

ARTICLES

TELLING TAILS: THE PROMISES AND PITFALLS OF LANGUAGE AND NARRATIVES IN ANIMAL ADVOCACY EFFORTS

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Using a feminist theoretical perspective and drawing on examples from Canada and the United States, this Article considers the promises and pitfalls of language and narrative in the context of animal advocacy efforts. Because the animal advocacy movement faces an uphill battle on a number of fronts, leveraging language and narrative more conscientiously can help enhance its success. Elucidating the equivocal nature of the premises on which our current social and legal conceptualization of nonhuman animals lies can prompt a shift in the dominant modes of thinking about nonhuman animals, thereby stimulating meaningful change in their treatment. However, it is not only the message that matters, but also how that message is conveyed. Narratives offer a potentially more compassionate, less antagonistic way of drawing attention to nonhuman animal suffering in order to trigger an interruption in established ways of thinking that posit that nonhuman animals are outside of the realm of moral considerability and, therefore, outside the bounds of legal protection.

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True human goodness, in all its purity and freedom, can come to the fore only when its recipient has no power. Humanity's true moral test, its fundamental test (which lies deeply buried from view) consists of its attitude towards those who are at its mercy: animals. And in this respect humankind has suffered a fundamental débâcle.

—Milan Kundera, *The Unbearable Lightness of Being*¹

I. INTRODUCTION

From the massive to the microscopic, the ferocious to the sanguine, nonhuman animals are a significant part of life on Earth. As our understanding of our place within the mortal order has evolved, the relationship between humans and nonhuman animals has become increasingly multifaceted, and in many ways, contradictory. Even while some animals are adored and revered, others are mistreated, manipulated, and slaughtered *en masse*.² The legal regulation of the (ab)use of nonhuman animals introduced a new layer of complexity to the underlying ethical questions regarding their treatment, and debates about these interrelated issues have spawned a considerable body of literature on nonhuman animal rights and corresponding human obligations.³

It appears to be widely accepted that humans oppose the intentional infliction of pain on nonhuman animals. In Canada alone, 95% of respondents in a 2010 poll agreed that “animal pain and suffering should be reduced as much as possible.”⁴ These types of findings are buttressed by the outcry that is often generated after egregious animal cruelty cases come to light.⁵ However, despite the gravity and scope of nonhuman animal suffering and exploitation, animal advocacy efforts

¹ MILAN KUNDERA, *THE UNBEARABLE LIGHTNESS OF BEING* 289 (1984).

² For more on this discrepancy, see, for example, MELANIE JOY, *WHY WE LOVE DOGS, EAT PIGS, AND WEAR COWS: AN INTRODUCTION TO CARNISM* (2010); Elizabeth Ann Overcash, *Unwarranted Discrepancies in the Advancement of Animal Law: The Growing Disparity in Protection Between Companion Animals and Agricultural Animals*, 90 N.C. L. REV. 837, 837–83 (2012); LESLI BISGOULD, *ANIMALS AND THE LAW* 1–4 (2011). The cultural contingency of our relationship with nonhuman animals should also be noted.

³ *ANIMAL RIGHTS AND HUMAN OBLIGATIONS* (Tom Regan & Peter Singer eds., 2d ed. 1976); *ANIMAL RIGHTS: A HISTORICAL ANTHOLOGY* (Andrew Linzey & Paul Barry Clarke eds., 1990).

⁴ BISGOULD, *supra* note 2, at 3.

⁵ Geordon Omand, *Outcry over B.C. Government Lag on Animal Cruelty Investigation*, *MACLEAN'S* (Feb. 19, 2016), <http://www.macleans.ca/news/outcry-over-b-c-govern>

to date have largely failed to produce broad-based reforms of the legal, social, and economic systems that legitimize and perpetuate these harms. Public education efforts have seemingly also been unsuccessful in encouraging meaningful changes to consumer behavior, as evidenced by trends like the increasing demand for meat⁶ and even a resurgence in the popularity of fur.⁷

Though its contributions are unquestionably laudable, the animal advocacy movement faces an uphill battle on a number of fronts.⁸ Part of the problem stems from the fact that many powerful actors have a vested interest in the continued (ab)use of nonhuman animals for human gain.⁹ Broad swaths of the population benefit from, or are at least complicit in, nonhuman animal suffering—by consuming animal products, wearing leather, and visiting zoos, for example.¹⁰ Another problem is that many people are simply unaware of the extent or degree of suffering that nonhuman animals endure when they are exploited in these ways.¹¹ From a legal perspective, the anthropocentric nature of Western legal systems poses a fundamental challenge to bringing nonhuman animals within its bounds.¹² Because animals cannot ‘speak’ for themselves or otherwise represent themselves within the legal system, they are forced to rely on the efforts of human representatives, who are often stymied by procedural hurdles such as the issue of standing.¹³ Furthermore, perceptions of animal advocates are not overwhelmingly positive, which erodes the legitimacy of their

ment-lag-on-animal-cruelty-investigation/ [https://perma.cc/9M58-RMPY] (accessed Apr. 9, 2017).

⁶ HENNING STEINFELD ET AL., *LIVESTOCK’S LONG SHADOW—ENVIRONMENTAL ISSUES AND OPTIONS*, at xx (2006).

⁷ Tracy McVeigh, *Animal Rights Campaigners Protest as Fur Comes Back into Fashion*, *GUARDIAN* (Mar. 1, 2014), <http://www.theguardian.com/fashion/2014/mar/01/animal-campaigners-protest-fur-fashion> [https://perma.cc/U2J8-3TKR] (accessed Apr. 9, 2017).

⁸ Joseph Lubinski, *Introduction to Animal Rights*, *ANIMAL LEGAL & HISTORICAL CENTER* (2d ed. 2004), <https://www.animallaw.info/article/introduction-animal-rights-2nd-ed> [https://perma.cc/NS4C-WPBN] (accessed Apr. 9, 2017).

⁹ *Animal Research Generates New Treatments, Benefits Society*, *UCLA NEWSROOM* (Feb. 13, 2008), <http://newsroom.ucla.edu/stories/animal-generates-new-treatments-45057> [https://perma.cc/6VGT-4B26] (accessed Apr. 9, 2017).

¹⁰ Eliza Barclay, *A Nation of Meat Eaters: See How It All Adds Up*, *NPR* (June 27, 2012), <http://www.npr.org/sections/thesalt/2012/06/27/155527365/visualizing-a-nation-of-meat-eaters> [https://perma.cc/EBC7-EX56] (accessed Apr. 9, 2017); Beth Boyle, *NPD Reports Fashion Accessories Business Is Picking Up*, *NPD* (May 24, 2010), https://www.npd.com/wps/portal/npd/us/news/press-releases/pr_100524/ [https://perma.cc/PX5Z-58QY] (accessed Apr. 9, 2017); *Visitor Demographics*, *ASS’N ZOOS & AQUARIUMS*, <https://www.aza.org/partnerships-visitor-demographics> [https://perma.cc/6EWN-44PB] (accessed Apr. 9, 2017).

¹¹ Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, and Trade*, 70 *L. & CONTEMP. PROBS.* 326, 333 (2007).

¹² HELENA SILVERSTEIN, *UNLEASHING RIGHTS: LAW, MEANING, AND THE ANIMAL RIGHTS MOVEMENT* 123–24 (1996).

¹³ *Id.* at 133–41.

efforts, not to mention there are profound differences of opinion within the movement itself that threaten its unity.¹⁴

Against this backdrop, this Article considers the significance of language and narrative in the context of animal advocacy efforts—both the pitfalls, as well as how language and narrative can be better utilized to enhance success. Language and narratives play an especially important role in animal advocacy efforts because nonhuman animals “are not, themselves, participants in their own social construction through language.”¹⁵ Yet, the social construction of nonhuman animals profoundly influences their treatment,¹⁶ even as humans often “overlook the fact that our present relationship with animals is a social construction, not a natural or historical constant.”¹⁷ Leveraging language and narrative more conscientiously can help elucidate the equivocal nature of the premises on which our current social and legal conceptualization of nonhuman animals lies.¹⁸ The hope is that prompting a shift in the dominant modes of thinking about nonhuman animals will then stimulate meaningful change in their treatment.

The analysis of this issue is conducted under a feminist theoretical lens. Feminism is a natural ally to the animal advocacy movement because, as Maneesha Deckha points out, “[g]ender and other human-based oppressions are sustained by the very same tropes that support the instrumental use of animals in our society.”¹⁹ Consequently, “[f]eminists and other cultural critics committed to dismantling these tropes need to attend to the narratives about species and animal differences that they establish to be consistent in their political positions and to fully undo these tropes with respect to humans.”²⁰ More specifically, within ecofeminism—a political and philosophical movement that posits that the oppression of women and the domination of nature are closely linked—several scholars and activists have suggested that one of the best ways to foster feelings of care for individual nonhuman animals is to perceive them as subjective beings, which is facilitated by learning their individual stories.²¹ Other feminist legal theorists have already been exploring the use of narratives in their scholarship, suggesting that “narratives present experience as [an alternate] way of knowing that which should occupy a respected, or in some cases a privileged position, in analysis and argumentation.”²² Arguably, the inter-

¹⁴ *Id.* at 17–18.

¹⁵ Arran Stibbe, *Language, Power, and the Social Construction of Animals*, 9 *SOC'Y & ANIMALS* 145, 146 (2001).

¹⁶ *Id.* at 147.

¹⁷ John Sorenson, *Animal Rights*, in *ABOUT CANADA* 9–12 (Brenda Conroy ed., 2010).

¹⁸ Stibbe, *supra* note 15, at 145.

¹⁹ Maneesha Deckha, *The Saliency of Species Difference for Feminist Theory*, 17 *HASTINGS WOMEN'S L.J.* 1, 37 (2006).

²⁰ *Id.*

²¹ MARTI KHEEL, *NATURE ETHICS: AN ECOFEMINIST PERSPECTIVE* 17 (2008).

²² Kathryn Abrams, *Hearing the Call of Stories*, 79 *CAL. L. REV.* 971, 976 (1991).

stitial area between feminism, animal advocacy and narrative contains a different, and perhaps more persuasive way of thinking and talking about why nonhuman animal suffering matters.

This Article proceeds as follows: because it is difficult to talk about any social movement outside of its context, Part II provides a brief overview of the philosophical and historical origins of animal law and how those intellectual currents have manifested in Anglo-American legal systems, as well as remarking on the birth of the animal advocacy movement. Part III examines some contemporary animal advocacy efforts, and some of the pitfalls that have been posed by language and narrative in the movement's struggle to create social change. In all aspects of animal advocacy—from the philosophical underpinnings to the legal and extralegal strategies employed—an interrogation of the language and narratives used suggests that there are serious deficiencies within the current approaches. Drawing on (eco)feminist insights, Part IV articulates some ways in which language and narrative may be better leveraged to enhance the success of animal advocacy efforts. Most importantly, it is not simply the message that matters, but also how that message is conveyed. Finally, Part V concludes by emphasizing that, despite the challenges, presenting the perspectives of marginalized and 'voiceless' groups like nonhuman animals in a skillful, well-informed, and compassionate way can be an important element in the ongoing effort to improve interspecies relationships and the circumstances of all living beings.

II. NONHUMAN ANIMALS AND THE LAW

Explorations of the ethical relationship between humans and nonhuman animals date back to antiquity, and many of the conclusions drawn by prominent philosophers like René Descartes, Thomas Hobbes, and John Locke have remained "fairly entrenched in modern philosophical and juridical traditions."²³ As Ruth Payne explains, a "deep-seated conception of animals as unthinking inferiors has had a profound impact on the shape of Western law dealing with animals."²⁴ Although legislatures have intervened in the treatment of nonhuman animals by humans, the resulting laws have not been rooted in notions of animal rights.²⁵ Instead, when anti-cruelty statutes first began to emerge in the mid-nineteenth century, the articulated rationales for these acts were "the protection of property and the guarding of public morality"²⁶—a decidedly anthropocentric approach.

Since then, the animal law landscape has evolved from a highly exploitative era in which nonhuman animal (ab)use was virtually un-

²³ Ruth Payne, *Animal Welfare, Animal Rights, and the Path to Social Reform: One Movement's Struggle for Coherency in the Quest for Change*, 9 VA. J. SOC. POL'Y & L. 587, 589 (2002).

²⁴ *Id.* at 589.

²⁵ *Id.* at 588.

²⁶ *Id.* at 591.

fettered, to an era where some legal protection to nonhuman animals is accorded, based on an animal welfare approach.²⁷ There are several different types of laws relating to nonhuman animals, including anti-cruelty laws, welfare laws, and control and management laws.²⁸ Notwithstanding the existence of welfare laws, their enforcement is lax at best, and anti-cruelty laws are generally the avenue through which the prosecution of nonhuman animal abuse proceeds.²⁹ In Canada, legislation prohibiting deliberate cruelty to nonhuman animals exists at the federal level in the form of provisions in the Criminal Code,³⁰ as well as at the provincial level.³¹

Despite these statutory measures, many scholars and advocates have pointed out that there are significant inadequacies to the existing approach.³² Over the years, there have been several efforts to strengthen the legal landscape of animal law—by reforming federal anti-cruelty provisions, for example—but these have generally been met with staunch resistance by organizations and industries that perceive such changes as threatening to their practices.³³ Recent Canadian efforts to strengthen animal welfare laws are illustrative in this respect. Bill C-246,³⁴ tabled by Liberal Member of Parliament (MP) Nathaniel Erskine-Smith on February 26th, 2016, proposed a number of changes to several pieces of legislation in order to amend the property status of animals that otherwise contributes to the harms inflicted upon them.³⁵ The Bill, which was ultimately defeated, was roundly criticized by Conservative MP Robert Sopuck, who called it “fundamentally flawed and dangerous,” noting that “[i]ts terms are so broad that they could place all animal use in legal jeopardy.”³⁶ These types of sentiments are often promulgated as the basis for rejecting similar

²⁷ *Reece v. Edmonton (City)*, 2011 A.B.C.A. 238, para. 54 (Can. Alta.); David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800s*, 1993 DET. C. L. REV. 1, 1–35 (1993); Elaine L. Hughes & Christiane Meyer, *Animal Welfare Law in Canada and Europe*, 6 ANIMAL L. 23–76 (2000).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Criminal Code*, R.S.C. 1985, c C-46, ss 444–447.1.

³¹ Provincial governments have adopted laws extending various degrees of protection to nonhuman animals. For a fuller description of provincial legislation relating to nonhuman animals, see BISGOULD, *supra* note 2, at 103.

³² Sorenson, *supra* note 17; Hughes & Meyer, *supra* note 27; Lyne Létourneau, *Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals*, 40 ALBERTA L. REV. 1041–55 (2003).

³³ BISGOULD, *supra* note 2, at 87–96.

³⁴ Bill C-246, *An Act to amend the Criminal Code, the Fisheries Act, the Textile Labelling Act, the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act and the Canada Consumer Product Safety Act (animal protection)*, 1st Sess., 42d Parl., 2016 (first reading Feb. 26, 2016) [hereinafter Bill C-246].

³⁵ *Id.*

³⁶ Robert Sopuck, *Sopuck Concerned with Liberal MP's Animal Rights Bill*, ROBERT SOPUCK (Feb. 26, 2016), <http://www.robertsopuck.ca/news-riding/sopuck-concerned-with-liberal-mps-animal-rights-bill> [https://perma.cc/74Q9-R3H9] (accessed Apr. 9, 2017).

Bills. Legislative reform measures have not, therefore, gained much traction.³⁷

Put bluntly, the laws protecting nonhuman animals are woefully inadequate and deeply resistant to change, especially in the context of institutionalized nonhuman animal exploitation.³⁸ Indeed, institutionalized exploitation, which constitutes the vast majority of nonhuman animal (ab)use in our society,³⁹ often sits in the blind spot of legal measures to protect nonhuman animals. Legislative historical materials “suggest that [anti-cruelty] statutes were not exacted primarily for the benefit of animals and . . . anti-cruelty statutes often exempt acts of tormenting and killing animals in such contexts as animal research and flesh-food production.”⁴⁰ These types of loopholes largely remain in place today.⁴¹ As such, it is no surprise that the enforcement of laws protecting nonhuman animals is a challenge, and that the case law relating to animal cruelty is concomitantly lacking. Because the actual laws protecting the welfare of the vast majority of nonhuman animals are so scant and weakly enforced, their treatment can rarely be effectively litigated.

Writing in the American context, Helena Silverstein comments that the prevailing paradigm under which animal law has evolved, in addition to “the minimal number of laws, the limited extent of those laws, [and] the obstacles surrounding enforcement,” further constrains the extent to which advocates can advance their goals.⁴² The protections afforded by an animal welfare approach are surely better than none at all, but in Anglo-American legal systems like Canada’s and the United States’, nonhuman animals are still considered to be items of property, rather than beings in their own right.⁴³ This classification legitimizes their inhumane treatment insofar as “the rights to own [nonhuman animals] as property includes the rights to abuse them as you see fit.”⁴⁴ The way in which the law consigns nonhuman animals to object status acts as a normative classification: based on the Enlightenment view of nonhuman animals as lower beings, the interests and desires of legal subjects (i.e., humans) can be legally prioritized.⁴⁵

³⁷ Bill C-246, 1st Sess., 42d Parl., 2016.

³⁸ Hughes & Meyer, *supra* note 27, at 67–69; Létourneau, *supra* note 32, at 1041–43, 1045–46.

³⁹ Taimie L. Bryant, *Similarity or Difference as a Basis for Justice: Must Animals Be Like Humans to Be Legally Protected from Humans?*, 70 L. & CONTEMP. PROBS. 207, 247 (2007).

⁴⁰ *Id.* at 247.

⁴¹ *Id.*

⁴² SILVERSTEIN, *supra* note 12, at 124–25

⁴³ GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 4 (2012).

⁴⁴ STEVEN M. WISE, RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS 43 (2000); Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471–546 (1996).

⁴⁵ Wendy A. Adams, *Human Subjects and Animal Objects: Animals as “Other” in Law*, 3 J. ANIMAL L. & ETHICS 29–51 (2009).

A. *Animal Advocacy*

Public concern about nonhuman animal welfare was first aroused in England in the 1800s, but an organized animal advocacy movement focused on rights did not emerge until the 1970s.⁴⁶ As with other progressive social movements, the aims of animal advocates are not only to win individual cases, but also to create broader, systemic impacts in terms of policy and public discourse “to transform the situation not only for the litigants but for all those similarly situated: that is, to alter structured inequalities and power relations in society in ways that reduce the weight of morally irrelevant circumstances.”⁴⁷ In the case of animal advocacy, species is the morally irrelevant circumstance that is considered to form inadequate grounds for differential treatment.⁴⁸ The charge against ‘speciesism,’ defined as “a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species,”⁴⁹ protests exactly this dichotomy between humans and all other animals.⁵⁰

Women make up the majority of animals rights activists, and have done so since the late nineteenth century.⁵¹ However, most of the authoritative voices in the animal advocacy movement have been male.⁵² This is problematic not only because many of these contemporary theorists “continue to employ Cartesian, or objectivist, modes even while they condemn the scientific practices enabled by them,”⁵³ but also because both the framing of the discourse as well as the ways the messages are conveyed—in other words, both the ‘what’ and the ‘how’ of animal advocacy—have been influenced by gendered roles.⁵⁴

The dominant and prevailing messages of contemporary animal advocacy efforts have been set by people like Peter Singer and Tom Regan, who represent the competing animal welfare and animal rights

⁴⁶ SILVERSTEIN, *supra* note 12, at 30. For a fuller overview of the philosophical and historical origins of animal law and the animal advocacy movement see, for example, Payne, *supra* note 23, and Hughes & Meyer, *supra* note 27.

⁴⁷ Siri Gloppen, *Public Interest Litigation, Social Rights, and Social Policy*, in *INCLUSIVE STATES: SOCIAL POLICY AND STRUCTURAL INEQUALITIES* 343, 344 (Anis A. Dani & Arjan de Haan eds., 2008).

⁴⁸ *Id.*

⁴⁹ PETER SINGER, *ANIMAL LIBERATION* 6 (2009). Singer argues that the fundamental objections to racism and sexism apply equally to speciesism, as none of these groups have enough moral significance to constitute grounds for exploitation of different groups on the basis of group membership alone.

⁵⁰ *Id.*

⁵¹ EMILY GAARDER, *WOMEN AND THE ANIMAL RIGHTS MOVEMENT* 1 (2011); Wesley V. Jamison & William M. Lurch, *Rights of Animals, Perceptions of Science, and Political Activism: Profile of American Animal Rights Activists*, 17 *SCI., TECH & HUM VALUES* 438, 438–58 (1992); Charles W. Peek et al., *Gender, Gender Ideology, and Animal Rights Advocacy*, 10 *GENDER & SOC.* 464, 464–78 (1996).

⁵² GAARDER, *supra* note 51, at 94.

⁵³ Josephine Donovan, *Animal Rights and Feminist Theory*, 15 *SIGNS* 350, 365 (1990).

⁵⁴ GAARDER, *supra* note 52, at 41–60.

approaches, respectively.⁵⁵ As the name suggests, a welfare approach to animal advocacy focuses primarily on improving the *welfare* of animals, without protesting to their (ab)use by humans per se.⁵⁶ The utilitarian philosophy underpinning this approach means that, even while advocating for more humane treatment of nonhuman animals, their (ab)use can be justified if it results in greater pleasure for society than pain for the nonhuman animals in question.⁵⁷ Conversely, a rights approach adopts *rights*-based rhetoric, and seeks to attain enforceable legal rights for nonhuman animals in order to change their current legal status as property and end their domestication, exploitation, and enslavement.⁵⁸ These two positions differ in terms of strategy as well as long-term goals.⁵⁹ A full exploration of this debate is beyond the scope of this Article, but suffice it to say, there are deep and ongoing philosophical struggles internal to the animal advocacy movement as to whether improvements in welfare or arguments for rights are likely to be of more benefit to nonhuman animals.⁶⁰

Notwithstanding the enduring welfare versus rights debate, the animal rights movement has grown in size, strength, and sophistication over the years.⁶¹ Contemporary animal advocates use litigation as one strategy to reform the legal system to include recognition and protection of nonhuman animal rights and interests, thereby altering prevailing attitudes towards nonhuman animals.⁶² In addition to litigation, animal advocates and advocacy groups have adopted a wide range of extralegal tactics—from political lobbying and publicity campaigns, to civil disobedience and outright violence—to draw attention to their cause.⁶³ However, the latter is rare and by no means representative of the movement as a whole. Rather, as Lyle Munro suggests, the activism of the animal movement primarily takes the form of “non-violent direct action which incorporates the two broad strategies of gaining publicity for the movement and disturbing the status quo in the way we treat other animals.”⁶⁴ Despite formidable constraints, both legal and extralegal forms of animal advocacy have made some

⁵⁵ *Id.* at 112.

⁵⁶ See SINGER, *supra* note 49.

⁵⁷ Gary L. Francione, *Animal Rights Theory and Utilitarianism: Relative Normative Guidance*, 3 ANIMAL L. 75 (1997).

⁵⁸ TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (1983).

⁵⁹ LORI GRUEN, *ETHICS AND ANIMALS: AN INTRODUCTION* 195 (2011).

⁶⁰ See Jonathan R. Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 ANIMAL L. 133, 148 (2006) (arguing against rights-based animal advocacy and that we need “foot soldiers, not philosophers” who use the existing legal framework to improve animal welfare); JOAN E. SCHAFFNER, *AN INTRODUCTION TO ANIMALS AND THE LAW* 171–72 (2011) (distinguishing the welfare and the rights approach).

⁶¹ SILVERSTEIN, *supra* note 12, at 34–37.

⁶² *Id.* at 123.

⁶³ GRUEN, *supra* note 59, at 188–95.

⁶⁴ Lyle Munro, *Strategies, Action Repertoires and DIY Activism in the Animal Rights Movement*, 4 SOC. MOVEMENT STUD. 75, 76 (2005).

notable inroads in reconstructing the law and its meaning when it comes to nonhuman animals.⁶⁵

III. TAKING PAWS: THE PITFALLS OF LANGUAGE AND NARRATIVE

In addition to the challenges inherent to social movement activism in general, language and narrative act as a significant stumbling block for animal advocates in particular. There are several major problems in this respect, which will be expanded on below. First, the devaluation of nonhuman animal lives occurs at both the micro and macro levels of language and narrative—but it is generally only the *consequences* of such discursive processes that are challenged.⁶⁶ Language is not merely descriptive, in that it establishes how things are, but also prescriptive, in that it sets expectations for how things should be.⁶⁷ The unselfconscious use of language that reinforces dominant, status quo, instrumentalist understandings of interspecies relationships fails to expose the normative bases of the human perception and treatment of nonhuman animals, both in terms of the law and within society more generally.⁶⁸

Second, the choice of narratives employed by animal advocates has frequently been limiting in that they neglect to take an intersectional approach to nonhuman animal oppression.⁶⁹ Narrow, single-issue approaches foreclose possible avenues for coalition building and risk preaching only to the already converted.⁷⁰ Extending the same legal rights accorded to human beings to nonhuman animals on the grounds that they are similar enough to humans to warrant such protection requires a conceptual leap that many are not yet prepared to make.⁷¹ Further, this kind of argument entails a flattening of the various ways in which nonhuman animal lives are unique and different

⁶⁵ For example, non-profit organization The Paw Project's sponsorship of legislation challenging the right of humans to declaw their cats resulted in a ban of this practice in the City of West Hollywood, California. *Milestones—The Paw Project's Role Advocating Anti-Declawing Legislation*, PAW PROJECT, <http://www.pawproject.org/legislation/> (accessed Mar. 15, 2017).

⁶⁶ Bryant, *supra* note 39, at 222.

⁶⁷ Amy Reynolds, *Understanding Prescriptive vs. Descriptive Grammar*, U. N.C. AT CHAPEL HILL, <http://amyrey.web.unc.edu/classes/ling-101-online/tutorials/understanding-prescriptive-vs-descriptive-grammar/> (accessed Feb. 18, 2017).

⁶⁸ BISGOULD, *supra* note 2, at 280–81 (“Law must look back to understand the assumptions that have traditionally impoverished interpretations of statutory language as noted above; otherwise, that language will continue to camouflage the very harms it purports to restrain.”).

⁶⁹ Bryant, *supra* note 39, at 216.

⁷⁰ Jeff Leslie & Cass R. Sunstein, *Animal Rights Without Controversy*, 70 L. & CONTEMP. PROBS. 117, 117 (2007) (“[D]isputes over animal rights produce an extraordinary amount of polarization and acrimony. Some people believe that those who defend animal rights are zealots, showing an inexplicable willingness to sacrifice important human interests for the sake of rats, pigs, and salmon.”).

⁷¹ *Id.*

from those of humans, albeit no less morally considerable.⁷² The use of controversial strategies to present what are already perceived to be radical arguments works to reinforce negative stereotypes about animal advocates and activists, thereby making their messages easier to dismiss.⁷³

A. *Language and Othering*

The terminology used in thinking and talking about nonhuman animal lives, as well as the laws regulating their (ab)use, reflects a pervasive anthropocentrism that denies nonhuman animals the subjectivity and respect that would mandate their better treatment.⁷⁴ For example, in the context of anti-cruelty provisions, “[c]ruelty connotes a malevolent intention that creates too high and constrained a standard.”⁷⁵ As a result, the entirely ordinary ways in which nonhuman animals are made to suffer as a consequence of acts that may be convenient, enjoyable, or profitable to humans, or otherwise performed with an intent other than being cruel, are determined to be acceptable at law.⁷⁶ Likewise, “laws that prohibit ‘unnecessary suffering’ or require ‘humane treatment’ fail to protect the interests animals have in living their own lives and in not being made to suffer for human purposes.”⁷⁷ To emancipate nonhuman animal interests from the shackles of human domination, it is first necessary to examine how this domination is sustained.

Pitting nonhuman animal interests in not being harmed against human interests of any kind is made possible by the dialectical process of Othering.⁷⁸ Numerous scholars have highlighted how language works to create and maintain the Otherness of nonhuman animals, thereby justifying their oppression.⁷⁹ Historically, language has often been used pejoratively in the process of Othering marginalized groups,

⁷² Bryant, *supra* note 39, at 246 (“[W]hile animal protection may result from actions undertaken for reasons other than protecting animals, social norms of animal protection will not be reinforced if such norms are not the explicit basis of reform.”).

⁷³ Nadia Y. Bashir et al., *The Ironic Impact of Activists: Negative Stereotypes Reduce Social Change Influence*, 43 EUR. J. SOC. PSYCHOL. 614, 624 (2013) (“[T]he very nature of activism leads to negative stereotyping: By aggressively promoting change and advocating unconventional practices, activists become associated with hostile militancy and unconventionality or eccentricity.”).

⁷⁴ Joan Dunayer, *Sexist Words, Speciesist Roots*, in ANIMALS & WOMEN: FEMINIST THEORETICAL EXPLORATIONS 11 (Carol J. Adams & Josephine Donovan eds., 1995).

⁷⁵ BISGOULD, *supra* note 2, at 279.

⁷⁶ *Id.*

⁷⁷ *Id.* at 280.

⁷⁸ *Id.*; Sune Borkfelt, *Non-Human Otherness: Animals as Others and Devices for Othering*, in OTHERNESS: A MULTILATERAL PERSPECTIVE 137, 137–38 (Susan Yi Sencindiver et al. eds., 2011).

⁷⁹ Stibbe, *supra* note 15; CAROL J. ADAMS, *THE SEXUAL POLITICS OF MEAT: A FEMINIST-VEGETARIAN CRITICAL THEORY* 146, 149, 152 (1990); Dunayer, *supra* note 74, at 11–31.

including women, people with disabilities, and homosexual people.⁸⁰ The derogatory labels applied frequently work doubly to reinforce certain conceptions of nonhuman animals just as they “Other” the marginalized group in question; for example, “racist discourse operates by animalizing the despised other humans and describing them as vermin, cockroaches, dogs, pigs, apes and so on, rendering them fit for enslavement or extermination.”⁸¹ Systems of power and oppression rely on mythologies that work, in part, through linguistic methods of Othering that create dichotomies and hierarchies of value.⁸²

The connection between nonhuman animal exploitation and the oppression of women is an essential tenet of several ecofeminist scholars and activists.⁸³ As Carol Adams elucidates, the objectification and Othering of both women and nonhuman animals is a central part of the underlying ideology driving their commodification and exploitation.⁸⁴ “We don’t realize that the act of *viewing* another as an object and the act of *believing* that another is an object are actually different acts, because our culture has collapsed them into one.”⁸⁵ In the case of animals raised for food, their commodification begins at the level of language when they are referred to by “industry labels that represent their end purpose, such as livestock, beef cattle, pork, dairy cows, veal calves, poultry, or seafood, instead of more essential references to them as living beings, such as cow, pig, bird, or fish.”⁸⁶ Objectification occurs not only through such language, but also through institutions, legislation, and policies, and prevents the “moral discomfort we might otherwise feel”⁸⁷ in treating nonhuman animals as objects, rather than as living beings.

Accordingly, Steven Bartlett notes that “[t]he present state of animal law can be described on two levels: the first level, in terms of legal discourse; the second, in terms of the psychological and conceptual structures that influence and underlie the former.”⁸⁸ Although the

⁸⁰ Deborah Schaffer & Rachel Schaffer, *An Overview of the Language of Prejudice*, VOICES COMPASSION EDUC., <http://voiceseducation.org/content/overview-language-prejudice> (accessed Feb. 22, 2017).

⁸¹ Sorenson, *supra* note 17, at 19.

⁸² Dr. Zuleyka Zavallos, *What Is Otherness?*, OTHER SOCIOLOGIST (Oct. 14, 2011), <https://othersociologist.com/otherness-resources/> (accessed Feb. 21, 2017).

⁸³ *E.g.*, CAROL J. ADAMS, *THE PORNOGRAPHY OF MEAT* 14 (2004) (arguing that women and nonhuman animals are objectified in similar manners); Jessica Schmonsky, *The Growing Importance of Ecofeminism*, VOICES FOR BIODIVERSITY (Oct. 22, 2012), <http://voicesforbiodiversity.org/articles/the-growing-importance-of-ecofeminism> [<https://perma.cc/5MKF-ZP3T>] (accessed Apr. 9, 2017) (summarizing ecofeminism and its tenets).

⁸⁴ ADAMS, *supra* note 83, at 14.

⁸⁵ *Id.*

⁸⁶ Carrie Packwood Freeman, *This Little Piggy Went to Press: The American News Media’s Construction of Animals in Agriculture*, 12 COMM. REV. 78, 89 (2009) (emphases omitted).

⁸⁷ JOY, *supra* note 2, at 118.

⁸⁸ Steven J. Bartlett, *Roots of Human Resistance to Animal Rights: Psychological and Conceptual Blocks*, 8 ANIMAL L. 143, 146 (2002).

laws regulating the way humans relate to other species may have shifted incrementally, strictly legal arguments fail to tackle the underlying ethical question of why nonhuman animal suffering matters.⁸⁹ In other words, a prescriptive approach that targets specific laws and advances proposals for legal reform fails to acknowledge the significance of the descriptive element of nonhuman animal subjectivity and suffering.⁹⁰ Indeed, Bartlett continues on to say that “[h]uman attitudes, policies, and behavior are influenced not only by the species’ underlying psychology, but by the vocabulary of ideas we use to make sense of the world.”⁹¹ The vocabulary of ideas we use to make sense of the world, in turn, feeds into cognitive processes that work to create and sustain our frames of reference.⁹² For instance, one of the major difficulties with advocating for nonhuman animals is that, through the process of ‘deindividualization,’ they are often thought of and addressed solely in terms of an abstract group identity, whether by species or function, thereby homogenizing their individuality.⁹³ Yet, as Paul Slovic has demonstrated in the context of genocide, individual victims are far more likely to arouse compassion than groups of victims.⁹⁴ By continuing to fail to underscore the individuality and value of nonhuman animal lives, the anthropocentric turn of animal law cannot be righted towards a more compassionate approach.⁹⁵

Given that problematic attitudes are built into our language and subsequently perpetuated in our laws, the significance of language in devaluing nonhuman animals cannot be understated.⁹⁶ As Marti Kheel observes, “[l]anguage conveys (and reproduces) the attitudes

⁸⁹ See *id.* at 146–49 (arguing that, even though there is a shift in the law in favor of nonhuman animals and nonhuman animal rights, the reasons for this shift are still anthropocentric).

⁹⁰ See, e.g., *id.* at 148–49 (arguing that the purpose of the Animal Welfare Act concerns human interests rather than nonhuman animal interests).

⁹¹ *Id.* at 171.

⁹² See *id.* (“The set of ideas in terms of which we construe events in the real world serves as a framework of interpretation in terms of which we, among many other things, express what we believe to be meaningful statements, check to verify their truth, and make predictions.”).

⁹³ See JOY, *supra* note 2, at 119 (defining ‘deindividualization’ and giving pigs as an example).

⁹⁴ See generally Paul Slovic, “*If I Look at the Mass I Will Never Act*”: *Psychic Numbing and Genocide*, 2 JUDGMENT & DECISION MAKING 79, 79–95 (2007) (arguing that people “become numbly indifferent to the plight of individuals who are ‘one of many’ in a much greater problem”).

⁹⁵ See Gary L. Francione, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, 70 L. & CONTEMP. PROBS. 9, 13 (2007) (asserting that there have been no significant improvements in nonhuman animal welfare or nonhuman animal welfare laws recently, and any changes that have been made are based on human needs rather than nonhuman animal concerns).

⁹⁶ See Freeman, *supra* note 86, at 89–90 (finding that the labeling of nonhuman animals as commodities devalues them as individuals); see, e.g., Bartlett, *supra* note 88, at 148–49 (arguing that laws such as the Animal Welfare Act are intended to advance human, rather than nonhuman animal, interests).

and practices of the societies in which it evolves.”⁹⁷ Consequently, exposing the cognitive processes contributing to our current attitudes towards nonhuman animals is an important step towards shifting perceptions and paradigms.⁹⁸ It is essential that advocates work to actively reshape the meaning of the words used to think and talk about nonhuman animal lives, in order to reimagine their value in something more than purely instrumental terms.⁹⁹

B. *The Similarity Argument*

Evaluating the narratives used to frame the arguments advanced by animal advocates reveals that they too may be based on problematic foundations. As Taimie Bryant points out, the “argument and goal of much of animal advocacy”¹⁰⁰ has proceeded on the basis of the similarity argument, which contends that “justice requires the like treatment of like entities.”¹⁰¹ This argument—which also played a prominent role in the civil rights movement, the feminist movement, and the disability rights movement—is evident in both the welfare and rights strands of animal advocacy.¹⁰² The similarity argument attempts to bring nonhuman animals within the bounds of legal protection by suggesting that at least some species of nonhuman animals are similar enough to humans to warrant granting them legal rights.¹⁰³

The similarity argument not only influences advocates’ choice of projects and their attempts to pass animal-respecting legislation, but is also present in litigation strategies.¹⁰⁴ The Nonhuman Rights Project (NhRP), a civil rights organization in the United States working to achieve legally enforceable rights for certain species, has clearly adopted the similarity argument in its approach.¹⁰⁵ Led by prominent animal lawyer and scholar Steven Wise, the articulated mission of the NhRP is

through education and litigation, to change the common law status of at least some nonhuman animals from mere ‘things,’ which lack the capacity to possess any legal right, to ‘persons,’ who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to

⁹⁷ KHEEL, *supra* note 21, at 6.

⁹⁸ See Francione, *supra* note 95, at 56–57 (concluding that advocates for nonhuman animals should challenge the notion of nonhuman animals as property instead of working within it).

⁹⁹ See Arran Stibbe, *Language, Power and the Social Construction of Animals*, 9 SOC’Y & ANIMALS 145, 157–58 (2001) (concluding that language used to refer to nonhuman animals is important in the domination and oppression of nonhuman animals).

¹⁰⁰ Bryant, *supra* note 39, at 207.

¹⁰¹ *Id.* at 208.

¹⁰² *Id.* at 208–09 n.7.

¹⁰³ *Id.* at 208–09.

¹⁰⁴ *Id.* at 248–49.

¹⁰⁵ *About Us*, NONHUMAN RTS. PROJECT, <https://www.nonhumanrightsproject.org/who-we-are/> [<https://perma.cc/P4SX-MYNJ>] (accessed Apr. 9, 2017).

which evolving standards of morality, scientific discovery, and human experience entitle them.¹⁰⁶

Most of the NhRP's work has been on behalf of captive chimpanzees. In the recent case of *Nonhuman Rights Project, Inc. ex rel. Hercules and Leo v. Stanley*,¹⁰⁷ the NhRP requested a writ of habeas corpus on behalf of Hercules and Leo, two chimpanzees kept at Stony Brook University for research purposes.¹⁰⁸ The petitioners argued that the chimpanzees were being unlawfully detained and denied their basic legal rights.¹⁰⁹ Affidavit evidence from a variety of experts who had conducted "in-depth research into the behavior, personality, cognition, intelligence, communication, and language skills of chimpanzees and other nonhuman primates"¹¹⁰ was submitted, all of whom attested to the "complex cognitive abilities of chimpanzees."¹¹¹

Although New York Supreme Court Justice Barbara Jaffe acknowledged that the concept of legal personhood had evolved over the years, she ultimately affirmed the property status of nonhuman animals and ruled against the NhRP, noting that nonhuman animals "are accorded no legal rights beyond being guaranteed the right to be free from physical abuse and other mistreatment and the right to humane living conditions."¹¹² Her conclusion reflects the notion that chimpanzees are similar enough to humans to arouse feelings of concern, and also alludes to a hierarchy of ordering nonhuman animal species when she writes that: "The similarities between chimpanzees and humans inspire the empathy felt for a beloved pet. Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed."¹¹³ Notwithstanding the explicit acceptance of the empathy felt towards at least some nonhuman species, the similarity argument failed, in this case, to justify granting legal rights to chimpanzees.¹¹⁴

However, as Catherine Mackinnon suggests, "seeking animal rights on a 'like-us' model of sameness may be misconceived, unconvincing, and counterproductive."¹¹⁵ Such a model of sameness tends to suggest that nonhuman animal lives are only important insofar as they approximate human ones.¹¹⁶ Bryant also takes issue with the similarity argument, pointing out that "[a] fundamental problem . . . is that it is not possible to resolve completely the question whether some

¹⁰⁶ *Id.*

¹⁰⁷ *Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 49 Misc. 3d 746 (N.Y. Sup. Ct. 2015).

¹⁰⁸ *Id.* at 748.

¹⁰⁹ *Id.* at 751.

¹¹⁰ *Id.* at 750.

¹¹¹ *Id.*

¹¹² *Id.* at 764–65.

¹¹³ *Id.* at 772–73.

¹¹⁴ *Id.*

¹¹⁵ Catherine A Mackinnon, *Of Mice and Men: A Feminist Fragment on Animal Rights*, in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 263, 264 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004).

¹¹⁶ *Id.* at 263–64.

or all animals are sufficiently like humans that justice requires treating the two groups alike, even if there were agreement about which capacities are relevant for comparison.”¹¹⁷ Moreover, the similarity argument does not challenge “the status quo’s acceptance of ‘man as the measure’ nor the hierarchical ordering of access to resources.”¹¹⁸ The resulting “hierarchy of worthiness”¹¹⁹ is problematic not only because it prioritizes certain species to the detriment of others, but also because it ignores the socio-cultural processes shaping the way some species are perceived, especially those which are institutionally oppressed.¹²⁰

Rather than arguing that nonhuman animals are like humans and warrant legal protection on those grounds, animal advocates should instead advance an ideology of protection focused on nonhuman animals themselves.¹²¹ Not only would this avoid the trappings of a similarity-based approach, but it would also go further towards an anti-discrimination approach that seeks change “based on respect for diversity and anticipatory accommodation of all.”¹²² An anti-discrimination approach does not proceed from the premise of formal equality that similarly situated entities should be treated the same at law, but instead, recognizes the inherent dissimilarities between species and assumes value in including and accommodating these differences to the point where they become “naturalized.”¹²³ Arguably, such an approach would be more favorable for a diverse range of nonhuman animals and their unique characteristics, as well as more effective at targeting entangled oppression of multiple kinds.

C. *Single-Issue Campaigns, Shock Tactics, and Stereotypes*

In terms of social movement activism, extralegal efforts have not necessarily fared much better than litigation, and are certainly not immune from facing the same criticisms.¹²⁴ The strategy of employing single-issue campaigns and shock tactics—whether in tandem, or separately—that has been adopted by some animal advocacy groups is particularly problematic.¹²⁵ A single-issue campaign is one that “involves identifying some particular use of animals or some form of treatment and making that the object of a campaign to end the use or

¹¹⁷ Bryant, *supra* note 39, at 211.

¹¹⁸ *Id.* at 250.

¹¹⁹ *Id.* at 215.

¹²⁰ *Id.* at 215, 222 n.48.

¹²¹ *Id.* at 246 (“[T]he argument is that, while animal protection may result from actions undertaken for reasons other than protecting animals, social norms of animal protection will not have been reinforced if such norms are not the explicit basis of reform.”).

¹²² *Id.* at 254.

¹²³ *Id.* at 238.

¹²⁴ Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 955, 958 (2007) (implying that extralegal efforts typically end up resulting in litigation once the social movement activism moves further).

¹²⁵ *Id.* at 951.

modify the treatment.”¹²⁶ Meanwhile, shock tactics aim to rouse feelings like surprise, outrage, and disgust in order to pierce apathy and spur action.¹²⁷

People for the Ethical Treatment of Animals (PETA),¹²⁸ the largest and one of the most well-known animal advocacy groups currently operating, has frequently utilized shock tactics to get their message across.¹²⁹ Indeed, PETA openly acknowledges that this is an organizational strategy:

We will do extraordinary things to get the word out about animal cruelty because we have learned from experience that the media, sadly, do not consider the terrible facts about animal suffering alone interesting enough to cover. It is sometimes necessary to shake people up in order to initiate discussion, debate, questioning of the status quo, and, of course, action.¹³⁰

Although PETA takes up a variety of issues related to nonhuman animal (ab)use and “works through public education, cruelty investigations, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns,”¹³¹ their legitimate efforts at advancing their agenda are undermined by their more colorful strategies.¹³² Even as single-issue campaigning and shock tactics may lead to incremental improvements in the well-being of some nonhuman animals, “it is also important to be mindful of the connected structures of power that speciesism relies on and reinforces.”¹³³

Some of PETA’s provocative, highly publicized media campaigns have come under fire for alienating other social movements, including feminism, by “commodifying women and sexuality by reinforcing harmful stereotypes in order to sell their animal rights message. . . . Sex, traditionally, sells, but, as some feminists have argued, the message of care, compassion, and justice gets lost in this particular exchange.”¹³⁴ Advocating for nonhuman animal interests does not nec-

¹²⁶ Gary L. Francione, *Is Every Campaign a Single-Issue Campaign?*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Feb. 3, 2010), <http://www.abolitionistapproach.com/is-every-campaign-a-single-issue-campaign> [<https://perma.cc/TRD7-GPB4>] (accessed Apr. 9, 2017).

¹²⁷ *Shockvertising*, EMERGING ADVERT. MEDIA (2017), <https://emerging-advertising-media.wikispaces.com/Shockvertising> [<https://perma.cc/M3DE-XXA5>] (accessed Apr. 9, 2017).

¹²⁸ PETA, <http://www.peta.org/> [<https://perma.cc/2MB8-VFAV>] (accessed Apr. 9, 2017).

¹²⁹ *About PETA*, PETA, <http://www.peta.org/about-peta/> [<https://perma.cc/ZF4D-AJGV>] (accessed Apr. 9, 2017).

¹³⁰ *Why Does PETA Use Controversial Tactics?*, PETA, <http://www.peta.org/about-peta/faq/why-does-peta-use-controversial-tactics/> [<https://perma.cc/A8EH-362S>] (accessed Apr. 9, 2017).

¹³¹ *About PETA*, *supra* note 129.

¹³² Hannah Crisan, *PETA: How the Messenger Kills the Message*, OHIO ST. U. (2009), <http://www.mhlearningsolutions.com/commonplace/index.php?q=node/3798> [<https://perma.cc/EF6Q-T5UY>] (accessed Apr. 9, 2017).

¹³³ GRUEN, *supra* note 59, at 202.

¹³⁴ *Id.* at 201; GAARDER, *supra* note 51, at 117–47.

essarily have to run contrary to advancing other progressive social causes, and such an approach may actually be self-defeating.¹³⁵ Another problem with single-issue campaigning is that “it presents some particular use or treatment as morally distinguishable from other forms of use or treatment and by doing so explicitly or implicitly suggests that other forms of exploitation are morally less problematic.”¹³⁶ When it comes to nonhuman animal exploitation, the concerns extend much further than a particular use or treatment, and focusing only on abolishing particularly egregious practices fails to adequately address the systemic nature of the problem.

A related problem is the unfortunate stereotyping of animal advocates, many of who become tarred with the same brush as its most radical representatives.¹³⁷ The resulting perception of animal advocates as strident, anti-human, or otherwise unpalatable has been a significant detractor from the power of the movement.¹³⁸ As Helena Silverstein notes, “[i]t is not uncommon to hear animal rights supporters called human haters, animal fanatics, and the like.”¹³⁹ The question of animal rights, in particular, is especially polarizing, as the concept of granting legal rights to nonhuman animals is still beyond the realm of comprehension and/or acceptability for most: “Some people believe that those who defend animal rights are zealots, showing an inexplicable willingness to sacrifice important human interests for the sake of rats, pigs, and salmon.”¹⁴⁰ In response, some advocates have chosen to jettison the term “animal rights” in favor of the more neutral “animal protection.”¹⁴¹ These kinds of strategic choices clearly illustrate that even though human interests and nonhuman animal interests are not necessarily mutually exclusive, they are often treated as such in populist sentiment.

This phenomenon is not limited to animal advocates: social movement activists of all stripes have frequently been branded with negative stereotypes and met with hostility or outright derision.¹⁴² Researchers have found that “the very nature of activism leads to negative stereotyping By aggressively promoting change and advocating unconventional practices, activists become associated with hostile militancy and unconventionality or eccentricity.”¹⁴³ Not only do such stereotypes undermine the message that these activists aim to convey, but they also prevent individuals from affiliating with certain kinds of

¹³⁵ GRUEN, *supra* note 59, at 199–202 (illustrating that focusing too finely on one interest can actually result in hurting the overall battle).

¹³⁶ Francione, *supra* note 126.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ SILVERSTEIN, *supra* note 12, at ix.

¹⁴⁰ Jeff Leslie & Cass R Sunstein, *supra* note 70, at 117.

¹⁴¹ Maggie Jones, *The Barnyard Strategist*, N.Y. TIMES MAG. (Oct. 24, 2008), <http://www.nytimes.com/2008/10/26/magazine/26animal-t.html> [https://perma.cc/TNG9-NXRC] (accessed Apr. 9, 2017).

¹⁴² Nadia Y Bashir et al., *supra* note 73, at 614–15 (2013).

¹⁴³ *Id.* at 624.

activists and reduces motivation to adopt the behaviors advocated for.¹⁴⁴

Within the animal advocacy movement, stereotypes and social constructions of different types of approaches to advocacy have also influenced choice of strategy, determining not only the message but how that message is conveyed. For example, the use of emotion has been repudiated for being unprofessional, irrational, and “feminine,” in contrast with a more “impartial” approach based on facts and figures.¹⁴⁵ Women, in particular,

face a double bind when it comes to emotional expression: If they express their compassion, they may be dismissed as trivial; if they express their anger, they may be dismissed as hysterical. Ironically, in denigrating their emotions as feminine, trivial, or hysterical, the activists contribute to the stereotypes they are fighting and denigrate the very reasons they join the animal rights movement—because of their empathy and compassion for animals The animal rights movement unintentionally perpetuates the prestige accorded to men and medical science.¹⁴⁶

However, the rejection of emotional expression, especially in the form of empathy and compassion, does the animal advocacy movement a disservice by eliminating a potent form of persuasion—facts, on their own, are not necessarily enough to stir change.¹⁴⁷ Language and narrative are essential components of any form of advocacy, but the various ways in which they are used can make considerable differences.¹⁴⁸ Maintaining the ethical and empathetic motivations behind advocating for nonhuman animal causes while avoiding dogmatic, ideology driven positioning is a fine balance, but one that needs to be carefully struck in order for animal advocacy to maintain its integrity as a social cause motivated by compassionate principles.

IV. TELLING TAILS: THE PROMISES OF LANGUAGE AND NARRATIVE

Despite the historically oppressive influence of language and narratives in animal advocacy efforts, they also offer liberatory potential. A conscientious reframing of the methods used to explain why nonhuman animal suffering matters may offer an alternative, less antagonistic way of advancing nonhuman animal interests.¹⁴⁹ Indeed,

¹⁴⁴ *Id.*

¹⁴⁵ Julian McAllister Groves, *Animal Rights and the Politics of Emotion: Folk Constructs of Emotions in the Animal Rights Movement*, in *PASSIONATE POLITICS: EMOTIONS AND SOCIAL MOVEMENTS* 212, 212–30 (Jeff Goodwin et al. eds., 2001).

¹⁴⁶ *Id.* at 229.

¹⁴⁷ *Cf. id.* at 212–15 (explaining the rejection of emotion in light of ration because of political expediency).

¹⁴⁸ *Cf. id.* at 217 (presenting different approaches to activism and their respective images).

¹⁴⁹ See Gary L. Francione, *Animals, Property and Legal Welfarism: “Unnecessary” Suffering and the “Humane” Treatment of Animals*, 46 *RUTGERS L. REV.* 721, 731–32

whereas explicit advocacy may most strongly reinforce norms of animal protection, it is not true that only actions undertaken explicitly to protect animals can reinforce such norms. It is possible that much turns on how developed the norms of animal protection are prior to a specific advocacy campaign.¹⁵⁰

The first step to developing these norms is acknowledging the fact that they exist, and not inevitably in their current incarnation.¹⁵¹ Therefore, they can be challenged and changed.¹⁵²

The symbolic construction of nonhuman animals in our society feeds into how they are conceived of at law and vice versa.¹⁵³ Narrative plays a significant role in the process of meaning-making, both legally and culturally.¹⁵⁴ Robert Cover's theory of jurisprudence holds that "laws and narrative traditions of a culture cannot be critically separated, that they must operate intertwined,"¹⁵⁵ thus indicating that "no law, no set of legal instructions or prescriptions, can exist apart from the narratives that give that law its meaning and effect."¹⁵⁶ Moreover, as the legal Realist school of thought has observed, "law cannot be separated from politics and policy. . . . [J]udges are policymakers who apply legal principles primarily to achieve desired policy objectives. . . . [The law is] a product of the background and experiences of lawyers, judges, and other policymakers."¹⁵⁷ Consequently, as can be observed in some of the case law dealing with animal rights, it may be beneficial not only to target existing laws and press for legal reform, but also to sway the minds and hearts of members of the public and influential institutional actors, including the judiciary.¹⁵⁸ As ecofeminists have suggested, the use of narratives to reveal the subjectivity of individual nonhuman animals may be one of the most compelling ways to do so.¹⁵⁹ Despite the difficulties of telling nonhuman

(1994) (illustrating the current methods we use to balance human and animal interests and what needs to change in order to move forward with animal rights).

¹⁵⁰ Bryant, *supra* note 39, at 243.

¹⁵¹ See Gary L. Francione, *Animals as Property*, 2 ANIMAL L. 242, 243 (1996) (acknowledging that we have to "eradicate the property interests of nonhumans" in order to move forward with challenging this status in the future).

¹⁵² *Id.*

¹⁵³ Jason Wyckoff, *Analysing Animality: A Critical Approach*, 65 PHIL. Q. 532, 533 (2015).

¹⁵⁴ Greta Olson, *Narration and Narrative in Legal Discourse*, in THE LIVING HANDBOOK OF NARRATOLOGY (Jan. 17, 2014), <http://www.lhn.uni-hamburg.de/article/narration-and-narrative-legal-discourse> (accessed Feb. 15, 2017).

¹⁵⁵ Roy Andrew Partain, *Ecologies of Paideic Law: Environmental Law and Robert M. Cover's Jurisprudence of "Nomos and Narratives"*, 43 HANYANG L. REV. 423, 424 (2013).

¹⁵⁶ *Id.* at 432.

¹⁵⁷ STEVEN C. TAUBER, NAVIGATING THE JUNGLE: LAW, POLITICS, AND THE ANIMAL ADVOCACY MOVEMENT 33 (2016).

¹⁵⁸ Kim Stallwood, *Animal Rights and Public Policy*, <http://www.kimstallwood.com/writer/writings/animal-rights-and-public-policy/> [<https://perma.cc/HYE3-934A>] (accessed Apr. 9, 2017).

¹⁵⁹ Chaone Mallory, *Acts of Objectification and the Repudiation of Dominance: Leopold, Ecofeminism, and the Ecological Narrative*, 6 ETHICS & ENV'T 59, 59–89 (2001).

animals' stories, the efforts to convey this type of information is necessary in order to dismantle dominant tropes about nonhuman animals and in so doing, improve interspecies relationships both in theory and practice.

A. *Reece v. Edmonton*

The case of *Reece v. Edmonton*, though a losing one in the literal sense, offers important insights into the significance of perception and framing when it comes to nonhuman animals and the law.¹⁶⁰ In this case, the action was brought by animal advocacy groups on behalf of Lucy, a 36-year-old Asian elephant owned by the Edmonton Valley Zoo.¹⁶¹ The petitioners argued that the City of Edmonton was in violation of the provincial Animal Protection Act¹⁶² by causing or permitting Lucy to be in distress.¹⁶³ Six affidavits were filed to this effect, “including sworn evidence from four doctors: an ecologist, an elephant biologist and ethologist, and two veterinarians.”¹⁶⁴ This evidence outlined not only the painful, debilitating medical conditions that Lucy was suffering from, but also the reasons for those health problems—namely, “her living conditions at the Valley Zoo, including her social isolation.”¹⁶⁵

The majority of the Alberta Court of Appeal upheld the lower court's decision to have the appellant's claim struck on the ground that the application constituted an abuse of process.¹⁶⁶ In so doing, the court failed to engage whatsoever with the broader questions raised, claiming that the merits of the appellant's argument “are not at issue in this appeal, all the evidence needed to resolve it is not found on this record, and this appeal does not deal with animal rights or the propriety of Lucy's care.”¹⁶⁷ However, the dissenting opinion of Chief Justice Catherine Fraser has been lauded as a departure “from the standard legal instrumentalist view of animals by providing a non-anthropocentric analysis of the animal interest at stake,” thereby providing “a new way of thinking about animals when compared to the existing Canadian jurisprudence.”¹⁶⁸ Indeed, Lesli Bisgould describes the dissent as potentially “the most important development for animals in Canadian jurisprudence to date.”¹⁶⁹

¹⁶⁰ Holly Vear, *Reece v. Edmonton: Legal Standing in Animal Protection*, ANIMAL JUST. (Nov. 13, 2013), <http://www.animaljustice.ca/blog/reece-v-edmonton-legal-standing-in-animal-protection/> [<https://perma.cc/PB7Q-YEWZ>] (accessed Apr. 9, 2017).

¹⁶¹ *Reece v. Edmonton* (City), 2011 A.B.C.A. 238, para. 2 (Can. Alta.).

¹⁶² *Id.* at para. 4.

¹⁶³ *Id.* at para. 108.

¹⁶⁴ *Id.* at para. 107.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at para. 36.

¹⁶⁷ *Id.* at para. 3.

¹⁶⁸ Maneesha Deckha, *Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability Under a Property Paradigm*, 50 ALTA. L. REV. 783, 785 (2013).

¹⁶⁹ BISGOULD, *supra* note 2, at 120.

Unlike the majority, which declined to engage at all with questions of animal rights or reforms to animal welfare law, Chief Justice Fraser's dissent is "noteworthy for providing the first significant Canadian judicial consideration of an animal's right to a legal voice and the relationship of this right to the proper working of our legal institutions."¹⁷⁰ More specifically, Maneesha Deckha suggests three main features of the judgment that distinguishes it in Canadian animal law: "its foundational reliance on the rule of law, its serious treatment of animal rights, and its recognition of animals' vulnerability."¹⁷¹ All of these features are evident when, at the outset of her opinion, Chief Justice Fraser notes explicitly that "Lucy's case raises serious issues not only about how society treats sentient animals—those capable of feeling pain and thereby suffering at human hands—but also about the right of the people in a democracy to ensure that the government itself is not above the law."¹⁷² Chief Justice Fraser did not treat the fact that the case concerned a nonhuman animal interest as justification to automatically discount its legal claim; rather, she reasons through the appellant's arguments in a way that is sensitive to both the letter and the spirit of animal law.¹⁷³

Through the course of her decision, Chief Justice Fraser engages directly with the affidavit evidence filed by the appellants, outlining why it is both relevant and admissible in determining the issues at hand, which included:

the seriousness of the dispute as reflected in the City's treatment of Lucy, the consequential impact on Lucy's health and the treatment of elephants in captivity in zoos generally and the Valley Zoo in particular, why the appellants should be granted public interest standing and why the public law issues raised are important.¹⁷⁴

She notes:

[T]he affidavit evidence packs a powerful punch. It holds up a mirror for all to see—provided one is prepared to look in the mirror. What it reveals is a disturbing image of the magnitude, gravity and persistence of Lucy's ongoing health problems and the severity of the suffering she continues to endure from the conditions in which she has been confined. And it also exposes who is responsible for those conditions and that suffering.¹⁷⁵

Her approach contrasts starkly with that of the majority, who only acknowledged the existence of the affidavit evidence in a perfunctory manner.¹⁷⁶

¹⁷⁰ Deckha, *supra* note 168, at 794.

¹⁷¹ *Id.* at 797.

¹⁷² *Reece v. Edmonton (City)*, 2011 A.B.C.A. 238, at para. 39 (Can. Alta.).

¹⁷³ *See id.* at para. 47 ("Viewed through the animal welfare lens, this appeal raises important issues fundamental to the effective protection of animals in this province.")

¹⁷⁴ *Id.* at para. 96.

¹⁷⁵ *Id.* at para. 103.

¹⁷⁶ *See id.* at para. 5 (mentioning only that the appellant's "application is supported by a number of affidavits, including affidavits by a number of veterinarians").

Significantly, Chief Justice Fraser conveys respect for the subjectivity of nonhuman animals in her discussion of Lucy's particular condition, as well as her broader comments about nonhuman animals at large.¹⁷⁷ She devotes a paragraph of her judgment to describing

the capacities of elephants . . . and acknowledging the perceived social organization among these animals. [Her] dissent even destabilizes the common anthropocentric narrative that animals do not use language, a common reason proffered to justify human uniqueness and corresponding social, legal, and cultural anthropocentric orders.¹⁷⁸

In relying on the affidavit evidence to recognize the range of nonhuman animal capacities in this way, Chief Justice Fraser demonstrates that the discursive practice of judicial reasoning can be considerably influenced by the portraits of nonhuman animals that are painted by the human representatives advocating for them.¹⁷⁹

Thus, although a narrative lacks the power to directly change a law, it can change perceptions and the process of meaning-making, which can have a profound effect on how we behave, both individually and collectively. Moreover, taking a legal Realist perspective and connecting judicial decision-making with broader social consciousness efforts reveals that shifting public attitudes about nonhuman animals can directly affect the outcomes of litigation advanced on their behalf. Changing perceptions and attitudes, especially ones that are deeply engrained, is by no means a straightforward task. However, given the fact that the majority of people already appear to hold the belief, at least on some level, that nonhuman animals deserve not to be harmed,¹⁸⁰ the focus should then be on connecting these moral inclinations with individual and institutional changes that can collectively work to alleviate nonhuman animal suffering and exploitation without the need for hostile and aggressive advocacy tactics.

¹⁷⁷ See Deckha, *supra* note 168, at 804 ("The dissent retains this strong respect for Lucy's subjectivity in discussing the details of the evidentiary record. Chief Justice Fraser begins by offering a substantial introduction to Lucy's life as a lone elephant Chief Justice Fraser's reasoning about animal vulnerability is combined with her affirmation that how humans treat animals is a topic that engages rule or law considerations and that the current legal status of animals is in need of judicial scrutiny").

¹⁷⁸ Deckha, *supra* note 168, at 803.

¹⁷⁹ See *Reece v. Edmonton (City)*, 2011 A.B.C.A. 238, at para. 98–99 ("The City . . . asserts that the . . . affidavits are not admissible because they are based on hearsay. Hearsay evidence is admissible for the truth of its contents despite its hearsay character if it meets the twin criteria of necessity and reliability. Since animals cannot tell someone what has happened to them, relying on records relating to animals is often, as here, a necessity.").

¹⁸⁰ *E.g., id.* at para. 54 ("We have moved from a highly exploitive era in which humans had the right to do with animals as they saw fit to the present where some protection is accorded under laws based on an animal welfare model.").

B. *Telling Tails*

Narratives can also work to expose entrenched ideologies such as patriarchy and speciesism.¹⁸¹ The supremacy of such ideologies makes them difficult to contest, especially once they become so embedded within cultural consciousness as to become self-reinforcing and invisible.¹⁸² Destabilizing such ideologies is a difficult task, as it requires forcing a shift in thinking outside of the dominant paradigm. However, by presenting alternative scenarios, narratives can reveal the taken-for-granted nature of engrained ways of thinking that challenges attitudes of ignorance and complacency, as well as practices and behaviors that are outright cruel.¹⁸³

To this end, the creativity required when engaging narrative strategies is often an important element when contesting certain orthodoxies.¹⁸⁴ From a feminist perspective, Marian Scholtmeijer states that “women employ the creative freedom of narrative to liberate otherness from the norms of dominant ideology. Women writers use fiction to concretize, affirm, and empower the state of being ‘other,’ which dominant ideology objectifies as a site of weakness, but which finds living expression in nonhuman animals.”¹⁸⁵ Narrative methods, especially those that focus on the particular lives of individual nonhuman animals as opposed to general, species-level stories, can transcend the constraints of dominant ideology to illuminate a more emotional—and perhaps more convincing—basis for addressing nonhuman animal suffering.¹⁸⁶

Lamenting the absence of an easy answer to the question of how to persuade people that “creatures have rights and must be allowed, through others as their spokespersons, to press moral claims,”¹⁸⁷ Laurence Tribe suggests that “[t]he secret to making that case may well reside at a level deeper than rational argument and deeper than provable fact, but paradoxically, in a visceral appeal to our own common humanity.”¹⁸⁸ Ecofeminists have answered this call by striving to offer

¹⁸¹ See Marian Scholtmeijer, *The Power of Otherness: Animals in Women’s Fiction*, in ANIMALS AND WOMEN: FEMINIST THEORETICAL EXPLORATIONS, *supra* note 74, at 231, 233 (“In narrative, writers can actualize the power to discount dominant ideology . . .”).

¹⁸² See *id.* at 234 (explaining the “perception that social and cultural outsiders are quintessential victims and that [they] cannot escape the mechanisms of conquest established by the in-group”).

¹⁸³ See *id.* at 233 (“[W]omen employ the creative freedom of narrative to liberate otherness from the norms of dominant ideology. Women writers use fiction to concretize, affirm, and empower the state of being ‘other,’ which dominant ideology objectifies as a site of weakness . . .”).

¹⁸⁴ Linda Vance, *Beyond Just-So Stories: Narrative, Animals, and Ethics*, in ANIMALS & WOMEN: FEMINIST THEORETICAL EXPLORATIONS, *supra* note 74, at 163, 178–79.

¹⁸⁵ Scholtmeijer, *supra* note 181, at 233.

¹⁸⁶ *Id.* at 236.

¹⁸⁷ Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 ANIMAL L. 1, 7–8 (2001).

¹⁸⁸ *Id.* at 8.

a different narrative to the one that has dominated, one that is informed by an ethic of care and that proposes a non-instrumental way of valuing nonhuman life.¹⁸⁹ Ecofeminist theory “recognize[s] sympathy and compassion as a fundamental feature of any inclusive, liberatory theory. An inclusive ecofeminist theory suggests that compassion is crucial to undoing oppression in both theory and practice.”¹⁹⁰ Rather than being seen as a form of weakness, or secondary to more “rational” forms of analysis, the ecofeminist approach is unapologetically rooted in ethical and compassionate ideals.¹⁹¹ Contrasted with the defensive posturing of some contemporary animal advocacy measures, establishing the inherent value of nonhuman animal lives through the telling of their stories effectively reverses the onus, forcing those who are responsible for the (ab)use of nonhuman animals to justify their practices rather than requiring animal advocates to demonstrate why the (ab)use of nonhuman animals is wrong.

However, Linda Vance highlights the fact that since the point of most human narrative is to illuminate the human experience, “narratives about animals and nature tend to be human centered, or to exist for human edification.”¹⁹² Instead of engaging with nonhuman animals on their own terms, human-centered depictions of nonhuman animals can tend to reinforce the perception of them as abstractions, rather than as individual entities.¹⁹³ Consequently, it is important to be cognizant of the tendency towards anthropocentrism in order to produce good ecofeminist narratives that “reject the notion that any part of the world, human or animal, exists for the use and pleasure of any other part; in particular, any kind of instrumental characterization of animals implies an endorsement of human power-over.”¹⁹⁴ Though it is impossible to avoid the requirement of human representation, the nonhuman animal voice (and what, to the best of our knowledge, is in their best interest) should remain the focus of the stories told.¹⁹⁵

C. Coalitions and Communication

The animal advocacy movement has been mired in internal struggles for just as long as it has battled external ones.¹⁹⁶ Yet, the long-standing dispute within the animal advocacy movement over a welfare

¹⁸⁹ Greta Gaard, *Living Interconnections with Animals and Nature*, in *ECOFEMINISM: WOMEN, ANIMALS, NATURE* 1, 2 (Greta Gaard ed., 1993).

¹⁹⁰ Lori Gruen, *Dismantling Oppression: An Analysis of the Connection Between Women and Animals*, in *ECOFEMINISM: WOMEN, ANIMALS, NATURE*, *supra* note 189, at 60, 80.

¹⁹¹ Stephanie Lahar, *Roots: Rejoining Natural and Social History*, in *ECOFEMINISM: WOMEN, ANIMALS, NATURE*, *supra* note 189, at 91, 99.

¹⁹² Vance, *supra* note 184, at 165.

¹⁹³ *Id.* at 166.

¹⁹⁴ *Id.* at 181.

¹⁹⁵ *Id.* at 183.

¹⁹⁶ Megan A. Senatori, *The Second Revolution: The Diverging Paths of Animal Activism and Environmental Law*, 8 *WIS. ENVTL. L.J.* 31, 39–40 (2002).

versus rights approach has not necessarily been productive; instead, it “has often unnecessarily shifted the focus from the plight of animal suffering to animal rights rhetoric and debate.”¹⁹⁷ Megan Senatori observes that advocates “strictly adhering to ‘animal rights’ theory may find that in their purism they have lost sweeping gains for animals by failing to take legal advancement in their steps.”¹⁹⁸ Likewise, those activists in the ‘animal welfare’ camp can often benefit from rights rhetoric as it leads to careful introspection regarding animal issues.”¹⁹⁹ Ruth Payne also remarks that “although the animal welfarists and animal rightists tend to focus on their differences, the two movements actually have much in common, and a unified strategy would be to the benefit of the animal advocacy movement as a whole.”²⁰⁰ While the fact that fragmentation and division has marked the animal advocacy landscape is not altogether positive, it also signals a possibility for a more cooperative strategy to emerge.²⁰¹

The call for a more integrated approach extends beyond the boundaries of the animal advocacy movement to include other social movements like environmentalism and feminism. Although the goals of animal law and environmental law have not always been allied,²⁰² there are many commonalities between the two movements, and numerous gains that can be made through their cooperation.²⁰³ A growing body of literature is examining the interlinkages between animal and environmental law,²⁰⁴ ethics,²⁰⁵ and activism²⁰⁶ to theorize how both movements could be strengthened.²⁰⁷

Similarly, Lori Gruen argues that while both feminist theory and animal liberation theory address ways in which the continuing oppression of women and nonhuman animals can be eradicated, neither draws on the strengths and insights of the other.²⁰⁸ The failure to capitalize on this connection misses an important opportunity for collaboration, as understanding the oppressive attitudes and practices nonhuman animals are subjected to “as expressions of power and privi-

¹⁹⁷ *Id.* at 40.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Payne, *supra* note 23, at 588.

²⁰¹ *Id.* at 633.

²⁰² Senatori, *supra* note 196, at 39. *See, e.g.*, Harold D. Guither, *Animal Rights: History and Scope of a Radical Social Movement* 131 (1998) (pointing out that the animal rights movement “believes in the inherent value and equality of the individual, while [the environmental movement] believes in the superiority of the whole”).

²⁰³ GUTHER, *supra* note 202.

²⁰⁴ WHAT CAN ANIMAL LAW LEARN FROM ENVIRONMENTAL LAW? (Randall S. Abate ed., 2015).

²⁰⁵ Gary E. Varner, *In Nature’s Interests?: Interests, Animal Rights, and Environmental Ethics* (1998).

²⁰⁶ Sarah Rutherford Smith, *Twelve Monkeys, the Cassandra Dilemma and Innovation Diffusion: Transdisciplinary Lessons for Animal and Environmental Activism*, 10 TD: J. for Transdisciplinary Res. in Southern Africa 1, 1–18 (2014).

²⁰⁷ *Id.*

²⁰⁸ Gruen, *supra* note 190, at 60–90.

lege, as well as of cruelty, ignorance, and complacency, may help activists to construct even more effective campaigns and to provide opportunities for building more successful alliances.”²⁰⁹ Religious groups have also been pulled within the ambit of animal advocacy, especially when arguments are framed “in terms of compassion and morality.”²¹⁰ Indeed, the moral element of animal advocacy have led some to suggest that animal rights functions as a form of environmental cosmology, offering its members a means of dealing with questions of order and chaos, suffering, good and evil, and justice.²¹¹

The animal advocacy movement can serve as a rallying point for many different progressive social and political movements who share fundamental elements, namely: “a sense of compassion and fairness, a focus on power relations and a critique of domination, inequality and hierarchy, [and] efforts to alleviate conditions of exploitation.”²¹² However, to better do so, the narratives employed by the animal advocacy movement should emphasize the positive generation of feelings of compassion and concern as opposed to focusing on negative duties not to harm nonhuman animals specifically. This would help elucidate the similarities of the aims being advanced, as opposed to drawing attention to the differences; it is too readily overlooked that many forms of nonhuman animal suffering harm humans as well.

Moreover, as Sarah Rutherford Smith explains, animal advocates can benefit from a transdisciplinary approach not only to gain strength through unity, but also because:

[A]n essential aspect of mastering any discipline is knowing how to present your conclusions. And if a certain discipline does not offer a method through which this can be done effectively (and on a mass scale) then activists must turn to other disciplines which may offer more effective means or may provide insights into how to better present or communicate information.²¹³

Although the animal advocacy movement has been prolific in its charges against human treatment of nonhuman animals, it has been less successful in presenting its arguments in ways that stimulate the kinds of changes it wants to see made, especially in terms of substantive legal reforms.²¹⁴

A significant body of research has clearly demonstrated that nonhuman animals feel pain and experience emotions, in addition to displaying skills in communication, tool-making and use, complex

²⁰⁹ GRUEN, *supra* note 59, at 202.

²¹⁰ Jones, *supra* note 141.

²¹¹ Anne Sutherland & Jeffrey E. Nash, *Animal Rights as a New Environmental Cosmology*, 17 *Qualitative Soc.* 171, 171–86 (1994).

²¹² Sorenson, *supra* note 17, at 16.

²¹³ Rutherford Smith, *supra* note 206, at 11.

²¹⁴ *Id.* at 1–2.

reasoning, and even demonstrating moral intelligence.²¹⁵ Without engaging the similarity argument, this kind of information about the moral and emotional lives of nonhuman animals, in combination with the human capacity for empathy, would suggest that there is a strong case for reassessing how we view and treat them.²¹⁶ However, in the majority of human representations of the nonhuman animal experience, especially in the news media, these dimensions often fall by the wayside. This deficiency is significant insofar as “[m]edia portrayals are an important site of meaning creation for topics with which viewers have little direct experience.”²¹⁷ Since it is by no means commonplace, in modern society, for people to directly engage with a wide range of nonhuman animals in their natural settings, most of their knowledge about nonhuman animal lives and experiences is simply that which they are presented with as fact, without being asked to critically engage with the ethical questions pertaining to the relationships between humans and nonhuman animals.²¹⁸

In evaluating national news coverage of animals used in agriculture, Carrie Packwood Freeman concludes that by favoring industry and government perspectives as well as reproducing anthropocentric and status quo utilitarian views of nonhuman animals raised for food, the American media is not adequately serving as a public forum for the exchange of comment and criticism.²¹⁹ This finding is noteworthy, because drawing on Michel Foucault’s theory on the power of discourse, Freeman asserts that “the nature of the news media’s construction of farmed animals plays a key role in whether or not these animals are publicly defined and treated as sentient beings in need of justice or as mere commodities for continued use.”²²⁰ By presenting a simplified portrayal of nonhuman animal lives on solely human terms, the news media reinforces existing conceptualizations of nonhuman animals while also failing to acknowledge the socially negotiated bases of these conceptualizations.²²¹

Yet, the current state of affairs does not have to lead to defeatism. As Freeman, Bekoff, and Bexell comment, “we should expect those who write about animals to represent them accurately as the unique, sentient beings they are, not primarily as who we want them to be, background objects, or as means to our own ends.”²²² The task of speaking for a nonhuman animal is challenging, to be sure, but not impossible. To incorporate a nonhuman animal voice as a legitimate source or per-

²¹⁵ Carrie Packwood Freeman et al., *Giving Voice to the “Voiceless”: Incorporating Nonhuman Animal Perspectives as Journalistic Sources*, 12 JOURNALISM STUD. 590, 595 (2011).

²¹⁶ Marc Bekoff & Jessica Pierce, *Wild Justice: The Moral Lives of Animals* (2009).

²¹⁷ Freeman, *supra* note 86, at 79.

²¹⁸ *Id.*

²¹⁹ *Id.* at 78–79, 89.

²²⁰ *Id.* at 79.

²²¹ *Id.* at 89.

²²² Freeman, et al., *supra* note 215, at 602.

spective on a particular issue, Freeman, Bekoff, and Bexell recommend that journalists attempt to

(1) observe, listen to, and try to communicate with [nonhuman animals] in their own environments and allow the audience to share in this experience via detailed written descriptions or audiovisual means, (2) interpret [non-human animal] behavior and communication and/or consult an expert for interpretation, and (3) consider and incorporate the [nonhuman animals'] perspective and interests (sometimes by consulting human representatives).²²³

Recommendations like the foregoing indicate that it is feasible to better represent nonhuman animal perspectives, or at least gain valuable insights in the efforts to do so.²²⁴ As Bryant observes, "Information about animals' capacities, independent of comparison to human capacities, is useful information . . . and may change public attitudes about animals."²²⁵ The broader dissemination of information about the myriad aspects of nonhuman animal lives can undoubtedly contribute to a more comprehensive understanding of the myriad ways in which they should be respected and treated as morally considerable in their own right, altogether separate from the current instrumentalist view that prevails.²²⁶

V. CONCLUSION

The animal advocacy movement is driven by noble goals, but some of its methods have been problematic, and its message has sometimes been confused. The use of shock tactics and arguments like the similarity argument does nonhuman animals a disservice by failing to respectfully advance their interests on their own terms, while branding at least some animal advocates as radical, militant, or otherwise not to be taken seriously. Additionally, the ongoing debate about a welfare versus rights approach to animal advocacy has detracted from the power of the movement as a whole. Rather than splintering into increasingly divided factions, animal advocacy efforts should focus on their common aims, coalesce with broader social change movements, and draw on disciplines like communications studies in order to nurture a less antagonistic way to convey why animal suffering matters.

Although the strategies traditionally employed through formal litigation, public education campaigns, and political action practices surely have a role to play in advancing the causes of nonhuman animals, narratives offer a unique opportunity for the animal advocacy movement to trigger an interruption in the established ways of thinking that posit that nonhuman animals are outside of the realm of moral consideration, and therefore, outside the bounds of legal protec-

²²³ *Id.* at 596.

²²⁴ *Id.*

²²⁵ Bryant, *supra* note 39, at 211.

²²⁶ *Id.* at 212.

tion. Indeed, in order to believe that nonhuman lives are inherently valuable and worth defending, one must accept that nonhuman animals have subjective identities and interests, as opposed to human-dictated ones. Examining the ways in which language influences our perceptions reveals the tenets of mainstream orthodoxy that inherently permits nonhuman animal (ab)use by conceptualizing them as objects placed in both a dichotomy and hierarchy of significance. Targeting the underlying dialectic structures supporting an instrumental view of nonhuman animals can help cultivate alternative conceptions about the full range of their capacities, in addition to encouraging greater inclusiveness and sensitivity more broadly.

Structures of oppression are often self-reinforcing and difficult to challenge, and starting from a premise of “objectivity” or “rationality” may be counterintuitive in that such an approach perpetuates the view that any arguments based on other grounds are “irrational” by default. Overly formalistic approaches to creating change through legal channels have not traditionally been very successful within the animal advocacy movement. Yet, political crusades marked by aggression and hostility are also not well received. The disconnect between the degree of concern that people purportedly harbor for nonhuman animals and their corresponding actions signals that the problems underlying human treatment of nonhuman animals are not necessarily rooted in the domain of the rational and conscious.

As such, the answers to such problems may lie beyond the obvious and the traditional. Although the use of “feminine” emotions like compassion and care have been denigrated within the animal advocacy movement, they can be important elements of persuasion, especially in the context of narratives presenting the perspectives of marginalized and “voiceless” groups. Feminist and ecofeminist theorists “frequently recommend an increasing valuation of sentiments and recognition of the importance of responsibility and caring.”²²⁷ An ecofeminist ethic of care goes beyond simply condemning negative behaviors to illuminate the opportunities created by embracing more positive ones. Narratives about nonhuman animals, as one strategy of such an ethic, can “demonstrate that ethical behavior toward the nonhuman world is a kind of joyfulness, an embracing of possibility, a self-respecting and respectful humility.”²²⁸ This kind of framing strikes at the speciesist roots of the problems when it comes to human treatment of nonhuman animals, while also going further to demonstrate that bettering interspecies relationships does not necessarily come at a cost, and can instead be richly rewarding.

To improve the plight of nonhuman animals, “the enormous effort to communicate and educate, as well as legislate, is always needed. And narratives, which must be skilful as well as well-informed, have pride of place in that process[.] . . . [S]tories and examples are how

²²⁷ SILVERSTEIN, *supra* note 12, at 47.

²²⁸ Vance, *supra* note 184, at 181.

people learn best.”²²⁹ Here, an example is instructive. In 1995, Emily, a former dairy cow, escaped a Hopkinton, Massachusetts slaughterhouse where she was to be killed.²³⁰ Aided by local residents, she eluded capture by the slaughterhouse owners for forty days and nights.²³¹ After hearing of Emily’s escape, Meg and Lewis Randa, founders of Peace Abbey, a spiritual and educational center for nonviolent living, bought Emily from the slaughterhouse owners in the hopes that she would be able to live the remainder of her life in the animal sanctuary on their grounds.²³² Before succumbing to uterine cancer in 2003, Emily touched countless lives, and was eulogized by Lewis Randa as being “more than just a cow. She was, for people who loved her, an important creature who put them in touch with a greater understanding of animals and how humans should treat them.”²³³ Emily’s story not only raised awareness about various animal issues, but also served as inspiration for many people to make changes in their own lives—by becoming vegetarian, for example.²³⁴

Stories like Emily’s do not rely on abstract theories or arguments about rights, nor do they turn to impersonal statistics and scientific facts.²³⁵ Yet, as the Randas emphasize,

they can inspire humans to deepen their connections to other animals. Stories such as these help humans to recognize that the lives of other animals follow story lines, representing a subjective identity. One way in which we can come to appreciate their subjectivity, therefore, is through telling their stories as best we can.²³⁶

To be sure, the task of telling the stories of nonhuman animals is a challenging one, both in theory and practice. However, the challenges are not intractable, and what is gained in the process of addressing them can be as revealing and valuable as the end result. Ultimately, the shared goal of elevating alternative ways of knowing and understanding nonhuman lives is to cultivate a transformative counter-narrative compelling enough to connect consciousness-raising, extralegal strategies, and legal reforms in order to strike at the normative basis from which our assumptions about nonhuman animals flow, thereby changing their status and improving their treatment.

²²⁹ PATRICK CURRY, *ECOLOGICAL ETHICS: AN INTRODUCTION* 85 (2d ed. 2011).

²³⁰ Cara Giaimo, *Emily the Cow Ran Away from the Slaughterhouse and Became a Star*, *ATLAS OBSCURA* (July 22, 2015), <http://www.atlasobscura.com/articles/emily-the-cow-ran-away-from-the-slaughterhouse-and-became-a-star> [<https://perma.cc/8XTW-FGQV>] (accessed Apr. 9, 2017).

²³¹ *Id.*

²³² *Id.*

²³³ MEG RANDA & LEWIS RANDA, *THE STORY OF EMILY THE COW: BOVINE BODHISATVA* 7 (2007).

²³⁴ Giaimo, *supra* note 230.

²³⁵ KHEEL, *supra* note 21, at 249.

²³⁶ *Id.*