

Against Punitive Approaches to Animal Protection

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Justin Marceau, [Beyond Cages: Animal Law and Criminal Punishment](#) (2019).

In the United States, we often rely on criminalization as a way (sometimes the only way) of communicating social value. We purport to communicate the value of those who are harmed or injured by criminalizing the conduct that harmed them and prosecuting those who engage in that conduct. In recent years, scholars who study the criminal legal system have raised questions about this carceral approach to communicating social value. These critics have argued that harsh, punitive approaches to social problems frequently fail to solve those problems, even as they reliably replicate old patterns of injustice and generate a host of unintended consequences. The criminal legal system may also produce carceral “solutions” at odds with the actual wishes of the individuals harmed by the criminalized conduct.

In *Beyond Cages: Animal Law and Criminal Punishment*, [Justin Marceau](#) applies this critique to the carceral turn within the animal protection movement. Marceau uses the term “animal protection movement” as an “imperfect shorthand” for the “disparate groups and philosophies” that make up a “multifaceted” movement. He notes that leaders of the movement “have made clear that carceral animal law policies are a critical strategic priority.” (P. 2.) He then proceeds to explore, in a systematic way, the accumulation of thirty years of “carceral animal law policies” in mainstream animal protection efforts.

The laundry list of carceral policies catalogued in the third chapter of Marceau’s book will be immediately familiar to anyone who studies today’s criminal legal system. Movement actors have engaged in a widespread push for felony provisions on animal cruelty, often relying on imperfect scientific evidence (roundly critiqued by Marceau in Chapter Six) of a link between violence toward animals and violence toward humans. They have advocated for much tougher sentences for animal abuse crimes. They have pushed for the creation of registries of individuals convicted of animal cruelty. They have argued in favor of laws that provide animals with a dedicated advocate in the criminal process—an advocate who always argues, alongside the prosecutor, for the harsher criminal punishment of the accused. They have filed amicus briefs supporting the treatment of animal abuse as an “aggravated felony” in immigration proceedings—a designation that ensures mandatory deportation and a lifetime bar on return. They have provided significant financial and professional assistance not only to prosecutors’ offices in individual cases, but to organizations like the American Association of Prosecutors and the [National District Attorneys Association](#). Perhaps somewhat exceptionally, they have actually funded prosecutors’ positions to ensure the presence of dedicated public actors committed to prosecuting animal abuse felonies. They have also provided extensive assistance to police officers investigating animal cruelty.

As Marceau makes clear, the movement has paid a price for its pursuit of more punitive animal protections. Along the way, advocates for these changes to the law have done what supporters of tough criminal law enforcement often do: they have argued for restrictive interpretations of constitutional and common law rights protections. They have called for strict liability approaches to animal abuse that disregard the accused’s lack of intent to harm. They have advocated for the stacking of criminal charges to leverage longer sentences in plea agreements. They have pushed for trying as adults some children accused of animal cruelty. They have argued successfully, in an [Oregon Supreme Court case](#), that a blood draw from a dog fails to qualify as a [Fourth Amendment](#) search of the owner’s property. In that case, the blood served as evidence of the owner’s failure to adequately feed her dog, but as Marceau notes, far from affirming the dog’s status as distinct from inanimate property, this holding allows for searches of nonhuman animals in the absence of any oversight from a magistrate, which enhances “the power of the Prosecuting State, not the animals.” (P. 47.)

Proponents of carceral animal protection have also advocated for restrictive interpretations of the [First Amendment](#). Marceau uses the example of [U.S. v. Stevens](#), which involved a law that criminalized knowingly creating, selling, or possessing any “depiction of animal cruelty.” The [Supreme Court](#) found the provision overbroad and likely to cover instances of protective speech. Many movement actors decried the decision, maintaining that prosecutors would surely not apply the law in cases involving protective speech. In Marceau’s view, this places the movement “on the wrong side of history,” putting too much faith in the government’s ability to weigh the costs and benefits of speech fairly, and “arguing for a limitation on speech rights even in the face of some of the movement’s greatest allies—media advocacy groups, civil rights lawyer, and free speech experts.” (P. 75.)

Marceau observes that some participants in the animal protection movement are disadvantaged by the broader movement’s alliance with law enforcement. “The very prosecutors and justice system that is reified by the animal protection movement when it seeks to incarcerate animal abuse will treat a foie gras investigator or a journalist exposing factory farm abuse as criminals or terrorists.” (P. 48.) For instance, advocates of animal protection might oppose the [Ag-Gag](#) and other laws that facilitate the prosecutions of reporters and investigators who uncover animal abuse on factory farms. However, those advocates have been far less vocal in working against such laws than they have been in advocating for enhancing the punitive capacity of the state against certain kinds of animal abusers.

Marceau also notes that mainstream animal protection organizations have generally moved away from advocacy on behalf of radical activists charged with crimes such as trespassing as an act of civil disobedience in service of animal protection. Marceau posits that many movement actors have concluded that they are more likely to be viewed sympathetically if they align themselves with, rather than against, the prosecuting state. In Marceau’s biting words, this means that the animal protection movement “is no longer on the sidelines of criminal law; it has chosen a side, and it is not the side of civil liberties or social change.” (P. 72.)

Marceau argues that this choice has weakened the practical and moral power of the animal protection movement in important ways. First, it has pushed movement actors to settle upon a narrow and non-transformative understanding of what constitutes animal abuse. Marceau surveys state animal cruelty laws and finds that, in states where advocates fought successfully for felony animal abuse provisions, they also supported state legislatures’ exemptions of agricultural cruelty from criminal animal abuse provisions. In seeking the “win” of felony animal abuse provisions, advocates agreed to laws that leave unprotected the vast majority of domesticated animals.

Second, the carceral turn of the animal protection movement has divided that movement from potentially powerful allies. For example, Marceau observes that animal protection could be furthered through workplace safety and health regulations that protect both humans and nonhuman animals in agricultural work. Such efforts could align the animal protection movement with other environmental, racial, and immigrant justice movements. Instead, the animal protection movement has pushed for felony provisions that give corporate agricultural interests a general pass for their abuses of agricultural workers and animals while “working with immigration officials in a variety of capacities in order to facilitate the deportation of persons who have a conviction relating to animal abuse.” (P. 84.)

More broadly, Marceau argues that the decision to embrace carceral animal protection puts the movement at odds with advocates for racial justice who generally seek to constrain, not enhance, the powerful carceral state that is devastating communities of color. As Marceau explains in Chapter Five, rather than aligning themselves with other movements that support shared values of non-violence, dignity, and the protection of vulnerable populations, the animal protection movement is working at cross purposes with those movements.

In making this case, Marceau draws heavily on the work of legal scholars and critical theorists who have diagnosed and criticized the racial bias of the criminal legal system. Their work will be very familiar to readers of this page: [Michelle Alexander](#), [Paul Butler](#), [Jack Chin](#), [James Forman](#), [Aya Gruber](#), [Randall Kennedy](#), [Charles Lawrence](#), [Dorothy E. Roberts](#), [Alice Ristroph](#), and the like. He also draws from [Angela P. Harris](#)’s work. Harris has written trenchantly about problems of racial injustice in the criminal legal system, of course. But fifteen years ago, she also analyzed the problems created by an animal rights movement insensitive to racial justice concerns. In one article, she asked [Should](#)

[People of Color Support Animal Rights?](#)—a question that she answered affirmatively, but with caveats. Harris also offered an important articulation of how that movement could and should be more attentive to racial justice concerns. With the benefit of fifteen more years of evidence, Marceau's work affirms and builds on Harris's analysis.

Marceau marries the insights of these legal scholars with those of scholars and activists working on issues of animal protection outside of the legal field. Voices from within that movement have raised concerns about the ways that the movement unnecessarily isolates and ignores the needs and perspectives of historically marginalized communities. Marceau incorporates the insights of scholars and activists who might be less familiar to many readers of this page (and certainly were to me), including [Julia Feliz Brueck](#), [Michelle R. Loyd-Paige](#), and [A. Breeze Harper](#), whose anthology [Sistah Vegan](#) receives sustained attention throughout Marceau's book.

Marceau is frank about the limited options that animal protection movement actors often face. He acknowledges that when it comes to enhancing animal protection, the choice usually offered by policy makers and courts has been carceral strategies or nothing at all. Confronted with this (non)choice, advocates have embraced carceral strategies. Marceau's critique, however, highlights how important it is for all social movements that value freedom and nonviolence to avoid entanglement with the criminal legal system in their quests for social change.

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