ESSAYS

CRIME VICTIMS' RIGHTS: CRITICAL CONCEPTS FOR ANIMAL RIGHTS*

BY
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It is simultaneously intimidating and presumptuous to make observations about a movement that one is not intimately involved in. I am not an animal rights scholar. However, I am in the dignity recognition business. As a legal advocate and academic, I work to promote the dignity of human victims of crime. I have written the only casebook for law students about crime victims law, consult with Congress about crime victim law, and advise attorneys and victim organizations around the country. I also have considerable experience in taking movements and moving them into practical operations within prosecutors' offices; for example, in forming domestic violence units and multi-disciplinary child abuse teams. I have worked for legislative and constitutional change in various areas within the victims' rights movement. In other words, my experience transcends the academic into the practical and the legal into the programmatic. Increasingly, students at Northwestern School of Law of Lewis & Clark College who are interested in animal law and advocating for animals come to me for assistance in steering them into the law of crime victims. As a result of our contact we have all become aware of the potential for a significant relationship between the animal rights and crime victim rights movements. This awareness prompted Animal Law *to invite me to write this essay which generally compares legal advocate challenges in the animal rights and human crime victims' rights movements. Due to my amateur level of knowledge in the field of animal rights, I expect the essay will fail to acknowledge someone in that field who may deserve credit. For this probability, I apologize. I hope that my expertise with the human crime victims' rights movement and the dynamic of the*

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criminal justice process will make up somewhat for my amateur status as a student of animal rights.

I. Introduction and Background

This essay is written by a legal advocate in a socio-legal movement, the crime victims' rights movement, to legal advocates in the animal rights movement. It addresses three issues from the perspective of an outsider to the animal rights movement. First, the essay addresses the problems in the relationship between rights philosophy and successful legal rights advocacy; second, the essay reviews two animal rights legal advocate strategies of incrementalism and the common law coup; finally, the essay concludes with three practical suggestions for the animal rights movement about joining a part of the victims' rights movement to reach mutually identified goals.

It is no secret that the human capacity for rationalizing oppression is boundless. Humans have shared with animals the designation of property. Historically slavery, oppression, and second class citizenship has characterized much of human culture. Animal rights scholars and victims' rights scholars have drawn the parallel between human abuse and oppression, and the abuse of animals.[1] People have even eaten people. People, like animals, have been considered "things" and not worthy of standing or protection of the law.

The animal rights and the victims' rights movements share the common goal of protecting the dignity of living things from criminal violence.[2] Those who work for victims' rights live under the collective label of the "Crime Victims' Rights Movement." The movement is comprised of at least three identifiable components: 1) feminists, 2) civil rights activists and, 3) crime control interests.[3] The crime victims' rights movement is centrally a movement to protect the dignity of individual crime victims through changes in criminal law and procedures and through social services.[4]

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[1] *E.g.* Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* 1-27 (Avon Books 1975); Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* 35-48 (Perseus Books 2000).

[2] *See* Douglas E. Beloof, *The Third Model of Criminal Process, The Victim Participation Model*, 1999 Utah L. Rev. 289, 328-30, app. A (listing the prevalence of the concept of dignity in due process-like laws for crime victims); Steven M. Wise, *Hardly a Revolution: The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy*, 22 Vt. L. Rev. 793 (1998).

[3] Andrew A. Karmen, *Who's Against Victims Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 St. John's J. of Leg. Commentary 157 (1992).

[4] Beloof, *supra* n. 2, at 295-96 (the primacy of the individual victim is the value underlying the Victim Participation Model); Laurence Tribe, *Statement on Victims' Rights*, in Douglas E. Beloof, *Victims in Criminal Procedure* 721-24 (Carolina Academic Press 1999) ("[t]he rights in question—rights of crime victims not to be victimized yet again through the processes by which government bodies and officials prosecute, punish, and release the accused or convicted offender—are indisputably basic human rights against government, rights that any civilized system of justice would aspire to protect

For crime victims, the procedural due process rights typically acquired with standing are the right to notice and to be heard in the legal system in certain (but not all) phases of the criminal process.[5] Examples of particular laws resulting from the victims rights movement are wide-ranging in nature. Changes in evidence law include rape shield laws[6] and accommodations for child victims of crime; for instance, testimony via videotape and admissibility of a child's initial disclosure of abuse.[7] Procedural law initiatives include the right to speak at sentencing and the right to restitution.[8] Privacy initiatives have led newspapers not to print the names of sexual assault victims and to keep victims' names and addresses from defendants.[9] Examples of protection laws are the right to speak at the release hearing in trial court and in front of the parole board.[10]

For legal advocates the brass ring of dignity is "standing." Without standing a harmed person or animal is a non-entity in the legal process. Animals are denied standing by being labeled "property." Crime victims were denied participation in the criminal process by being labeled "mere witnesses." The label of "mere witness" was facilitated by a theory that only the state is harmed by crime, not the crime victim.[11] The crime victims' movement disputes the axiom that crimes harm only the government and seek recognition and legitimization of the individual harm to crime victims. Over the last twenty years limited standing for crime victims has become more commonplace.[12] Standing has not been, and is not, easy to obtain. Crime victims are far from claiming victory. Powerful interests work to undo what the movement has achieved.[13]

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and strive never to violate."); Paul Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 Utah L. Rev. 1373, 1387-88 (defending Utah's victims' rights constitutional amendment, which protects crime victims' rights to be treated with fairness, dignity and respect).

5 Beloof, *supra* n. 2, *passim*.

6 *E.g.* Fed. R. Evid. 412 (2000).

7 *See* Douglas E. Beloof, *Victims in Criminal Procedure* 525 (Carolina Academic Press 1999).

8 *Id.* at 621.

9 *Id.* at 161.

10 *Id.* at 651.

11 *Id.* at 621; *see generally* William F. McDonald, *Towards Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 Am. Crim. L. Rev. 649 (1976).

12 Beloof, *supra* n. 7, at 308-27 (summarizing the victim's role in the criminal process); National Victim Center, *The 1996 Victim Rights Sourcebook: A Compilation and Comparison of Victims' Rights Laws* (Nat'l Victim Center 1996).

13 A striking example of this is the "watering down" of rape shield law protections by courts, for example through the admissibility of exception to the rule, such as pattern evidence. *See* Beloof, *supra* n. 7, at 575-97 (summarizing problem); for a more complete treatment, *see e.g.* Elizabeth Kessler, *Pattern of Sexual Conduct Evidence and Present Consent: Limiting the Admissibility of Sexual History Evidence in Rape Prosecutions*, 14 Women's Rts. L. Rep. 79 (1992); Susan Estrich, *Palm Beach Stories*, 11 Law & Phil. 5 (1992); Harriet Galvin, *Shielding Rape Victims in the State and Federal Courts: A Proposal for the Second Decade,* 70 Minn. L. Rev. 763 (1986).

Both the animal rights and crime victims' rights movements began in earnest in the 1970s. On various fronts both movements have separately worked toward legitimizing dignity. A comparison of the two movements reveals that the legal advocates have faced similar issues and, in areas of mutual interest, have the potential for mutual support. First, legal advocates in both movements face similar problems with legal philosophy. Second, animal rights and victims' rights legal advocates have enlisted similar tactical approaches to advancing their respective goals. Finally, there are mutual concerns in the two movements that promise to provide the animal rights movement, in some initiatives, the assistance of the substantial lobby of the victims' rights movement.

II. The Legal Advocates' Trouble with Rights Philosophy

In reviewing Lawrence and Susan Finsen's[14] summary of six leading animal rights philosophers and comparing them with the recent works of attorney/law professors Gary Francione[15] and Steven M. Wise,[16] a problem is revealed that mirrors a problem in the human victim rights' movement. Despite Herculean intellectual efforts by brilliant philosophers, the fundamental basis of law (much less the fundamental foundation of rights) is far from settled.[17] To the pragmatic attorney advocate, the perpetual quandary of legal philosophy is a troublesome distraction to getting down the road with the socio-economic movement for several reasons. First, philosophy does not provide "the answer." Second, philosophy is inaccessible to the majority of people in the culture, which is the very audience the attorney advocate needs to win over. Third, allegiance to a particular identified philosophy simply sets up another target for the movement's adversaries.

A recent effort to criticize human crime victims' rights is illustrative of the problem of making the animal rights movement a target. Law Professor Lynne Henderson, a longstanding opponent of human crime victims' rights, has recently done a critique of victims' rights.[18] Among her complaints is a jurisprudential/rights justification criticism. Henderson complains that the victim rights' movement (and particularly Harvard Law Professor Laurence Tribe, a strong proponent of a victims' rights amendment to the United States Constitution)[19] has

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[14] Lawrence Finsen & Susan Finsen, *The Animal Rights Movement in America: From Compassion to Respect* 179-234 (Maxwell Macmillan Intl. 1994).

[15] Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple U. Press 1996).

[16] Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Books 2000).

[17] James E. Herget, *American Jurisprudence, 1870-1970: A History* (Rice U. Press 1990) (for a review of American legal philosophy and criticism of the last hundred and thirty years); Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (N.Y. U. Press 1995).

[18] Lynne Henderson, *Revisiting Victim's Rights*, 1999 Utah L. Rev. 383 (1999).

[19] Tribe, *supra* n. 4.

failed to identify "a coherent statement identifying the specific source or nature of these fundamental rights" nor has a "theoretical basis for them" been proposed.[20] The basis of human crime victim rights—the concept of human dignity—is discarded out of hand by Henderson as "a vaguely Kantian notion" which is, to her way of thinking, insufficient justification for human crime victim rights. Never mind that at the time of Henderson's critique, twenty-two of the thirty-two states that had granted crime victims state constitutional rights explicitly did so based on notions of human dignity and/or out of considerations of fairness and respect.[21] It seems "dignity" is a sufficient basis for the creation of state constitutional rights for crime victims, but an insufficient philosophy for our adversaries.

If one responded to Henderson's move on the intellectual chess board by selecting a particular rights theory from among the options available, the next probable move in opposition would be to borrow existing criticism of the chosen theory and apply the criticism specifically to human crime victims' rights. This is set up to be a no-win game for the legal advocate. The irony is that criticism of rights theory can be applied to any right, even criminal defendants' rights. This is not to say I oppose criminal defendants' rights, merely that the devise of philosophical criticism cuts in many directions that Professor Henderson might not like. Before taking her critique seriously it would be helpful if Professor Henderson would identify any basis of rights theory, or jurisprudence for that matter, that is not subject to substantial, credible criticism. If this could be done then it would be a simple matter to explain within the framework of *that* theory how victims' rights are truly rights worthy of legitimacy. Because no one has yet produced a universally accepted "coherent statement" or "theoretical basis" of human rights (or law in general for that matter),[22] Professor Henderson baits us to bite at a quandary that has proven to be philosophically elusive.

Animal rights legal advocates would be wise to avoid involvement in a similar no-win game. If controversy remains about the basis of *human* rights and laws, it is understandable that the animal rights movement struggles with a philosophy of *animal* rights. The no-win game forces legal advocates to put time and energy into intellectual tar pits that do not get the legal arm of the movement down the road. The time and energy of the legal advocate is better spent defining the goal and strategizing on how to reach it within the confines of present cultural and political possibilities. At bottom, the problems of lawyers in socio-legal movements are not necessarily the problems of philosophers.

Having said all that, it would be wrong to leave the impression that philosophers cannot make a difference by providing frameworks

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[20] Henderson, *supra* n. 18, at 396-400.

[21] Beloof, *supra* n. 2, at 328, app. A.

[22] *See* Herget, *supra* n. 17; Minda, *supra* n. 17.

for cultural shifts. For the lawyer advocate working for change now, what is most helpful is an identified goal and an understanding of how to work pragmatically toward that goal during the lawyer's productive life. For example, use of the term "rights" by the animal rights movement is a very good choice. Despite the crime victims' movement opposition's endless song about whether human crime victim laws *really* represent "rights," the term "rights" is very effective from a pragmatic point of view. It resonates with people. The human victims' rights movement has faced (erroneous) criticism that what victims seek are not rights,[23] yet sticking with the "rights" language has been of immeasurable practical help. Thus, while animal rights philosopher Mary Midgley may not like the term "rights," partly because morality encompasses much more than rights,[24] such a term is useful to the lawyer advocate in getting the socio-legal movement down the road. A legal advocate is well advised to view philosophers through the lens of the practical application of the philosopher's theory towards achieving the goal. The lawyer advocate needs something simple that resonates and rings true. What lawyer advocates need is a practical approach, a simple elegant theory that helps the movement progress down the road. Here it is helpful to have a theory that is fairly understandable to the layperson.

For example, the philosopher John Rawls has articulated an approach to legal philosophy which I use to help others understand crime victims' rights. James Herget describes part of John Rawls' theory as:

> Rawls envisions a hypothetical "original position" in which all of the people in the society are given an opportunity to review various proposed principles of justice. They have general knowledge about all aspects of life, but they do not have specific knowledge about themselves, that is, they do not know whether they will be one of the poor or the rich, talented or the untalented, or what their specific likes and dislikes will be. This Rawls calls the "veil of ignorance." It is necessary to insure disinterested and fair deliberation and choice by the people in these original position. . . . Once the original position has been established the participants are given a list of possible principles by which their society is to be modeled.[25]

In the law school class, Victims in Criminal Procedure, the students use this piece of Rawls' theory to build a "fair" criminal process. No one in the class knows if they will be assigned to a future exercise as a defendant, a victim, or a member of the community. A remarkably balanced hypothetical criminal process is developed during the class period because no one can predict their role. Not surprisingly, in every class so far, the students develop a process in which the crime victim is an active participant along with the state and the defendant.

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[23] *E.g.* Lynne Henderson, *The Wrongs of Victim Rights*, 37 Stan. L. Rev. 937 (1985); Henderson, *supra* n. 18.

[24] Finsen & Finsen, *supra* n. 14, at 228-32 (describing Midgley's philosophy).

[25] James E. Herget, *American Jurisprudence, 1870-1970: A History* 311-13 (Rice U. Press 1990).

Compare this Rawls inspired approach to various animal rights theories that, in order to understand the theory, require a lay person to know the difference between utilitarianism, "act" utilitarianism, and "hedonistic" utilitarianism,[26] or to understand the meaning and limits of animal "consciousness."[27] Examples from other animal rights philosophers could be given. The point is that the lawyer advocate is left without an easily understandable theory or resonating message with which to reach his target audience. An easily understandable theory would be very helpful to the animal rights lawyer advocate. Perhaps an effort on a variation of Rawls' approach that took into account the human/animal link would resonate. For example, during an exercise in an animal rights class, some students are designated human, some animal. But no one knows which he or she will be. All beings in the class share in the strong survival instinct. The students are then instructed to build a legal process from an original position, maintaining the veil of ignorance of their designation until after the exercise.

I do not suggest that this particular exercise is the best or most desirable approach to providing the audience with a readily understandable concept. Nor am I implying that there is any such straightforward approach that is not subject to criticism. But the nature of the approach is important. An approach that is simple and understandable with the potential to resonate is squarely directed at the objective of having available a rationale for animal rights lawyers that is readily understandable to the lay person. If animal rights philosophers want to provide practical assistance to the lawyer advocate, then they should consider risking the criticism of their peers and take up the challenge to create a simple theory useful to the lawyer advocate.

III. Professor Francione's Incrementalism and Professor Wise's Common Law Coup Seen Through the Lens of a Crime Victims' Rights Legal Advocate

In two very different ways, law professors/lawyers Gary Francione and Steven Wise have moved decisively away from the sticky morass of the animal rights philosophies to focus on what might be more practical to achieve their goal. Both have worshiped at the altar of philosophy, perhaps unnecessarily, by authoring law review articles that indulge the intellectual morass of philosophy.[28] Recently, they have left the morass behind them.

A chapter in Professor Francione's book, *Rain Without Thunder*, is entitled "Rights Theory: An Incremental Approach."[29] The chapter reflects a frustration with the endless intricacies of rights theory. Francione sees clearly that "social protest movements cannot strive for the

[26] Finsen & Finsen, *supra* n. 14, at 186-88 (describing Peter Singer's philosophy).

[27] *Id*. at 194-96 (describing Tom Regan's philosophy).

[28] Gary L. Francione, *Animal Rights Theory and Utilitarianism: Relative Normative Guidance*, 3 Animal L. 75 (1997); Wise, *supra* n. 2, at 190-92.

[29] Francione, *supra* n. 15, at 190.

certainty in complicated ethical matters that we have in mathematics."[30] Francione states that his "purpose is to keep [his] criteria [for rights theory] as uncomplicated and uncontroversial as possible."[31] As a legal advocate for animal rights, he has made the necessary effort to create a theory to work as a tool of the legal advocate for animal rights. Evidence of this is that he has identified (and protected) the simple theory by casting it in "legal language."[32] Perhaps his simple theory can be improved upon in order to resonate more, but in practical terms, avoiding complex philosophy is a giant step forward to providing a practical tool for the legal advocate. Next, Francione persuasively argues that the strategy "on a macro, or socio-legal, level [is] for incremental eradication of the property status of animals, which is the long-term goal of the animal rights ideal,"[33] and that the animal rights advocate is in the position of an "outsider who ultimately seeks a paradigm shift in the way that law and social policy regard the status of animals . . . ."[34]

The strategy of outsider incrementalism is identical to the largely successful use of a similar strategy relied upon in the human crime victims' movement to achieve limited standing. In 1982, Professor Abraham Goldstein, then the Dean at Yale Law School, suggested that human crime victims might have standing in certain stages of the criminal process.[35] He suggested that in restitution hearings, a subset of the sentencing hearing, the human crime victim's attorney be able to present evidence and argue for restitution.[36] Goldstein's suggestion is implicitly one of incrementalism. Indeed, before Goldstein's suggestion, human victims' rights activists were already pursuing the strategy of incrementalism in pursuit of, among other things, intermittent standing.[37] By passing a rape shield law here and a set of procedural rights there, the crime victim began to have intermittent standing and to become a "player" in the criminal process.

By 1999, the intermittent standing of human crime victims in the criminal process was so substantial that I could credibly state that laws of victim participation in the criminal process represent a shift in a dominant paradigm of criminal procedure.[38] This paradigm shift is that the primacy of the individual human crime victim is now a legitimate value in the criminal process.[39] The value now competes with the two previously acknowledged values of the primacy of the individual

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[30] *Id*. at 191-92.

[31] *Id.* at 190.

[32] *Id*.

[33] *Id.* at 219.

[34] *Id.*

[35] Abraham Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 Miss. L.J. 515, 550 (1982).

[36] *Id.* at 521-23.

[37] "Intermittent standing" is a term used by the author to mean the ability to have standing for some purposes in some phases of the process.

[38] Beloof, *supra* n. 2, at 292.

[39] *Id.*

defendant and the value of efficient suppression of crime.[40] Such a statement was made possible by the incremental strategy, with the crime victim as the outsider. This is exactly the strategy proposed by Professor Francione in pursuit of animal rights. Incremental steps are bricks in the road to an identified goal.

Of course, it would be naive not to acknowledge that the animal rights movement has a tougher row to hoe and must have more patience and a longer-term strategy than the human victims' rights movement. The populace is more receptive to human victim rights than animal victim rights. As I have said elsewhere with respect to the crime victims' rights movement, to change the belief system or bias of a culture is an extremely difficult task.[41] It is harder still for the animal rights movement. Nevertheless, engaging and persuasive cases are being made that the animal/human distinction in law is not credible. Until these arguments attract a human following that achieves a critical mass, evidenced in a paradigm shift concerning the socio-legal status of animals, the legal advocates of animal rights are on the right road with "outsider incrementalism."

Steven Wise takes a different route away from the sticky morass of animal rights philosophy in his book, *Rattling the Cage: Toward Legal Rights for Animals*.[42] In his chapter entitled, "What are Legal Rights,"[43] Wise's position is that humans and nonhumans have the right to bodily integrity. This formulation, too, is a credible effort towards seeking a simple theory that resonates and can be used as a tool for legal advocates.

Wise's thesis is that the evidence already exists under traditional common law analysis to justify judicial recognition of animals, not as property, but as life forms worthy of standing. More specifically, he argues that hominid apes are so close to humans in their various attributes and capacities that they cannot credibly be considered property. So, while Francione's approach is to set forth a structure for a socio-legal movement to effect change by increment, Wise's approach is to present the case for judicially based recognition of the propriety of a change in the legal status of animals. Such judicial recognition should come because animals, particularly apes, are not credibly distinguishable from humans. Thus, Professor Wise envisions a common law coup wherein a judge or judges exercise their common law authority to change the definition of property to exclude hominid apes.

If the experience of human crime victims is any measure, hidden danger in the courts could abruptly terminate Wise's common law coup approach. Despite a common law history of participation in the criminal process, an effort relying on a common law basis for a victim's legitimate interest in a criminal prosecution went down in flames in the

40 *Id.*

41 Beloof, *supra* n. 7, at 79.

42 Wise, *supra* n. 16.

43 *Id.* at 49.

United States Supreme Court.[44] In the context of crime victims in the criminal process, an approach similar to Wise's common law approach was (wrongly) foreclosed to human victims' rights advocates. The mother of an illegitimate child brought an action to enjoin the discriminatory application of the Texas penal code. The relevant penal code provision made it a misdemeanor to fail to willfully provide support to a child. An earlier Texas court opinion held that the statute did not protect illegitimate children.[45] The mother argued that the statute unlawfully discriminated between legitimate and illegitimate children in violation of the Equal Protection Clause of the Fourteenth Amendment. In disposing of the mother's claim the Court never reached the Equal Protection Clause issue. Instead, the five members of the majority refused to recognize that the crime victim mother had any standing to raise the claim in the first place because "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another."[46] Therefore, there was no standing to bring the equal protection claim.

Significantly, a majority of five members of the Court abandoned crime victims despite a strong historical record that would have supported a different, or at least more moderate, conclusion. Professor Abraham Goldstein criticized the ruling of the majority in *Linda R.S.*, calling the court's decision a "misunderstanding of history."[47] He observed that "the American historical error confused the [Attorney General's] power to intervene and dismiss cases already initiated by private parties with the exclusive power to decide whether they should be initiated at all."[48] The Court had "transformed" the interest in public prosecutorial review after charging "into a rationale for total control of the initial stage, the charge itself."[49] Thus, the Supreme Court evicted human crime victims from their place in the traditions of common law. In a significant way, the eviction denied the human crime victims' rights movement the approach articulated by Professor Wise.

As a practical matter, the Court in *Linda R.S.*[50] simultaneously crippled the common law tradition of victim participation in the criminal process, consolidated power in the government and "passed the buck" to federal and state legislatures. If human victims were to have rights of participation in the criminal process, the courts were not going to be much help. In the context of common law and animal victims, a similar maneuver by the courts to dump the "problem" of animal status on legislatures is a strong possibility. Furthermore, the "problem" of animal status can be identified by judges as factually complex

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[44] *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) (5-4 opinion).

[45] *See Home of the Holy Infancy v. Kaska*, 397 S.W.2d 208, 210 (Tex. 1966); *Beaver v. State*, 256 S.W. 929, 929 (Tex. 1923).

[46] *Linda R.S.*, 410 U.S. at 619.

[47] Goldstein, *supra* n. 35, at 549.

[48] *Id.* at 550.

[49] *Id.*

[50] 410 U.S. 614 (1973).

enough to require the unique fact finding ability that legislatures possess, but courts do not. Finally, animals lack the historical standing that human crime victims have in the criminal process in America. This is not to say that both of the approaches of Francione and Wise should not be pursued. When engaged in a socio-legal movement, assuming sufficient resources, all available avenues of progress should be utilized until they are foreclosed.

IV. Three Incremental Suggestions

A. Waking the Law Enforcement Dragon

The most apparent area of mutual benefit between the animal rights and human victims' rights movements is the shared concern over criminally violent humans and the harm they cause. It is now indisputable that there is a strong correlation between violence towards animals and violence towards humans.[51] Human crime victim legal advocates strive to minimize harm to human victims. The minimization of harm to animals is a goal of the animal rights movement. Because criminally violent people pose a threat to both people and animals, animal rights and victim rights lobbies should work together to address the problem of criminally violent humans. This observation has been made elsewhere by victims rights advocates, particularly the feminist arm of the movement.[52]

If incrementalism is building a road to a goal by laying one brick at a time, it is more efficient to figure out how to create a proliferation of bricklayers than to set each brick yourself. The police and prosecutorial enforcement bureaucracy is like a many headed dragon. The link to effective engagement is to wake a head of the dragon and direct that head towards animal abuse. For example, human crime victim advocates have successfully awakened a head of the dragon and directed it at the problem of domestic violence. Concerning domestic violence, we are emerging from a criminal justice system in which, as recently as the 1980s, the head of the law enforcement dragon was asleep to one in which the head is awake and aggressively pursuing batterers. Centrally, the success of this effort was due to women's organizations and increasing numbers of women in public prosecutors' offices who are finally getting the culture of the criminal process to accept, first, that domestic violence is a crime, and second, that it is a serious crime. The effort did not entail passing new criminal laws, because the law already criminalized assault. The task was to get the

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51 *Cruelty to Animals and Interpersonal Violence* (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998) (collected studies).

52 For example, Carol Adams, a victim advocate in domestic violence, has written about the correlation between the abuse of women, children, and companion animals. *Id.* at 318-39. Ms. Adams work persuasively eliminates conceptual barriers between animal and domestic abuse. Carol J. Adams, *Neither Man nor Beast, Feminism and the Defense of Animals* (The Continuum Publg. Co. 1995); Carol J. Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (The Continuum Publg. Co. 2000).

system to view assault against women as worthy of enforcement under existing laws. The challenge was to wake a head of the criminal law enforcement dragon. I suspect (but do not know) that there is a similar need to wake a head of the dragon in the enforcement of offenses against animals because of a lack of law enforcement focus on animal abuse per se and/or the failure of law enforcement to make animal abuse a significant focus of domestic violence investigation and prosecution.

By no means does the category of domestic violence crime capture all of the connections between animal abuse and crime victims. Firesetting, serial murder, rape, mutilation, and assault outside the domestic violence context have all been shown to have a correlation with animal abuse.[53] Nevertheless, domestic violence represents a good vehicle for demonstrating what can be done to promote animal safety within the criminal justice process. As a practical matter, how do animal rights activists leverage existing concern for domestic violence victims into increased concern and legal protection for animals? There are several steps in the process of waking the dragon. The first is engagement and building a trust relationship with the police and prosecutors themselves. In urban areas there are typically steering committees where police, prosecutors, women's groups and others send representatives to meet on a regular basis. Find out who is on the committee and approach them for permission to bring your concerns to the table. Ideally you are looking for a permanent seat at the table. The people at the table are more likely to be open to the concerns of an animal rights advocate, simply because they are already sensitive to domestic violence issues generally.

The best way to engage the group is to begin with information sharing. Educating these people about the issues is the foundation of success. Ask if they have seen animal abuse in connection with domestic violence. They probably have. Share Carol Adams' articles and books on the relationship between domestic violence and animal abuse.[54] You may want to look at training materials for law enforcement and prosecutors. Members of the group should have access to these materials. These materials may already have information about the correlation between battering and animal abuse. When police and prosecutors hear the message from their "own" sources it can help establish your credibility and the credibility of your concerns and ideas. Share studies on correlations of violence. Show respect. Be patient. In Portland, Oregon it took two years to build trust relationships and come to an accord on a coordinated domestic violence law enforcement

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[53] *E.g.* Daniel S. Hellman & Nathan Blackman, *Enuresis, Firesetting and Cruelty to Animals: A Triad Predictive of Adult Crime*, 122 Am. J. Psychiatry 1431 (1966)*;* Alan R. Felthouse & Stephen R. Kellert, *Childhood Cruelty Towards Animals among Criminals and Noncriminals*, 38 Human Relations 1113 (1985); Faith H. Leibman, *Serial Murderers: Four Case Histories*, 53 Fed. Probation 41 (1989*)*; *Cruelty to Animals and Interpersonal Violence, supra* n. 51.

[54] Adams, *supra* n. 52.

effort. Don't expect acceptance overnight. Do not assume you know more about police work and prosecution than the professionals. However, you do know more about animal abuse, and, in a trust relationship, the group will begin to look to you for information and ideas. In a trust relationship within the problem solving structure of the group people can begin to focus on how to address the problem of animal abuse in the context of domestic violence. This conversation is the beginning of achieving your incremental objective of engaging the multiplier effect of specialized investigation and prosecution efforts.

The multiplier effect is what happens when police and prosecutors, advocates, and others focus their attention on a particular problem. My experience with the domestic violence problem provides a great example of the multiplier effect. Victim advocates who worked with domestic violence victims were a crucial predicate to getting police and prosecutor attention. Your future presence at the group table will itself be evidence of the multiplier effect. Your work in animal abuse is a predicate to engaging the criminal process at a meaningful level. Indeed the very acceptance by human victim advocates of the correlation between domestic violence and animal abuse is part of the multiplier effect of focus on domestic violence. For example, Carol Adams made the correlation between animal abuse and domestic violence by working in domestic violence.[55] The multiplier effect in domestic violence has been powerful. Recognition of the domestic violence problem has resulted in specialized police and prosecution units.[56] These units attract professionals committed to the issue. These professionals advocate within and without the system for resources and progress. They seek change in law to better address the issue.

Other than the creation of specialized enforcement units, changes in domestic violence enforcement brought about through the multiplier effect include mandatory arrest, no-drop prosecution policies, required mental health and substance abuse treatment for batterers, and changes to evidence codes to facilitate prosecution.[57] A further benefit of the multiplier effect is that once investigation is focused on a particular area, like domestic violence, the magnitude of the problem becomes apparent. As the statistics increase, more resources become devoted to the effort. In terms of incrementalism this domestic violence group can become a very powerful ally with significant resources and credibility. In sum, they are a cadre of bricklayers.

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[55] *Id.*

[56] *See generally Development in the Law: Legal Responses to Domestic Violence*, 106 Harv. L. Rev. 1498, 1530-43 (1993).

[57] *Id.* at 1535*;* Douglas E. Beloof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims Out of Court Statements as Substantive Evidence*, 11 Colum. J. Gender & L. ___ (forthcoming 2001).

B. Victim Compensation for Animals

Another incremental benefit worth pursuing is crime victim compensation for animals and their caretakers. Among the first programs urged in the crime victims' movement was compensation for crime victims. The movement to establish victim compensation was very successful and now the federal government and states all have victim compensation programs. Typically, victim compensation programs provide reimbursement to a crime victim for medical, psychological, and funeral expenses resulting from the crime. The source of funds for victim compensation is from fines or assessments in criminal cases. Because funding is limited, damage to, or loss of, property is not compensated under victim compensation schemes. Because animals are considered property in victim compensation programs, animals that are injured or killed have no access to compensation funds. A survey of legal databases reveals that animals or their caretakers are not yet included as beneficiaries of crime victim compensation schemes.[58]

As a public policy matter it is wrong not to provide funds for veterinary bills or cremation services resulting from a crime against an animal. In addition, funds should be available for grief counseling resulting from a criminal act against an animal. Without such funds, the human caretaker pays for the damage done to the animal. This places an undue burden on the human caretaker. For example, the animal might be put down when it could be saved because the individual cannot allocate the funds to keep the animal alive. Also, if the individual does expend the funds, it is unfair that victims, rather than a fund paid into by criminals, should bear the financial burden of the perpetrator's criminal actions. Furthermore, because persons convicted of committing crimes *against animals* also pay into the compensation fund, animals who are victims of criminal acts should have access to these funds via their human caretakers, agencies taking over animal care, or treating veterinarians.

Victim compensation program administrators should be convinced to amend the statutes or administrative rules to include compensation for animals killed or injured by criminal conduct. In establishing compensation programs, there was no conscious effort to exclude animals, it simply was not thought of at the time these programs were established.

Acquiring crime victim compensation for animals is certainly an incremental benefit for the animal rights movement. Moreover, the easiest way to amend the compensation statutes and rules is to *exempt* animals from the definition of "property" under the victim compensation statutes. In addition to providing a compensation fund, this approach has a separate and distinct incremental benefit to the animal rights movement because the exemption from the definition of prop-

[58] Search of Westlaw, state materials, statutes, allstates database (Feb. 27, 2001) (search for statutes with the phrase "victim +1 compensation & animal or pet").

erty creates another law or administrative rule that does not define animals as property.

C. Getting an In-Depth Education in Human Crime Victim Laws

If animal rights advocates are serious about entering the arena of criminal courts and criminal prosecution, it is essential that animal rights legal advocates obtain an education in human crime victim law. Such an education is critical to understanding when and how to be involved in a criminal case involving harm to an animal. For purposes of this essay, it is sufficient to discuss just a few of the issues that are relevant.[59] It is not well-known that a decision of the public prosecutor not to charge can be legally challenged. These challenges may take different procedural forms from jurisdiction to jurisdiction. Providing input on plea bargains and appearing in court to formally object to a plea bargain that is too lenient are also procedures which may be available to animal rights legal activists. The basis for engaging in such procedures varies from a statutory or state constitutional right to the ability to appear in the trial court amicus curiae.

There are other procedures available, including appearing in court as a lawyer for the victim in a criminal trial. If the victim is a party for purposes of a particular procedural stage, they undoubtedly may have counsel represent their interests, as long as the victim and their attorney do not control "critical" decisions in the criminal case.[60] Another procedure is speaking as the owner or a member of the animal rights community at the sentencing hearing,[61] attending trial *en masse*, and arguing for restitution.

If lawyers for animals reading this section are left with more questions about the law of victims in criminal procedure than answers, it only proves the point—that education of animal rights advocates in victim law is an essential component of effective legal advocacy for animals in the criminal process. Such an education may well have incremental benefits beyond the suggestions in this essay, perhaps ultimately achieving *crime victim status* for animals in the criminal courts. In order to achieve the full potential of the linkage between the movements, legal advocates for animals must engage experts to educate them in crime victim law.[62]

V. CONCLUSION

It is beyond dispute that criminally violent humans are often violent to humans and animals alike. Stopping criminal violence is a

[59] Beloof, *supra* n. 7 (for a more complete exploration of victims' legal rights in all phases of the criminal process).

[60] *See East v. Scott,* 55 F.3d 996, 1000-01 (5th Cir. 1995); *Person v. Miller*, 854 F.2d 656, 664 (4th Cir. 1988), *cert. denied*, 489 U.S. 1001 (1989).

[61] Katie Long, *Community Input at Sentencing: Victim's Right or Victim's Revenge?*, 75 B.U. L. Rev. 187, 195 (1995).

[62] Attorneys interested in such training may reach the author through *Animal Law*.

shared objective of human victims' rights organizations and initiatives as well as animal rights organizations and initiatives. It is also inescapable that the crime victims' movement typically works within the parameters of criminal law and process. Thus, a significant limitation of the connection between the movements is that the victims' movement seeks to address criminal violence. The animal rights movement seeks to end *all* violence to animals whether or not the violence is presently defined as criminal. It may be that the "criminal" violence focus of the victims' rights movement is also the short-term practical limit of its utility to the animal rights movement. In building incrementally, brick by brick, the long road to the goal of animal rights activists, the suggestions that animal rights groups join domestic violence steering committees, seek victim compensation for animals, and obtain an education in crime victim law may ultimately lead to the paving of only a section of the road. But, that is what incrementalism is all about. The benefit of allegiances is to work together in those areas where the cause is shared. Because bricks laid anywhere on the road get it closer to completion, even incremental benefits from the linkage of movements should be pursued by animal rights legal advocates.