
Book Reviews

Beyond Cages: Animal Law and Criminal Punishment. By Justin Marceau. Cambridge: Cambridge University Press, 2019. 298 pp. \$34.99 paperback

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Cultivating empathy for the oppressed has been a core strategy for many social movements. But empathy can also lead movements astray. Recent research in psychology and cognitive science portrays empathy as a biased spotlight focusing primarily on people similar to ourselves while diverting attention away from the more systemic, large-scale suffering that a more reason-based moral calculus would prioritize. How should the sociolegal inquiry into law and social change respond to these insights? Should we stand “against empathy,” as some psychological researchers suggest? Or can we combine empathy with systemic, evidence-based perspectives and strategies? The latter suggestion is illuminated in Justin Marceau’s groundbreaking study of the animal protection movement, *Beyond Cages: Animal Law and Criminal Punishment*. Marceau analyzes the movement’s misguided carceral turn, wherein empathy for pets has morphed into a focus on maximally punishing pet abusers, while leaving behind the much larger-scale abuse of animals in the agricultural industry. *Beyond Cages* recommends combining efforts to cultivate empathy with an empirically informed lens on the harms animals suffer and the intersectional movement strategies that are most likely to help reduce those harms.

Beyond Cages analyzes the animal protection movement’s concerted efforts to increase criminal penalties for violent abuse of animals, primarily pets. These carceral strategies include inter alia felony classifications, mandatory arrests, minimum sentences, prosecution of juveniles as adults, offender registries, funding of private prosecution, and deportation of undocumented persons convicted of animal abuse. Marceau argues that these strategies lack empirical support, undermine the movement’s credibility, and distract attention from the movement’s larger animal protection goals.

On empirical grounds, Marceau shows that the movement relies on faulty assumptions about the “LINK” between abuse of animals and abuse of humans, as well as the assumed effectiveness

of maximal incarceration and criminal registries in preventing recidivism. On theoretical grounds, Marceau persuasively argues that the carceral turn tends to reinforce the sustaining logics of systemic violence against animals. Maximally confining humans is an ironic and illogical strategy for efforts to liberate nonhuman animals. Furthermore, by adopting the tools of mass incarceration, the movement alienates itself from powerful civil rights allies and fails to develop a compelling narrative of “interconnected oppression,” and “opposition to systemic, institutionalized violence.” Instead, the movement has regrettably portrayed itself as “colorblind and divorced from racial politics.”

Perhaps the carceral turn’s greatest failing is that it reinforces the legal and cultural norms responsible for the suffering of billions of nonhuman animals in factory farms every year. For example, the movement has advocated for cruelty laws that target animal abusers but exempt harms that occur in agricultural contexts. By emphasizing relatively rare instances of violence against cats and dogs, the carceral strategy has done little to challenge the near ubiquitous, morally inconsistent notion that most people are innocent of harming animals. As Marceau notes, this strategy makes “scapegoats and demons out of a few animal abusers, almost as a way of ignoring or de-prioritizing the large-scale suffering of animals.” Peter Singer’s foundational work in the animal liberation movement (1975) similarly observes that people who eat factory farmed meat typically identify as “animal lovers” by detaching the consumption of animal products from the experience of other live animals they encounter.

The fact that our empathy for pets generally fails to radiate outward to include animals in factory farms is consistent with the recent empirical accounts of empathy as a biased spotlight, which “shines most brightly on those we love and gets dim for those who are strange or different or frightening” (Bloom 2016). In psychologist Paul Bloom’s interpretation of recent research, empathy appears to encourage a “perverse moral mathematics” that favors the one over the many. For example, our empathy for highly visible victims of school shootings might lead to substantial political mobilization, while we generally ignore the much larger population harmed by gun violence outside of schools and outside of public sight. In the policy arena, Bloom argues that empathy tends to highlight short-term and smaller-scale priorities, while we allow larger scale suffering to continue unabated.

The carceral turn deems animal abusers “undeserving of empathy” while advocating for their maximal punishment. Marceau suggests that this strategy is unlikely to serve the symbolic goals of the animal protection movement, as “more cages do not beget more empathy or less systemic violence.” Instead, Marceau advises the movement to challenge the public’s “compartmentalized” empathy

for pets but not farm animals. While Bloom argues that most humans are not good at empathizing with individuals who are very different from ourselves, and this likely includes a limited ability to empathize with nonhuman animals, it may be a necessary condition for animal liberation that more people are persuaded to feel at least *some* empathy for farm animals. Peter Singer has raised the concern that farm animals are largely excluded from our “sphere of moral concern.” If more people saw the abysmal treatment of animals in factory farms, and if people were encouraged to connect and empathize with these animals, perhaps we would generally be less likely to view animals as mere instruments to, as Marceau summarizes, satiate our “dietary cravings, amusement, or research interests.”

Regarding law and lawyers, Marceau sees the carceral turn as a very limited police-and-prosecution conception of law’s potential role in the movement. Instead, Marceau optimistically suggests that lawyers can significantly contribute to the larger symbolic project of creating “a monumental shift in the social understanding of the human-animal relationship.” Lawyers should thus work beyond the traditional bounds of legal advocacy seeking to “infuse legal challenges with a more radical, revolutionary form of advocacy that will shape the media and public narratives, and eventually impact legal norms.” Building on recent sociolegal perspectives, Marceau suggests that the use of law and lawyers can be complementary with other movement strategies rather than narrowing, legalizing, and deradicalizing the movement, as some social movement scholars have portrayed cause lawyering.

Beyond Cages points toward a future in which we would look back with greater moral clarity and see the carceral turn as a “a relic of a more desperate, darker period in the history of animal rights.” For the sociolegal audience concerned with transformative social change, the book provides a cutting-edge account of an evolving movement and a compelling blueprint for the integration of empathy, empiricism, and intersectional movement strategies.

References

- Bloom, Paul. 2016. *Against Empathy: The Case for Rational Compassion*. New York: Ecco.
 Singer, Peter. 1975. *Animal Liberation: A New Ethics for Our Treatment of Animals*. New York: Harper Collins.

