

SPECTACULAR ANIMAL LAW: IMAGERY, MORALITY, AND NARRATIVES IMPACTING LEGAL OUTCOMES FOR NONHUMAN ANIMALS

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Abstract: This paper contends that much of the understandings and perceptions within postindustrial societies of both nonhuman animals and practices that they are subjected to are derived from conflicting representations generated within mass media. These representations, including narratives and imagery, may be disseminated through mediated spectacles that promote particular moral understandings or vocabularies regarding what are appropriate considerations for nonhuman animals. Building on Nibert's theory of oppression, this paper suggests that within postindustrial capitalist societies, the communication of mediated representations of nonhuman animals and practices that they are subjected to may serve as vehicles for challenging and undermining legal statutes and economic activities involving nonhuman animals, and not simply act as reinforcing mechanisms for existing economic practices and the legal statutes and practices surrounding nonhuman animals. This paper considers six case studies of how mediated spectacles have served to challenge existing societal practices involving nonhuman animals – the destruction of African ivory by Richard Leakey and the Kenyan Wildlife Service, the controversy surrounding professional football player Michael Vick, controversy over the production of foie gras, one of the first cases of mass protest over the use of primates in scientific research, the anti-whaling activities of the Sea Shepherds and efforts to end “fur farming” by Richard Coronado – and discusses how these spectacles served as vehicles for communicating alternative moral understandings about nonhuman animals. This paper suggests that spectacles surrounding nonhuman animals may be an emerging cultural, societal, and legal site for conflicts over future perceptions of the moral standing of nonhuman animals.

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INTRODUCTION

In outlining his theory of stratification (and by extension a broader theory of conflict), Collins¹ proposes “an empirically realistic image of society” through visualizing social life “as the encounters among a population of hairless apes with pictures in their heads.”² Such a metaphorical rendering of human social life is notable both for its recognition that humans are animals and that the perceptions and understandings that humans employ in their activities are significant in explaining their behavior.³ Such a characterization of human societies as both comprised in some form of “animalist” and symbolic representation is not unique;⁴ but such a characterization does stress the explanatory importance of these variables.⁵ Therefore, the ontological assumptions that Collins makes compels an investigation of what he and other thinkers (including the progenitor of this phrase, journalist Walter Lippmann) termed the “pictures inside their heads” as a partial basis for understanding social life.⁶ The significance of the “pictures inside their heads” of humans regarding nonhuman animals (hereinafter “animals”) may be doubly significant because of the historical evidence that these perceptions and understandings have been generated throughout past human societies and because the evidence is also very compelling that the substance of these images have changed radically over time.⁷ Kalof contends that the images and representations of nonhuman animals are literally ancient, extending from prehistory and varying greatly into (post)modern societies, with some different classes of nonhuman animals being subsumed into broader schemas of knowledge, including Mediterranean honor codes and capitalist modes of production.⁸ Belozerskaya notes the certain nonhuman animals became perceived as indicative of social power,

¹ See RANDALL COLLINS, *CONFLICT SOCIOLOGY: A SOCIOLOGICAL CLASSIC UPDATED* 13, 18–19 (Stephen K. Sanderson ed., Paradigm Publishers 2009) (discussing Collins theory of stratification and discussing conflict theory).

² *Id.* at 18.

³ *Id.*

⁴ See, e.g., RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* 59, 177 (1989) (discussing the theoretical comparisons between humans and animals).

⁵ See COLLINS, *supra* note 1, at 18.

⁶ See *id.* at 18; Helen R. Wright, *Book Reviews and Notices*, 30 *J. OF POL. ECON.* 717, 717–18 (Oct. 1922) (reviewing WALTER LIPPMAN, *PUBLIC OPINION* (1922)).

⁷ See COLLINS, *supra* note 1, at 18.

⁸ See LINDA KALOF, *LOOKING AT ANIMALS IN HUMAN HISTORY* 94, 136 (2007) (discussing representations of animals from prehistory to postmodernity).

and control of these animals was central to the maintenance and expansion of that power through means as divergent as organized warfare (in which elephants played a central role on the battlefield) to the menageries of European aristocrats.⁹ Shevelow suggests that the Animal Protectionist movement of the nineteenth century was deeply informed not only by a view of (many) animals that diverted from both upper and working class perspectives on animals (in which animals were typically understood as commodities) as creatures whose well-being at the hands of humans was worthy of consideration, as well as an emerging vision of the connections between the treatment of animals and other aspects of social life (such as how cruelty towards animals flowed into human social life).¹⁰ Herda-Rapp and Goedeke suggest that many conflicts within the United States over the presence of certain animals in areas inhabited or utilized by humans (such as newly developed residential areas) is rooted in differing perceptions of the animals being considered and the images and narratives associated with these animals.¹¹

That the representation of animals – both through images and through narratives – in various forms should both impact human perceptions of animals and their reactions of animals towards them in contemporary western societies should not be surprising.¹² Some of the earliest subjects of still photography were nonhuman animals, giving rise to Jonathan Burt's concept of the "visual animal."¹³ Mitman demonstrates that one of the first genres of motion picture films to emerge during the silent film era (and continue into the present) were "nature" films, often providing images of nonhuman animals (and their human contemporaries) in locations distant from audiences.¹⁴ These representations were

⁹ See MARINA BELOZERSKAYA, *THE MEDICI GIRAFFE AND OTHER TALES OF EXOTIC ANIMALS AND POWER* 5, 207–08 (2006) (discussing elephants as powerful tools of war and tigers who lived in menageries of Europe and were considered powerful and prestigious).

¹⁰ See KATHRYN SHEVELOW, *FOR THE LOVE OF ANIMALS: THE RISE OF THE ANIMAL PROTECTION MOVEMENT* 9–10, 13 (2008).

¹¹ See MAD ABOUT WILDLIFE: LOOKING AT SOCIAL CONFLICT OVER WILDLIFE 9, 10, 11 (Ann Herda-Rapp and Theresa L. Goedeke eds., 2005).

¹² See *id.* at 11.

¹³ See JONATHAN BURT, *ANIMALS IN FILM* 96–97, 99, 103 (2002) (discussing early photography of nonhuman animals and the relationship between the photography and the development of various sociological theories); Jonathan Burt, *The Illumination of the Animal Kingdom: The Role of Light and Electricity in Animal Representation*, in *SOCIETY & ANIMALS* 203, 212 (2001) (discussing Burt's visual animal theory).

¹⁴ GREGG MITMAN, *REEL NATURE: AMERICA'S ROMANCE WITH WILDLIFE ON FILM*

often conflicted in terms of whether the primary expectations of such representations were meant to be educational or entertaining, influencing how films were produced.¹⁵ Such concerns were not limited to films and photography; Kirk provides an account of naturalist and taxidermist Carl Akeley, who spent decades killing and preserving animal bodies for public display (including for the prestigious Chicago Field Museum) in fulfillment of touted educational mandates (despite the fact that the taxidermy process involved both killing animals and subsequently discarding viscera as a prelude to display, thereby destroying evidence essential for understanding much of the behavior of the depicted animal).¹⁶ Beyond representations in museums and through films, Chris documents the rise of television regarding “nature” and more recently animals through specialized programs and more recently networks like *Animal Planet*.¹⁷

Beyond the visual representation of animals for various purposes, animals have been placed into numerous categories relating to human perceptions of their relationship to humans.¹⁸ Early animal welfarists focused their efforts on both “companion animals” (those animals that, in the nineteenth and early twentieth century’s, were primarily kept within households without expectations of economic productivity) and the “humane” treatment of domesticated animals destined for slaughter and consumption.¹⁹ Animals which did not easily fall into these categories were beyond the scope of most claims for ethical consideration, despite the activities of some protectionists; Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals (ASPCA) attempted to deploy anti-cruelty statues on behalf of pigeons that were hunted for sport by a wealthy gun club, and was roundly rebuked by both the press and the courts.²⁰ It is significant that Bergh’s defeat occurred within

26, 50–51 (1999).

¹⁵ *Id.* at 50.

¹⁶ JAY KIRK, KINGDOM UNDER GLASS: A TALE OF OBSESSION, ADVENTURE, AND ONE MAN’S QUEST TO PRESERVE THE WORLD’S GREAT ANIMALS 77, 254–55 (2010).

¹⁷ CYNTHIA CHRIS, WATCHING WILDLIFE 69, 91 (2006).

¹⁸ See generally David Walls, *Animal Rights Movement*, SONOMA STATE UNIVERSITY, <http://www.sonoma.edu/users/w/wallsd/pdf/Animal-Rights-Movement.pdf> (last updated Nov. 9, 2014) (discussing various categories of animals based upon their relationship with humans).

¹⁹ See generally *id.* (explaining early focus of humane groups).

²⁰ See generally John Gibb Millspaugh, *Henry Bergh: ‘The Great Meddler’*, UUWORLD (Aug. 1, 2011), <http://www.uuworld.org/articles/bergh-great-meddler> (explaining passage of law and newspaper anger towards Bergh).

the confines of law and media, two fields which became (and remain) centrally important to efforts to extend innovative ethical understanding for animals.²¹ Subsequent efforts to influence the treatment and/or perception of animals within Western societies have inevitably involved some interaction with law (both law enforcement and legislation to redefine the treatment of animals) and some mediated representations of animals (including film, television, novels, journalistic account), which disseminates information to the broader public.²²

Questions of perceptions and representations of persons, subject, phenomena and the like have long been a part of the sociological agenda in several different paradigms including Symbolic Interactionism, Constructivism²³ and the Social Construction of Reality.²⁴ What these and other theoretical orientations suggest is that perceptions, informed by some form of representations (visual, symbolic, narratives, etc.) are significant variables within explanations of the creation and maintenance of social orders.²⁵ For example, Altheide and Glassner argue that public perceptions of crime and terrorism are largely derived from popular cultural and other mass mediated sources rather than from closely scrutinized factual research (contributing to the increased fear of criminal victimization in the 1990s, despite the decline in measurable victimization by the FBI).²⁶ Bob argues that specific international problems – such as a specific human rights crisis – rises or falls within the international community based on how it

²¹ See generally *Animal Rights Movement*, *supra* note 18 (explaining some legal victories in the animal rights field); Alexis Croswell, *10 Documentaries that Will Make you Rethink Everything You Know About Animals*, ONEGREENPLANET (Dec. 12, 2013), <http://www.onegreenplanet.org/animalsandnature/10-documentaries-that-will-make-you-rethink-everything-you-know-about-animals/> (demonstrating effects of digital media on animal rights movement); Millsbaugh, *supra* note 20 (discussing Berg's influence on the law and impact in the media).

²² See, e.g., Croswell, *supra* note 21.

²³ See JOEL BEST, *SOCIAL PROBLEMS* 14–15, 210–11 (W.W. Norton & Company, 2d ed. 2012) (discussing the constructionist framework, using poverty as an example, and discussing policymakers and use of construction).

²⁴ See PETER BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 1, 3 (1966) (discussing the social construction of reality and the fact that what is “real” differs between cultures).

²⁵ See generally BEST, *supra* note 23, at 325 (explaining how media representations are significant variables within the social landscape).

²⁶ See DAVID L. ALTHEIDE, *CREATING FEAR: NEWS AND THE CONSTRUCTION OF CRISIS* ix, x (2002); DAVID L. ALTHEIDE, *TERRORISM AND THE POLITICS OF FEAR* ix (2006); BARRY GLASSNER, *THE CULTURE OF FEAR: WHY AMERICANS ARE AFRAID OF THE WRONG THINGS* xx, xxi (1999).

fares within the “global morality market.”²⁷ Such multi-vocalic (and often contradictory) sources of information contribute to Manjoo’s assertion that contemporary American social life is becoming impervious to solely factual persuasive methods.²⁸ De Zengotita and Gabler likewise contend that social life in postindustrial societies is increasingly influenced by mediated appearances likewise contend that social life in postindustrial societies is increasingly influenced by mediated appearances.²⁹ Ewen asserts that much of contemporary public discussions of social problems and other concerns may be surreptitiously influenced by public relations firms that seek to promote a positive perception of their clients within what Taylor identifies as the social imaginary: “the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.”³⁰ These representations and their impact become more discernible within societal and cultural conflicts as differing constellations of images, representations, and symbols are drawn into stark contrast.³¹ Stout argues that the American Civil War was both propelled into existence and sustained in part through the support given from clergy through sermons in both the Union and Confederacy (to such an extent that more possible admonishing regarding religious injunctions concerning the conduct of the war were eclipsed).³² Conant argues that the British Security Coordination (BSC) operated an ongoing propaganda campaign to encourage American participation in the Second World War in the United States partially through producing literary contributions to popular magazines, which emphasized the

²⁷ See CLIFFORD BOB, *THE MARKETING OF REBELLION: INSURGENTS, MEDIA, AND INTERNATIONAL ACTIVISM* 4 (Jack A. Goldstone et al. eds., 2005).

²⁸ FARHAD MANJOO, *TRUE ENOUGH: LEARNING TO LIVE IN A POST-FACT SOCIETY* 1, 2 (2008).

²⁹ See THOMAS DE ZENGOTITA, *MEDIATED: HOW THE MEDIA SHAPES YOUR WORLD AND THE WAY YOU LIVE IN IT* 11 (2005); NEAL GABLER, *LIFE: THE MOVIE. HOW ENTERTAINMENT CONQUERED REALITY* 10 (1998); JEAN BAUDRILLARD, *SIMULACRA AND SIMULATION* 55 (Sheila Faria Glaser trans., 1994) (discussing how socialization is measured by the exposure to media messages).

³⁰ STUART EWEN, *PR! A SOCIAL HISTORY OF SPIN* (BasicBooks 1996); CHARLES TAYLOR, *MODERN SOCIAL IMAGINARIES* 23 (Durham and London: Duke University Press 2004).

³¹ See TAYLOR, *supra* note 30, at 23.

³² See HARRY S. STOUT, *UPON THE ALTAR OF THE NATION: A MORAL HISTORY OF THE AMERICAN CIVIL WAR* 49 (2006) (discussing the support clergymen throughout the Confederacy and the North gave on religious grounds).

war effort as heroic and righteous.³³ Rodgers notes that the domestic political “war of ideas” that began in the 1970s saw a massive increase in the creation and delivery of Presidential speeches in support of particular agendas.³⁴ These findings support Nibert’s assertion that systems “of oppression of humans and other animals” rely on “ideological control” (Factor 3) in addition to systems of “economic exploitation” (Factor 1) and “unequal power, largely vested in the state” (Factor 2):

[w]hile physical force is the key to this subordination, such force is usually vested in part in political control. Those who exercise political control wield the power of the state, with the ability to make and enforce law. Finally, ideological manipulation fuels prejudiced attitudes and discriminatory acts that help protect and maintain oppressive economic and social arrangements.³⁵

Nibert’s thesis is amplified through the concept of *domeseccration*,³⁶ in order to emphasize the structural violence and inequalities created through what is commonly termed “domestication.”³⁷ Nibert defined *domeseccration* as “the systematic practice of violence in which social animals are enslaved and biologically manipulated, resulting in their objectification, subordination, and oppression.”³⁸ Nibert contends that historic systemic domestication of large herbivores (primarily horses, cattle, sheep, and pigs) are a necessary precondition for sustained forms of “widespread violence,” including “invasion, conquest, extermination, displacement, repression, coerced and enslaved servitude, gender subordination and sexual exploitation, and hunger.”³⁹ Nibert argues that the historical development of human societies have been significantly informed by the practice of *domeseccration*, especially in the case of nomadic pastoralism.⁴⁰ These societies (including the Mongols and Scythians) were

³³ See JENNET CONANT, *THE IRREGULARS: ROALD DAHL AND THE BRITISH SPY RING IN WARTIME WASHINGTON* (First Simon & Schuster hardcover ed., 2008) at 12–14, 16–17, 20–21 (discussing Dahl’s role in the propaganda and the British Security Coordination).

³⁴ DANIEL T. RODGERS, *AGE OF FRACTURE* 15–16 (Cambridge 2011).

³⁵ DAVID A. NIBERT, *ANIMAL RIGHTS/HUMAN RIGHTS: ENTANGLEMENTS OF OPPRESSION AND LIBERATION* 13 (Rowan & Littlefield Publishers, Inc. 2002).

³⁶ DAVID A. NIBERT, *ANIMAL OPPRESSION AND HUMAN VIOLENCE: DOMESECCRATION, CAPITALISM, AND GLOBAL CONFLICT* 91, 212 (Gary L. Francione & Gary Steiner eds., 2013).

³⁷ *Id.* at 12.

³⁸ *Id.*

³⁹ *Id.* at 5, 6.

⁴⁰ *Id.* at 6, 13, 16.

characterized by: high levels of territorial expansion (to gain land and water to support grazing), social stratification (through external conquests, enslavement and servitude, and internal hierarchical ranking), and military activity (through the conquest of neighboring human groups, and often the decimation of other animal life that interfered with grazing).⁴¹ While these trends were most blatant within pastoral societies, Nibert observes that agrarian societies (including the Romans and European Middle Ages) followed similar patterns, including emphasis on practices including ranching that disproportionately enriched already wealthy elites (wealth measured in terms of land, animals, and a servile population) and perpetuated deprivations amongst subjected groups (including poverty and hunger).⁴²

These patterns manifested themselves in the European expansion into the Americas, during which elites sought to control grazing land and water for expanding herds, derived great profits through the sale of herd animals for meat and related products (such as leather and wool) and actively sought to displace groups (including native populations and potential competitors, like subsistence farmers and smaller ranchers) in pursuit of these goals.⁴³ As in the cases of their pre-modern antecedents, state powers were beholden to these larger landowners in order to protect these conditions, including the use of military force to forcibly displace populations and the creation of governmental bodies like the American Forest Service, created in 1905 and placed within the Department of Agriculture in order to serve “the interests of powerful ranchers.”⁴⁴ However, modern societies, including the United States, occasionally witnessed countervailing mediated representations about the consequences of these practices, including newspaper articles that depicted the plight of small ranchers and farmers and the plight of slaughterhouse worker⁴⁵ (most famously in Upton Sinclair’s 1906 *The Jungle*,

⁴¹ *Id.* at 13, 17, 25, 40–41.

⁴² NIBERT, *supra* note 36, at 18–20.

⁴³ *Id.* at 63, 68.

⁴⁴ *Id.* at 168–69, 172.

⁴⁵ *See id.* at 172, 173; Lucas Spangher, *The Overlooked Plight of Factory Farm Workers*, HUFFINGTON POST (Aug. 18, 2014, 5:39 PM) http://www.huffingtonpost.com/lucas-spangher/plight-of-factory-farm-workers_b_5662261.html (describing the poor work conditions slaughterhouse workers face); *see also* *USDA Announces Assistance for Socially Disadvantaged Farmers and Ranchers*, U.S. DEP’T OF AGRIC. (Aug. 8, 2012), http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/08/0266.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edep1

which encouraged the passage of the Pure Food and Drug Act).⁴⁶ Recognizing the significance of both mass media and the emerging field of public relations, elites within animal-based economics (what Barbara Noske termed the “animal-industrial complex”)⁴⁷ turned to these areas in order to expand and solidify their prominence within American popular culture.⁴⁸ After the advent of the hamburger in 1916 by J. Walter Anderson, his business partner Edgar Ingram suggested creating restaurants that were visually clean and respectable, with the confidence-bolstering name White Castle, to counter the perception that hamburgers were undesirable.⁴⁹ In the 1920s, the progenitor of American public relations, Edward L. Bernays, was contracted by the Beechnut Packing Company to alter and redirect public perception that the hearty American breakfast should include bacon and eggs, thereby vastly bolstering their sales.⁵⁰ After acquiring the McDonald’s restaurant chain from Maurice and Richard McDonald, Roy Kroc amplified the trend in heavy advertising expenditure to the degree that, in 1966, the McDonald’s “You deserve a break today” theme song was only behind the national anthem in public awareness.⁵¹ These trends contributed to what Noske identified as the animal-industrial complex: the economic and political interests of those directly providing goods from farmed animals, but the restaurants, advertising, and public relations companies intimately involved in maintaining the hegemonic dominance of these practices.⁵²

Therefore, the representations of animals themselves may be expected to be a zone of conflict, as particular representations of animals may challenge either the economic order and/or the political order by suggesting that animals are subjects who have the capacity to suffer, and are not simply legally constructed property.⁵³ Such representations may be especially threatening to industries built on the killing of animals; such representations may

oyment_action=retrievecontent (recognizing small ranchers and farmers are economically and socially disadvantaged).

⁴⁶ NIBERT, *supra* note 36, at 174; *The 1906 Food and Drugs Act and Its Enforcement*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/AboutFDA/WhatWeDo/History/Origin/ucm054819.htm> (last updated June 18, 2009).

⁴⁷ NIBERT, *supra* note 36, at 189.

⁴⁸ *Id.* at 175.

⁴⁹ *Id.* at 174–75.

⁵⁰ *Id.* at 177.

⁵¹ *Id.* at 185–87.

⁵² *Id.* at 189.

⁵³ NIBERT, *supra* note 36, at 5–6.

call into question the moral legitimacy of such industries.⁵⁴ Such challenges may be especially challenging to the perpetuation of such structures, as when consumers perceive an economic order to be manifestly unjust, they may develop their own moral understanding in the wake of the previous devalued system.⁵⁵

This is not to imply that these representations are somehow aligned in a unidirectional fashion; conversely, these two fields are likely to become contested terrain over what form of representation will become dominant.⁵⁶ For example, the case of Atlanta Falcons quarterback Michael Vick and three co-conspirators charged with multiple counts of animal cruelty for the operation of Bad Newz Kennels emphasizes the potential gaping distance between legal constructions of recognizable forms of animal cruelty and how the Vick case appeared within the public social imaginary.⁵⁷ Gorant's overview of the initial investigations and proceedings against Vick and others eventually charged reveals a conflicted and ambivalent law enforcement (including a Surry County District Attorney who resisted charging Vick with any offenses), in stark juxtaposition to the public outcry which led to Vick losing hundreds of millions of dollars in product endorsements.⁵⁸ In short, while key actors within the legal system were reluctant to act on charges of animal cruelty, the public reaction was nearly uniform in its condemnation of Vick and the redemption of the Pit Bulls utilized by Vick in Bad Newz Kennels.⁵⁹ Similarly, Kirby contends that representations of "Confined Animal Feeding Operations" (CAFO) or "factory farms"—including the conditions under which the animals within these CAFOs are subjected to—remain diametrically opposed: supporters argue that these systems are economic engines that produce high-quality food and lower prices, while critics represent CAFOs as propagating vast cruelty to animals, destroying rural environments and economies, and potentially creating future

⁵⁴ *Id.* at 261.

⁵⁵ LISA DODSON, *THE MORAL UNDERGROUND: HOW ORDINARY AMERICANS SUBVERT AN UNFAIR ECONOMY* 5 (The New Press 2009).

⁵⁶ *Id.* at 173–74, 192–93 (arguing that when what is legal and moral are at odds, people disobey the law and form their own moral underground. Sometimes, as was the case with child labor in the nineteenth century, and with a strong social uprising, what is moral becomes law).

⁵⁷ JIM GORANT, *THE LOST DOGS: MICHAEL VICK'S DOGS AND THEIR TALE OF RESCUE AND REDEMPTION* 46, 47, 94 (Penguin Books 2010); see TAYLOR, *supra* note 30, at 23 (for definition of social imaginary).

⁵⁸ GORANT, *supra* note 57, at 46, 47, 94, 97.

⁵⁹ *Id.* at 106.

health crises.⁶⁰

Questions of the perceptions of animals and what actions they are subjected to is hardly the first case of disparate objects and concerns brought together under a more symbolic rubric.⁶¹ Hunter and Lakoff note that recent American politics is deeply informed by synthesizing moralistic understandings which permit a variety of apparently disparate concerns (such as abortion, welfare reform, funding for the arts, defense spending) into constellations that unite these issues in terms of “world view” or metaphoric structures.⁶² Lakoff has attempted to promote his assertions to American political progressives so that progressives will utilize their own terms and articulate their own moral vision, rather than reacting to what conservatives have expressed.⁶³ While this paper does not investigate the assertions of either Hunter or Lakoff in examining contemporary American politics, it does embrace these insights and contend that the images and narratives which are constructed, circulated, and deployed around nonhuman animals significantly informs how these animals will be perceived and treated by large segments of the population.⁶⁴ These insights are important for understanding recent and contemporary representations of nonhuman animals because they suggest that representations will be rooted in moral and cultural resources derived from a variety of locations.⁶⁵ While some claim makers, including animal protectionists and those exploiting animals for economic gain, will seek to infuse societal discourse with coherent themes, it is much more likely that these representations will be synthetic coats made from many different cloths.⁶⁶ Moreover, as with Hunter and Lakoff, this paper contends that these images and narratives are resources for developing differing moral visions

⁶⁰ DAVID KIRBY, *ANIMAL FACTORY: THE LOOMING THREAT OF INDUSTRIAL PIG, DAIRY, AND POULTRY FARMS TO HUMANS AND THE ENVIRONMENT* xiv–xvi (2010).

⁶¹ See, e.g., Sarah Batt, *Human Attitudes Towards Animals in a Relation to Species Similarity to Humans: A Multivariate Approach*, 2 *BIOSCIENCE HORIZONS* 180, 180 (June 2009); Ruth Beatson et al., *Attitudes Toward Animals: The Effect of Priming Thoughts of Human-Animal Similarities and Mortality Salience on the Evaluation of Companion Animals*, 17 *SOC'Y & ANIMALS* 72, 72–73 (2009).

⁶² JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* 42, 43 (1991); George Lakoff, *Metaphor, Morality, and Politics, or, Why Conservatives Have Left Liberals in the Dust*, 62 *SOC. RES.* 1, 1–2 (1995), <http://www.wvcd.org/issues/Lakoff.html>.

⁶³ *Id.* at 20.

⁶⁴ See, e.g., HUNTER, *supra* note 62, at 42, 43, 51; Lakoff, *supra* note 62, at 20.

⁶⁵ See Lakoff, *supra* note 62, at 2.

⁶⁶ See *id.* at 17 (different morality views that could be infused in societal discourse).

around nonhuman animals.⁶⁷

Despite the multiple potential sources of information and understanding that socially and culturally circulate representations of nonhuman animals, this article contends that many of them necessarily involve contested moral understanding regarding nonhuman animals and what considerations they are entitled to within human societies.⁶⁸ Moreover, this paper contends that these contested meanings appear in contemporary post-industrial societies within the context of mediated spectacles⁶⁹ through promoting different images, narratives, and moral understandings surrounding nonhuman animals. Through conceptualizing how representatives and narratives surrounding nonhuman animals circulate within spectacles, this paper will conclude by suggesting a typology of representations of animals, which may be apparent within contemporary mass media.⁷⁰ Through a consideration of narratives, imagery communicated through spectacles, this paper examines four cases studies involving animals in which competing forms of morality and moral vocabularies⁷¹ become evident. The following suggests an understanding of how representations and narratives are deployed and circulated around animals contributes to understanding the origins of “the pictures in our heads” and what actions and moral engagements that they may encourage.⁷²

⁶⁷ See, e.g., HUNTER, *supra* note 62, at 43, 51; Lakoff, *supra* note 62, at 4, 5.

⁶⁸ See, e.g., Batt, *supra* note 61, at 180; Beatson et al., *supra* note 61, at 72–73.

⁶⁹ GUY DEBORD, *THE SOCIETY OF THE SPECTACLE* 8, 9, 10, 12, 13 (Donald Nicholson-Smith trans., Zone Books 1994) (for information about industrial spectacle theory); GUY DEBORD, *COMMENTS ON THE SOCIETY OF THE SPECTACLE* 10, 11, 12 (Malcolm Imrie trans., Verso 1998); STEPHEN DUNCOMBE, *DREAM: RE-IMAGINING PROGRESSIVE POLITICS IN AN AGE OF FANTASY* 2, 3, 5, 185 (The New Press 2007); DOUGLAS KELLNER, *MEDIA SPECTACLE* 2 (Routledge 2003); DOUGLAS KELLNER, *MEDIA SPECTACLES AND THE CRISIS OF DEMOCRACY: TERRORISM, WAR, AND ELECTION BATTLES* 228 (Paradigm 2005); Julian Murphet, *Pitiable or Political Animals?*, 37 *SUBSTANCE* 97, 101, 102, 104, 105, 109–10, 111 (2008).

⁷⁰ Marc Bekoff, *Animals in the Media: Righting the Wrongs*, *PSYCHOL. TODAY* (Jan. 25, 2010), <https://www.psychologytoday.com/blog/animal-emotions/201001/animals-in-media-righting-the-wrongs>.

⁷¹ Brian M. Lowe, *The Creation and Establishment of Moral Vocabularies: Why Moralizing and Moral Vocabularies Matter*, in *HANDBOOK OF THE SOCIOLOGY OF MORALITY* 293, 294, 298 (Steven Hitlin & Stephen Vaisey eds., Springer 2010).

⁷² Susan McHugh, *Animal Outtakes: Media Studies and Narrative Ethology* 1–2, 3 (Aug. 1999) (unpublished Ph.D. Thesis, Purdue University), <http://search.proquest.com/news/docview/304522774>.

I. SPECTACLES AND ANIMAL ADVOCACY

Duncombe contends that many of the modern liberation movements, such as the abolitionists, exemplified the Enlightenment-era characteristics of reliance on empiricism and linear, rational arguments as vehicles for claims making.⁷³ For instance, Kean notes that the Victorian animal welfarists made claims advocating and justifying the protection of animals based in liberal Protestantism (who also attacked slavery and supported protections for children).⁷⁴ Even after many of these liberation movements detached from their religiously-inspired origins for secular claims-making resources and platforms, such as science and human rights, the Enlightenment paradigm of linear argument and rational empiricism remained.⁷⁵

Reliance on providing evidence and sustained linear argumentation has produced undeniable successes for liberation movements, such as the dissemination of Sinclair's *The Jungle*, leading to the passage of the Pure Food and Drug Act. The contemporary animal rights movement is part of this Enlightenment tradition, inspired by the utilitarian writings of Peter Singer in *Animal Rights* (1990) and Tom Regan's *The Case for Animal Rights* (1983). Like other Enlightenment-based liberation endeavors, the contemporary animal rights movement has experienced successes in influencing legislation regarding animals, cultural perceptions (such as the precipitous decline of the consumption of fur garments in North America and Western Europe since the 1970s) it also exhibits the vulnerabilities exemplified by what Duncombe terms the 'Enlightenment Faith': 'that somehow, if reasoning people have access to the Truth, the scales will fall from their eyes and they will see reality as it truly is and, of course, agree with us' While Duncombe's eloquent and succinct formulation of the 'Enlightenment faith' is directed generally at many Progressive political movements that take their cues from the Enlightenment, it is especially pertinent for the contemporary animal rights

⁷³ DUNCOMBE, *supra* note 69, at 6, 7, 11, 12, 185; see BEST, *supra* note 23, at 4, 9, 10, 14, 15 (for theories on approaching social problems including objective, subjective, and claims-making).

⁷⁴ HILDA KEAN, *ANIMAL RIGHTS: POLITICAL AND SOCIAL CHANGE IN BRITAIN SINCE 1800* 34, 35, 36 (Reaktion Books 1998).

⁷⁵ See Yehudah Mirsky, *The Religious Fate of Secular Liberation*, THE AMERICAN INTEREST, <http://www.the-american-interest.com/2015/10/10/the-religious-fate-of-secular-liberation/> (last visited Nov. 10, 2015); see also Lonnie D. Kliever, *Liberalism in Search of a Political Agenda*, in RELIGIOUS RESURGENCE AND POLITICS IN THE CONTEMPORARY WORLD 125, 130–31 (Emile Sahliyah ed., State University of New York Press 1990).

movement and animal protectionists. Rooted in rational, linear argument and the utilization of scientific data, the contemporary animal rights movement is able to readily mobilize evidence fit for panel discussions, courtrooms, or genuine debates, but this approach is less able to defend itself against counterclaims and narratives that are factually weak and heavily mediated. For example, the Center for Consumer Freedom (CCF) has initiated a media campaign 'PETA Kills Animals,' which relies on television, radio, and print advertisements in an attempt to discredit PETA.

The contemporary animal rights movement is hardly alone in this dilemma. Simon contends that many large American food manufacturers have circumvented the scientifically-based arguments and advocacy produced by public health organizations, (including the American Medical Association and the Harvard School of Public Health) which claim that many aspects of contemporary North Americans diets are dangerous for consumers, through employing Richard Berman and his 'industry front group', the Center for Consumer Freedom (CCF). Simon states that the CCF relies primarily on intimidating opponents (through requesting financial records from nonprofit organizations which expends time and resources) challenging findings that threaten CCF and its patrons as 'junk science', and through a sweeping defense of 'consumer freedom' and 'defending enjoyment' against the food cops that somehow seek to limit food consumption. CCF does not produce a canon of peer-reviewed scientific or medical data to defend 'consumer freedom'; it utilizes emotional claims, fears (largely unwarranted) of intrusions into personal freedoms, and the defense of 'consumer freedom.'⁷⁶

In short, CCF generates images of intrusive government and incompetent foes to defend itself, as opposed to answering data with data. In light of the findings of Duncombe and Simon, an understanding of representation, moralization, and narratives are necessary for grasping how such contests unfold.⁷⁷

⁷⁶ Brian Lowe, *Animal Rights Struggles to Dominate the Public Moral Imagination through Sociological Warfare*, 1 *THEORY IN ACTION* 1, 2–3 (2008) (internal quotes removed); see, e.g., DUNCOMBE, *supra* note 69, at 7; MICHELE SIMON, *APPETITE FOR PROFIT: HOW THE FOOD INDUSTRY UNDERMINES OUR HEALTH AND HOW TO FIGHT BACK* xxi, 1, 23, 24, 46–51, 54, 55 (Nation Books 2006).

⁷⁷ See, e.g., PAUL VIRILIO, *WAR AND CINEMA: THE LOGISTICS OF PERCEPTION* 1, 6 (Patrick Camiller trans., Verso, New Let Books 1989) [hereinafter *WAR AND CINEMA*].

II. REPRESENTATION

Virilio contends that, especially in modernity, war and visual representation are to some degree inseparable:⁷⁸ “There is no war, then, without representation.”⁷⁹ Virilio observes that the expansion of military logistics evolved alongside visually representative technologies including the chrono-photographic rifle.⁸⁰ He contends that:

[T]he strategic and tactical necessities of cartography were known long ago, and in the line from the emergence of military photography in the American Civil War to today’s video surveillance of the battlefield, the intensive use of film sequences in aerial reconnaissance was already developing during the First World War.⁸¹

This alignment of military logistics, strategy, and visual representation encouraged the evolution of a war machine/watching machine “capable of providing soldiers, and particularly commanders, with a visual perspective on the military action under way.”⁸²

While the connection between visual representation and warfare has accelerated within societies that have representative technologies (photography, film, and video), Virilio suggests that not only is this relationship between war and representation much older, but that the historical connection between the two indicated that the visual eclipsed more mundane military considerations: “[w]ar can never break free from the magical spectacle because its very purpose is to *produce* that spectacle: to fell the enemy is not so much to capture as to ‘captivate’ him”⁸³ Virilio suggests that the production of spectacles (military and otherwise) involved logistical capabilities and were deployed in the creation and maintenance of social order: “[w]e should not forget that, ever since Antiquity, the liturgy was a *public service* which combined the logistical organization of distant expeditions, religious ceremonies laid down by the spiritual authorities, and spectacles conceived as

⁷⁸ *See id.* at 6 (using the example of “the German dive-bomber of World War Two that swept down on its target with a piercing screech designed to terrorize and paralyse [sic] the enemy”).

⁷⁹ *Id.* at 6.

⁸⁰ *See id.* at 68.

⁸¹ *Id.* at 1.

⁸² *Id.* at 1–3.

⁸³ WAR AND CINEMA, *supra* note 77, at 5–8.

'special effects.'"⁸⁴ Virilio proposes that sites of intensive visual production (such as Hollywood) "succeeded the theatre-town of the ancient City-State" in that both produced compelling visual spectacles which served to provide common reference points for the growing populations of these respective societies.⁸⁵ The control of visual representative production has become dominated by large actors who are coupled to government, military and economic interests, effectively excluding alternative means of seeing: "[s]ight was once a cottage industry, an 'art of seeing'. But today we are in the presence of a 'tangible appearances business' that may well be some form of pernicious *industrialization of vision*."⁸⁶ In modern societies, Virilio suggests that political power is "now shared between the logistics of weaponry and of sound and images, between war cabinets and propaganda departments. . . ."⁸⁷ In terms of "sounds and images," Virilio cites the case of British actor Leslie Howard, returning to the United Kingdom after a successful career in film (including a role in *Gone with the Wind*) in order to participate in the British war effort.⁸⁸ Howard was heavily involved in making propaganda for the British government, espousing that film was a far more successful implement for reaching the British people than government reports or other official publications: "[t]hey won't buy your White Paper. But they will crowd into the cinemas to see an official documentary."⁸⁹ Far from being a historic relic, Virilio argues that the relationship between war and visual representation has intensified in contemporary (post)industrial societies: "[p]eople used to die for a coat of arms, an image on a pennant or a flag; now they died to improve the sharpness of a film. War has finally become the third dimension of cinema."⁹⁰

The case of the possible overabundance of visual representations of wars and other activities does not create a transparency through which citizens can more easily perceive and understand military actions undertaken in their name (or other activities); Virilio takes the contrarian position and argues that the dissemination of vast

⁸⁴ *Id.* at 38–39.

⁸⁵ *Id.* at 38, 39.

⁸⁶ PAUL VIRILIO, *OPEN SKY 89* (Julie Rose trans., Verso 1997) [hereinafter *OPEN SKY*]; see also *WAR AND CINEMA*, *supra* note 77, at 53 (discussing power balance between war department and propaganda).

⁸⁷ *WAR AND CINEMA*, *supra* note 77, at 1–2, 53.

⁸⁸ *Id.* at 4, 24.

⁸⁹ See *id.* at 62.

⁹⁰ See *id.* at 5, 84–85.

amounts of information can contribute to the overall spread of disinformation: “whereas in the past it was lack of information and censorship which characterized the denial of democracy by the totalitarian state, the opposite is now the case. Disinformation is achieved by flooding TV viewers with information, with apparently contradictory data.”⁹¹ Such “over-information” contributes to uncertainty and ambiguity which, in the case of long-distance military conflict (and other actions at a geographic and/or social distance that are only experienced through mediated representation), may serve to reinforce such actions through what Virilio terms information warfare: “the remote guidance of confusion. It is this chaos of opinion which complements, which puts the finishing touch to, the chaos of destruction on the ground.”⁹² Virilio argues that visual representations are especially useful in the creation of deceptions through providing particular imageries of such actions, including humanitarian efforts:

popularized in the media by any number of ‘TV marathons’ and other interactive shows (on social, health and ecological issues). In actual fact, these were intended to prepare people’s minds for future large-scale humanitarian maneuvers of a much less peaceful kind, such as those in Kosovo . . . the lavish shows staged to combat AIDS or cancer, with the incurably disabled and the terminally ill being paraded before the cameras. . . . [T]he unprecedented exercise of the new right of intervention in the internal affairs of a sovereign nation would not have been accepted by public opinion were it not for this long psychological preparation, *this total cinema* born during the Cold War with the de-neutralization of the East-West media . . .⁹³

Virilio also suggests that, far from clarifying or emphasizing ideological differences between social actors, the use of the visual has contributed to the blurring of ideological distinctions:

[a]part from a visually correct physical appearance . . . have understood that in a rapidly globalizing world there is no longer, *strictly speaking*, either Right or Left, and that, since the fall of the Berlin Wall, these things literally no longer have any meaning. All that remains is the great audiovisual dilemma, the conflict between the soft (the word) and the hard (the image).⁹⁴

Notably, Virilio gives more significance to the “hard” image than

⁹¹ PAUL VIRILIO, *STRATEGY OF DECEPTION* 48, 49 (Chris Turner trans., Verso 2007) [hereinafter *STRATEGY OF DECEPTION*].

⁹² *Id.* at 48–49.

⁹³ *Id.* at 71–72.

⁹⁴ PAUL VIRILIO, *THE INFORMATION BOMB* 74–75 (Chris Turner trans., Verso 2005) [hereinafter *THE INFORMATION BOMB*].

the “soft” word, implying that, in terms of representations and depictions, the visual trumps the literary.⁹⁵ This assertion may be because of Virilio’s recognition of Robert Houdin’s term “Illusionism”: “[i]llusionism is an art entirely concerned with taking advantage of the visual limits of the onlooker by attacking his innate capacity to distinguish between the real and what he believes to be real and true, thus inducing him *to believe firmly in that which does not exist*.”⁹⁶ Virilio argues that this blurring of the actual and virtual extends to macro-scale military events, including Hiroshima, the Falklands war, and the 1991 Gulf war: “[t]hese . . . were ‘war games’, image wars, but, more than this, they were metaphysical conflicts between the real and the virtual.”⁹⁷ The widespread dissemination of images of these conflicts far beyond the confines of participants serves to make such “mass spectacle . . . *the true popular art of the twentieth century*.”⁹⁸ In sum, such mass spectacles serve to confuse distinctions between the real and virtual, and also make mass violence and other potentially or actually violent activities forms of captivating entertainment that potentially serve to eclipse factual knowledge: “[the] square horizon of the computer terminal or head-mounted screen (HMS) presents, like certain kinds of spectacles, the very latest ‘volume’ – no longer that of things perceptible to the naked eye, but of the *instantaneous superimposition of actual and virtual images*.”⁹⁹ The strategic deployment of such images in fields such as advertising may lead to “the unprecedented possibility of a *defeat of facts* and hence a disorientation of our relation to reality.”¹⁰⁰ The sum consequences of this instantaneous flow of representation and information is not a more intellectually grounded public in the matters in question, but results in what Virilio defines as information war which creates disorientation: “everything is . . . hypothetical; and just as information and disinformation have become indistinguishable from each other . . .

⁹⁵ *See id.* at 75.

⁹⁶ *Id.* at 86 (quoting Robert Houdin, “a conjuror, but also a designer in the Nineteenth Century of androids and optical equipment”) (internal quotation marks omitted).

⁹⁷ *Id.* at 89.

⁹⁸ *Id.*

⁹⁹ *See generally id.* at 88, 89, 119 (discussing how certain conflicts, through the use of images, creates a virtual presence for civilians as a form of media entertainment).

¹⁰⁰ *See generally* THE INFORMATION BOMB, *supra* note 94, at 113 (describing the amount of advertising found in the world, outside of its traditional space, and the ability to influence that advertising has).

[d]igital messages and images matter less than their instantaneous delivery; the ‘shock effect’ always wins out over the consideration of the informational content.”¹⁰¹ This bewildering flow of information serves to create anxiety and a historicity among viewers as they are bombarded with information which is presented in a time compressed, “hurried presentation” format without effort to contextualize the information, leading to Virilio’s metaphorical “information bomb,” which explodes and disseminates vast amount of information across an intellectual and social imaginary landscape without regard to whether the information is factual, false, misleading and/or deceptive.¹⁰² For Virilio, such production and dissemination of information is characteristic of societies that have transcended metabolic and mechanical proximity (in which social life is based on either the simple co-presence of persons and subsequently the movement of persons and goods by mechanical means like locomotives) characterized by the electromagnetic transmission of information.¹⁰³ James Der Derian considers the societal sources and impacts of representations in his analysis of what he terms the “military-industrial-media-entertainment” (MIME) network in the United States.¹⁰⁴ Der Derian contends that the increasing interrelationships between the American military, visual entertainment producers (including television, film and video games) and mass media news have collectively contributed to the evolution to of “virtuous war”: At the heart of virtuous war is the technical capability and ethical imperative to threaten and, if necessary, actualize violence from a distance¹⁰⁵ Der Derian argues that “virtuous” war is both *virtuous* in that military actions are justified on ethical claims (such as unseating dictators and alleviating humanitarian crises) and virtual in that the

¹⁰¹ See generally *id.* 142–143 (discussing that the speed of information is more important than the message transmitted).

¹⁰² See generally *id.* at 140–43 (discussing that the speed which information is transmitted is so great, that it supersedes the ability to process it, resulting in misinformation, and further that information itself is warfare capable of altering life).

¹⁰³ See OPEN SKY, *supra* note 86, at 73–74 (describing the evolution of science in history and the current proximity of information transmission).

¹⁰⁴ See generally JAMES DER DERIAN, VIRTUOUS WAR: MAPPING THE MILITARY-INDUSTRIAL-MEDIA-ENTERTAINMENT NETWORK xxxvii (2d ed., Routledge 2009) (discussing the general layout of the virtuous war thesis and the societal sources which he uses as support).

¹⁰⁵ See generally *id.* at xxvii, xxxi (discussing the virtual world and the relationship with the virtuous war).

representations of military violence are represented externally to wider audiences and internally to many decision makers in manners which diminish, or conceal altogether, the disturbing aspects of violence (including accidental civilian casualties from military actions intended to aid those very civilians) often through the use of visual simulations.¹⁰⁶ Der Derian's account of virtuous war is not simply that of military and political actors hoping to alleviate public concerns about geo-political military actions (although that is part of his thesis), but rather to understand how this synthesis of representational capabilities impacts perceptions of contemporary military and related activities, including the staff of General Schwarzkopf during the First Persian Gulf War, which repeatedly mistook reports from a simulated war game of an invasion from Kuwait into Iraq ("Internal Look") for reports from the actual American-led invasion.¹⁰⁷ In sum, those who had created the simulation to prepare for an actual invasion became confused and deceived by the fidelity of their own creation.

One of Der Derian's concerns, beyond the potential for simulations to conceal unpleasant aspects of military actions, is the capacity for these representations to generate emotional states, which in turn compel actions.¹⁰⁸ Der Derian contends that Nietzsche made this connection when he argued that the original societies were formed partially through a desire to repay ancestors through accomplishments and deeds, a dynamic which evolved into states offering their citizens some form of virtual security against potential threats.¹⁰⁹ Therefore, the production and dissemination of particular representations could benefit states through creating fear or anxiety, which then the state could offer to combat in return for loyalty and other services.¹¹⁰ Such simulations or

¹⁰⁶ See generally *id.* at xxxi–xxxii (summarizing the way technology can instantaneously show the war zone while suppressing the image of damage caused and the way which international actions can be handled).

¹⁰⁷ See generally *id.* at xxxiv–xxxv, 14–15 (discussing the way which virtual representation affects the power and stability of states through media, and how the virtuous war may affect society, with an example detailing the way which technology allowed the U.S. to control a conflict overseas with detailed training of the exact scenario, a synthesis of actual and perceived military actions).

¹⁰⁸ *Id.* at 57 (describing the realistic simulation viewed, and the emotion generated from the viewing of the simulation).

¹⁰⁹ See *id.* at 35 (summarizing Nietzsche's argument that the tribal belief that tributes to prior generations granted protection created and furthered the growth of tribes into societies).

¹¹⁰ See DER DERIAN, *supra* note 104, at 35–36 (elaborating on Nietzsche's argument that fear prompted tribal tribute, with the eventual creation of the state continuing the use of fear to maintain loyalty).

representations could offer the illusion of control or influence, as a simulation may offer predictability or plausibility within particular situations (such as offering worse case scenarios), highlighting the potential of the *mimetic*:

From its original conception as the reproduction of reality through dance, ritual, theater, image, and writing, mimeses thrived as an aesthetic concept, capturing the perceptual and representational powers of mimicry, imitation, and metaphor. Its linguistic roots go back to fifth century Greece, to *mimos*, whose many derivatives convey a dramatic act of representation through imitation. At the outset, mimesis attracted philosophical criticism, as one would expect from any powerful form of representation that created whole worlds, that made one thing into something other, even if it was done through symbolic actions.¹¹¹

Der Derian extends the mimetic concept to argue that such simulations and representations are integral components of a mimetic war of images:

A mimetic war is a battle of imitation and representation, in which the relationship of who we are and who they are is played out along a wide spectrum of familiarity and friendliness, indifference and tolerance, estrangement and hostility. . . . More than a rational calculation of interests takes us to war. People go to war because of how they see, perceive, picture, imagine, and speak of others: . . . how they construct the difference of others as well as the sameness of themselves through representations. From Greek tragedy and Roman gladiatorial spectacles to futurist art and fascist rallies, the mimetic mix of image and violence has proven to be more powerful than the most rational discourse.¹¹²

In sum, Der Derian and Virilio argue that the representation of an object, cause, or animal greatly contributes to both societal perceptions of it and how actions are likely to be undertaken towards it.¹¹³

III. MORALITY

This propensity to utilize moralistic understanding and

¹¹¹ See *id.* at 39–40 (describing how mimesis can fool people, and thus be used to influence).

¹¹² *Id.* at 238.

¹¹³ See *generally id.* at xxx (discussing the way in which the promotion of technology or any cause or object can affect the perception of future actions on said technology/cause/idea); THE INFORMATION BOMB, *supra* note 94, at 30 (describing the way in which society will perceive food corporations in regards to animals following health scares and possible solutions to safety concerns).

discourse in social life has been recognized in a range of recent sociological scholarship that have emphasized the importance of how morality and phenomena related to morality have impacted both American and other post-industrial societies.¹¹⁴ For example, moral discourse has influenced (but is not limited to) the creation and reinforcement of moral boundaries¹¹⁵, the impetus for creative social protests¹¹⁶, the basis for the “culture wars”¹¹⁷ and has been integral to the creation of the contemporary American state.¹¹⁸ What these and related works share is the importance morality plays in modern and postmodern societies.¹¹⁹ It is not limited to “traditional” areas of moral focus such as sexuality and other “moral panics;”¹²⁰ for example, morality involves the underpinnings of the belief in the legitimacy of armed insurrection in service of a moral cause,¹²¹ understandings of poverty in both the Gilded Age and the 1990s in the United States,¹²² and the creation of legitimacy for military invasion (as in the case of the false “incubator story” that established a narrative of response to cruelty as the primary justification for the American invasion of Iraq in 1991).¹²³

A necessary component of examining moral understandings in contemporary societies is what Paul Rozin has termed

¹¹⁴ See generally MICHÈLE LAMONT, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION* 19–20, 51–52 (Russell Sage Foundation 2000) (discussing the morals found within American social life and the way they impact society).

¹¹⁵ See generally *id.* at 2–3 (discussing how personal morals of workers creates and reinforces moral boundaries within their social classes and society).

¹¹⁶ See generally JAMES M. JASPER, *THE ART OF MORAL PROTEST: CULTURE, BIOGRAPHY, AND CREATIVITY IN SOCIAL MOVEMENTS* 374 (The University of Chicago Press 1997) (describing the use of protests to convey and further moral opinions to the public as a whole).

¹¹⁷ See generally HUNTER, *supra* note 62, at xii, 4 (discussing how moral standards held by individuals who are religious can create a cultural conflict when others of a similar nature hold a different viewpoint within society).

¹¹⁸ JAMES A. MORONE, *HELLFIRE NATION: THE POLITICS OF SIN IN AMERICAN HISTORY* 3 (2003).

¹¹⁹ KRISHAN KUMAR, *FROM POST-INDUSTRIAL TO POST-MODERN SOCIETY* 126–127 (2d ed. 2005).

¹²⁰ See NICOLA BEISEL, *IMPERILED INNOCENTS: ANTHONY COMSTOCK AND FAMILY REPRODUCTION IN VICTORIAN AMERICA* 4–5 (Princeton University Press 1997).

¹²¹ DAVID S. REYNOLDS, *JOHN BROWN, ABOLITIONIST: THE MAN WHO KILLED SLAVERY, SPARKED THE CIVIL WAR, AND SEEDED CIVIL RIGHTS* ix–x (2005).

¹²² STEPHEN PIMPARE, *THE NEW VICTORIANS: POVERTY, POLITICS, AND PROPAGANDA IN TWO GILDED AGES* 6–7 (2004).

¹²³ See KATHLEEN HALL JAMIESON & PAUL WALDMAN, *THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE POLITICAL WORLD* 15–17 (Oxford University Press 2003).

“moralization as the acquisition of moral qualities by objects and activities that were previously morally neutral”¹²⁴ (Rozin also argues that there is an inverse process of amoralization).¹²⁵ Rozin’s discussion of moralization begins with the premise that “something is in the moral domain if the term *ought* (or *ought not*) applies to it” and “that if something is in the moral domain for person A, then A is concerned that other people hold and behave according to the position held by A.”¹²⁶ In sum, Rozin argues that moralization is rooted in social actors holding a Weberian value rational understanding of a phenomena or practice and wishing for others to accept that understanding.¹²⁷ For example, Rozin distinguishes between the “pure moral” vegetarians that “avoid eating meat only because of the moral implications (killing animals, wasting resources, and so on), whereas pure health vegetarians [who] avoid eating meat on the grounds that it is unhealthy.”¹²⁸ Rozin contends that moralization on an individual unit of analysis occurs through “moral piggybacking” (“the extension of an existing moral principle to a new object/activity”) and/or through “moral expansion” (which “involves creation of a new moral domain”).¹²⁹ In both cases, moralization occurs through either an *affective route* (based primarily on emotional impact and understandings, such as a person becoming disgusted after viewing a documentary of how animal slaughter is conducted) and/or a *cognitive route* (based primarily on principles, data, or other information, such as exposure to reasoned and principled arguments about why the slaughter of animals is morally indefensible).¹³⁰ In the case of social directions, moralization may occur either through “moral piggybacking” when a person is either affectively or cognitively persuaded that a current understanding that is held is subsequently applied to another context (such as a person that understands killing animals for fur is immoral comes to perceive that killing animals for sport is also immoral) or through “moral expansion” (such as a person reading Tom Regan’s *The Case for*

¹²⁴ Paul Rozin, *Moralization*, in *MORALITY AND HEALTH: INTERDISCIPLINARY PERSPECTIVES* 379, 380 (Allan M. Brandt & Paul Rozin eds., 1997).

¹²⁵ *Id.* at 380.

¹²⁶ *Id.*

¹²⁷ See MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* 5 (Guenther Roth & Claus Wittich eds., The Regents of the University of California 1978).

¹²⁸ Rozin, *supra* note 124, at 380.

¹²⁹ *Id.* at 385, 386.

¹³⁰ *Id.*

Animal Rights and coming to hold the new understanding that animals should not be killed for food or sport).¹³¹

Moralization involves two non-mutually exclusive strategies of providing *information* (empirical data and evidence) and providing *visual and/or emotional appeals* within the host society. Considering these two strategies along the bifurcated axis of horizontal (left) and visual or emotional appeals (right) and the vertical axis of mild to intense moralization creates four general categories of form of moralizing activities. *Mild Moralization (information)*: In this form of moralization, factual information is coupled with narrowly focused appeals regarding the treatment of animals that does not generally challenge the wider social order. This type of moralization is often described as “educational” not only because of the formal attempt to disseminate information intended to create behavioral and cultural change but also parallels the methods of formal education. Shortly after the legal establishment of animal advocacy organizations in the mid-1860s, some of these organizations engaged in “humane education” that would not only encourage children to act humanely towards animals but also to mature into benevolent adults.¹³² In 1869, the Women’s Branch of the Pennsylvania Society for the Prevention of Cruelty to Animals (WSPCA) printed 5,000 “little books” entitled *Early Lessons in Kindness* that were distributed to schools; by the early 1900s, humane organizations in virtually every state encouraged legally mandated humane education in schools.¹³³ Contemporary animal advocacy organizations also offer data and evidence to support their claims, such as citing the work of philosopher Peter Singer in arguing for recognizing the need to treat animals in an ethical fashion without relying on emotional appeals.¹³⁴

A. *Mild Moralization (visual and emotional)*

This form of moralization may involve information, but the primary goal is to use visual and/or emotional appeals in order to

¹³¹ *Id.* at 386; Tom Regan, *The Case for Animal Rights*, in *IN DEFENSE OF ANIMALS* 13, 13 (Peter Singer ed., Basil Blackwell 1985), <http://www.animal-rights-library.com/texts-m/regan03.htm>.

¹³² DIANE L. BEERS, *FOR THE PREVENTION OF CRUELTY: THE HISTORY AND LEGACY OF ANIMAL RIGHTS ACTIVISM IN THE UNITED STATES* 87 (Swallow Press/Ohio University Press 2006).

¹³³ *Id.* at 86–87.

¹³⁴ *See id.* at 198.

attract attention (although the goal of attracting attention may be to provide viable grounds for an audience to become more engaged with an issue). In the case of animal advocacy, this type of moralization has taken two primary forms: portraying animals in an ideal state (especially attractive or friendly) or as innocent victims of cruelty.¹³⁵ In either case, such appeals act as a vehicle to encourage deeper investigation of the topic.¹³⁶

For example, Lowe and Ginsberg noted that in their survey of 105 animal rights activists, 26 percent of respondents cited a “sudden change” in explaining their initial interest in animal activism.¹³⁷ Farm Sanctuary in Watkins Glen, New York practices this form of moralization through offering guided tours of their preserve for animals typically raised for human consumption (such as cows, pigs, and chickens).¹³⁸ During the tour, guides refer by the given names to the animals residing in the sanctuary, explaining how each animal came to be in the sanctuary and how that animal is emblematic of practices involved in killing animals for human consumption.¹³⁹ For example “Cincinnati Freedom” escaped from a Cincinnati, Ohio slaughterhouse and briefly became a focus of national media attention as she eluded capture and became a sympathetic figure (eventually receiving a key to Cincinnati from Mayor Charlie Luken); her presence at Farm Sanctuary serves to embody the reality of cattle slaughter opposed by Farm Sanctuary.¹⁴⁰

B. Intense Moralization (information)

In this form of moralization, information is presented in a very direct and partisan manner, possibly without an overt effort to be

¹³⁵ See BEERS, *supra* note 132, at 12 (early movements used graphic images of animal cruelty).

¹³⁶ See generally Brian M. Lowe & Caryn F. Ginsberg, *Animal Rights as a Post-Citizenship Movement*, 10 SOC'Y AND ANIMALS 203, 203, http://animalsandsociety.org/assets/library/460_s1027.pdf (study based on surveying activists to uncover their economic and educational profiles, motivation for participation, and cultural manifestations of their beliefs in animal rights).

¹³⁷ *Id.* at 206, 208.

¹³⁸ See *Tours of Farm Sanctuary's New York Shelter*, FARM SANCTUARY, <http://www.farmsanctuary.org/the-sanctuaries/watkins-glen-ny/tours/> (last visited Nov. 28, 2015).

¹³⁹ See *id.*

¹⁴⁰ See *Cinci Freedom: Cow Escapes Slaughterhouse and Prompts Public Outcry to Save Her*, FARM SANCTUARY, <http://www.farmsanctuary.org/the-sanctuaries/rescued-animals/featured-past-rescues/freedom/> (last visited Nov. 28, 2015).

objective, and with broader implications for the information presented. Intense moralizing efforts emerging out of animal advocacy include espousing more radical agendas such as veganism (a diet that eschews all forms of animal products) and the communications of the Animal Liberation Front (ALF).¹⁴¹ The ALF is defined as a domestic terrorist organization by the American Federal Bureau of Investigation (FBI).¹⁴² As an illegal organization, the ALF cannot directly contact media or otherwise act in an open fashion; instead the ALF releases communiqués after its actions that starkly justify its actions in defense of innocent animals through characterizing the treatment of the animals in question as immoral and cruel¹⁴³. Intense informational moralization may also involve dramatic public service announcements and the presentation of data through illegal means (as in the case of the Gennerelli head injury laboratory; see below).¹⁴⁴

C. *Intense Moralization (visual and emotional)*

As with intense informational moralization, this form of moralization often emphasizes information that could, if adhered to, radically alter the wider society and is often explicitly partisan. Moreover, this form of moralization often relies on “moral shocks”¹⁴⁵ in order to both attain and hold public attention. This may involve public protests (often with a theatrical aspect like the “I’d rather go naked than wear fur” advertisements of People for the Ethical Treatment of Animals) or providing footage of actions on behalf of specific categories of animals.¹⁴⁶

¹⁴¹ See Brian M. Lowe, *The Actions of the Animal Liberation Front as Social Performance*, 2 THE J. OF SOC. AND ECOLOGICAL BOUNDARIES 85, 85 (2007).

¹⁴² See generally *id.* at 86 (noting that the ALF is considered a terrorist organization in both the United States and Canada); see also *The Threat of Eco-Terrorism: Hearing Before the Subcom. On Forests and Forest Health of the H. Resources Committee*, 107th Cong. (2002) (testimony of James F. Jarboe, Domestic Terrorism Section Chief, Counterterrorism Division Federal Bureau of Investigation), <https://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism> (noting that the FBI considers the ALF a “serious terrorist threat”).

¹⁴³ See Lowe, *supra* note 141.

¹⁴⁴ See *id.* at 89.

¹⁴⁵ See JAMES M. JASPER & DOROTHY NELKIN, *THE ANIMAL RIGHTS CRUSADE: THE GROWTH OF A MORAL PROTEST* 44 (The Free Press 1992).

¹⁴⁶ See *id.*

IV. NARRATIVES

Polletta contends that narratives are an ambiguous source of information in social life; both dismissed as “just stories” (potentially misleading or merely anecdotal) and as prime sources of data within most areas of social life, including social movements, courtrooms, descriptions of medical diagnoses and journalism.¹⁴⁷ Polletta contends that stories provide coherence for complex events, create and sustain identity, and are vehicles for symbols including metonymies.¹⁴⁸ Metonymies suggest connections between clusters of objects, and relations among them, so that “the crown” becomes variously a monarchy and/or the prosecution in legal proceedings and “the media” refers to a variety of competing organizations and their sources.¹⁴⁹ Polletta suggests that through understanding the metonymies within narratives deployed by social movements and other actors, a more complete accounting of actions and perceptions by those actors can be made.¹⁵⁰

In addition to identifying the necessarily quasi-propagandistic nature of mass mediated societies in shaping the shared cognitive environment, Kallis argues against any tabula rasa vision of the propagandists’ capacity to shape societal opinions and perceptions in any possible manner.¹⁵¹ Rather, Kallis argues that the persuasive success of propaganda is deeply informed by the existing social values of audiences, which cannot simply be overridden:

The active complicity or even passive consensus of the audience cannot be taken for granted, even in putatively ‘totalitarian’ systems where individual issues become related to a one-dimensional world-view. This is because, even in a ‘revolutionary’ situation of break with the past, the replacement of traditional values with attitudes derived from a ‘revolutionary’ ideology requires a long-term process of careful, step-by-step cultivation. . . . In this context, the most effective propaganda is one that maintains a dialogue between traditional social principles and its own alternative prescriptions by using some of the vocabulary, terminology and fundamentals of the existing value system. This would . . . suggest to the audience that

¹⁴⁷ FRANCESCA POLLETTA, *IT WAS LIKE A FEVER: STORYTELLING IN PROTEST AND POLITICS* 1, 172 (The University of Chicago Press 2006).

¹⁴⁸ *See id.* at 12, 20.

¹⁴⁹ *See id.* at 58.

¹⁵⁰ *See id.* at 20.

¹⁵¹ ARISTOTLE A. KALLIS, *NAZI PROPAGANDA AND THE SECOND WORLD WAR* 1–2 (Aristotle A. Kallis ed., 2008).

the propaganda anchor is firmly fixed in the sea-bed of social fundamentals. In this way, the audience can be brought to believe that the way the propagandist addresses a particular pressing issue of the day either accords with convictions and attitudes that have long been held within society, or at least does not violate them. Such congruence is, of course, often illusory. By undermining the validity of entrenched attitudes very slowly and in interconnection with other values that the society also shares, successful propaganda opts for long-term, gradual attitudinal change through sustained exposure to an alternative.¹⁵²

In sum, Kallis argues that propaganda cannot be modeled in a unidirectional fashion, as actors are not simply passive receptacles for a propagandist to simply fill with desired messages.¹⁵³ Additionally, the preexisting conditions of the host society strongly impact how audiences are to receive particular messages.¹⁵⁴ The “fundamentals of the existing value system” must be contended with and cannot be discounted, at least initially.¹⁵⁵ These values and associated behaviors may be altered over time, but at least from the onset of a propaganda campaign, these existing values must be recognized and engaged.¹⁵⁶

Kallis argues that all propaganda must “provide guiding principles for understanding the events presented, use ideological referents to supply meaning to the fragments of information that they have chosen to impart and thus maintain the consistency and continuity of the specific message” and to address three interconnected themes:

to bolster the moral validity of the state’s actions and at the same time minimise [sic] knowledge or embellish perception of the less pleasant aspects of its own side’s behavior . . . to exaggerate the alleged immorality or errors of the opponent(s) whilst consciously underestimating their more positive attributes . . . [pursue] the goal of audience integration . . . by a combination of ‘positive’ and ‘negative’ themes Thus, whilst the propagandists’ control over what actually happens is seriously limited and their response often reactive, the power of their position lies in their ability to organize the information and present it through a plethora of versatile techniques and devices to their carefully chosen recipients.¹⁵⁷

Kallis offers an understanding of propaganda which is implicitly

¹⁵² *Id.* at 4.

¹⁵³ *See id.* at 3–4.

¹⁵⁴ *See id.* at 2.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *See id.* at 3.

¹⁵⁷ KALLIS, *supra* note 151, at 5–6.

moralistic: the propagandist must produce representations which favor the propagandists own side while weakening their opponents moral standing through providing a steady stream of “positive” and “negative” themes.¹⁵⁸ Note that this overview of propaganda does not require deception or the deliberate dissemination of “disinformation,” but it does require two essential projects: filtering and emplotment:

If . . . propaganda is understood in a more morally and historical neutral context – as a universal factor in political legitimation regardless of regime features – then[,] its primary function is that of a *filter*, intending to sift through factual information and then construct a message based on that manipulated reality that is either more agreeable to its audience or aims to covert it to the regime’s rationale (and once again a combination of the two processes is common).

Factual material, even if not distorted or selectively manipulated, does not make much sense beyond its very specific contours of action and (immediate but never conclusive) result. An event is a mere instance – a fragment. The crucial process that invests it with meaning is its particular *emplotment*, its arrangement within a wider discourse of action and intention that links past, present and future in a meaningful, coherent way. This process operates on multiple levels of time, space and ambition. In the particular context of our discussion of NS propaganda in war, a specific battle rests on a situation-specific combination of separate micro-events, but is itself emplotted into a more macro-context (of a conflict between states, between ideologies[,] or even a historic crusade with long-term historical significance). This sort of emplotment . . . opens up opportunities for filtering ‘events’ by organising [sic] them into a specific meaningful discourse of juxtaposing its short-term outcomes to its medium-and-long-term significance.¹⁵⁹

The propagandist, like all other creators of mediated representations must necessarily be selective in the crafting and presentation of information and thereby “filter” available information for public consumption.¹⁶⁰ The necessity of “filtering” has been recognized by others; Edelman recognized that filtering data is necessary for making it informative and relevant to

¹⁵⁸ *Id.* at 6.

¹⁵⁹ *Id.* at 63–64.

¹⁶⁰ MURRAY EDELMAN, *CONSTRUCTING THE POLITICAL SPECTACLE* 107 (Univ. of Chicago Press 1988).

audiences¹⁶¹; and Herman and Chomsky¹⁶² view the filtering of news by mass media as a necessary reaction to the overwhelming potential of individual and ongoing potential “stories” to be represented.¹⁶³ Such recognitions do not excuse or weaken the potential hazards posed by filters: Edelman argues that filters can prevent data which might damage a particular political spectacle may be concealed (despite its relevance and validity); Herman and Chomsky argues that the danger of filters in American news coverage is that they favor the interests of media owners and other powerful social actors, which concealing information that could be harmful to these actors.¹⁶⁴ This does not necessarily mean deliberate deception, but rather the significant omission of important information or themes (such as emphasizing the alleged human rights violations of other states while ignoring similar occurrences by American allies or within the United States).¹⁶⁵ The propagandist, like journalists, will necessarily wish to represent certain themes, events, narratives, symbols and the like into order to create and sustain coherent corpus to audiences.¹⁶⁶ The creation of such representations necessarily involves emplotment, whereby specific events, ongoing phenomena, particular individuals and groups are all placed in a context which allows them to be made meaningful, coherent, and ultimately reinforcing for the message(s) that the propagandist is hoping to disseminate.¹⁶⁷ As Kallis suggests in the above passage, military propaganda (and history) are made meaningful and relevant to audiences through emplotment: a specific battle can be placed within the wider thematic context of an overall campaign or overarching progression (such as the “march of democracy”).¹⁶⁸ Such emplotment of events extends well beyond the propagandistic efforts of nation-states: social movements, non-governmental organizations, and other non-state actors all attempt to maintain (or expand) their legitimacy through connecting particular

¹⁶¹ *Id.* at 99–100.

¹⁶² EDWARD HERMAN & NOAM CHOMSKY, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA* 31 (Pantheon Books 2002).

¹⁶³ *Id.* (using as an example Turkish violence in the 1980s).

¹⁶⁴ EDELMAN, *supra* note 160, at 96; HERMAN & CHOMSKY, *supra* note 162, at xix, xlii.

¹⁶⁵ *See, e.g.*, HERMAN & CHOMSKY, *supra* note 162, at 243.

¹⁶⁶ *See, e.g., id.* at xiv, xv, lxi; *see also* KALLIS, *supra* note 151, at 1, 9.

¹⁶⁷ KALLIS, *supra* note 151, at 1.

¹⁶⁸ *Id.* at 64.

“victories” with larger efforts and/or movement goals.¹⁶⁹

Successful employment necessitates some degree of temporal organization of events and/or phenomena into a coherent chronology and reinforcement of the propagandistic spectacle being created.¹⁷⁰ Kallis argues that this process involves:

both *long-term-employment* and *short-term justification* are crucial components of persuasion. Success can be gauged in terms of psychological *integration* – and this integration can be positive (active endorsement of the regime’s policy and goals) or negative (a more complex process, whereby the audience eventually subscribes to the goals having first rejected the perceived alternatives), or actually both. . . . It is not enough for a regime, however popular, to proclaim the relevance of a seemingly disagreeable action to a putative distant utopia; it needs to convince its audience that this connection is evident, that the chosen short-term policy path is the optimal one, and that its expected outcome can contribute to the attainment of the long-term vision. Therefore, three distinct types of discourses interact and dovetail in any propaganda process: two long term (one positive and one negative) and one short term.¹⁷¹

Metaphorically, the propagandist must produce both a compelling and attractive background of the vision for the future and simultaneously a chilling, dystopian visage of what is to be feared while also offering short-term evidence of one or both visions in the foreground that reinforce one or both of the macro-narratives.¹⁷²

V. CASE STUDY: AFRICAN IVORY AND SPECTACLE

Leakey and Morell’s account of Richard Leakey, the creation of the Kenyan Wildlife Service and efforts to curtail elephant poaching and trade in ivory is a narrative that hinges on nationalism and spectacle.¹⁷³ In an effort to preserve Kenyan wildlife and the tourism industry that Kenya is dependent upon, Leakey attempted to alter societal and cultural perception of the value and desirability of ivory.¹⁷⁴ Leakey contends that ten days after beginning the position as head of Kenyan Wildlife Department (renamed the Kenyan Wildlife Service) he was

¹⁶⁹ See *id.* at 64, 65.

¹⁷⁰ *Id.* at 65.

¹⁷¹ *Id.*

¹⁷² KALLIS, *supra* note 151, at 64.

¹⁷³ See RICHARD LEAKEY & VIRGINIA MORELL, *WILDLIFE WARS: MY FIGHT TO SAVE AFRICA’S NATURAL TREASURES* 1, 2, 4–8 (St. Martin’s Press 2001).

¹⁷⁴ *Id.* at 1.

confronted with the sight of thousands of pounds of seized ivory tusks (as well as other animal items including “zebra skins and pelts of leopards, cheetahs, and other wild cats . . . about a hundred rhino horns And there were the trophies confiscated from curio shops: elephant feet that had been made into stools or umbrella stands, and belts, wallets, and purses made of elephant and zebra hide.”¹⁷⁵ Leakey states that this encounter, and the fact that his Department was expected to manage a sale of seized poached ivory, led him to the conclusion that the direct solution to the problems posed by illegal poaching – to burn it in a public spectacle of contempt for the ivory trade.¹⁷⁶ Leakey’s interest in both preserving elephants and weakening the ivory trade was well founded: Leakey notes that in 1979, 85,000 elephants lived in Kenya; in 1989 only 22,000 remained.¹⁷⁷ Moreover, Leakey perceived that protecting Kenyan wildlife was an essential element in elevating Kenya as a whole: “Clean air, clean water, plentiful forests, and a human population that is well fed, educated, and reasonably affluent is our goal in Kenya. Saving the elephants is symbolic—a means to achieve these greater objectives.”¹⁷⁸ Therefore, Leakey emplotted the illegal elephant hunting as “economic sabotage: elephants were the flagship species of our wildlife and the basis for Kenya’s biggest industry, tourism. The decimation of elephants and other wildlife therefore posed a direct economic threat to our country.”¹⁷⁹ To pursue this end, Leakey began an internal effort to transform the Kenyan Wildlife Service into a professional body capable of protecting the indigenous animals in the Kenyan national parks (modeled in the 1930s on the national parks in the United States) which included fighting poachers (and creating fears that the increasingly well-armed and trained park rangers might be a vehicle for a military-style coup).¹⁸⁰ Leakey went on an international fundraising tour to both raise funds for the parks and to begin to stigmatize the ivory trade through press interviews which highlighted the connections between ivory commodities and the frequent illegal slaughter of

¹⁷⁵ *Id.* at 2–3.

¹⁷⁶ *Id.* at 3.

¹⁷⁷ *Id.* at 2.

¹⁷⁸ *Id.* at XI.

¹⁷⁹ LEAKEY & MORELL, *supra* note 173, at 6.

¹⁸⁰ *Id.* at 7, 9; see, e.g., *Expansion of the National Park Service in the 1930s: Administrative History*, NAT’L PARK SERV., http://www.nps.gov/parkhistory/online_books/unrau-williss/adhi3.htm (last modified Mar. 14, 2000).

elephants for this valuable commodity.¹⁸¹ Leakey perceived a public burning of ivory as way to demonstrate internationally and internally that the standing of ivory had shifted and would invigorate the KWS staff:

The idea of burning the ivory gave me a boost. For weeks I had been searching for something that would fire up my staff and shake them out of their inertia and despondency. I was also now certain that burning the ivory would be worth more to us than selling it. Last, I believed it would help bring the poaching war to an end once and for all

When I laid out my plan to President Moi the next morning, he looked at me as if I were slightly crazed. ‘Burn the ivory?’ he asked, aghast. ‘It is worth at least 3 *million* dollars.’ He thought about how angry Kenya’s citizens would be with him for permitting this wasteful display.

‘I know it sounds mad,’ I admitted. ‘But we need to take bold action. Most of the world doesn’t believe we’re committed to saving our elephants. Burning the ivory will show them that we are. We’ll get a huge amount of publicity and good will from doing this. I’m certain of it.’

‘It would also help us in our battle with the poachers,’ . . . [a]bout 40 percent of Africa’s ivory went to the West for trinkets and baubles. I told Moi that we were to make the very idea of buying and wearing ivory abhorrent to Europeans and Americans, we would eliminate almost half the market for it. And without a market, there would be no poaching.

. . . .

I emphasized again the enormous public relations value involved, not only to Kenya’s image in the eyes of conservationists, but to the government itself. If the burning was part of a formal ceremony in which he—Kenya’s president—were to light the fire and then address the press, the government would gain credibility at a time when it was facing increasing criticism from the West on human rights issues. . . . Animal rights and human rights were generally closely linked, I pointed out, and they often supported each other on issues. Thus, pleasing the animal lobby would surely help appease

¹⁸¹ LEAKEY & MORELL, *supra* note 173, at 142.

his human rights critics.¹⁸²

Leakey's plan came to fruition on July 18 in the form of a public political and mediated spectacle:

I joined President Moi on a grassy glade just below the Wildlife Department's headquarters at Nairobi National Park. A huge pyramid of more than two thousand elephant tusks rose some twenty feet above us in a sort of macabre sculpture. Many of the tusks had been painted with a clear, highly flammable plastic, and placed around a stack of straw bales and firewood. A mixture of kerosene and petrol would be pumped into the straw bales under pressure. It would produce 'a huge, spectacular fire,' Robin Hollister, the special-effects man, had promised me. I had alerted the press well in advance, and the world's media turned out in force to broadcast the event. ABC set up a live satellite link with the Good Morning America television studios in New York.¹⁸³

President Moi pronounced, "To stop the poacher, the trader must also be stopped. And to stop the trader, the final buyer must be convinced not to buy ivory. I appeal to people all over the world to stop buying ivory" and then lit the pyre, which successfully combusted.¹⁸⁴ Leakey noted that the fire was well publicized, thereby bringing the event in Nairobi National Park to an international audience:

The next day pictures of the ivory fire filled the front pages of newspapers around the world. It was estimated that between the TV coverage and the pictures in magazines and newspapers, some 850 million people saw the elephant tusks burn. The whole world now knew about the African elephant crisis, and Kenya had taken the lead.¹⁸⁵

Leakey's account does not suggest that this single spectacle served to end the ivory trade, but he does suggest that this political act propelled international legal changes (such as the CITES elevation of elephants to Appendix I) and served to deal a significant blow to ivory as a desirable commodity by affluent consumers.¹⁸⁶

VI. CASE STUDY: MICHAEL VICK AND DOGFIGHTING

On April 25, 2007, the home and surrounding property in Surry

¹⁸² *Id.* at 49–51.

¹⁸³ *Id.* at 91.

¹⁸⁴ *Id.* at 92.

¹⁸⁵ *Id.*

¹⁸⁶ *See id.* at 85, 142.

County, Virginia of Atlanta Falcon Michael Vick was searched by local police as part of a drug investigation.¹⁸⁷ The search results in the seizure of more than 50 dogs, on the grounds that they were used in illegal dog fighting.¹⁸⁸ On June 7 the same property is searched by federal officials; the searches result in an 18 page federal indictment released on July 17, 2007 against Vick and other co-defendants (in which Vick's name is mentioned 48 times).¹⁸⁹ Vick and other co-defendants are charged with running "Bad Newz Kennels" as a dogfighting ring since 2001, including sponsoring betting, and the killing of poorly performing dogs (pit bull terriers).¹⁹⁰ Vick and his co-defendants plead not guilty to the charges in the indictment on July 26; this unified stance is very brief.¹⁹¹ On July 30 co-defendant Tony Taylor pleads guilty to the federal dogfighting charges and agrees to testify against Vick; on August 17 Quianis Phillips and Purnell Peace, the other co-defendants in the federal indictment—also plead guilty to dogfighting and executing dogs that perform poorly (by hanging and drowning).¹⁹² On August 23, Vick signs a plea agreement, admitting to dogfighting and killing some dogs (but denying gambling).¹⁹³ On August 27 Vick pleads guilty in the federal courthouse in Richmond Virginia and begins serving his sentence on November 19; on December 10 Vick is sentenced to 23 months in prison and 3 years' probation.¹⁹⁴

While Vick's downfall might appear simply to be the result of

¹⁸⁷ *Vick Suspended Indefinitely After Filing Plea*, ASSOCIATED PRESS, <http://www.nfl.com/news/story/09000d5d801c1644/article/vick-suspended-indefinitely-after-filing-plea> (last updated July 26, 2012, 8:55 PM).

¹⁸⁸ Veronica Goreley Chufo, *Drug and Dog Fighting Investigation at Property Owned by Michael Vick*, DAILY PRESS (Apr. 26, 2007), <http://www.freerepublic.com/focus/f-news/1824255/posts>.

¹⁸⁹ Indictment, of U.S. v. Purnell A. Peace, No. 3:07CR274 (E.D.V.A. July 17, 2007); *Vick Suspended Indefinitely After Filing Plea*, *supra* note 187.

¹⁹⁰ Indictment, *supra* note 189, at 2, 3, 4, 5, 6.

¹⁹¹ *Vick to Enter Guilty Plea Monday at Federal Courthouse*, ASSOCIATED PRESS (Aug. 27, 2007, 8:53 AM), <http://www.nfl.com/news/story/09000d5d801d9618/article/vick-to-enter-guilty-plea-monday-at-federal-courthouse> (last updated July 26, 8:55 PM).

¹⁹² *Id.*

¹⁹³ *Id.*; *Vick Pleads to Dogfighting Charge; Says He Didn't Make 'Side Bets'*, ESPN (Aug. 28, 2007), <http://sports.espn.go.com/nfl/news/story?id=2989824>.

¹⁹⁴ *Apologetic Vick Gets 23-Month Sentence on Dogfighting Charges*, ESPN (Dec. 11, 2007), <http://espn.go.com/nfl/news/story?id=3148549>; *Vick Surrenders Early to Begin Dogfighting Sentence*, CNN (Nov. 20, 2007), <http://www.cnn.com/2007/US/law/11/19/vick.surrenders/index.html?iref=topnews>. <http://sports.espn.go.com/nfl/news/story?id=3148549>; *Vick to Enter Guilty Plea Monday at Federal Courthouse*, *supra* note 191.

well planned and executed legal action, the roles of political actors, organizations, and moral entrepreneurs cannot be ignored.¹⁹⁵ Vick entered this maelstrom with significant economic resources: in 2004 Vick signed a 10 year \$130 million dollar contract with the Atlanta Falcons that also included \$37 million in bonuses and a base salary of \$6 million.¹⁹⁶ Additionally, Vick was a spokesperson for AirTran Airways, Nike, and Reebok.¹⁹⁷ Despite these significant economic resources, Vick alienated himself from both the Atlanta Falcons owner Arthur Blank and the National Football League (NFL) Commissioner by initially denying the charges made in the federal indictment; following the indictment, on July 23 National Football League Commissioner Goodell orders Vick not to attend the Atlanta Falcons training camp.¹⁹⁸ This alienation was effectively formalized when Blank and Goodell joined with other potential supporters of Vick in a letter condemning animal cruelty:

In a letter to Goodell, Falcons owner Arthur Blank and Vick's corporate sponsors, hip-hop mogul Russell Simmons and the Rev. Al Sharpton joined with People for the Ethical Treatment of Animals and the Humane Society of the United States in calling for strong stands against animal cruelty. "Today, we sound a clarion call to all people: Stand up for what is right, and speak out against what is wrong. Dogfighting is unacceptable. Hurting animals for human pleasure or gain is despicable. Cruelty is just plain wrong" the letter said.¹⁹⁹ Beyond this loss of institutional support from the Atlanta Falcons, the NFL, and other supporters, and the creation of a united front by these parties with prominent animal advocacy organizations, Vick was also morally condemned by the Democratic Senator Robert Byrd, from West Virginia, on the Senate Floor on July 19, 2007:

Let that word resound from hill to hill and from mountain to mountain, from valley to valley across this broad land . . . May God help those poor souls who would be so cruel. Barbaric! Hear me! . . .

¹⁹⁵ See Veronica Gorley Chufó & Alicia P.Q. Wittmeyer, *NFL: Wait And See*, DAILY PRESS (July 19, 2007), http://articles.orlandosentinel.com/2007-07-19/sports/VICK19_1_michael-vick-eastern-district-district-of-virigina; *Sharpton Weighs In On Vick, Dogfighting*, WSBTV (July 18, 2007), <http://m.wsbtv.com/new/news/Sharpton-weighs-in-on-vick-dogfighting/nJWFz/>.

¹⁹⁶ Len Pasquarelli, *Falcons Take Cap Hit in Release of Vick*, ESPN (June 13, 2009), <http://sports.espn.go.com/nfl/news/story?id=4255981>.

¹⁹⁷ Richard Sandomir, *In Endorsements, No Athlete Is a Sure Thing*, N.Y. TIMES, Aug. 1, 2007, at D5.

¹⁹⁸ *Id.*

¹⁹⁹ Chufó & Wittmeyer, *supra* note 195; *Sharpton Weighs In On Vick, Dogfighting*, *supra* note 195.

I am confident that the hottest places in hell are reserved for the souls of sick and brutal people who hold God's creatures in such brutal and cruel contempt One is left wondering [w]ho are the real animals: the creatures inside or outside the ring?²⁰⁰

By the end of July 2007, Vick had lost all of his corporate sponsors.²⁰¹ After a court ruling that Vick could be sued in order to recover his salary, comedian and commentator Dave Barry noted, in an end of the year review, that, "the big sports story is Michael Vick, whose guilty plea in connection with a dogfighting operation effectively ends his football career, costing him a fortune and setting a standard for moronic, immoral and self-destructive professional-athlete behavior[.]"²⁰² The implosion of Vick in less than eight months, from multi-millionaire athlete and corporate spokesperson, to prisoner and fodder for end of the year comedic renderings, suggests the potency of moralization.²⁰³

VII. SPECTACLES AND RESURGENT CONTROVERSIES: THE CASE OF FOIE GRAS

As Caro notes, the practice of foie gras has existed for over 5,000 years²⁰⁴ and has been the subject of several waves of controversy and moral condemnation during that time.²⁰⁵ Foie gras is the fattened livers of geese (and more recently ducks), which are deliberately increased through gavage, or force feeding.²⁰⁶ Foie gras is produced in parts of the United States, Canada, and France, in relatively similar fashions: the geese or ducks are kept in open

²⁰⁰ Charles Babington, *Sen. Byrd Calls Dog Fights 'Barbaric'*, THE WASHINGTON POST (July 19, 2007, 8:20 PM), http://www.washingtonpost.com/wp-dyn/content/article/2007/07/19/AR2007071902022_pf.html (internal quotation marks omitted).

²⁰¹ *Michael Vick Rises Again*, EXAMINER.COM (July 13, 2012, 2:11AM), <http://www.examiner.com/article/michael-vick-rises-again>.

²⁰² Dave Barry, *An Inconvenient Year*, THE WASHINGTON POST (Dec. 30, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/10/AR2008011003142.html>.

²⁰³ *Animal Fighting Case Study: Michael Vick*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/laws-cases/animal-fighting-case-study-michael-vick/> (last updated Jan. 2011); Barry, *supra* note 202; *Michael Vick Rises Again*, *supra* note 201; *Michael Vick Sentenced to 23 months in Jail for Role in Dogfighting Conspiracy*, FOX NEWS (Dec. 10, 2007), <http://www.foxnews.com/story/2007/12/10/michael-vick-sentenced-to-23-months-in-jail-for-role-in-dogfighting-conspiracy.html>.

²⁰⁴ MARK CARO, THE FOIE GRAS WARS: HOW A 5,000-YEAR-OLD DELICACY INSPIRED THE WORLD'S FIERCEST FOOD FIGHT 1 (Simon & Schuster 2009).

²⁰⁵ *Id.* at 23.

²⁰⁶ *Id.* at 6.

spaces or ranges until they are about 12 weeks old, then the birds are placed in group pens (largely in the United States) or in individual pens (in Canada and France).²⁰⁷ While in the pens, the birds that experience gavage:

These involve a metal tube or pipe being lowered down the bird's throat two or three (or, with some geese, four) times daily over a period of two to four weeks. For about two to 10 seconds each time, the feeder delivers a corn-based meal down the bird's esophagus either by way of a funnel and gravity or via a pneumatic or hydraulic machine. The gullet fills up with food, and the bird digests it before the next feeding.²⁰⁸

This process is intended to both mimic and accelerate the liver fattening that migratory ducks and geese engage in prior to migration, whereby the liver fat sustains birds during migration, and to produce livers swollen with fat for human consumption.²⁰⁹

Foie gras has existed for thousands of years, including brief descriptions in *The Odyssey*, and has received praise as delicious, and condemnation as an indicator of decadent indulgence.²¹⁰ Despite its near disappearance in Parisian restaurants following the French Revolution, foie gras was established as a fine dining staple in France and the United States by the end of the nineteenth century.²¹¹ The sustained foie gras revival weathered the industrialization of food production, the Great Depression, the Holocaust, and the coterminous destruction of much of European Jewish culture (including raising ducks and geese for foie gras) and was established in Israel and France following World War II.²¹² Foie gras continued its paradoxical expansion as object of desire and moral condemnation: in 2007 in France, 35 million Mulard ducks, a hybrid breed of ducks created largely for foie gras production, were raised.²¹³ Simultaneously during this period of expanded foie gras production and consumption, force-feeding for food consumption was banned in several European countries including Norway, Denmark, Italy, Germany, and the Czech Republic.²¹⁴ Other nations, including Switzerland, Sweden, and the United Kingdom, moved to curb foie gras production; in 2003,

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ CARO, *supra* note 204, at 23, 24.

²¹¹ *Id.* at 31–32.

²¹² *Id.* at 32.

²¹³ *Id.* at 33.

²¹⁴ *Id.*

the Israeli Supreme Court banned foie gras production through extending existing animal cruelty laws to foie gras, but not banning the importation of foie gras.²¹⁵

The controversy over foie gras is a useful case study regarding spectacles, because the consumption of foie gras has been elevated and challenged within the spectacular.²¹⁶ Foie gras production has been championed by several prominent “celebrity chefs” whose emergence has been paralleled by mediated food culture in magazines and television programs, which have popularized gourmet dining.²¹⁷ Chicago Chef, Charlie Trotter, is an exemplary embodiment of this phenomenon. Beginning with the opening of his 1987 restaurant in Chicago’s Lincoln Park, Trotter became “a flag bearer in a national haute cuisine revolution[,]” in part because of a mediated presence that featured both Trotter’s culinary skills (*The Kitchen Sessions with Charlie Trotter* on PBS) and volatile personality (including being named by *Chicago magazine* as one of Chicago’s 10 meanest persons of 1996 and shouting to a cook “I will kill your whole family if you don’t get this right! I need this perfect!” in the 1997 romantic comedy film *My Best Friend’s Wedding*, starring Julia Roberts).²¹⁸ Both mediated representations of Trotter became significant in his subtle refutation of foie gras and the mediated conflict, which followed.²¹⁹ Despite his previous publication of *Charlie Trotter’s Meat & Game* in 2001, featuring 14 foie gras recipes, serving foie gras in his restaurant, and even posing for cookbook photographs on foie gras farms, Trotter ceased serving foie gras in 2002.²²⁰ This termination was unannounced, and only became public knowledge in 2005 during an interview with *Chicago Tribune* Restaurant Critic Phil Vettel, who mentioned it in the course of an article about the competition between Trotter and fellow Chicago Chef Rick Tramonto, a former employee of Trotter’s.²²¹ The discussion of this overtly economic conflict drew upon foie gras as either a symbol of suffering and cruelty (Trotter’s stated reason for abandoning foie gras) and Tramonto’s statements regarding Trotter’s apparent hypocrisy in reservations over serving foie gras which did not

²¹⁵ *Id.*

²¹⁶ See CARO, *supra* note 204, at 17.

²¹⁷ *Id.*

²¹⁸ *Id.* at 2–3.

²¹⁹ *Id.* at 4, 7–9.

²²⁰ *Id.* at 3–4.

²²¹ *Id.* at 4–5, 7.

displace Trotter's use of other meat-based dishes (and Trotter's outspoken condemnation of animal rights claims).²²² This conflict was featured in articles in the *Chicago Tribune* (which withheld a front page story for one week regarding the conflict because of the growing media coverage of the comatose Terri Schiavo and a concern over another appearances of insensitivity because of discussions of feeding tubes), the *New York Times*, the *New York Post* and *Newsweek*, and indirectly gained attention because of a visible animal rights campaign against fellow luxury chef Wolfgang Puck in Los Angeles and his use of foie gras.²²³

Beyond mediated clashes of famous chefs in urban centers, others spectacles manufactured around foie gras emerged during this same period.²²⁴ A covertly filmed video shot on one of the farms, which serves Elevages Perigord in Quebec, the largest Canadian foie gras company, was posted on the Internet by the Global Action and Farm Sanctuary.²²⁵ According to Caro, the video was filmed "by a temporary worker with a hidden camera, the footage shows employees kicking ducks, wringing their necks and swinging them like baseball bats to smash their heads against hard surfaces. (It also depicts just-sexed female ducklings being gassed, but not always killed, in garbage bags.)"²²⁶ For animal rights activists, this video provided undeniable evidence of the inherent cruelty of foie gras production and the violence that the intensive rearing and slaughtering of animals for human consumption necessarily evokes cruelty amongst those employed in these industries.²²⁷ While not addressing the overall production of foie gras, Elevages Perigord President, Emmanuel Nassans, in response to the video, stated that one worker who had abused ducks on one of the farms had been suspended and any other workers who abused animals would be fired. In sum, the efficacy of the video was partly compromised because the most vivid forms of violence could be explained as aberrant and unsanctioned violence by individual employees, not systematic animal cruelty.²²⁸

The question of whether or not the systematic and enormous in scale and scope rearing of animals for human consumption (often

²²² CARO, *supra* note 204, at 3–5, 7.

²²³ *Id.* at 8–10.

²²⁴ *See id.* at 56, 57.

²²⁵ *Id.* at 40, 41.

²²⁶ *Id.* at 41.

²²⁷ *Id.*

²²⁸ CARO, *supra* note 204, at 41.

termed “factory farming”) is inherently cruel has been a central concern of the contemporary animal rights movement and many animal welfarists.²²⁹ This was also a central concern in the production of foie gras: was the deliberate force-feeding and confinement of ducks and geese prior to slaughter inherently cruel even when workers and owners of foie gras farms did not condone or tolerate other forms of abuse (like that captured in the Elevages Perigord video).²³⁰ This case had been made in a 1991 anti-foie gras video, *Victims of Indulgence*, released by People for the Ethical Treatment of Animals (PETA) (narrated by Sir John Gielgud).²³¹ The video featured covertly obtained footage from Commonwealth Foie Gras of force-feeding, accompanied by experts describing the practice as inherently cruel and then followed by an appeal by Gielgud for viewers never to purchase or consume foie gras and to inform others why foie gras was cruel.²³² Ironically, the film was released and in circulation during the 1990s and early 2000s when foie gras was becoming an established staple of gourmet dining.²³³

Another attempt to generate public outrage surrounding foie gras production through spectacular films began in the early 2000s with the efforts of three animal rights activists, Bryan Pease, Sarahjane Blum, and Ryan Shapiro.²³⁴ Shapiro viewed foie gras as an ideal target for moralistic attack not because of the number of animals killed for foie gras (about 500,000 ducks annually, roughly equivalent to the number of broiler chickens slaughtered per day by some larger chicken slaughterhouses) but because it could be a battle that the animal rights movement could fight and win, and possibly introduce other people to a wider spectrum of animal rights concerns: “a tremendous stepping stone to broader issues of factory farming. It’s not that far of a leap to show that while this is so clearly and egregiously cruel and needless, it really isn’t significantly different from any of the other billions of animals who are suffering on factory farms.”²³⁵

In order to inform the public moral imagination about foie gras production, Pease began covert filming at Sonoma Foie Gras in California in 2002, and later at Hudson Valley Foie Gras in

²²⁹ *Id.* at 69.

²³⁰ *Id.* at 57.

²³¹ *Id.* at 57.

²³² *Id.*

²³³ See *supra* notes 217–222 and accompanying text (history of foie gras).

²³⁴ CARO, *supra* note 204, at 68, 69.

²³⁵ *Id.* at 69.

Sullivan County, New York with Blum and Shapiro.²³⁶ Pease and his supporters entered the grounds of Sonoma Foie Gras at least twelve times (late at night or early in the morning) to film the farm conditions.²³⁷ Despite difficulties in filming (both opposition by employees and failures by a concealed pinhole spy camera to produce visible footage), Pease and the other activists finally captured graphic and compelling footage: the activists filmed two injured ducks in pens that were unable to prevent a rat from chewing bloody wounds in their posteriors while being filmed under a battery-powered halogen light.²³⁸ The activists filmed what Caro termed “Rat Munching on Ducks’ Bloody Ass Wounds” and then transported the ducks to a veterinarian for treatment.²³⁹

In New York, Blum and Shapiro began covert footage filming at Hudson Valley Foie Gras, originally intending to both provide newsworthy footage of foie gras production and to record “open rescue”:

Videotaping themselves and other volunteers removing ducks from their cages and getting them veterinary help. Such work was popularized by an American-born activist living in Australia named Patty Mark, and Compassion over Killing, Paul Shapiro’s group, followed her lead by having members videotape themselves rescuing caged layer hens, releasing the footage to the press and hosting news conferences.²⁴⁰

The production of spectacles was central to this effort, and led to a strategic split between Pease and Blum and Shapiro.²⁴¹ According to Blum:

Our intentions kind of just evolved from it being, ‘Hey, let’s take a camcorder in and take some pictures and see what we get’ to ‘Let’s really figure out how to create a cornerstone piece that groups nationwide can take to restaurateurs, can take to their representatives in government, can take to the media and can use again and again to really educate about something nobody knows anything about . . .’²⁴²

In pursuing the goal of a self-contained spectacle, Blum and Shapiro developed a website, GourmetCruelty.com, where two edited versions of their covert footage were referenced as *Delicacy*

²³⁶ *Id.* at 63, 69.

²³⁷ *Id.* at 69.

²³⁸ *Id.* at 64, 65.

²³⁹ *Id.* at 65.

²⁴⁰ CARO, *supra* note 204, at 72.

²⁴¹ *Id.*

²⁴² *Id.*

of *Despair*.²⁴³ One version (eleven minutes long) focuses on foie gras and is intended for restaurants and politicians.²⁴⁴

The longer version (16 minutes) features an additional five minutes of “open rescue,” which visually juxtapose the ducks being confined in cages and subsequently moving freely, and an appeal to viewers to become vegans.²⁴⁵ Emphasizing that the film does not simply represent one case, *Delicacy of Despair* includes footage from both Hudson Valley and the infamous Sonoma segment involving a rat attempting to eat live ducks.²⁴⁶

As a device intended for existence within the spectacular, Blum and Shapiro sought various media outlets for *Delicacy of Despair*, before it was first utilized on September 16, 2003 in a San Francisco ABC-TV “I-Team Investigation” report.²⁴⁷ The broadcast relied heavily on excerpts from *Delicacy of Despair* (including the aforementioned rat attacking two ducks), is accompanied by statements by avian veterinarian, Laurie Siperstein-Cook, and provided a sympathetic account of the illegal trespass through describing the rehabilitation of the fifteen ducks taken from Hudson Valley and Sonoma Foie Gras farms.²⁴⁸ The controversy grew through a September 18 *Los Angeles Times* article and in a September 19 follow-up television broadcast in which Guillermo Gonzalez (owner of Sonoma Foie Gras) inadvertently reaffirmed a canonical animal rights claim: that force-feeding ducks was inherently cruel.²⁴⁹ Subsequently, *Time Magazine* and the *New York Times* covered the controversy, and by the following spring Animal Planet broadcasted a documentary concerning Blum, Shapiro, and *Delicacy of Despair*.²⁵⁰ Despite the eventual arrests of Blum and Shapiro for trespass, which ultimately led to misdemeanor convictions and community service (making Blum the first person in the United States to be arrested for open rescue), momentum in California continued to support the animal rights claim that force-feeding of animals is inherently cruel.²⁵¹ California bill SB 1520, which prohibited the force-feeding of ducks and geese (effectively criminalizing the production of foie gras),

²⁴³ CARO, *supra* note 204, at 73.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 73.

²⁴⁶ *Id.* at 74.

²⁴⁷ *Id.* at 76.

²⁴⁸ *Id.* at 76–77.

²⁴⁹ CARO, *supra* note 204, at 77–78.

²⁵⁰ *Id.* at 79.

²⁵¹ *Id.* at 79–81.

was co-sponsored by the Association of Veterinarians for Animals Rights, Farm Sanctuary, Lawyers for Animals, and was publicly promoted by actress Bea Arthur and Melissa Rivers.²⁵² Despite testimony in which the inherent cruelty of foie gras production was questioned, SB 1520 was signed into law by Governor Schwarzenegger on September 29, 2004 (with a provision enacting the law beginning in 2012 to allow Gonzales, California's only foie gras producer, to change businesses).²⁵³ In 2015, a federal judge blocked the California ban and California Attorney General Kamala D. Harris stated that California would appeal the ban.²⁵⁴

VIII. CASE STUDY: INNOCENT VICTIMS AND "UNNECESSARY FUSS"

On May 28, 1984 elements of the Animal Liberation Front (ALF) penetrated the laboratory of Thomas Gennarelli at the University of Pennsylvania.²⁵⁵ This raid resulted in the seizure of what were later termed the "Watergate tapes of the animal rights movement": over 60 hours of videotapes of Gennarelli's own research on test subject baboons, which were deliberately subjected to head traumas.²⁵⁶ While these tapes were quite graphic in nature and understandably troubling depictions of animal research, these forms of documentations were potentially defensible in that they represented animal-based research, which might hold benefits for humans who suffered from head traumas inflicted through automobile accidents or other causes.²⁵⁷ Such justifications, however, were eroded by the fact that Gennarelli's own research tapes documented several violations of the Federal Animal Welfare Act.²⁵⁸ Such charges were potentially damning in that Gennarelli had received roughly one million dollars annually in federal grants to conduct this research since 1971, and these tapes (or other documents) did not reveal any scrutiny or sanctions by federal government officials regarding violations of the Federal Animals Welfare act.²⁵⁹

²⁵² *Id.* at 81.

²⁵³ *Id.* at 84.

²⁵⁴ *State Appeals Court Ruling That Overturned Foie Gras Ban*, CBS SACRAMENTO (Feb. 4, 2015, 6:41 PM), <http://sacramento.cbslocal.com/2015/02/04/fois-gras-ban/>.

²⁵⁵ LAWRENCE FINSSEN & SUSAN FINSSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 67 (Twayne Publishers 1994).

²⁵⁶ *Id.* at 68.

²⁵⁷ *Id.* at 67.

²⁵⁸ *Id.* at 68.

²⁵⁹ *Id.* at 67-68.

As the Gennarelli research tapes were graphic in nature, derived from an unimpeachable source (Gennarelli's own data), and documented government-supported animal abuse, these tapes were a strong candidate for deployment in efforts to alter the public moral imagination regarding animal experimentation.²⁶⁰ The research tapes were compiled by People for the Ethical Treatment of Animals (PETA) into a 30-minute documentary titled "Unnecessary Fuss" (The title was derived from an 1983 interview with Gennarelli about possible public reactions to his research.)²⁶¹ Copies of "Unnecessary Fuss" were distributed to the *New York Times*, the *Washington Post*, NBC's "Nightly News" and the Cable News Network (CNN) (which broadcast clips from the compilation).²⁶² Two screenings of "Unnecessary Fuss" also occurred on Capitol Hill.²⁶³ The mediated publicity of these tapes was amplified by a campaign of civil disobedience at both the University of Pennsylvania and the National Institute of Health (NIH) (the primary source of Gennarelli's funding).²⁶⁴ The synthesis of traditional protests, civil disobedience, public outcry generated as a result of the dissemination of "Unnecessary Fuss", congressional pressure and a lack of a systemic response from animal experimentation advocates led to the closure of Gennarelli's laboratory – the first time in American history that a federally-funded research laboratory had been closed as a result of public protests informed by mediated images.²⁶⁵

IX. CASE STUDY: THE SEA SHEPHERD AND SPECTACULAR CONFLICT

The Sea Shepherd Organization, created in 1977 by Paul Watson (a co-founder of the environmental group Greenpeace), provides an excellent example of how direct action may be mediated in order to directly communicate these actions to an audience at a significant social and/or geographic distance.²⁶⁶ Watson founded the Sea Shepherd Organization after a break with Greenpeace regarding

²⁶⁰ See *id.* at 69 (discussing how a demonstration drew 1,500 people to the campus).

²⁶¹ FINSSEN & FINSSEN, *supra* note 255, at 68.

²⁶² *Id.* at 71.

²⁶³ *Id.* at 69.

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 70–71; JASPER & NELKIN, *supra* note 145, at 2.

²⁶⁶ DEAN KUIPERS, OPERATION BITE BACK: ROD CORONADO'S WAR TO SAVE AMERICAN WILDERNESS 24–25 (Bloomsbury 2009).

applicable strategies in pursuit of environmental or animal protection²⁶⁷ (as Greenpeace members, Watson was televised attempting to disrupt Soviet whaling in Zodiac boats on *The Undersea World of Jacques Cousteau*).²⁶⁸

The core strategy of Watson and the Sea Shepherd Organization has been direct confrontation of whaling vessels at sea with the ships of the Sea Shepherds, the later named after publicly recognized animal advocates including Farley Mowat, Steve Irwin, and Cleveland Armory in order to interrupt and possibly disrupt commercial whaling.²⁶⁹ Prior As noted by Heller in his 2007 account of being aboard the *Farley Mowat*, Watson succinctly summarizes the Sea Shepherd strategy as “sink ships, but don’t break laws.”²⁷⁰ The actions of the Sea Shepherds have been the subject of a series aired on *Animal Planet* for seven seasons of varying length beginning in 2008.²⁷¹

The Sea Shepherd Organization legitimizes its actions through appeals to international law and the scientific community in order to appeal to broad audiences that the actions undertaken by the Sea Shepherd organization are defending both marine life and the legal statutes against callous disregard and indifference towards law.²⁷² Watson’s statement refers a portion of the justification of the Sea Shepherd’s actions: that commercial whaling – especially in international oceanic sanctuaries – is illegal, and therefore actions undertaken to disrupt such hunts are legally sanctioned.²⁷³ Watson argues that one of the primary justifications cited by Japanese whalers – that they are actually gathering data on

²⁶⁷ *Id.* at 24–25.

²⁶⁸ *Id.* at 23.

²⁶⁹ See *The History of Sea Shepherd*, SEA SHEPHERD, <http://www.seashepherd.org/who-we-are/our-history.html> (last visited Oct. 27, 2015).

²⁷⁰ PETER HELLER, *THE WHALE WARRIORS: THE BATTLE AT THE BOTTOM OF THE WORLD TO SAVE THE PLANET’S LARGEST MAMMALS* 76 (Free Press 2007).

²⁷¹ See *About Whale Wars*, ANIMAL PLANET (Aug. 13, 2012), <http://www.animalplanet.com/tv-shows/whale-wars/about-this-show/about-whale-wars/>.

²⁷² See generally *International Laws & Charters*, SEA SHEPHERD CONSERVATION SOC’Y, <http://www.seashepherd.org/who-we-are/laws-and-charters.html> (last visited Oct. 27, 2015) (explaining legitimacy of actions in defending marine life in accordance with international law).

²⁷³ See HELLER, *supra* note 270, at 76 (noting that Watson believed “that he was simply destroying property used in criminal activities, upholding international law.”). See generally *Mandate*, SEA SHEPHERD CONSERVATION SOC’Y, <http://www.seashepherd.org/who-we-are/mandate.html> (last visited Oct. 27, 2015) (describing authority to disrupt illegal activities in international waters).

whales and therefore their actions are legally sanctioned – are false and indefensible.²⁷⁴ Conversely, Watson argues that he and the Sea Shepherds are acting on behalf of whales and other marine mammals and in keeping with international law:

Our intention is to stop the criminal whaling. We are not a protest organization. We are here to enforce international conservation law. We don't wave banners. We intervene. . . . I don't give a damn what you think. My clients are the whales and the seals. If you can find me one whale that disagrees with what we're doing, we might reconsider.²⁷⁵

Despite efforts to elevate the status of whales and seals to “clients” worthy of protection, the Sea Shepherd’s primary strategy is to engage in direct actions against the Japanese whaling fleet (consisting of attempts to block whaling vessels from whales by superimposing the *Farley Mowat* between the whalers and their targets, throwing foul-smelling butyric acid onto the decks of the Japanese fleet to both make the decks impassible and in the hopes of contaminating whale meat, and deploying “prop foulers” in the hopes of paralyzing or destroying the engines of the Japanese vessels) and through a rapid mediation and dissemination of the activities of the *Farley Mowat* and the Japanese whaling fleet to news media and supporters.²⁷⁶ Heller reports that, while the activities of the *Farley Mowat* themselves have limited effectiveness in actually inhibiting the Japanese whaling fleet, the press dispatches transmitted to the Sea Shepherd’s supporters and others become tactically significant in this conflict.²⁷⁷ For example, Heller notes that due to negative public sentiment generated by communications from the Sea Shepherd and Greenpeace, the Japanese whaling fleet is unable to enter an Australian whaling fleet in order to refuel, thereby delaying and limiting their hunt.²⁷⁸ Even a near collision between the *Farley Mowat* and the much larger *Nisshin Maru* is understood in terms of channeling political

²⁷⁴ Peter Heller, *The Whale Warriors, Whaling in the Antarctic Seas*, NATIONAL GEOGRAPHIC, <http://www.nationalgeographic.com/adventure/0605/features/whales-2.html> (last visited Oct. 27, 2015) (Watson describing Japanese research as bogus).

²⁷⁵ *Id.* (internal quotation marks omitted).

²⁷⁶ *See id.*

²⁷⁷ *See id.*

²⁷⁸ *See generally id.*; MarEx, *Sea Shepherd Severs Fuel Supply to Japanese Whaling Fleet*, THE MARITIME EXECUTIVE, <http://www.maritime-executive.com/article/Sea-Shepherd-Severs-Fuel-Supply-to-Japanese-Whaling-Fleet> (last visited Oct. 27, 2015) (describing cut off of Japanese fuel supply in Australian waters).

pressure and public outrage against the Japanese practice of whaling, as revealed in a conversation between Heller and Watson:

‘There was a point there where it was up to him to whether we were T-boned or not.’

‘Yes, he definitely had that choice, and he didn’t take it. If he would’ve ended it there, that would’ve probably ended commercial whaling. But I still believe that not sacrificing people for that, in that way, is probably a better choice.’

‘But personally, you’re willing to make that trade off-trade your own life to stop whaling?’

‘Absolutely. But I’m not going to engage in some suicide mission. It’s gotta [sic] be a calculated risk.’

The captain said, ‘If they had sunk us, there’d be such bad PR for them. The Australian navy would be down here in no time. They’d be hauled in for investigations. Australia would have to intervene at that point. We have Australian citizens on board.’

. . . .

Watson ducked into the radio room. By 0605 he already had his first press release posted. It began: “No whale will be killed this Christmas day. . . .”²⁷⁹

The above exchange is noteworthy because it demonstrates Watson’s strategy of intermingling direct action, mediated accounts of direct action, and efforts to manipulate governments to intervene on behalf of the Sea Shepherd’s (and their interpretation of international law) through the citizenship of members of the crew of the *Farley Mowat* who are placed in jeopardy in pursuit of their goal of ending whaling in the Antarctic sanctuary.²⁸⁰

X. CASE STUDY: ROD CORONADO, DIRECT ACTION, AND SPECTACULAR RADICALIZATION

The evolution of animal rights and environmental movements in the United States has been characterized by policy-based organizations which attempt to create change through legislative

²⁷⁹ HELLER, *supra* note 270, at 207–08.

²⁸⁰ *See id.*

and judicial means and during the 1980s and 1990s the strategy of “direct action,” whereby (often illegal and covert) activities or “operations” are undertaken to disrupt, prevent and/or terminate activities which are understood as being harmful to the environment.²⁸¹ This strategic difference has contributed to rifts within both the animal rights and environmental movements between those who seek to court political favor and public opinion and those who regard the latter as ineffectual.²⁸² Animal rights and environmental activist Rod Coronado’s movement trajectory exemplifies this rift, and his effort to utilize spectacle as a strategy of social change appears to have contributed to his further commitment to direct action.²⁸³ Coronado became involved in direct action in both environmentalism and animal rights during the 1980s, including his participation as one of two activists that sank two harbored Icelandic whaling vessels in 1986 (temporarily eliminating half of the Icelandic whaling fleet).²⁸⁴ Coronado was hardly alone in this strategic evolution: the Sea Shepherd Organization had formed in part over strategic divergences from Greenpeace, and the Animal Liberation Front had formed in the United Kingdom in the late 1970s (and had some adherents in the United States by the early 1980s) and the environmental movement witnessed the emergence of “monkey wrenching” (the destruction of equipment or resources which were employed in what some defined as environmental destruction, such as logging).²⁸⁵ While all of these manifestations (the decentralized

²⁸¹ See, e.g., KUIPERS, *supra* note 266, at 10–12 (discussing Coronado and his fellow activist’s breaking into a facility in Iceland in order to enforce international ban on whaling). See generally *Lobbying for Campaigning*, ANIMALETHICS.ORG, <http://www.animaethics.org.uk/i-ch3-6-lobbying.html> (last visited Oct. 27, 2015) (describing necessity for lobbying and working within the legislative field to achieve change); *The Campaign*, DIRECT ACTION, <http://directactioneverywhere.com/next-action/> (last visited Oct. 27, 2015) (describing necessity for direct action).

²⁸² See, e.g., KUIPERS, *supra* note 266, at 12 (explaining that “[u]nlike a lot of mainstream environmental groups, Sea Shepherd had never positioned itself as a maker of environmental legislation; its members considered themselves enforcers of international law.”).

²⁸³ See, e.g., *id.* at 10, 12 (discussing Coronado’s use of both direct action and media attention).

²⁸⁴ See *id.* at 9–12 (discussing Coronado and fellow activist’s breaking into whaling station in Iceland).

²⁸⁵ See *id.* at 24–25 (explaining that the Sea Shepherd Organization was founded by Watson following a break with Greenpeace over applicable strategies in the pursuit of environmental or animal protection); *Ecoterrorism: Extremism in the Animal Rights and Environmentalist Movements*, ANTI-DEFAMATION LEAGUE, http://archive.adl.org/learn/ext_us/ecoterrorism.html (last visited Oct.

Animal Liberation Front lacks many of the attributes of a formal organization) of direct action shared a philosophical commitment to non-violence; avoiding any actions which possibly could injure or kill humans and/or non-human animals (a prohibition clearly not extended to equipment or facilities, which could be targeted for destruction as a form of “economic sabotage”).²⁸⁶ Despite the lack of violence within direct action, the 1980s also witnessed the countertrend within legislation and law enforcement of regarding direct action as a form of terrorism (the term “eco-terrorism” was coined in 1983 by Ron Arnold), which was accompanied both by increased surveillance and agent provocateurs of and within groups and networks and increased prosecutions.²⁸⁷ These policing actions were accompanied by the passage of the Animal Enterprise Protection Act of 1992, which redefined “direct actions” against animal-based economic entities as domestic terrorism. It was in this environment that Coronado experimented with the spectacular as an advocacy strategy.²⁸⁸

In 1989, Coronado was living in Scotts Valley, California and was active in both covert and public animal rights and environmental organizations.²⁸⁹ Coronado was contacted by an east coast animal rights organization and was asked to provide a covert investigation of a fur farm outside of Pittsburgh,

27, 2015) (describing the origins of ALF). *See generally* *Monkeywrenching*, EARTHFIRST J., <http://earthfirstjournal.org/monkeywrenching/> (last visited Oct. 27, 2015) (describing the practice of monkeywrenching).

²⁸⁶ *See, e.g.*, KUIPERS, *supra* note 266, at 9, 12 (describing the non-violent outlook of groups such as ALF and ELF and discussing in detail the way that the activists destroyed equipment and stole records and other items from whaling facility); *see also* *The Animal Enterprise Protection Act of 1992 and Mandated Report*, FURCOMMISSION (Oct. 2, 1993), <http://furcommission.com/the-animal-enterprise-protection-act-of-1992-and-mandated-report/> (last visited Oct. 27, 2015) (discussing ALF’s “economic sabotage”).

²⁸⁷ *See* KUIPERS, *supra* note 266, at 9 (noting that “[i]n the last few years, it has become almost routine for FBI officials and members of Congress to declare that the Animal Liberation Front and its more broad-based spin-off, the Earth Liberation Front (ELF), are ‘on a par with Al Qaeda. . . . But there are differences that are impossible to overlook.’”); *see also* *The Animal Enterprise Protection Act of 1992 and Mandated Report*, *supra* note 286 (discussing the official response to groups like ALF as considered to be terrorist organizations since 1988 and the enactment of the Animal Enterprise Protection Act and the grand jury investigations and other enforcement that resulted).

²⁸⁸ *See generally* *The Animal Enterprise Protection Act of 1992 and Mandated Report*, *supra* note 287 (describing the passage of the Act, the government response, and the advocacy actions of Coronado).

²⁸⁹ *See* KUIPERS, *supra* note 266, at 54–55.

Pennsylvania.²⁹⁰ The experience of filming animals raised for fur garments (some of which were captured in the wild) inspired Coronado and housemate Jonathan Paul to establish Global Investigations as a vehicle to gather images of animal suffering for larger and more mainstream organizations including PETA, Friends of Animals (FOA), and In Defense of Animals (IDA) (organizations which had supported some public aspects of direct action, including hunt sabotaging).²⁹¹ Both wanted to utilize their covert skills within the spectacular, as noted by Kuipers: “wanted the images to elicit more outrage, like the footage of the head-injury lab at the University of Pennsylvania. For a fee, they would get images no other video crew could get; they could even sell images to the mainstream press.”²⁹²

Global Investigations, hired by FOA to provide footage from domestic fur farms, encountered two difficulties, moralistic and technical: the willingness to observe animal suffering and not immediately intervene and the need to be able to witness the animal suffering in order to provide compelling images.²⁹³ Coronado briefly assuaged his desire for immediate intervention with the hopes that these images would raise outrage about animal suffering and through the recognition that filming could also be used as a means of tactical intelligence gathering prior to a direct action.²⁹⁴ In order to meet FOA’s need to obtain “something horrific and shocking – literally shocking[,]” Coronado created the persona of Jim Perez, who posed as someone interested in entering the fur trade, and therefore could openly film on fur farms.²⁹⁵

As a result of assuming a covert identity, Coronado was able to observe and film common practices in fur farming, including the neck-breaking of mink, the skinning, gassing, and anal electrocution of fur-bearing animals (procedures intended to kill animals without damaging their pelts) and to learn more about the fur industry while also hardening his resolve to cripple or destroy the fur industry.²⁹⁶ Paradoxically, Coronado’s efforts to produce a spectacle which would raise public outrage ultimately drove him

²⁹⁰ *See id.* at 55.

²⁹¹ *See id.* at 57.

²⁹² *Id.* at 57.

²⁹³ *See, e.g., id.* at 59, 86–87 (describing Coronado and his associate’s need to fight their urge to save the animals in order to successfully complete the Global Investigations project).

²⁹⁴ *Id.*

²⁹⁵ KUIPERS, *supra* note 266, at 72, 96, 98.

²⁹⁶ *Id.* at 87–89, 91.

away from primarily focusing on spectacle production, and towards an engaging and participatory spectacle alongside direct action.²⁹⁷ FOA remained dissatisfied with the footage gathered by Global Investigations as “[not being] sexy enough”²⁹⁸ (the footage eventually being compiled into *The Faces of Fur*), but the process of filming also encouraged Coronado to consider an alternative spectacle: to create a sanctuary for fur farm animals which could then be shared with the public: “He was gripped by the idea that the rescue, rehab, and release of an entire fur farm was a media coup. He thought they should film the whole thing and make a documentary out of it.”²⁹⁹ With \$9,000 borrowed dollars and without the assistance of FOA (which feared losing its nonprofit status if it was implicated in any illegal animal rescue or release) Coronado and several friends established the Coalition Against Fur Farms (CAFF), and Coronado balanced his public personas as both anti-fur activists and as fur farmer Jim Perez.³⁰⁰ While posing as Perez, Coronado attended the Seattle Fur Exchange, and learned about the Mink Farmers Research Foundation (MFRF). The MFRF had been founded with federal funds during the 1920s for the study of foxes; in the 1960s, it was subsumed by Oregon’s agricultural division, and by the 1980s was supported by domestic fur farmers.³⁰¹ Subsequently Coronado and several other movement members raided and largely destroyed the MFRF, and also raided an animal research facility at Washington State University.³⁰² Despite Coronado’s dissatisfaction with spectacle as an advocacy strategy, he utilized film footage in his communications to KHQ and KREM in Spokane on 16 August 1991 which included both a press release and a videotape:

The videotape ended with footage of one of the CAFF mink leaving a cage, entering a stream, and swimming away. The press release ended with a few lines that have echoed to this day, giving the entire campaign its name: ‘As long as one member of a native American wild species is held captive, ALF will continue Operation Bite Back until all hostages are freed.’³⁰³

²⁹⁷ See *id.* at 91 (discussing how Coronado began to have feelings of despair regarding getting the footage).

²⁹⁸ *Id.* at 91.

²⁹⁹ *Id.* at 94–95, 191.

³⁰⁰ *Id.* at 95–96, 98.

³⁰¹ KUIPERS, *supra* note 266, at 113.

³⁰² *Id.* at 115–18, 150–51.

³⁰³ *Id.* at 151.

XI. SPECTACULAR IMPLICATIONS: HOW SPECTACLES IMPACT LAW

The anti-foie gras campaign suggests the potential of spectacles to advantage small groups as they challenge a weak industry.³⁰⁴ In the case of *The Delicacy of Despair* and the related media coverage which related to covertly manufactured footage of foie gras production, spectacles appeared to be an exceptionally effective tool against *a small and comparatively weak industry* (as compared to other types of commercial poultry production, which have significantly more financial resources, lobbyists, and public relations personnel to represent them).³⁰⁵ These spectacles also received support of mediated celebrities whose “halo effect” in support of foie gras production helped to keep the foie gras question in media circulation.³⁰⁶ Furthermore, the status of foie gras as a luxury good that many Americans are unlikely to be familiar with, did not serve to insulate it from sustained criticism (unlike, for example, the status of chickens as food items, whose symbolic position as an item of relative prosperity [“a chicken in every pot”] remains largely unaltered).³⁰⁷ In sum, a spectacle generated by a small group of actors in tandem with a campaign by larger animal rights and animal advocacy organizations appears to have been effective in the passage of SB 1520 in California and the continued questionable status of foie gras as an acceptable luxury.³⁰⁸

³⁰⁴ See Joshua I. Grant, *Hell to the Sound of Trumpets: Why Chicago’s Ban on Foie Gras Was Constitutional and What It Means for the Future of Animal Welfare Laws*, 2 STAN. J. ANIMAL L. & POL’Y 54, 64–65 (2009) (discussing the foie gras industry as a negligible part of the overall U.S. poultry industry); *The Truth about Foie Gras*, GOURMETCRUELTY.COM, <http://www.gourmeteruelty.com/> (last visited October 22, 2015) (discussing that there are only two companies in the United States who produce foie gras).

³⁰⁵ See CARO, *supra* note 204, at 8, 76 (discussing *Delicacy of Despair* and other media accounts); Grant, *supra* note 304, at 63–64; *The Truth about Foie Gras*, *supra* note 304 (discussing that there are only two producers of foie gras in the United States, and discussing *Delicacy of Despair* and the rescue of ducks).

³⁰⁶ See CARO, *supra* note 204, at 8; e.g., *Kate Winslet Exposes Foie Gras Cruelty*, PETA.ORG, <http://www.peta.org/features/kate-winslet-exposes-foie-gras-cruelty/> (last visited October 22, 2015) (describing the impact of Kate Winslet and other actors and stars who took part in sharing the anti-foie gras message). See generally “Halo Effect”, DICTIONARY.COM, <http://dictionary.reference.com/browse/halo-effect> (last visited October 23, 2015) (defining the term).

³⁰⁷ See Grant, *supra* note 304, at 64; *Chicken in Every Pot*, ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/doc/1G2-3401800779.html> (last visited October 23, 2015).

³⁰⁸ Hillary Dixler, *The Decade-Long Foie Gras Fight, Explained*, EATER (Jan. 9, 2015), <http://www.eater.com/2015/1/9/7513743/foie-gras-ban-california-history->

A. *“Unnecessary Fuss”: Spectacle, Coalition, and Divided Government*

The case of the Gennarelli Head Injury Laboratory closure demonstrates the significance role that spectacles may play in the case of a coalition-driven protest and a lack of unified response.³⁰⁹ In the case of “Unnecessary Fuss”, a video produced from Gennarelli’s own research tapes had credibility and also undermined potential federal government support because the video documented several violations of the Federal Animal Welfare Act; in short that taxpayers could be doubly shocked by the content of the video itself and the realization that their tax dollars supported these activities.³¹⁰ The sustained campaign of protest on the University of Pennsylvania campus and at the National Institute of Health (which featured still images taken from the video itself) and the broadcast of segments on the video on American television news and reference in newspapers including the New York Times also served to maintain the existence of the spectacle.³¹¹ Finally, the lack of a swift and organized response by biomedical researchers left the dominant mediated narrative largely in the hands of animal activists.³¹² It is not coincidental that after the Gennarelli closure that many university and private company vivariums improved their security, making the unlawful entry thereby production of similar spectacles much more difficult.³¹³

B. *Direct Action, Government Intervention and Spectacle Production*

In the cases of spectacle production by individuals and organizations involved in direct action, the efficacy of spectacles is more problematic to gauge.³¹⁴ This difficulty stems in part from the

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³⁰⁹ FINSSEN & FINSSEN, *supra* note 255, at 67, 68.

³¹⁰ *Id.* at 68.

³¹¹ *Id.* at 71.

³¹² *See id.* at 68; Lowe, *supra* note 76, at 10.

³¹³ *See* Rod Coronado, *Direct Actions Speak Louder than Words*, in *TERRORISTS OR FREEDOM FIGHTERS? REFLECTIONS ON THE LIBERATION OF ANIMALS* 178–79 (Steven Best & Anthony J. Nocella eds., 2004); FINSSEN & FINSSEN, *supra* note 255, at 71.

³¹⁴ *See* Lowe, *supra* note 76, at 9.

divergence in desired strategic outcome of the spectacles themselves.³¹⁵ In the case of the Sea Shepherd Organization, the production of spectacles has been strategic politically (to place pressure on the Japanese to cease whaling and for other governments to adopt the Sea Shepherd's interpretation of the international whaling ban) and socially (to concern potential audiences about Japanese whaling which is both geographically and socially distant) and tactical (to gather public support for its ongoing campaign).³¹⁶ In terms of government activity, the actions of the Sea Shepherd Organization are ambiguous: they claim to be enforcing international law which the Japanese are violating, while the Japanese accuse the Sea Shepherd of being illegal "pirates."³¹⁷ However, as of this writing, the practice of Japanese whaling does not appear to be ebbing. In the case of Rod Coronado and Global Investigations, spectacle production was being carried out by a few individuals with nominal support of larger animal rights organizations regarding fur farming, a legal practice producing a luxury consumer item that was steadily declining in public acceptance.³¹⁸ Despite the tactical innovation of Coronado creating a public persona to gather footage from fur farms that was unquestionably valid (including footage of farmers breaking the necks of minks) the footage itself (and the subsequent documentary *The Faces of Fur*) did not generate either public interest or even the enthusiastic support of his patrons.³¹⁹ Moreover, the process of producing spectacles appears to have

³¹⁵ See *id.* at 2.

³¹⁶ See Amanda M. Caprari, *Lovable Pirates? The Legal Implications of the Battle Between Environmentalist and Whalers in the Southern Ocean*, 42 CONN. L. REV. 1493, 1495–96, 1508–09 (2010); Andrew Hoek, *Sea Shepherd Conservation Society v. Japanese Whalers, the Showdown: Who Is the Real Villain?*, 3 STAN. J. ANIMAL L. & POL'Y 159, 175, 177–79, 185, 192–93 (2010) (discussing the public condemnation of Japan, the frustration of Sea Shepherd and other activists with the lack of repercussions to Japan for its whaling practices, various methods used by Sea Shepherd to combat Japanese whaling, and the political and social pressure on Japan).

³¹⁷ Caprari, *supra* note 316, at 1495–96, 1508–09; Hoek, *supra* note 316, at 178–79, 185.

³¹⁸ See KUIPERS, *supra* note 266, at 54–57; see also Tara Watson, *Cruelty is Coming back into Fashion*, THE DRUM TV (Oct. 1, 2013, 1:35 AM), <http://www.abc.net.au/news/2013-10-01/watson-the-true-face-of-the-fur-trade/4991790> (discussing fur farms and their unpopularity in society at that time).

³¹⁹ See Coronado, *supra* note 313, at 178–80 (recounting Rod Coronado speaking as to his actions of videotaping and the criticism he has received); KUIPERS, *supra* note 266, at 56–57 (explaining Rod Coronado's attempts at gathering footage of fur farms).

radicalized Coronado further, propelling him towards direct action (although using spectacles to communicate direct actions to the public).³²⁰ However, in analyzing Coronado as a spectacle manufacturer, it is necessary to note that his activities transpired as the United States moved towards reclassifying direct actions as “eco-terrorism” (as through the Animal Enterprise Protection Act of 1992) arguably making covertly produced videos about animal industries (especially by individuals like Coronado) less attractive to media outlets.³²¹

CONCLUSIONS

As the above indicates, mediated representations concerning some aspect of animal advocacy have existed since the legal establishment of anti-cruelty organizations in Great Britain, Canada and the United States since the early nineteenth century.³²² Moreover, demonstrable changes have occurred because of mediated representations of animals.³²³ The passage of the Animal Welfare Act of 1966 was driven partly by public reactions to two popular magazine articles: a 1965 *Sports Illustrated* article about Pepper, a Dalmatian who was apparently abducted from her yard, used in an experiment in a New York hospital and subsequently euthanized, and in 1966 a *Life* magazine article titled “Concentration Camp for Dogs”, about former family dogs used in medical experiments.³²⁴ Herzog stated that the public reaction to these stories was profound:

Members of the House and the Senate were bombarded with letters from constituents worried that their cats and dogs might suffer a similar fate. For a couple of months, Congress received more mail about animal research than about the two great moral issues of the time, the war in Vietnam and civil rights. The House and Senate quickly enacted the Animal Welfare Act of 1966. (It was not until 1974 that the government took steps to ensure that human research subjects were treated ethically).³²⁵

Beyond the significance of the creation of new laws both

³²⁰ See *supra* notes 305–06; Coronado, *supra* note 313, at 178–80.

³²¹ See Dara Lovitz, *Animal Lovers and Tree Huggers are the New Cold-Blooded Criminals? Examining the Flaws of Ecoterrorism Bills*, 3 J. ANIMAL L. 79, 79–82 (2007).

³²² See *supra* Introduction.

³²³ See HAL HERZOG, *SOME WE LOVE, SOME WE HATE, SOME WE EAT: WHY IT'S SO HARD TO THINK STRAIGHT ABOUT ANIMALS* 223–25 (2010).

³²⁴ *Id.* at 223–24.

³²⁵ *Id.*

domestically and internationally (as in the cases of the reclassification of African Elephants as endangered and the 2014 United Nations High Court ruling against Japan's scientific claims regarding whaling), the above clearly demonstrates that mediated spectacles have played roles in the *enforcement* of existing laws.³²⁶ Despite the reticence of local prosecutors, the case of Michael Vick rapidly accelerated and resulted in legal action against Vick and his co-conspirators (as well as the related spectacle of the economic implosion of Vick's professional athletic career).³²⁷ The case of the University of Pennsylvania depicts how law could be activated: once apparent violations of Federal law were depicted and disseminated in the *Unnecessary Fuss* video, NIH was compelled to reassess its support of Generelli's laboratory and the apparent lack of oversight.³²⁸

The above has also suggested the apparent utility of the creation and dissemination of mediated spectacles by animal advocates as a form of "force multiplier" that may augment the "deep pockets" and other legal, political and economic resources controlled by the opponents of animal advocates.³²⁹ The case of Californian foie gras demonstrates that a few individuals were able to insert spectacle into a debate regarding the production of a luxury commodity.³³⁰ The Sea Shepherds have been able to use the television program *Whale Wars* and other mediated representations to pressure both a nation and international legal bodies (the International Whaling Commission and the United Nations High Court³³¹) to scrutinize Japan's claims justifying whaling.

In light of these findings, it is unsurprising that current and potential targets of animal advocates have themselves recognized the potential for moralizing inherent in spectacles and have attempted to legally suppress them.³³² Oppel, Jr. reported in 2013 that "a dozen or so" U.S. state legislatures were considering some variation of "ag-gag" laws that would criminalize the unauthorized

³²⁶ See, e.g., *African Elephant: Loxodonta Africana*, NATIONAL GEOGRAPHIC, <http://animals.nationalgeographic.com/animals/mammals/african-elephant/> (last visited Jan. 31, 2016); Hiroko Tabuchi & Marlise Simons, *U.N. Court Orders Japan to Halt Whaling Off Antarctica*, N.Y. TIMES, Apr. 1, 2014, at A4.

³²⁷ See *supra* notes 183–203; see also *Animal Fighting Case Study: Michael Vick*, *supra* note 203.

³²⁸ See *supra* notes 255–265.

³²⁹ See *supra* note 35.

³³⁰ See *supra* notes 204–254.

³³¹ Hoek, *supra* note 316, at 178; Tabuchi & Simons, *supra* note at 326.

³³² See Richard A. Oppel, Jr., *Taping of Farm Cruelty is Becoming the Crime*, N.Y. TIMES, Apr. 7, 2013, at A1.

creation and/or dissemination of visual materials related to the economic use of animals (including animal agriculture and animal experimentation).³³³ Such laws, promoted by organizations including the American Legislative Exchange Council (ALEC), potentially criminalize both animal advocacy and investigative journalism (or proffer expensive and time-consuming court proceedings), and pose a threat to the mediated representations that have informed animal advocacy since its legal establishment in the mid-nineteenth century.³³⁴ Beyond the ambiguous threat to First Amendment rights that such laws would create, the above has suggested that the enforcement of existing anti-cruelty/animal protection laws are often informed by the exposure of practices and activities to the wider society and/or the wider legal system through mediated representations.³³⁵ The existence of such ‘ag-gag’ laws could conceivably threaten this apparently essential mechanism for animal protection.³³⁶

³³³ Cody Carlson, *The Ag Gag Laws: Hiding Factory Farm Abuses From Public Scrutiny*, THE ATLANTIC (Mar. 20, 2012), <http://www.theatlantic.com/health/archive/2012/03/the-ag-gag-laws-hiding-factory-farm-abuses-from-public-scrutiny/254674/>; Oppel, *supra* note 332.

³³⁴ Carlson, *supra* note 333.

³³⁵ Carlson, *supra* note 333; Bill Ketzer, *Ag Gag Laws: A National Epidemic Threatening the First Amendment*, NEW ENGLAND FIRST AMENDMENT COALITION (Feb. 04, 2014), <http://nefirstamendment.org/ag-gag-laws-national-epidemic-threatening-first-amendment/>; Oppel, *supra* note 332.

³³⁶ Ketzer, *supra* note 335.