

# MYTHIC NON-VIOLENCE

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All societies have myths by which they define and inspire themselves. Perhaps because myths represent aspirations as well as optimistic self-descriptions, there are inevitable gaps between a society's mythic representations and actual, complicated realities. Paradoxically, depending on the strength of the myth, a myth can actually slow developments in accord with the very values that underlie the myth. One example is the myth of America as a "melting pot," through which Americans have defined themselves as "color-blind" or "tolerant" of race. Of course, in actual fact there is a lot of evidence that we are color-sensitive and intolerant. Certainly American society has not been consistently experienced by people of color as a felicitous "melting pot," and the idea of "melting" (i.e., assimilating) into white society has not been uniformly perceived as the best response to racism, either. However, the strength of mythic representation of a melting pot meant that civil rights advocates had to first contest the factual basis of the mythic representation--whether in fact ours is a melting pot society--and only then build a basis for actual racial acceptance premised on something other than assimilation into white society--diversity.

Analogously, there are many myths about our regard for and protection of animals, and the strength of those myths makes acceptance of contrary evidence more difficult than it might be without such myths. One myth is that Americans reject cruel treatment of animals, as evidenced by the existence of anti-cruelty statutes in every state. While Americans' rejection of animal cruelty may accurately reflect some aspects of our values on an ideological level, reality is much more complicated. Indeed, Gary L. Francione's label of "moral schizophrenia" aptly describes our participation in and acceptance of tremendous amounts of human-caused animal suffering despite our professed rejection of such suffering.<sup>1</sup> Among other possible reasons for the disjuncture is the possibility that strength of the belief that we are "animal-friendly" makes contrary evidence more difficult to accept than if there were no such pre-existing belief.

Another complex myth that impacts animals and their advocates involves representations that we disdain violence and take immediate steps to redress violent harms, even as evidence grows that violence is a common, unaddressed feature of our society. In this essay I claim that mythic rejection of violence harms animals and their advocates in the following ways: (1) it lays

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<sup>1</sup> GARY L. FRANCIONE, INTRODUCTION TO ANIMAL RIGHTS 1 (2000).

the foundation for the claims of institutional (ab)users<sup>2</sup> of animals that they do not and would not treat animals cruelly or violently because they are participants in the mainstream values of the society; (2) it results in traumatic silencing of advocates because of public disbelief that so much violence against animals could be occurring in a society that abhors violence; (3) it creates broad-brush oppositional categories such that animals' advocates can be painted as violent actors in a society that rejects violence; and (4) it hinders full consideration among advocates as to what advocates themselves consider "violent" means of protecting animals for fear that such discussion might allow for *any* amount of violence and, thereby, discredit animals' advocates and their cause. However, if advocates do not participate in the definition of violence, as it concerns their own activism, violence will be defined by their opponents in ways that make advocates' tasks of exposing violence against animals much more difficult.

## I. THE PROBLEM OF INAPPROPRIATE DEMANDS FOR TRUST

During a recent visit to UCLA Law School. Justice Ginsburg related her disappointment when, shortly after oral argument in which the Government denied the use of torture in interrogating U.S. military detainees, pictures of abuse at Abu Ghraib appeared on the front pages of major newspapers all over the world. Twice on April 28th, 2004, the Solicitor General of the United States had rejected the idea that the U.S. participates in torture. And twice the Solicitor General had argued that the government should be trusted. During oral argument in the case of *Hamdi v. Rumsfeld*, the Solicitor General was asked, "[D]o you think there is anything in the law that curtails the method of interrogation that may be employed?"<sup>3</sup> The Solicitor General responded,

It's . . . the judgment of those involved in this process that the last thing you want to do is torture somebody. . . . [I]f you did that, you might get information more quickly, but you would really wonder about the reliability of the information you were getting. So the judgment of the people who do this as their responsibility is that the way you would get the best information from individuals is that you . . . try to develop a relationship of trust.<sup>4</sup>

The Solicitor General opined that the government is entitled to trust from the public as well as from military detainees. On the same day, during oral argument in *Rumsfeld v. Padilla*, the Solicitor General was asked, "Suppose the executive says mild torture we think will help get this information?"<sup>5</sup> The Solicitor General responded that "the executive doesn't [make use of torture],"<sup>6</sup> and "the fact that executive discretion in a war situation can be abused is not a good and sufficient reason for judicial micromanagement and overseeing of that authority . . . you have to trust the executive to make the kind of quintessential military judgments that are involved. . ." <sup>7</sup> At the time of oral argument, it was, perhaps, easy to accept such assertions.

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<sup>2</sup> I use the terms (ab)user and (ab)use for ease in referencing both types of animal advocacy claims: (1) that all use of animals constitutes abuse, and (2) that only inhumane use of animals constitutes abuse.

<sup>3</sup> Oral Argument at 48, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), *available at* [http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/03-6696.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/03-6696.pdf).

<sup>4</sup> *Id.* at 50.

<sup>5</sup> Oral Argument at 22, *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), *available at* [http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/03-1027.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/03-1027.pdf).

<sup>6</sup> *Id.* at 23.

<sup>7</sup> *Id.*

Certainly it was easier than during the subsequent days, weeks, and months of public debate about photographs revealing abusive, violent conduct against detainees at Abu Ghraib. In her remarks to us, Justice Ginsburg expressed disappointment in the Solicitor General's assertions of a simple reality when, in fact, reality was far more complex.

For the feminists sitting with me, Justice Ginsburg's example (and disappointment) brought to mind instances in which claims of violence against women have been rejected as the hysterical overstatement of emotional women. After all, it could not be in the best interests of men to abuse their wives or female employees, could it? For me, Justice Ginsburg's example also brought to mind the claims of factory farmers that consumers need not worry about their treatment of factory farmed animals. Indeed, factory farmers have long contended that they are not cruel or violent. Practices like cutting the beaks of chickens and docking the tails of pigs have been defended as actually sparing animals from harms associated with living in close proximity to each other.<sup>8</sup> The claim is that the practices are not violent; such practices are simply necessary to reduce the harms that animals would experience if not "prepared" for life in intensive confinement. Factory farmers would have us believe that, since it is in their best interest to produce meat from well-cared for animals, they do not subject animals to cruel practices.<sup>9</sup> Finally, factory farmers could point to lack of prosecutions for cruelty as evidence that they are compliant with anti-cruelty laws and non-violent. Animals' advocates can answer each of these contentions, of course, but, without proof of their claims, it is difficult to convince consumers that factory farmers' claims are inaccurate.

As in the case of little documentation of U.S. military abuses of authority, there is little documentation of institutional exploitation of animals because the public is not given access to see for themselves what is going on. Animal-exploiting industries own both the animals and the buildings in which they are kept, with no obligation to provide access to the public. Such industries can reject calls for greater transparency and accountability, based on claims that their practices take into account the needs of the animals and are designed to protect rather than to harm animals. They would ask, "What need is there for inspection rights of animal facilities?" They would claim, "We are not the ones who should be monitored in this society; it is those who unlawfully disrupt our businesses who should be monitored." And, they would argue, "As participants in the mainstream values of American society, which include protection of animals from suffering and rejection of violent conduct, we should be trusted to apply those values to our own business practices."

In this essay I am not focused on whether violence against animals is "like" violence against women or against U.S. military detainees. Nor am I analyzing a claim that violence against animals should be recognized as equally bad as violence against women and U.S. military detainees or anyone else harmed by violent human action. Undoubtedly, our society imposes a hierarchy of victim-worthiness to be free of violence, but it is not the purpose of this particular essay to participate in or protest that hierarchy. My focus in these few pages is on consideration of some costs associated with a sociocultural myth of disdain for and rejection of

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<sup>8</sup> PETER SINGER, *ANIMAL LIBERATION* 100-01, 121 (1975, 1990).

<sup>9</sup> For example, Peter Singer reports that "[F]armers are sometimes advised to avoid practices that would make their animals suffer because the animals will gain less weight under these conditions; and they are urged to handle their animals less roughly when they send them to slaughter because a bruised carcass fetches a lower price. . . ." *Id.* at 97. See also the Foster Farms website reassurance that Foster Farms treats its birds well: "[I]n the interest of optimal health and development, we keep the birds comfortable, clean, and well treated." [Http://www.fosterfarms.com/faq/raise.asp](http://www.fosterfarms.com/faq/raise.asp).

violence. Such mythic non-violence facilitates arguments that various actors with power over others would, as mainstream participants in society, not abuse their power by acting in violent ways and that we should trust them. These arguments, taking place against a backdrop of general belief that violence is only a last resort rather than an ever-present possibility in our society, makes it easy to dismiss “radical” claims of violence occurring on a regular and predictable basis.

If violence and the potential for abuse in privately controlled settings were part of our general belief system, we would, as a matter of course, seek greater transparency and accountability without specific proof of violence and wrong-doing in a particular context or setting. While trust may be a desirable basis on which to structure some relationships, the circumstances under which trust is requested or created should take into account the prevalent use of violent conduct to produce desired effects in others. In other words, there should be a basis for trust other than a myth of societal disdain for and rejection of violence. The basis for trust should be *demonstrated* rejection of violence, not unsupported claims of non-violent conduct. In order to create a default rule of required transparency and accountability whenever one has control over another, it is important to break down mythic notions that suggest that such transparency and accountability are not necessary.

## II. THE PROBLEM OF TRAUMATIC SILENCING

That violence is actually a common feature of our experience is illustrated by the American Psychiatric Association’s (APA) changed definition of “trauma.” In 1980, the APA defined a traumatic event as one “outside the range of usual human experience.”<sup>10</sup> In 1994, the APA apparently recognized that traumatic events are not outside the range of usual human experience. It dropped that part of its definition and instead defined a traumatic event as one involving “actual or threatened death or serious injury, or a threat to the physical integrity of self or others.”<sup>11</sup> If approximately 60% of men and 50% of women state that they have been *directly* exposed to at least one traumatic event in their lives,<sup>12</sup> the extent of *indirect* experiencing of violence is quite great. The experience of violence is not evenly distributed, of course. Relatively powerless individuals are at greater risk of experiencing more violence than relatively powerful individuals.

Some in our society, social justice activists, actually deliberately expose themselves to violent mistreatment of others in order to bring such mistreatment to light and to stop it from continuing. Their experience of violence is necessarily and intentionally great because it is central to their goals to reveal the different manifestations and consequences of violence. As that exposure increases so do the repercussions of experiencing violence: posttraumatic stress.<sup>13</sup>

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<sup>10</sup> AM. PSYCHIATRIC ASSOC., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 247 (3d ed. 1987).

<sup>11</sup> ALLEN FRANCES ET AL., THE ESSENTIAL COMPANION TO THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV GUIDEBOOK 424 (1995).

<sup>12</sup> Ronald C. Kessler et al., *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 ARCHIVES GEN. PSYCHIATRY 1048, 1052 (1995).

<sup>13</sup> JUDITH L. HERMAN, TRAUMA AND RECOVERY 57 (1992). The most powerful determinant of psychological harm is the character of the traumatic event itself. Individual personality characteristics count for little in the face of overwhelming events. There is a simple, direct relationship between the severity of the trauma and its psychological impact, whether that impact is measured in terms of the number of people affected or the intensity and duration of harm. Studies of war and natural disasters have documented a ‘dose-response curve,’ whereby the greater the

Posttraumatic stress, in turn, adversely affects advocacy by, among other things, burdening the emotional and physical tolerance one has for being disregarded or discredited. Advocates' once calm presentations of reality may turn increasingly strident and take exaggerated form, which then becomes another basis for discrediting activists' statements about the reality of violence.

It is not the fault of advocates' presentation style that they are disbelieved. At the root of disbelief is people's reluctance to believe that there is so much violence in their society and that there is so much violence directly involved in producing their consumer products. Society's clinging to mythic non-violence and rejection of claims of violence ("it couldn't be happening here") compounds both the experience of violence and the potential for posttraumatic stress among social justice activists. Research psychiatrist Judith Herman has written about the trauma associated with, for example, rejecting war veterans' claims of the extent of violence they encountered as indicative of the very real nature of "war as hell" and rejecting rape victims' claims about their experiences as indicative of the very real risks of being a woman in this society.<sup>14</sup> To tell the veteran that "war" is unique and not "violence" because its objectives are justified or to tell the rape victim that rape resulted only because of one aggressor's idiosyncratic evil is to deny the contributions of society to the probabilities that men and women will have experiences characterized by extreme violence. To be told that one's experience is atypical, that one is hypersensitive to situations that others easily tolerate, that one brought violence on oneself, or, in the case of animal activism, that animal suffering is of a different kind or importance, is to be told that one's experience doesn't comport sufficiently with normative values in one's society that society should bear obligations to address those claims of systemic violence.

Making claims of violence seem idiosyncratic--either on the part of the perpetrator or on the part of the victim--is a process by which mythic notions of non-violence are sustained and a means by which we reject the underlying claim of unacceptable probabilities of (and actual occurrences of) violence in our society. Rejection of the underlying claim of violence results in tenacious restating of the claim and relentless seeking of acknowledgement of those claims. Both victims and their advocates are caught at the first important step--having society acknowledge that there is a problem--without being able to move on and actually address the harms one knows are ongoing. Exposing a truth that others refuse to acknowledge is a tedious process that provokes self-doubt, frustration, and guilt as the body count of direct victims of violence increases. The stress of contending with seemingly willful disbelief in the prevalence of violence warps the advocacy process and contributes to advocate burnout.<sup>15</sup>

This problem of being caught between reality and a disbelieving public is not traumatic in the sense of a severe physical injury, although there are known physiological effects of the stress attendant to speaking truths others refuse to hear. It is traumatic because it is disorienting to be told that the reality one presents isn't "real" or isn't important. As sociologist Jeffrey Alexander has noted, trauma is as much a social construct as it is a phenomenon of individual experience; the community's validation of the truthfulness of the individual's reports either traumatizes or heals.<sup>16</sup> Rejection of the reality of violence is not costly only to the individual; it is also costly to

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exposure to traumatic events, the greater the percentage of the population with symptoms of post-traumatic stress disorder." *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Elsewhere I have dealt at length with the subject of trauma and animal advocacy. Taimie L. Bryant, *Trauma, Law, and Advocacy for Animals*, 1 J. ANIMAL L. & ETHICS (forthcoming 2006).

<sup>16</sup> ALEXANDER ET AL., CULTURAL TRAUMA AND COLLECTIVE IDENTITY 8 (2004).

the community. The community's acknowledgement or rejection of the underlying truth of a claim of violence can allow or inhibit progress for the individual *and* the community. The cost to the community of rejecting evidence of violence is in failing to process that evidence in ways that move the community closer to its stated ideal of non-violence.

To address public disbelief, advocates for animals seek direct access to evidence of the actual actions that are taken against animals' bodies by industrial (ab)users of animals. Currently, institutional (ab)use of animals is difficult to expose because institutions own both the animals and the settings in which those animals are held. Animals' advocates build a picture of animal suffering through investigations that often involve trespass or other illegal conduct. If the data from investigations dispelled disbelief, the fact of lawbreaking to acquire the evidence would be offset by the importance of what is revealed about animal suffering. Unfortunately, it is difficult to dispel disbelief because (a) the public cannot verify for itself the claims made by (lawbreaking) activists; (b) it is inconvenient and troubling to acknowledge the extreme violence wreaked on animals because it would mean that consumers of animal-based products are complicit in the mistreatment of animals; (c) industry is quick to reassure the public that advocates' claims are false; and (d) since advocates must break the law just to find out what is going on, industry can readily characterize as "criminal trespassers" those who expose their practices.

From there it is a relatively easy descent into descriptions of advocates as "terrorists" willing to go to any length, including violence. It is, of course, a gross exaggeration to state that because an activist would trespass, the activist would blow up a building or kill people. Unfortunately that kind of descent into exaggeration is faster as a general matter in post-9/11/01 America. The tendency is exacerbated by the relative lack of public protest about other social justice issues by which animal activism could be compared. It is also exacerbated by institutional (ab)users' preemptively foreclosing advocates' claims through affirmative representations to the public that they treat animals humanely. For example, even without or before negative publicity specifically directed at them and their practices, entities like United Egg Producers and Foster Farms have attempted to shape public views of themselves and their products by labeling and advertising claims of humane care, secure in the knowledge that they control access to the facts that could refute such claims.<sup>17</sup> Having already set in consumers'

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<sup>17</sup> For example, United Egg Producers (UEP) established a certification system of eggs as "Animal Care Certified," and Foster Farms claims on its website that its animals are well-cared for. Regarding UEP's certification, see United Egg Producers: Animal Care Certified, <http://www.animalcarecertified.com> (last visited Feb. 22, 2006) ("[W]e care about the welfare of our hens. This care provides our customers with the safest . . . eggs in the world"). For information on stopping its use, see COK Exposes Maryland Egg Industry, <http://www.cok.net/camp/inv/mdefi/index.php> (last visited Feb. 22, 2006) ("[T]he Better Business Bureau deemed the ACC logo misleading because it conveys to consumers a false message of humane animal care"); Federal Trade Commission Announces [on Oct. 3, 2005] End to Misleading Egg Logo, [http://www.upc-online.org/battery\\_hens/10305egglogo.html](http://www.upc-online.org/battery_hens/10305egglogo.html); and Alexei Barrionuevo, *Egg Producers Relent on Industry Seal*, N.Y. TIMES, Oct. 4, 2005, at C1 ("The Old [Animal Care Certified] label 'implied that the animals were treated humanely, when they are not.'). For information on Foster Farms, see <http://www.fosterfarms.com/faq/raise.asp>. For a description of the controversy between East Bay Animal Advocates and Foster Farms, see Suzanne LaBarre, *Foster Farms Threatens Litigation Against East Bay Animal Activists*, BERKELEY DAILY PLANET, Apr. 7, 2006, available at Archives, <http://www.berkeleydaily.org>.

Although UEP and its members can no longer use the certification, and Foster Farms' claims have been contested as well, it is difficult to attack such claims of humane treatment when there is no access to the very establishments in which the animals are held. Moreover, in response to a small contingent of animal advocate

minds the image of themselves and their products as “humane,” consumers will be even less likely to accept claims of animal suffering as justification for breaking into facilities where animals are held.

If the extent to which violence is a part of American society and culture were recognized, claims about its occurring in yet another area would not be met with as much initial skepticism. As it is, people don’t want to believe that such mistreatment and abuse of animals, as is described by animals’ activists, could really be happening in their society. While some may argue that Americans actually don’t care about animals, I believe that Americans do care on an ideological level and that advocates are working against public assumptions that there are laws that prevent the animal industry practices advocates describe, that animal industries actually do attend to the needs of animals, and that the society in which they live would not produce people or institutions capable of the type of cruelty animals’ advocates describe. Breaking down mythic notions about violence and non-violence is an important part of unraveling such assumptions and barriers to change.

### III. THE PROBLEM OF OPPOSITIONAL CATEGORIES

I would like to be clear that my observation that violence is a regular feature of American society does not lead me to advocate a free-for-all among disputants, or violence-based advocacy, or tolerance of violence because so much of it is occurring. Rather I contend that recognizing that violence runs throughout our society is the necessary starting point for serious and nuanced consideration of when and how to *reduce* it. That is why I began with the example of America as a mythic “melting pot.” Once the myth was challenged, the underlying issue of racial rejection could be approached anew, with a wholly different response: respect for the diversity among us. While that, too, has seriously mythic dimensions, at least a dialectic that moves us forward could begin with initial questioning of the basis and reality of the first myth of the “melting pot.”

Because violence is rejected as part of our description and definition of ourselves, “violent” becomes an oppositional label. Some people/entities are characterized as “violent” (i.e., bad), and that gross categorization eclipses subtleties and differences in the positions of advocates who engage in different types of activism that make majority members of society uncomfortable. Similarly, some people/entities are characterized as “not violent” (i.e., good), and that gross categorization eclipses realities of conduct that refute the label. For example, agribusiness and laboratories that (ab)use animals define themselves, in opposition to trespassing advocates, as “law-abiding” and define their practices as non-violent by reference to the lawfulness of those practices, not by reference to the actual effect of those practices on animals’ bodies. Animals’ activists, on the other hand, are branded as “terrorists,” and their conduct as “violent” by reference to their unlawfulness, rather than by a sophisticated consideration of what is actually violent (or not) about their conduct and claims. In fact, once animals’ advocates are branded as violent or as terrorists, laws can be put in place that presume a need to control them. For example, the Office of the Tulare County (California) District Attorney has entered into a collaborative agency network whose goal is to monitor, investigate, and prosecute what it calls

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investigators, United Egg Producers and Foster Farms can engage an army of lawyers to threaten civil trespass actions and libel suits.

“agricultural crimes.”<sup>18</sup> Once laws and government action are premised on a belief that animals’ activists are “terrorists,” it is difficult to go back to a time when *whether* activists are terrorists was still an open question.

Although animals’ activists are regularly called “violent” or “terrorists” when they break the law, an actual review of so-called “direct action” activism reveals a spectrum of lawbreaking or violence. At one end is picketing and leafleting with images that the observer is likely to consider violent--violent either because of what is shown of animal (ab)use or violent because it speaks in harsh terms about the perpetrators of such violence. The activity of picketing and leafleting may, itself, be completely lawful and peaceful but, technical violations of protest regulations combined with a message that expresses anger and demands stopping violent conduct against animals can easily result in the whole activity being cast as “violent.” Indeed, just being “disruptive” seems to be popularly cast as “violent.”

When violence erupts during activism, the overly simple cultural definitions of violence lead to overly simple characterizations of actors and their conduct. The slide into such designation is, perhaps, exemplified by activists’ attempts to document seal massacres or to question seal killers. Such attempts can result in breaking the law, if the law provides that only authorized seal “hunters” can come within one-half nautical mile of an active seal “hunt.”<sup>19</sup> Is it an act of violence when someone breaks that law to document or to challenge the seal massacre? I contend that it is perceived as an act of violence, or at least an act that welcomes violence, because the law may well have been enacted to prevent violent encounters between seal killers and activists. Having violated a law ostensibly enacted to prevent violence, the lawbreaker will be deemed the violent one when violence does occur, even if the activist did not initiate the actual violent encounter with the seal killer. Tellingly, activists can be called “terrorists” with impunity and without the charge of exaggeration, but activists cannot use the term “massacre” in reference to seal “hunts” without accusation of exaggeration and violent intent.

Is it violent to spray paint “murderer” or “puppy killer” on the home of the general manager of a traditional kill-oriented shelter? Of course, the act could easily be considered violent, but it need not be characterized as the act of a terrorist. It could be seen as illegally expressed anger or frustration, and it could be punished as such without fanning the flames of fear. By defining the angry or frustrated act as the “violent” act of a “terrorist,” it is, of course, easier to justify suppressing the message, subjecting the activist to more severe penalties, and discrediting the movement of which the activist is a part. Should recognition of that as a consequence lead activists to engage in less property damage? I don’t know. My point is that a significant part of the problem actually lies in the ease with which a label of “violent” attaches and that the ease with which it attaches is directly related to mythic non-violence as a means by which institutional (ab)users can frame such acts to their advantage. Regardless of what activists do or do not do, activists are susceptible of being labeled “violent” and, from there, being labeled “terrorist,” if the term “violence” is allowed to sweep in a wide range of acts and

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<sup>18</sup> The collaboration is called the Agricultural Crime Technology Information and Operations Network (“ACTION”), details of which are available at [http://www.agcrime.net/request\\_publication.htm](http://www.agcrime.net/request_publication.htm).

<sup>19</sup> Jerry Vlasak and other animal rights advocates were convicted of coming within half a nautical mile of seal killers engaged in legal seal killing in the Gulf of St. Lawrence, Canada, on March 30, 2005. The charges were brought after an altercation broke out between animals’ activists documenting the killing and those killing the seals. *See Seal hunt protester turns himself in, announces plan for hunger strike*, THE GUARDIAN (Charlottetown, Canada), Mar. 28, 2006, available at Archives, <http://www.theguardian.pe.ca/>.

thoughts that are disquieting to majority members of society and activists' opponents control the definition and labels that flow from it.

If lawbreaking or expressed anger is glossed as "violence," then certainly the reach of the term "violence" is great. It is also a problem that the public participates in the shaping of the term with only partial knowledge of what "violence" is in the context of animal (ab)use. The discourse about violence that takes place in the public eye is of angry activists and cowering managers of shelters, research labs, and fur farms, for example. What takes place in private is the cowering of animals, if they can, from violent reductions of their bodies to consumer goods and exploiters who disregard clear signals of pain and fear. The discourse on view to the public enables enterprises that (ab)use animals to characterize animals' activists as "violent" because the private facts that would enable activists to contextualize what "violence" means are not generally available. Accordingly, the sociocultural meaning of "violence" in this context is one-sided.

My point is somewhat different from Tom Regan when he writes that the violence of activists is but a raindrop compared to the ocean of violence perpetrated against animals<sup>20</sup> but that animal (ab)user industries can be cast as "paragons of nonviolence versus beady-eyed flamethrowers"<sup>21</sup> at least partially because some activists too often resort to violent advocacy without having pursued alternatives.<sup>22</sup> I don't think there is adequate documentation to support the contention that activists have insufficiently pursued alternatives. However, my primary contention is that advocates' activism, whatever it may entail, is easily characterized as "violent" because their opponents control the definition, that a myth of non-violence allows for oppositional categorization of "beady-eyed flamethrowers" and "paragons of nonviolence," and that, in addition, the hidden nature of human-caused animal suffering unreasonably and inaccurately further restricts the general meaning of "violence." Precisely because of their ability to control what the public knows about their practices, institutional animal (ab)users can control the definition of violence just as they have controlled the definition of cruelty.<sup>23</sup> It is not animals' activists who control the definition of violence. Violence is socioculturally defined by those who benefit from definitions of violence that do not include them.

Enterprises that (ab)use animals have been so successful in painting activists ("terrorists") as the opposite of themselves ("law-abiding providers of consumer goods") that it was possible to embed that view in law. The Animal Enterprise Protection Act (AEPA) as enacted in 1992 creates penalties for "physically disrupting" animal enterprises, which are defined as commercial or academic enterprises that use animals for food or fiber production, agriculture, research or testing and enterprises that use or hold animals for entertainment purposes, such as zoos, rodeos, and fairs.<sup>24</sup> Since animals' advocates often have to trespass or "break into" animal enterprises just to document what is going on, physical disruption of an enterprise could be claimed even if actual damage to property does not occur. Just "physically

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<sup>20</sup> Tom Regan, *How to Justify Violence, in TERRORISTS OR FREEDOM FIGHTERS?: REFLECTIONS ON THE LIBERATION OF ANIMALS* 235 (Steven Best & Anthony J. Nocella II eds., 2004).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 234.

<sup>23</sup> For description and analysis of the extent to which animal agribusinesses have defined "cruelty" so that animal "anti-cruelty" statutes do not apply to them, see David Wolfson & Mariann Sullivan, *Foxes in the Henhouse: Animals, Agribusiness and the Law: A Modern American Fable, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 205, 208 (Cass Sunstein & Martha C. Nussbaum eds., 2004).

<sup>24</sup> 18 U.S.C. § 43(a)-(b) (2000).

disrupting” an enterprise is so dangerous--so violent--that it warrants a federal law to supplement state criminal law and its sanctions? It is so violent that it warrants making the FBI available for investigations of “physical disruptions” of animal enterprises? Animal (ab)using enterprises successfully defined “physical disruption” as a form of violence that warrants just such precautions and penalties.

Amendments proposed in 2005 would further expand the definition of “animal enterprises” to include animal shelters and enterprises that sell animals or animal products such as pet stores and furriers. The proposed amendments would sweep “conspirators” to disrupt an animal enterprise explicitly into its reach and would expand the definition of wrongful acts to include “causing the loss of any property used by the animal enterprise (including records), or any property of a person or entity having a connection to, relationship with, or transactions with the animal enterprise.” The proposed amendments also provide for increased penalties, including the death penalty in cases in which someone has died as a result of the wrongful acts.<sup>25</sup>

Significantly, breaking the law to obtain information about how animals are treated is the only way to get information about many kinds of animal (ab)use. But animal (ab)using enterprises do not describe activists as “breaking the law to obtain information.” Rather they are described as activists who break into animal enterprises in order to destroy those lawful businesses and to harm the law-abiding people who work in those businesses. Allowed to control the characterization of what activists are doing, animal (ab)using industries can control images that are then further embedded by way of legislation. That, in turn, furthers the image of activists as “terrorists,” increases the risks of obtaining needed information that is not available through other means, and emboldens animal abusing enterprises to make greater use of a law that already gives very broad protections to animal enterprises.

Meanwhile, advocates have made little progress in creating legal avenues to obtain information currently obtained only through trespass. I contend that it will become even more difficult to create those legal avenues and that blame for that is properly placed at the feet of animal (ab)using enterprises’ distortion of the meaning of “violence” in a society that swears allegiance to mythic non-violence. Since even low-level law-breaking has been defined as violence, I do not believe that primary blame for the characterization of advocates as violent terrorists lies with advocates who engage in law-breaking activities. Regardless of what activists are doing or not doing, in a fearful and insecure society the easiest way to suppress unpopular messages is by branding the messengers as “violent” and as “terrorists.”

#### IV. THE PROBLEM OF FEARFUL SILENCE AMONG ADVOCATES

Despite the extraordinary reach of the proposed amendments of the AEPA, few animal advocacy groups, if any, are monitoring its progress or attacking its premises. It is being tracked by groups *opposed* to goals of animal advocacy groups, but there is relative silence in the animal advocacy community itself about the law and about proposed amendments which, if enacted, could seriously diminish the already small amount and quality of documentation of violence

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<sup>25</sup> Senate Bill 1926 provides for extension of the AEPA to include acts of intimidation and harassment (“§43 (a) ‘Offenses’ (2) (B)”), increased imprisonment terms in the event of property damage in excess of \$100,000 (“§43 (b) ‘Penalties’ (3)”) and the possibility of the death penalty if the offense causes the death of another person (“§43 (b) ‘Penalties’ (6)”), and extension of the definition of “animal enterprises” to include animal shelters, pet stores, breeders, and furriers (§43 (d) ‘Definitions’ (1)(B)). S.1926, 109th Cong. (2005).

against animals that occurs minute by minute in animal (ab)using industries in the United States.<sup>26</sup> Similarly, there seems to be little discussion about the recent convictions of members of the organization known as “Stop Huntingdon Animal Cruelty (“SHAC”) under the AEPA. This lack of debate about the law, its use in the SHAC prosecution, and proposed amendments is shocking considering none of the six defendants who ultimately were convicted were alleged to have carried out any of the substantive crimes laid out in the indictment, ranging from property damage to intimidation. Rather, the six were convicted of running the SHAC USA website, which allowed others access to information that could be used in such alleged crimes. The act of managing the website was defined as an act of conspiracy in furtherance of violating the AEPA.<sup>27</sup>

Despite the appearance of a thought-provoking book about direct action tactics in animal advocacy,<sup>28</sup> it appears that the subject of direct action (too easily restated as “violence”) is taboo. There are several reasons for that reticence, but for purposes of this essay I propose only two. First, allegiance to mythic non-violence prevents sophisticated, thoughtful discussion of degrees and types of actions that are already and readily characterized as “violent” by the broader society. Even engaging in discussion about illegal forms of activism seems high risk because illegality is seen--in a fearful, insecure society such as ours--as a precursor to terrorist violence, and allegiance to the myth of non-violence means that one must avoid, at all costs, being seen as violent. Maybe it is less ideological than pragmatic; perhaps the lack of attention to the issue is a function of the fact that most advocacy is conducted by nonprofit organizations, which fear the loss of donor dollars. However, I would like to think that there are other responses to being marginal in an insecure and fearful society than to buy wholeheartedly into the fears of the majority society with the hope that doing so will earn us a little room to exist. It won't.

Second, through others' definitions of “violence” and our own distancing from the issue for fear of tainting, the subject of “violence” may well have been reduced to the point that it is perceived as “uninteresting” or “beside the point.” Surely, if we but began a discussion about “violence,” we would see within its current expansive boundaries troubling contradictions and misrepresentations. For example, like Tom Regan, I tend to believe that intentional harm to

<sup>26</sup> On March 3, 2006, a Google search using the parameter <inchofe 1926 “animal enterprise”> yielded only 72 hits total, of which the 11 below were organizations tracking the legislation. There were no hits related to animal rights organizations in that 72 hit list:

1. Animal Crackers blog (touts itself as an “anti-AR” site);
2. Fur Commission;
3. National Animal Interest Alliance (an organization of animal-using enterprises and private property proponents);
4. Office of Legislative Policy and Analysis (liaison between NIH and Congress);
5. Society of Toxicology;
6. Federation of American Societies for Experimental Biology;
7. American Association of Meat Processors;
8. American Feed Industry Association;
9. Connecticut Quarter Horse Association;
10. Minnesota Trappers Association; and
11. Western United Dairymen.

<sup>27</sup> Various news media reported on the trial and convictions. See, e.g., Brad Knickerbocker, *Crackdown on Animal-Rights Activists*, CHRISTIAN SCIENCE MONITOR, Mar. 7, 2006, available at <http://www.csmonitor.com/2006/0307/p03s01-usju.html>; and Thomas Walkom, *U.S. terror hunt targets animal activists*, THE TORONTO STAR, March 13, 2006, available at Archives, <http://www.thestar.com>. A description of the prosecution, conviction, and pending appeal sympathetic to SHAC is available at <http://www.shac7.com/cont.htm>.

<sup>28</sup> TERRORISTS OF FREEDOM FIGHTERS?: REFLECTIONS ON THE LIBERATION OF ANIMALS (Steven Best and Anthony J. Nocella II eds., 2004).

anything or anyone is an inherently violent act because, for purposes of considering whether an action is violent, I focus on the nature of the act itself rather than on the nature of the target or object of violence.<sup>29</sup> But I agree with Regan that when considering the *justice* of a particular act of violence, other considerations become important, such as the availability of non-violent methods to accomplish the particular goal, whether saving innocent victims is the primary objective, and whether the least amount of violence necessary has been used.<sup>30</sup> There may or may not be agreement among members of the advocacy community regarding the definition of violence and general criteria for acts of violence to be just. There will most certainly be disagreements as to specifics, such as whether violent acts that are not immediately incident to rescuing living animals are less just than violent acts that are immediately incident to rescuing living animals.<sup>31</sup> There may be even more controversy associated with some views, such as ALF Press Officer Robin Webb's distinctions (1) between harm to sentient beings (violence) and harm to insentient objects (not violence), and (2) between "constructive destruction" of instruments of animal torture and mindless destruction of inanimate objects "just for kicks."<sup>32</sup>

The point is that these issues are complicated and that debating and discussing them is not just an idle, intellectual exercise. Intra-community debate and discussion signals our intent to challenge opponents' definitions of "violence" of ourselves as "terrorists." *Not* to debate the issues and the definitions of "violence" leaves definitional control in the hands of those who would use that control to create a large gap between animals' activists, painted as "terrorists," and law-abiding, "humane" mainstream producers of valued consumer goods. As members of a movement currently at risk of definition as "terrorists," it behooves us to discuss and debate among ourselves issues of violence, justice, and advocacy, and to challenge outsider definitions that are inappropriate and inflammatory. For the sake of clarifying what is and is not violence and terrorism, it is necessary to take on legal representation of activists who have broken laws in the name of advocacy.

Refuting the definition of violence as something animals' advocates do but that animal (ab)using industries do not do, challenging the definition of violence as something unusual in our society, and replacing the definition of violence as a simple concept with a realistically complex definition are all difficult tasks. That is all the more true when the existing definitions of violence seem already fairly deeply inscribed. However, the situation could grow worse. Without intervention in the definitional process, protest itself could ultimately be deemed a violent affront to society. In other words, this is not just about violence in the animal advocacy movement. This is about painstakingly challenging mythic representations of non-violence so that our society as a whole can, as in the case of moving from "melting pot" to "diversity," move to the next mythic representation of our interest in living in peace.

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<sup>29</sup> Regan, *supra* note 19, at 233.

<sup>30</sup> Tom Regan, for example, delineates specific criteria that include those aspects. *Id.* at 233.

<sup>31</sup> For example, the line of justice that makes it unjust to burn down an "empty building" (that is only *presently* empty of living animals) but just to burn down a building as an incident to rescuing living animals is not as clear to me as it may be to Regan. *Id.* at 234.

<sup>32</sup> *Staying on Target and Going the Distance: An Interview with U.K. A.L.F. Press Officer Robin Webb*, NO COMPROMISE (Fall 2003), available at <http://www.nocompromise.org/issues/22robin.html>.