawyers, and what do animal advocates have to teach us all about social change through policing and prosecution?

The book also lies at the intersection of two emerging fields of study, progressive carceralism and what is loosely called anticarceral veganism. In this vein, the chapters that follow offer some fresh perspectives on the uniquely paradoxical project of incarcerating humans in order to liberate nonhumans, as well as some of the most thoughtful and comprehensive defenses of a carceral approach to animal law written to date.

I.1 ABOUT THE EDITING OF THIS BOOK

We are scholars of philosophy and law, and we are both personally and professionally committed to improving the lives of nonhuman animals. We care about

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suffering and the oppression of marginalized beings, whether they are human or other-than-human, and we think moral and legal frameworks grievously undervalue the lives of animals. The questions this book seeks to interrogate revolve around the role of carceral logics in catalyzing positive social change. Are animals benefited by the logics of captivity and carcerality, whether the cages are for the animals or reserved for the humans accused of animal abuse or neglect? The chapters that follow take a diverse approach to examining these critical questions. The relationship of human and animal captivity to well-being is a question of defining import for modern animal law. It is also profoundly important for those who are captive.

As editors and authors, we don't approach this topic from a position of detachment or self-proclaimed neutrality. Rather, our own research shapes our view that carceral logics impede more than they advance the project of protecting animals. Our own chapters urge readers to recognize what we view as the futility of a carceral response, and worse, the negative impacts carceral frameworks have on animals. But we recognize this as contested intellectual terrain, and accordingly we have attempted to gather a range of scholars with differing perspectives and varying entry points for this conversation. To this end, we have recruited accomplished and distinguished voices who see policing and prosecution as paths to a promising future for animal law. Indeed, at least one chapter in this volume openly calls for the expansion of the punishment bureaucracy in the form of a new unit at the Department of Justice whose focus would be more vigorous and frequent animal abuse and neglect prosecutions. Other chapters unapologetically and earnestly speak to the role that felony prosecutions might be understood to play in recognizing animals as victims of crime.

This book aims to provide readers with perspectives from persons who possess a variety of backgrounds and beliefs about the criminal system. Some of the authors in this book have only worked on animal protection issues and have very little involvement in the law, or the criminal law. Other chapters are by authors who are field-marking experts on topics of law, such as immigration or domestic violence or drug crimes, who have never previously engaged with the field of animal studies. This array of backgrounds and perspectives is deployed to provide a larger context for examining carceral logics in animal law.

The project is not, however, one of unifying or flattening out differing perspectives. The goal is not to suggest that there is a single, rational response to the devalued status of animals in the law. Rather, our goal is to generate new conversations, making new theoretical connections, and encouraging discourse across disciplinary and ideological lines. There is not a consensus on many of the questions raised in this book, and nothing approaching it.

Historians examine society's legal norms as one of the metrics for gauging fairness and justice. Our view is that history will not look favorably on the practices of carceral animal law – neither our treatment of animals nor our prosecution and policing of persons as a response to animal maltreatment. But we are strong believers

that one should confront the strongest version of an argument, and engage with it fully and fairly. And for that reason, the book includes a plurality of perspectives, and we have endeavored to provide the best set of arguments on a variety of topics relating to the intersection of carceral logics and animal protection.

I.2 WHAT DO WE MEAN BY "CARCERAL LOGICS"?

There are two distinct senses of "carceral logics" – one that we might think of as a narrower, internal logic, the logic that orders the legal system, prisons, and other similar institutions; and one that is broader, that shapes our understanding and analyses of social problems and solutions. We can think of the first sort of carceral logic as having its emphasis on the "logic" of carceral systems – the laws, rules, design, and practices of courts, police, and prisons. The second sort or carceral logic emphasizes how the "carceral" and its practices inform, surveil, limit, and constrain our thinking in contexts that go beyond prisons.

That these two senses of carceral logics are distinct, doesn't mean that they don't inform one another, as often they do. One clear example that we briefly mention below is the way in which incarceration as a means of incapacitation to both punish those who have caused harm and prevent them from doing so again shapes thinking about how to respond to people, particularly young people, who harm animals. The carceral logic of the criminal law often justifies lengthy sentences for those who commit violent crimes in part as a way to allow victims, and their communities, to feel protected and safe. Many of those in animal law want to replicate this carceral logic in the context of animal cruelty, suggesting that someone who egregiously harms an animal may very well do so again, and it may not just be nonhumans who are harmed the next time.

Animal protectionists who work to expand carceral responses to harms are not alone in thinking that criminal punishment will elevate the status of the victims and protect others in the future. Indeed, among social justice scholars and activists of all sorts, carceral logics are operating overtly or covertly. So-called carceral feminists seek gender justice and relief from domestic violence by turning to the patriarchal legal system to protect them and punish perpetrators of harm. In the wake of the police killing of George Floyd and Breonna Taylor, and so many other Black men, women, and children, there is usually a large number of people who respond to these murders with a desire to lock the police up. Carceral logics prevent many of those seeking to challenge injustice from seeing how the legal system can perpetuate injustice and from critically imagining less carceral responses to a variety of harms to both humans and to other animals. It has become commonplace to speak of criminal sentences that don't lead to incarceration as noncarceral. Indeed, animal advocates are quick to point to sentences of probation and fines, for example, as useful teaching tools or proactive interventions. It is taken for granted that if an individual is in need of public services such as mental health treatment, the criminal

system is an efficient means of connecting individuals with the treatment they need. But this idea that policing, fines, and convictions are a good vehicle for the distribution of civil services is, in fact, a carceral mindset and one that warrants considerably more scrutiny.

1.3 THIS PROJECT IS NOT ANTHROPOCENTRIC

When we talk to people about the problems with a criminal response to animal suffering, a common reaction is to assume that our project is designed at prioritizing human suffering. At least one commentator has concluded that a project concerned with the demonstrated problems inherent in policing and prosecution is a project that is concerned first and foremost with human rights. This is comforting for many animal advocates because it allows them to create a clear distinction between those who are helping primarily humans and those focused on the other-than-human world.

We unequivocally reject this binary. The idea that protecting animals and protecting humans is akin to a zero-sum game in which if one is benefiting humans, for example, by arguing for alternatives to convictions, then animals have to suffer, is maliciously and demonstrably false. There is very little reason for adopting such either/or thinking. We hope this book will generate conversations and lead to research considering the ways that helping humans can help other animals and vice versa.

The chapters that follow provide support for a variety of commitments. We respect the arguments and views expressed in this collection, even though we sometimes don't agree. And we certainly don't purport to have a singular vision of the best path forward for animal advocacy. One thing we reject, however, are claims that we do not sufficiently care about animals, or that we care more about humans who are incarcerated, than we do other nonhuman animals. Our scholarly and practical records show how this is false. Our project here is one of reimagining the discourse about animal law, of opening fields of inquiry about what is possible, and challenging the received wisdom about the role of law in helping animals. We welcome challenges, but it would be a mistake to conflate our view with an effort to deemphasize animal status or undervalue animals. We may disagree with the prevailing wisdom that more prosecutions and investment in the criminal system will lead to "more justice"[1] for animals, but not because we disagree with the idea that animals are grotesquely undervalued in our legal system and in society more broadly.

[1] Jessica Rubin, 34 Harv. L. Rev. F. 263 (2021).

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I.4 ANIMAL CRIMES AND THE "LINK" BETWEEN HUMAN AND ANIMAL VIOLENCE

The salience of the so-called link in animal law debates is hard to overstate. It has become nearly impossible to talk about animal cruelty without discussing the presumed threat to humans from animal abusers. Seemingly every piece of carceral animal legislation and nearly every piece of academic commentary defending a criminal response to animal cruelty, including several chapters in this book, take for granted the idea that a criminal response is necessary to protect humans. A prominent animal attorney, Rebeka Breder, was arguing to the media for a longer sentence in an animal abuse case in 2021 and said, because "we know there is a link between animal abuse and human abuse, this should be a sentencing factor." According to this ubiquitous logic, animal abuse is a sort of canary in the coal mine, an early warning for human violence to come, and thus punishments are a necessary intervention to break this link, and protect humans. As one leading organization puts it, "Animal Cruelty Is a Clear Predictor of Future Violence, So Why Are Perpetrators Merely Slapped on the Wrist?"[2]

The appeal to human interest and safety is transparently deployed by animal advocates in their carceral strategies for addressing certain animal harms. The link creates a sort of bogeyman that calls to mind images of serial killers, and is reminiscent of rhetoric like that of so-called superpredators. The public is told that if they want fewer mass shootings, fewer murders, or fewer sexual assaults, than a more aggressive approach to animal policing and prosecution is the answer. The link has become a sort of talisman of carceral animal law, much as superpredators became the poster children of the war-on-crime era at the end of the twentieth century. Judges are told that they need training on the link, and legislators are warned that violent crime rates are intimately linked to violence against animals.

We think it is important to flag our discomfort with the way the link has been used as a justification for carceral interventions in animal law, and though our list of grievances with this line of thought is long, we will focus on just a couple of deep concerns. First, it must be noted that the animal protection movement protests mightily that their calls for tough-on-crime approaches have *anything* to do with mass incarceration – there are not many animal abusers in prison, they often assume. But we have passed the point in history where we can simply engage in hyperbolic discourse about budding psychopaths and would-be mass-shooters without expecting it to grease the gears of the carceral machinery. Promoting a public understanding that warns of lurking criminal monsters and great public dangers because of underenforcement is precisely the type of logic and discourse that made

[2] Steve Wells, *Animal Cruelty Is a Clear Predictor of Future Violence, So Why Are Perpetrators Merely Slapped on the Wrist?* www.all-creatures.org/articles/lit-slap-on-wrist.html (the header on the website reads, "Working for a Peaceful World for Humans, Animals and the Environment").

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mass incarceration possible in this country. No one group (not domestic violence advocates, not child protectionists, not anti–drunk driving campaigns, not hate-crime proponents, not anti-drug crusaders) is responsible for shaping the discourse or driving carceral logics on their own. It is a joint project, and one that the animal lawyers – fueled by their moral panic around the link – have participated in consistently. Before turning away from the link, it is worth noting a few other, related objections to the way it is deployed by animal lawyers.

First, the logic of link-think is internally inconsistent. Even if one assumes that persons who harm animals will progress to harming humans (or that animal harm is a strong predictor of such behavior), there is no basis for concluding that a criminal response to the maltreatment of animals will end the presumed cycle of violence. John Dilulio, notorious originator of the falsified theory of superpredators, famously espoused the "thug in prison" theory of crime control, which is fundamentally just a theory of incapacitation: "A thug in prison can't shoot your sister." Presumably the same logic underlies the old mantra, "Abuse an Animal, Go to Jail" – that is, a person in jail cannot hurt animals, or your sister! The problem is that even the most hardline proponents of carceral animal law seem to acknowledge that sentences for years or up to a decade are rather extreme, meaning that the person who is convicted of abusing an animal will be released from prison relatively quickly. It is beyond speculative to imagine that a period of incarceration will stop someone who is intent on harming others. On the contrary, prison conditions don't do anything to help incarcerated people work on their anger issues or inclinations toward violence, and programming on the inside to reflect on one's actions is extremely limited. Just placing one on probation, imposing fines, or placing one on an offender registry, all approaches to carceral animal law that are viewed by movement insiders as progressive reforms, are likely to make one's life harder, and to lead to the sort of stress that might culminate in crime. Creating a bogeyman out of animal abusers and calling for a criminal response to animal crimes simultaneously ignores the possibility for human transformation and reform, and treats criminal punishment as the only protection against downstream human violence.

Another problem with the link's use by advocates is that it rests on a logical fallacy. The fallacy of the converse exists when one infers the truth of a converse of a factual statement. For example, one could say that if the animal is a dog, then she is a mammal. Or if someone uses cocaine tonight, then it is highly likely that he used marijuana in the past. But even assuming the truth of these statements, they do not mean that if an animal is a mammal, then she is a dog, nor does it mean that marijuana use is a good predictor of whether one will subsequently use cocaine. By the same token, it may be assumed (based on existing data) that among persons incarcerated for violent crimes, it is more likely that these persons have previously harmed an animal, but that does not mean that harming an animal is a particularly good predictor of whether one becomes violent toward humans. And yet, commentators frequently deploy this very logic to point out the virtues of all variety of carceral

animal law proposals. For example, in Jessica Rubin's 2021 essay about Desmond's Law, she opens by citing a study finding that persons who were incarcerated for violent crimes were about 5.3 times more likely to say they had harmed an animal in the past, and from this concludes, "[t]hose who are cruel to animals are over five times as likely to commit cruelty against humans."[3]

There are a multitude of problems with relying on nonlongitudinal studies of self-reporting among incarcerated persons. But even accepting that persons who have been convicted of violent crimes are more likely to have abused animals than other incarcerated persons does not tell us anything about how good animal abuse is at predicting future violent crime. Such equations only give us half of the fraction – we know the numerator (the number of violent persons who abused an animal), but we have no data about the denominator (the total number of persons who have abused an animal). By the logic of animal advocates, juvenile crime of any sort should be used to predict adult crime because "the vast majority of adult offenders begin offending as juveniles"; however, in reality juvenile crime is a terrible predictor of adult crime because the "majority of juvenile offenders do not continue to offend as adults."[4]

The failure to acknowledge the possibility of human transformation, the bogeyman type thinking that calls for incapacitation, and the logical fallacies at work in this context, all suggest that recourse to the link should be sparing, and certainly not treated as a definitive justification for carceral recourse.

1.5 INTENTIONAL ABUSE IS RELATIVELY LESS COMMON THAN ASSUMED

Animal lawyers tend to focus on the need for criminal responses to the most high-profile acts of sadistic abuse. Think of the e-mail about Franky the dog quoted above. But this is a sort of displacement or distraction, because the research overwhelmingly shows that the vast majority of animal offenses are acts of neglect – that is, crimes of poverty, mental illness, or some combination. In this regard Kendra Coulter and Brittany Campbell's review of animal cruelty statistics for a province in Canada is revealing. They find that for all six of the years they studied, the most common animal cruelty offense (generally more than 50 percent of all animal cruelty) is a violation of a standard of care, such as the provision of adequate food, water, or veterinary care.[5] Other research has tended to confirm this finding that neglect is the most common form of animal cruelty. For example, Lori Donley and

[3] *Id.*

[4] David Skalansky, A Pattern of Violence 174 (2021).

[5] Kendra Coulter & Brittany Campbell, Public Investment in Animal Protection Work: Data from Manitoba, Canada, Animals, 7 (2020).

Gary Patronek found that 62 percent of reported cases of animal maltreatment related to what they called "husbandry," or issues of food, shelter, and the like.[6]

We emphasize this fact not to diminish the importance of addressing neglect, but because it is relevant to conversations about how to respond to animal maltreatment. Rationalizations of carceral animal law often focus attention on mass shooters who supposedly abused an animal in the past or on the graphic details of a high-profile case of animal torture. But these examples do more to stir moral panic than they do to present a clear-eyed look at the realities of animal maltreatment. And once a new felony law is created, based on a story like Franky's, a broadly drafted law can threaten crimes that result from poverty with lengthy, felony prison terms.

It is rather striking to juxtapose the reality of neglect as the dominant form of animal abuse, with the calls by advocacy groups for more and longer sentences for animal crimes. Reflecting on the salience of race and poverty in animal cruelty is a theme of increasing, though still nascent, interest among commentators. For our purposes, though these intersections call to mind the reflections of Dorothy Roberts, who writes about a system that animal lawyers often look to as an inspiration, the child welfare system. It is commonplace to hear animal lawyers aspire to create an animal protection system that is more akin to the child welfare system. But as Roberts explains, "the child welfare system also exacts an onerous price: It requires poor mothers to relinquish custody of their children in exchange for the state support needed to care for them." Roberts continues,

> An African American woman I interviewed in a Black Chicago neighborhood poignantly captured this fundamental problem with U.S. child welfare philosophy: [T]he advertisement [for the child abuse hotline], it just says abuse. If you being abused, this is the number you call, this is the only way you gonna get help. It doesn't say if I'm in need of counseling, or if . . . my children don't have shoes, if I just can't provide groceries. . . . I don't want to lose my children, so I'm not going to call [Department of Children and Family Services] for help because I only see them take away children.[7]

Too often, well-meaning, even loving human companions to animals may not have the funds to properly care for them. Creating solutions that can provide resources, rather than carceral responses, may be the best for animals, their human caretakers, and the communities in which they live.

The chapters that follow invite conversation and debate about whether carceral responses are the best way to protect animals. Looking at the history of carceral responses, as well as other areas in which carceral responses to social problems may

[6] Lori Donley and Gary Patronek, *Animal Abuse in Massachusetts: A Summary of Case Reports at the MSPCA and Attitudes of Veterinarians*, 2(1) Journal of Applied Animal Welfare Science, 59 (1999).

[7] Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474, 1485 (2012).

or may not have worked, like cases of domestic violence, the war on drugs, and immigration, the discussion that follows should deepen our thinking about animal protection. There is an abolitionist, anticarceral strand in many projects focused on radical social change. This book contemplates a world in which carceral logics play less of a role in the imagination of law reformers and urges us to think more and harder about a more just world for all animals, human and non.