

THE ETHICAL CASE FOR EUROPEAN LEGISLATION AGAINST FUR FARMING

By
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In recent years, several member states in the European Union enacted legislation to regulate or prohibit fur farming. This article calls for further action to ban the practice throughout the European Union. The Author notes animals' inabilities to protect their own interests and the role of law to protect these vulnerable interests. The Author concludes by responding to the objections of fur farming proponents, ultimately finding no legitimate justification for the documented suffering of animals raised on fur farms.

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I. PREAMBLE

This article is a revised version of a Statement¹ signed by more than sixty academics, including ethicists, philosophers, and theologians.

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¹ Andrew Linzey, *The Ethical Case against Fur Farming: A Statement by an International Group of Academics, Including Ethicists, Philosophers and Theologians*, <http://information.com/pdf/linzey02.pdf> (2002).

gians, which argues the case for prohibiting fur farming in the European Union. Originally commissioned by the animal welfare organization, Respect for Animals, in the United Kingdom it was intended to justify the moves by some European Union Member States against fur farming on the basis of “public morality,” and to encourage others to take similar action. Although, of course, it was written with European legislators in mind, the arguments have relevance to non-European countries, most notably the United States and Russia, which still allow fur farming.² There is no reason to suppose that the veterinary objections to this practice, detailed below, do not also apply to fur farming in other countries, since the practices described are similar, if not uniform.³ Furthermore, the basic considerations about suffering and the nature of the moral objections also have wide relevance to many other uses of animals throughout the world. The Statement is itself an example of how there exists a wide consensus among moralists for fundamental change in the area of our institutionalized use of animals.

II. INCREASING LEGISLATION AGAINST FUR FARMING

An increasing number of European countries are legislating against fur farming. Austria has banned “fur farming in six of the nine Austrian federal states and in the remaining three there are such strict welfare regulations, [particularly] in relation to the availability of [water for swimming], that fur farming is no longer economically viable.”⁴ In fact, “[t]here are no . . . fur farms [left] in Austria.”⁵ The Netherlands decided to ban fox farming in 1995, and all fox fur produc-

² See *Fur No Longer on Fashion's Menu*, Taipei Times 13 (Nov. 10, 2005) (available at <http://www.taipetimes.com/News/feat/archives/2005/11/10/2003279614>) (noting that there are still twenty fur farms operating in Russia); Fur Commission USA, *Mink Farming in the United States* 1 (Sept. 2006) (available at <http://www.furcommission.com/resource/Resources/MFIUS.pdf>) (noting that the United States ranks fourth in the world in fur production).

³ Bont voor Dieren, *Mink Farming: Factory [F]arming*, <http://www.bontvoordieren.nl/english/dutch.php?action=minkfarming> (accessed Nov. 12, 2006) [hereinafter *Mink Farming*]; see Animal Defenders Intl., *Why Is It Wrong to Wear Fur?* <http://www.ad-international.org/fur/go.php?ssi=19> (accessed Nov. 12, 2006) (discussing international fur farming).

⁴ Bont voor Dieren, *Fur Farming*, <http://www.bontvoordieren.nl/english/index.php?action=farming>; scroll to *Curtain falling for fur farming in Europe* (accessed Nov. 12, 2006); Clemens Purtscher, *Peltztierhaltung und Pelzhandel in Österreich — Rechtliche Regelungen und Handlungsbedarf* 116 (Universität Wien 2000) (available at <http://www.information.com/pdf/purtsc00.pdf>). For details of the Austrian legislative provisions, see *Kärntner Tierschutzverordnung, Anlage 3, Zu §§ 10 bis 15*. (For an analysis of this law, see Purtscher, *supra* n. 4, at 61–62). For an example of legislation banning mink farming in one of the Austrian states, see *Wiener Tierschutz- und Tierhaltegesetz: Änderung, Artikel 1, 5 § 15a, Landesgesetzblatt für Wien, 1996, Stück 46, p. 259* (available at <http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/1996/pdf/lg1996046.pdf>).

⁵ Bont voor Dieren, *supra* n. 4, at <http://www.bontvoordieren.nl/english/index.php?action=farming>; scroll to *Curtain falling for fur farming in Europe*.

tion will cease by April 1, 2008.⁶ In 2005, the Swedish Agricultural Minister announced that stringent new welfare standards for keeping mink would be introduced into the Animal Protection Act.⁷

In 2000, the Westminster Parliament of the United Kingdom passed the Fur Farming (Prohibition) Bill, which makes it a criminal offense in England and Wales to keep “animals solely or primarily for slaughter . . . for the value of their fur, or . . . for breeding progeny for such slaughter.”⁸ A similar measure has been passed by the Scottish Parliament.⁹

The principal ground cited for this legislation within the United Kingdom is “public morality.”¹⁰ Elliot Morley, the Parliamentary Secretary to the (then) Ministry of Agriculture, Fisheries, and Food, gave the following account of the Government’s position:

Morality is important when it comes to the treatment of animals. I shall repeat our view on the morality of fur farming. Fur farming is not consistent with a proper value and respect for animal life. Animal life should not be destroyed in the absence of a sufficient justification in terms of public benefit. Nor should animals be bred for such destruction in the absence of sufficient justification. That is the essence of our argument for applying morality to a Bill of this kind, and for justifying it under article 30 of EU regulations.¹¹

Some people may express surprise at the idea that our treatment of animals is a public moral issue. In fact, concern for the right treatment of animals has been the subject of legislative activity since 1800, when the first animal protection bill (to abolish bull baiting) was

⁶ *Id.* at <http://www.bontvoordieren.nl/english/index.php?action=farming>; scroll to The Dutch Situation. For the full text announcing the change in the Dutch Animal Health and Welfare Law, see *Besluit van 10 december 1997, houdende uitvoering van artikel 34, eerste lid, van de Gezondheids- en welzijnswet voor dieren (Besluit aanwijzing voor productie te houden dieren)*, <http://faolex.fao.org/docs/texts/net17565.doc> (accessed Nov. 12, 2006). For the entire history of events leading up to the proposed mink breeding ban, see *Mink Farming*, *supra* n. 3; Bont voor Dieren, *Summary on the Dutch Discussion to Ban Mink Farming*, <http://www.bontvoordieren.nl/english/dutch.php?action=discussion> (accessed Nov. 12, 2006).

⁷ Animal Protec. Inst., *API News: The Fur Trade Today – 10/03/05*, <http://www.api4animals.org/news?p=218&more=1>; scroll to Bill to restrict fur farming in Sweden on the horizon (accessed Nov. 12, 2006); Asa Lexmon, *Sweden Livestock and Products: Animal Welfare Legislation in Sweden 2005* 5 (USDA For. Agric. Serv. 2005) (available at <http://www.fas.usda.gov/gainfiles/200510/146131334.pdf>). The Author is grateful to Dr. Joanna Swabe, Senior Policy Advisor of Bont voor Dieren for references 4–7 inclusive.

⁸ *Fur Farming (Prohibition) Act*, 2000, ch. 33, § 1 (Eng.) (available at <http://www.opsi.gov.uk/ACTS/acts2000/20000033.htm>).

⁹ *Fur Farming (Prohibition) (Scotland) Act*, 2002, asp 10, § 1 (Scot.) (available at <http://www.opsi.gov.uk/legislation/scotland/acts2002/20020010.htm>).

¹⁰ Elliot Morley, *Oral Answers to Questions; Fur Farming (Prohibition) Bill*, Hansard col. 40 (May 15, 2000) (available at <http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo000515/debindx/00515-x.htm>).

¹¹ *Id.* at col. 76.

presented to the House of Commons.¹² Since that time, there has been a growing awareness that there must be legal constraints on the uses to which animals can be put. There are now a wide range of measures regulating, or prohibiting, use in almost every sphere of human activity that affects animals: these include the use of animals in commercial trade, in farming, in research, in entertainment, and even as domestic companions.¹³ Far from being ethically regressive, there is an overwhelming acceptance that these developments are conducive to a civilized society, even the complete prohibition of practices (such as cockfighting and bull baiting) whose abolition in Britain was attended by no little controversy.¹⁴

These developments have been supported philosophically by a growing sense that society has a clear stake in safeguarding animals from acts of cruelty.¹⁵ Not only is it wrong to make animals suffer needlessly, but also humans themselves benefit from living in a society where cruelty is actively discouraged and punishable by law. More recently, a number of factors have stimulated a concern that this now commonly accepted position should be strengthened still further.

III. FUR FARMING, HARM, AND SUFFERING

In the first place, many previous attempts at legislation defined cruelty in specific relation to *physical* acts, such as beating, kicking,

¹² Sir William Pulteney moved the first bill against bull baiting on April 2, 1800. For the debate, see James Turner, *Reckoning with the Beast: Animals, Pain and Humanity in the Victorian Mind* 15, 148 (Johns Hopkins U. Press 1980) (citing and discussing *Parliamentary History* 35 Hansard 202–13 (1800)).

¹³ The sheer volume of law, most of it relating to disputed practices, is steadily growing. See e.g. Kevin Dolan, *Laboratory Animal Law* (Blackwell Sci. 2001) (providing an overview of the legal obligations to animals used in research); Mike Radford, *Animal Law in Britain: Regulation and Responsibility* (Oxford U. Press 2001) (providing an overview of substantive animal law and policy in Britain); David B. Wilkins, *Animal Welfare in Europe: European Legislation and Concerns* (Kluwer L. Intl. 1997) (providing an overview of animal related law in Europe).

¹⁴ See e.g. Andrew Linzey, *John Wesley, An Early Prophet of Animal Rights*, *Methodist Recorder* 15 (Apr. 10, 2003) (discussing the history of Methodism and animal welfare). The article states:

Methodists were accused of being one of the two most subversive groups in the country in a parliamentary debate. To general approval, one MP [member of Parliament] claimed that Methodism aimed at nothing less than the destruction of “the old English character, by the abolition of all rural sports.” One recent Methodist sermon was singled out because of its preposterous suggestion that cruel sports would “render mankind cruel.” In Methodism, he argued, “everything joyous was to be prohibited, to prepare the people for the reception of their fanatical doctrines.” That debate was on May 24, 1802, and it concerned the proposed abolition of bull-baiting. The speaker was the notorious Tory MP, William Wyndham, who opposed virtually every one of the ten bills opposing bull-baiting – right up to its abolition in 1839.

Id.

¹⁵ See *infra* nn. 30–33 and accompanying text (discussing the ethical consensus against fur farming).

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hitting, stabbing, and so on.¹⁶ Such a definition reflects an understanding at the time that animals could be harmed solely, or principally, by the infliction of adverse physical activity. We now know, however, that animals can be harmed, sometimes severely, in a range of other ways: for example, by subjection to unsuitable environments where their basic behavioral needs are frustrated. As early as 1980, biologists, veterinarians, and ethicists proposed “basic guidelines” for all “managed” species:

No husbandry method should deny the environmental requirements of the basic [behavioral] needs of these animals. These needs will include the following:

- freedom to perform natural physical movement
- association with other animals, where appropriate of their own kind
- facilities for comfort activities, e.g. rest, sleep and body care
- . . .
- satisfaction of minimal spatial and territorial requirements including a visual field and ‘personal’ space.

Deviations from these principles should be avoided as far as possible, but where such deviations are absolutely unavoidable efforts should be made to compensate the animal environmentally.¹⁷

Where these principles are not observed, animals suffer what has been called “harms of deprivation,”¹⁸ which cause as much, if not more, suffering to animals than the infliction of physical pain. Our current understanding of animals—their mental states and behavioral

¹⁶ See e.g. Simon Brooman & Debbie Legge, *Law Relating to Animals* 46–47 (Cavendish Publ. Ltd. 1997) (discussing the pioneering Protection of Animals Act 1911 in the United Kingdom). The 1911 Act was a revision of the 1849 Cruelty to Animals Act and made it an offense to “cruelly beat, kick, ill-treat, over-drive, over-load, torture, infuriate, or terrify any animal . . .” *Id.* at 47. It excluded wild animals, laboratory animals, and animals used for food. *Id.* Under current discussion in Parliament is the new Animal Welfare Bill that amends the 1911 Act to impose, *inter alia*, a “duty of care” on all who manage animals. This new bill does not extend to laboratory animals. Dept. Env., Food, & Rural Affairs (DEFRA), *Animal Health and Welfare: Animal Welfare Act*, <http://www.defra.gov.uk/animalh/welfare/bill/index.htm> (last modified Nov. 9, 2006).

¹⁷ Animals & Ethics Working Party, *Animals and Ethics: A Report of the Working Party Convened by Edward Carpenter* 16–17 (Watkins Publ. 1980). The working party included, among others, Dr. Michael Brambell, Professor Kenneth Carpenter, David Coffey, Ruth Harrison, Professor Sydney Jennings, and Professor W.H. Thorpe. *Id.* at 44. These principles followed the “Brambell Committee” recommendations (*Report of the Technical Committee to Enquire into the Welfare of Animals Kept under Intensive Livestock Husbandry Systems*, 1965, Cmnd. 2836). *Id.* at 43. Later came the “five Freedoms,” now adopted as (sadly, only voluntary) welfare guidelines by DEFRA of the United Kingdom Government. DEFRA, *Food and Drink: Freedom Foods*, <http://www.defra.gov.uk/foodrin/poultry/trade/markings/assurance.htm#FREEDOM> (last modified Aug. 8, 2003) (explaining the five Freedoms and their voluntary nature).

¹⁸ For an explanation of the phrase “harms of deprivation,” see Tom Regan, *The Case for Animal Rights* 96–99 (U. Cal. Press 1983) (asserting that harms can consist of deprivations which animals can experience). The important point is that free ranging, fur bearing animals are harmed, *inter alia*, when deprived of their freedom and kept in barren cages.

needs—has necessitated a much wider appreciation of harm than was previously possible through simple appeals to physical cruelty.

Fur farming is a case in point. Some people, unaware of the conditions on fur farms, assume that breeding animals for fur is like any other form of farming and poses no special welfare problems.¹⁹ There are good reasons for thinking otherwise. The United Kingdom Government's own advisory body, the Farm Animal Welfare Council (FAWC), made public its disapproval of mink and fox farming in 1989.²⁰ Its judgment makes clear the particular difficulties in subjecting essentially wild animals to intensive farming:

Mink and fox have been bred in captivity for only about 50-60 generations and the [FAWC] is particularly concerned about the keeping of what are essentially wild animals in small barren cages. The [FAWC] believes that the systems employed in the farming of mink and fox do not satisfy some of the most basic criteria which it has identified for protecting the welfare of farm animals. The current cages used for fur farming do not appear to provide appropriate comfort or shelter, and do not allow the animals freedom to display most normal patterns of behaviour.²¹

So severe were these strictures that the FAWC declined to issue a Welfare Code in respect of fur farming as it has done for other farming practices.²² The FAWC's then Chairman, Professor C. R. W. Spedding, made clear in a letter to the then Parliamentary Secretary to the Ministry of Agriculture that:

One of the objects of the [press] statement is to give a clear warning that [the] FAWC does not see fur farming as an acceptable alternative enterprise as currently [practiced]. We have decided against drawing up a Welfare Code for mink and fox farming to avoid giving it the stamp of approval which a Government-backed Welfare Code would imply.²³

This unusually strong position has been subsequently confirmed by further scientific research. A comprehensive review of the welfare of farmed mink in 1999, undertaken by Professor D. M. Broom, Professor of Animal Welfare at the University of Cambridge, and his colleague, A. J. Nimon of the Department of Clinical Veterinary Medicine, concluded that:

The high level and pervasiveness of stereotypies among farmed mink, and the incidence of fur chewing and even self-mutilation of tail tissue, suggest that farmed mink welfare is not good. Stereotypies are associated with neg-

¹⁹ See e.g. Richard D. North, *Fur and Freedom: In Defence of the Fur Trade* 39 (Inst. Econ. Affairs 2000) (Even an author who is familiar with conditions on fur farms argues that fur farming is no worse than regular animal farming.).

²⁰ Press Notice, FAWC, *Farm Animal Welfare Council Disapproves of Mink and Fox Farming* (Apr. 4, 1989) (copy on file with *Animal L.*).

²¹ *Id.* at 1.

²² Ltr. from C. R. W. Spedding, Chairman of the FAWC, to D. Thompson, Parliamentary Secretary, Ministry of Agriculture, Fisheries, and Food (Mar. 31, 1989) (copy on file with *Animal L.*).

²³ *Id.*

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ative consequences such as slower kit growth, and higher levels of feed intake without an increase in growth.²⁴

A further study, published in 2001 by the same authors in relation to the welfare of farmed foxes, concluded:

Research on fox welfare in relation to housing shows that farmed foxes have a considerable degree of fear, both of humans and in general, that the barrenness of the cages is a significant problem for the foxes, and that farmed foxes can have substantial reproduction problems. There is clear evidence that the welfare of farmed foxes in the typical bare, wire-mesh cages is very poor.²⁵

Such conclusions are confirmed by the recently published report on *The Welfare of Animals Kept for Fur Production*.²⁶ Areas of concern with respect to the welfare of mink include gastric ulcers, kidney abnormalities, tooth decay, self-mutilation, and stereotypies.²⁷

Foxes were found to suffer from, *inter alia*, “[a]bnormal behaviours such as exaggerated fear responses, infanticide, stereotypies and pelt-biting”²⁸ While ethical questions were not included within the remit of the Scientific Committee on Animal Health and Animal Welfare, it concluded on welfare grounds alone that “mink and foxes generally suffer from being kept in cages because it limits their natural behaviour as wild animals.”²⁹

In the light of all these findings, it is now unreasonable, even perfidious, to hold that fur farming does not impose suffering on animals. The issue is not whether direct, physical pain is inflicted upon such animals. It is rather that the confinement of wild creatures in barren, sterile enclosures where their behavioral needs cannot be adequately met, involves the kinds of deprivation that inevitably result in suffering. Such forms of confinement cannot by their nature be made “animal-friendly”; no captive environment can adequately facilitate the full range of social and behavioral needs that are essential to the

²⁴ A. J. Nimon & D. M. Broom, *The Welfare of Farmed Mink* (Mustela Vison) in *Relation to Housing and Management: A Review*, 8 *Animal Welfare* 205, 222 (1999); see also C. M. Vinke, *Some Comments on the Review of Nimon and Broom on the Welfare of Farmed Mink*, 10 *Animal Welfare* 315 (2001) (questioning the relevance and basis for concluding that mink were not domesticated and therefore had the same needs as a wild animal); see also A. J. Nimon & D. M. Broom, *Response to Vinke's Short Communication: Comments on Mink Needs and Welfare Indicators*, 10 *Animal Welfare* 325 (2001) (responding to Vinke's criticisms).

²⁵ A. J. Nimon & D. M. Broom, *The Welfare of Farmed Foxes* *Vulpes Vulpes* and *Alopex Lagopus* in *Relation to Housing and Management: A Review*, 10 *Animal Welfare* 223, 241–42 (2001).

²⁶ Sci. Comm. Animal Health & Animal Welfare, *The Welfare of Animals Kept for Fur Production* 185–86 (European Commn., Health & Consumer Protec. Directorate-Gen. 2001) (available at http://ec.europa.eu/food/animal/welfare/international/out67_en.pdf).

²⁷ *Id.* at 71, 84–88.

²⁸ *Id.* at 185.

²⁹ Press Release, Sci. Comm. Animal Health & Animal Welfare, *New Report Recommends Improved Conditions in Fur Farms* (Dec. 19, 2001) (copy on file with *Animal L.*).

well-being of such creatures. The worst aspects of fur farming may conceivably be ameliorated by some environmental improvements, but no reform can eradicate the suffering inherent in such systems.

IV. ANIMALS AS A SPECIAL MORAL CASE

The second factor stimulating change is the growing ethical sensitivity to issues of animal protection. This sensitivity has been reinforced by considerable ethical and philosophical work on the status of animals. It has been observed that “within the past 20 years contemporary moral philosophers have written more on the topic of human responsibility to other animals than their predecessors had written in the previous two thousand years.”³⁰ Our use of animals in modern farming has been the subject of particularly strong criticism. As an example, Dr. David DeGrazia, in a comprehensive study, maintains that “the institution of factory farming, which causes massive harm for trivial purposes, is ethically indefensible.”³¹ While not all ethicists agree on the precise limits that should be observed in our treatment of animals, there is an emerging consensus that we have special kinds of obligations to animals, and that a great deal of what we now do to them is morally unacceptable.³² There is, in short, a strong desire for fundamental change among ethicists who have addressed this topic.³³

It is important to spell out precisely *why* animals should be regarded as constituting a special moral case or having a special claim on our attention. It is not enough to simply say that the infliction of suffering is wrong; we need to provide an account of why it is so. When analyzed impartially, we can see that there are a number of considerations that are peculiarly relevant to animals, as well as to some vulnerable human subjects. For example:

Animals cannot give or withhold their consent. The point is obvious, but it has considerable moral significance. It is commonly accepted that “informed consent” is required in advance by any person who wishes to override the legitimate interests of another. The absence of this factor requires, at the very least, that we should exercise special care and thoughtfulness. The very fact that animals cannot agree to the purposes to which they are put increases our responsibility and singles them out (along with others) as a special case.

Animals cannot represent or vocalize their own interests. Again the point is obvious, but it has serious moral implications. Individuals who

³⁰ Tom Regan, *Foreward*, in *Animal Rights: A Historical Anthology* xi (Paul Barry Clarke & Andrew Linzey eds., Columbia U. Press 2004) (based on a statement by Andrew Rowan).

³¹ David DeGrazia, *Taking Animals Seriously: Mental Life and Moral Status* 284 (Cambridge U. Press 1996).

³² *Supra* nn. 30–31 and accompanying text (surveying the increase in philosophical work discussing our obligations to animals).

³³ See e.g. *Encyclopedia of Animal Rights and Animal Welfare* (Marc Bekoff & Carron A. Meaney eds., Greenwood Press 1998) (comprising a broad range of ethical and philosophical positions urging reform of the *status quo*).

cannot adequately represent themselves have to depend upon others to do so. The plight of animals—precisely because they cannot articulate their needs or represent their interests—should invoke an increased sense of obligation and mark them as a special case.

Animals are morally innocent. Because animals are not moral agents with free will, they cannot—strictly speaking—be regarded as morally responsible. That granted, it follows that they can never (unlike, arguably, adult humans) deserve suffering, or be improved morally by it. Animals can never merit suffering; proper recognition of this consideration makes any infliction of suffering upon them particularly problematic.

Animals are vulnerable and defenseless. They are wholly, or almost wholly, within our power and entirely subject to our will. Except in rare circumstances, animals pose us no threat, constitute no risk to our life, and possess no means of offense or defense. Moral solicitude should properly relate to, and be commensurate with, the relative vulnerability of the subjects concerned.

The key point to note is that these considerations make the infliction of suffering and death on animals not *easier*—but *harder*—to justify.

These considerations are all particularly relevant to the issue of fur farming. After all, in such farming we keep essentially wild animals captive and make them subservient to our purposes; we frustrate their basic behavioral needs, and we kill them in a frequently inhumane way (through, for example, gassing, neck-breaking, suffocation, or anal electrocution).³⁴ We do all this even though these animals have not harmed us and do not pose any threat to our life or well-being. They cannot “assent” to their maltreatment, or even vocalize their own interests. They are in a state of moral innocence; they are without the means of defense, and are wholly vulnerable. In short, we have made them entirely dependent upon us; they deserve, as a matter of justice, special moral solicitude.

Perhaps the best analogy is the special solicitude now rightly extended to weaker members of the human community, for example, newly born infants or young children.³⁵ It is, *inter alia*, their sheer vulnerability, their inability to articulate their needs, and their moral innocence that compels us to insist that they be treated with special

³⁴ See e.g. Canterbury Animal Respect Network Green Env., *The Fur Factory “Farm,”* <http://www.carn-age.org.uk/fashion.html> (May 2001) (listing common manners by which animals are killed on fur farms).

³⁵ It is worth reminding ourselves that ethical concern for children, and especially infants, is a comparatively new sensitivity in Western society. The United Nations Convention on the Rights of the Child was adopted as late as 1989. See Cynthia Price Cohen, *United Nations Convention on the Rights of the Child: Developing International Norms to Create a New World for Children*, in *Children as Equals: Exploring the Rights of the Child* 49, 49–72 (Kathleen Alaimo & Brian Klug eds., U. Press Am. 2002) (discussing the adoption of the Convention).

care and protected from exploitation. But, if this argument is sound, it applies equally to sentient mammals.

V. LAW AND THE PROTECTION OF THE WEAK

The third factor that has stimulated change is the recognition that law has a specific role in protecting the weak and the vulnerable. It is worth noting that the concern for the alleviation of animal suffering that emerged in the nineteenth century was part of a broader “humanitarian movement.” This movement was equally concerned with the protection of children from abuse and cruelty, the abolition of slavery, the establishing of minimum working conditions, and the emancipation of women.³⁶ As Henry Salt, founder of the Humanitarian League (1894–1920), emphasized: “Humanitarianism must show that it is *not* ‘bestarian,’ and must aim at the redress of *all* needless suffering, human and animal alike”³⁷

Many of the key movers for animal protection—William Wilberforce, Lord Shaftesbury, and Fowell Buxton, to take only three examples—were prominent in all these campaigns.³⁸ If one looks at the early debates concerning animal protection in Britain, two rationales are frequently prevalent: (1) cruelty is unjust to other creatures, and (2) it also harms the perpetrator by diminishing his or her humanity.³⁹ Consider, for example, the celebrated preamble to Lord Erskine’s famous Cruelty to Animals Bill in 1809: “the abuse of that [human] dominion by cruel and oppressive treatment of such animals, is not only highly unjust and immoral, but most pernicious in its example, having an evident tendency to harden the heart against the natural feelings of humanity.”⁴⁰

From this starting point, and from that day on, humans have continued to welcome a range of legislative measures that grant specific protection to those who are easily abused and exploited.⁴¹ The notion then that there is a legitimate social or public interest in limiting animal suffering has a long provenance. There is a benevolent motivation behind socially progressive legislation that some, perhaps many,

³⁶ Hilda Kean, *Animal Rights: Political and Social Change in Britain Since 1800* 136, 143 (Reaktion Bks. Ltd. 1998).

³⁷ George Hendrick, *Henry Salt: Humanitarian Reformer and Man of Letters* 193 (U. Ill. Press 1977) (emphasis in original) (quoting a reprint of Henry Salt’s play, *A Lover of Animals*, which was originally published in *The Vegetarian Review* in February 1895).

³⁸ Kean, *supra* n. 36, at 34, 56–57 (describing the roles of key movers in the animal protection movement).

³⁹ See e.g. Lord Erskine, Speech, *Second Reading of the Bill for Preventing Malicious and Wanton Cruelty to Animals* 277 (H. Peers, May 15, 1809) (available at http://www.animalrightshistory.org/ers_lord-erskine/1809-erskine-speech.htm) (discussing those two rationales). The Author is grateful to Dr. Chien-hui Li of Wolfson College, Cambridge, for this reference.

⁴⁰ *Id.*

⁴¹ *Supra* n. 13 and accompanying text.

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would hold to be the proper function of law, namely to defend the weak and defenseless.

But the case for including animals within this legislative advance is even stronger today. It is buttressed by the increasing empirical evidence of a link between abuse and cruelty to animals and other forms of violence, notably against women and children.⁴² In the past, the connection, if any, was largely rhetorical. Early reformers sensed that there must be a connection and assumed that it was so. Today, however, heavyweight publications are beginning to marshal the evidence. To take just one example, Frank R. Ascione and Phil Arkow, in their collection *Child Abuse, Domestic Violence, and Animal Abuse*, maintain that "Violence directed against animals is often a coercion device and an early indicator of violence that may escalate in range and severity against other victims."⁴³ Much has yet to be done to explore and document that connection, but the fact that there is a link is increasingly difficult to deny. It is an increasingly viable assumption that a world in which abuse to animals goes unchecked is bound to be a less morally safe world for human beings.

Such awareness should inform, *inter alia*, legislative attempts to limit the infliction of suffering on animals. The need for reform extends not only to the protection of domestic species, but also to "managed" species subject to commerce and exploitation. As already noted, the institutionalized use of animals in modern farming has become a major area of concern. An increasing number of people want to move towards a society in which commercial institutions do not routinely and habitually abuse animals. A United Kingdom opinion poll on animal welfare found majorities against training animals for circuses (sixty-one percent), keeping veal calves in crates (seventy-eight percent), hunting foxes for recreation (seventy-two percent), keeping "battery" hens (sev-

⁴² See e.g. Phil Arkow, *Animal Abuse, Child Abuse and Domestic Violence - Compelling Connections*, 30, No. 1 The Guardian (pub. of the Women's Humane Socy.) 1 (Spring 1998); Phil Arkow, *The Relationships between Animal Abuse and Other Forms of Family Violence*, 12: 1-2 Family Violence & Sexual Assault Bull. 29 (1996); Howard Davidson, *On the Horizon: What Lawyers and Judges Should Know about the Link between Child Abuse and Animal Cruelty*, 17: 4 ABA Child L. Pract. 60 (June 1998); A. William Ritter, Jr., *The Cycle of Violence Often Begins with Violence toward Animals*, 30 Prosecutor 31 (Jan.-Feb. 1996); Jared Squires, *The Link between Animal Cruelty and Human Violence: Children Caught in the Middle*, 8 Ky. Children's Rights J. 2 (Winter 2000) (all discussing the link between animal abuse and violence against women and children). The Author is grateful to Phil Arkow for these references and for his pioneering work. See also Paul Wilson & Gareth Norris, *Relationship between Criminal Behavior and Mental Illness in Young Adults: Conduct Disorder, Cruelty to Animals and Young Adult Serious Violence*, 10 Psych., Psychol. & Law 239 (April 2003) (suggesting that cruelty to animals, as one component of conduct disorder, is a significant indicator of subsequent anti-social behavior).

⁴³ *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* xvii (Frank R. Ascione & Phil Arkow eds., Purdue U. Press 1999) (This collection is the result of a multidisciplinary symposium of people professionally concerned with social work, child protection, domestic violence, and animal protection.).

enty-two percent), and trapping animals for fur (seventy-six percent).⁴⁴

VI. ABSENCE OF MORAL JUSTIFICATION

We now need to address more precisely the moral issue involved in fur farming. Some people hold that the infliction of suffering on animals is intrinsically objectionable and never morally justifiable.⁴⁵ This position deserves much more consideration than is usually given to it. The considerations outlined in part IV indicate that there are good rational grounds for supposing that certain kinds of activity, directed against vulnerable subjects, are so morally outrageous that they ought never to be countenanced, whatever the circumstances. The infliction of prolonged suffering on captive creatures is, from this perspective, intrinsically evil. No circumstances, benefits, or compensating factors can ever remove the fundamental offense or render the practices morally licit.

Others hold that suffering can sometimes, perhaps rarely, be justified if it can be shown to be necessary, or if there would be sufficient benefit, and if the end result cannot be achieved by other means.⁴⁶ For the latter, the issue would turn on whether there is sufficient moral necessity, or benefit, involved in fur farming to justify its continuance.

Thus, in ethical terms, to show that something is necessary requires more than a simple appeal to what is fashionable, or even desirable.⁴⁷ Human wants do not by themselves constitute moral necessity.⁴⁸ It must be shown that the good procured is essential, and that no alternative means are available. When viewed from this perspective, it can be seen immediately that fur farming fails a basic moral test. The wearing of fur, while conceivably pleasant, fashionable, or even desirable, cannot reasonably be defined as essential. Fur is

⁴⁴ Andrew Linzey, *Animal Gospel: Christian Faith as if Animals Mattered* 137 (Westminster John Knox Press 1998) (citing and discussing a Market Opinion & Research International (MORI) Poll on Animal Welfare from the Daily Telegraph).

⁴⁵ See e.g. Peter Singer, *Practical Ethics* 58 (Cambridge U. Press 1979); Tom Regan, *The Case for Animal Rights* 286–87 (U. Cal. Press 1983) (both discussing such a view).

⁴⁶ That is, for example, the position of Peter Singer. Although often associated with “animal rights,” his position is wholly utilitarian. As Singer makes clear: “[I]f one, or even a dozen animals had to suffer experiments in order to save thousands, I would think it right and in accordance with equal consideration of interests that they should do so. This, at any rate, is the answer a utilitarian must give.” Singer, *supra* n. 45, at 58.

⁴⁷ See e.g. *id.* at 57 (noting that animal testing for cosmetics is hard to justify, because cosmetics are not a necessity); see also Richard A. Posner, *Animal Rights: Legal, Philosophical, and Pragmatic Perspectives*, in *Animal Rights: Current Debates and New Directions* 51, 59 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (discussing Singer’s approach).

⁴⁸ Gary L. Francione, *Animals—Property or Persons?* in *Animal Rights: Current Debates and New Directions* 108, 115–16 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (describing how hunting, fur production, and cosmetic animal testing cause suffering that is ultimately unnecessary).

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a luxury item.⁴⁹ When weighed in terms of a cost/benefit analysis, the case fails, and spectacularly so. It is obviously unjustifiable to inflict suffering on animals for non-essential, indeed trivial, ends. In that sense, Elliot Morley was right to insist that animals should not be “bred for such destruction in the absence of sufficient justification.”⁵⁰

Unsurprisingly, perhaps, supporters of fur farming fail to address the central moral issue and frequently provide exaggerated claims for the “necessity” of fur.⁵¹ For example, Richard D. North accepts that fur is a luxury item, but still defends it.⁵²

He maintains that “[t]here is a powerful case to be made for the idea that the need for luxury is one of the most fundamental human urges, as it is one of the most powerful well-springs of activity in the whole animal kingdom.”⁵³ He continues:

Biologists have long understood a Darwinian explanation for the apparent excesses of display indulged in by animals such as the peacock. Sexual attractiveness that involves a conspicuous and costly display demonstrates a male’s ability to satisfy to an extraordinary degree the capacity to fulfil his basic needs.⁵⁴

Even allowing for the correctness of North’s interpretation of animal behavior, no human being has a “basic need” for adornment articles, such as fur coats or fashion accessories. Even if they could be shown to be a component in fulfilling sexual desire, the case would still have to be made that such wants (as distinct from needs) could not be met through alternative means. To say the least, the argument is frivolous in the context of animal suffering.

VII. ANSWERS TO OBJECTIONS

Before we conclude, there are six objections in favor of fur farming that should be briefly addressed.

The first objection is that fur farming is consistent with commonly held religious notions that animals have a subordinate place to humans and are made for human use.⁵⁵ This objection deserves some scrutiny. While it is true that Judaism, Christianity, and Islam have

⁴⁹ North, *supra* n. 19, at 12, 18, 22–23.

⁵⁰ Morley, *supra* n. 10, at col. 76. It is perhaps worth adding that even those who argue against animal rights are sometimes equivocal about fur. Michael P. T. Leahy, for example, confesses that “[f]urs are a far tougher nut to justify unless one is thinking of primitive peoples who depend upon them for staying alive.” Michael P. T. Leahy, *Against Liberation: Putting Animals in Perspective* 266 (rev. paperback ed., Routledge 1994).

⁵¹ North, *supra* n. 19, at 22–23.

⁵² *Id.*

⁵³ *Id.* at 23.

⁵⁴ *Id.*

⁵⁵ See e.g. Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 Iowa L. Rev. 1, 8–13 (2001) (stating that ancient philosophical and religious views of animals may cause judges and legislatures to trivialize cruelty to animals).

held at some points in their history that some use of animals is justifiable, none of them have ever supposed that our use of animals should be illimitable or without moral constraint.⁵⁶ It is often overlooked that, at the beginning of the most recent phase of the movement for animal protection, the Archbishop of Canterbury, on accepting the Presidency of the Royal Society for the Prevention of Cruelty to Animals (RSPCA), declared: "Animals, as part of God's creation, have rights which must be respected. It behoves us always to be sensitive to their needs and to the reality of their pain."⁵⁷

As is well known, Judaism itself pioneered the biblically-grounded principle of *tsaar baalei hayyim* (literally, consideration for "the pain of living creatures") against cruelty to animals.⁵⁸ Jewish scholars, such as the eighteenth-century legalist Ezekiel Landau, ruled that hunting for pleasure or killing for adornment articles such as fur is forbidden:

We find in the *Torah* the sport of hunting imputed to no one but to such fierce characters as Nimrod and Esau, never to any of the patriarchs or to their descendants. The customary blessing, 'Thou shalt outlive', offered to one donning a new garment, is . . . omitted altogether in the case of a fur coat. Such a blessing might make it appear that the killing of animals is not only condoned but actually desirable, which is contrary to the verse in Psalms 'And his tender mercies are over all his works.' . . . I cannot comprehend how a Jew could even dream of killing animals merely for the pleasure of hunting, when he has no immediate need for the bodies of the creatures.⁵⁹

Islam, too, has its own tradition of concern for animals, epitomized in the saying of the Prophet Muhammad: "Kindness to any living creature will be rewarded."⁶⁰ The Prophet explicitly rejected cruel practices in his own day involving horses and birds.⁶¹

Within Christianity, there are growing signs of a vocal opposition to animal abuse, especially the killing of animals for fur. In 1992, for example, forty-one Anglican bishops (including two archbishops)

⁵⁶ See e.g. Andrew Linzey & Dan Cohn-Sherbok, *After Noah: Animals and the Liberation of Theology* 35–59, 62–69 (Mowbray 1997) (discussing Jewish and Christian limits on the use of animals and providing an account of the resources within the Jewish and Christian traditions for a positive view of animals); The Prophet Muhammad, *The Sayings of Muhammad* 48–49 (Neal Robinson ed. & trans., Duckworth 1991) (discussing the same with respect to Islam).

⁵⁷ Archbishop Donald Coggan, *Presidential Message to the Annual General Meeting of the RSPCA*, reprinted in Andrew Linzey, *Christianity and the Rights of Animals* 152 (Appendix: *Church Statements on Animals 1956-1986*) (Crossroad 1997).

⁵⁸ Linzey & Cohn-Sherbok, *supra* n. 56, at 30 (discussing the meaning and origins of this principle).

⁵⁹ *Id.* at 53–54 (quoting Elijah Judah Schochet, *Animal Life in Jewish Tradition: Attitudes and Relationships* 267–68 (KTAV 1984)).

⁶⁰ The Prophet Muhammad, *supra* n. 56, at 48.

⁶¹ See *id.* Robinson summarizes the position of animals in Islam as follows: "According to the Qur'ân, all animals and birds belong to communities [of like creatures] (Q 6.38) and give praise to God (Q 24.41). Hence the Prophet ordered his followers to be merciful even when slaughtering animals for food or killing dangerous species." *Id.*

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signed a statement refusing to support or wear fur on moral and theological grounds.⁶²

The idea that religious authorities can be uncritically utilized in this debate in defense of fur farming should therefore be jettisoned. Indeed, there are sufficiently positive grounds within almost all religious traditions to oppose the utilization of animals for trivial purposes, such as luxury or adornment. These grounds include: the intrinsic value of sentient creatures made by God, the responsibility of humans as stewards and guardians of God's creation, and, not least of all, a near-unanimous rejection of the deliberate infliction of suffering as an abuse of our power over animals.⁶³ It is worth noting that the modern movement for the protection of animals owes a great deal to the Christian and Jewish founders, Arthur Broome and Lewis Gompertz, of the world's first national animal welfare society, the RSPCA, which was founded in 1824.⁶⁴

The second objection is that banning fur farming is a denial of individual freedom. In that sense, the statement is self-evidently true. The legal prohibition of any practice does of course limit individual freedom. But what has to be shown, morally, is that the outlawing of fur farming constitutes an unwarranted or unjustifiable invasion of individual liberty. It should be pointed out that right from the outset, animal protectionists have had to suffer the use of this argument to prevent the prohibition of even the grossest acts of cruelty. For example, commenting on the failure of the first Bill to outlaw bull baiting in 1800, *The Times* was adamant that the attempt was misconceived, because "whatever meddles with private personal disposition of a man's time or property is tyranny direct."⁶⁵

The current attempt to cast animal protectionists in the guise of anti-civil libertarians misses the moral point that liberty to inflict unnecessary suffering, even and especially to animals, violates civilized values and renders weaker humans vulnerable as well. For if the argument is logically sound, there are no good reasons for stopping at animals. Properly understood, there cannot be a civil right to be cruel.

⁶² Linzey, *supra* n. 1, at 8.

⁶³ See *supra* nn. 56–62 and accompanying text (discussing Jewish, Christian, and Muslim principles that advocate compassion toward animals).

⁶⁴ Arthur Broome, an Anglican priest, called the first meeting to inaugurate the RSPCA and also wrote the first "Prospectus." Linzey, *supra* Author bio, at 19, 36. In 1832, the RSPCA issued a declaration that stated "the proceedings of this Society are entirely based on the Christian Faith and on Christian Principles." See Turner, *supra* n. 12, at 43 (discussing and quoting pages 40–41 of the RSPCA Minute Book, No. 1). The Author is grateful to Olive Martyn, the librarian of the RSPCA, for this reference. Broome's work was immensely sacrificial. He gave up his London church to work full-time (unpaid) for the RSPCA as its first Secretary and ended up in prison because of the RSPCA's debts. Radford, *supra* n. 13, at 42; see also Turner, *supra* n. 12, at 40–45 (for lines from the Prospectus, information about Broome, and information about the complex relationship between Broome, Gompertz, and the RSPCA).

⁶⁵ A.W. Moss, *The Valiant Crusade: The History of the R.S.P.C.A.* 14 (Cassell 1961) (quoting *The Times* editorial of April 25, 1800).

The third objection is that banning fur farming is inconsistent when there are greater cruelties that need to be addressed. Whether there are greater cruelties than the infliction of prolonged suffering on wild animals is debatable. But, even allowing for that, the argument also has a poor pedigree. The same was also said, *inter alia*, about those who opposed bear-baiting.⁶⁶ For example, Richard Martin's attempt to bring in a Bill "to prevent bear-baiting and other cruel practices" in 1824 was met with (what had even then become) the usual objection of inconsistency:

Now, if the hon. gentleman [Richard Martin] laid down the general principle, that no pain should be inflicted on animals, beyond such as was necessary in putting them to death for the support of man, his legislation would be consistent; but he was certainly not fair in selecting partial instances to legislate on, in which the members of the House, the parties legislating, did not happen to be interested [hear!]. . . . Let them abolish fox-hunting and partridge shooting, and they might then abolish Bear-baiting. . . . Who could say that hawking was less cruel than Bear-baiting or fishing? Nay, fishing added treachery to cruelty Fishing was a cruel fraud practised on innocent and defenceless animals.⁶⁷

But if one took the view that all welfare legislation for humans or animals had to be rigorously consistent (in the sense of encompassing all possible abuses) before any single law was enacted, one would have had to logically oppose the enactment of all socially progressive legislation for animals in Britain since 1800.

The fact is that, out of necessity, animal protection legislation has to be a gradual piece-meal affair, depending as it does on popular, democratic support for its enactment. Each case must be judged on its merits, the relevant arguments advanced, and popular support marshaled. If, in this process, legislation is sometimes inconsistent, then it has to be recognized that all legislation—for both human and animal protection—depends upon public opinion, which is itself not always consistent.⁶⁸

In a democratic society, the risk of inconsistency has to be acknowledged. The alternative (in the case of humans as well as animals) is to not even begin the process because of the inevitable risk of inconsistency.

The fourth objection is that responsibility for animal welfare should rest with the European Commission rather than Member States. It should be noted, however, that this objection is not endorsed by the relevant Commissioner, David Byrne. In a remarkably frank

⁶⁶ Robert Peel, Speech, *On Martin's Bill* (H. Commons, Feb. 11, 1824) in *Hansard* cols. 131–32. Richard Martin also attempted to pass several animal welfare bills against bull baiting, dog-fighting, etc. in the 1820s. Moss, *supra* n. 65, at 17–18.

⁶⁷ Peel, *supra* n. 66, at cols. 131–32 (second brackets in original).

⁶⁸ See e.g. *Public Opinion*, in *The Encyclopedia of Democracy* 1027–38 (Seymour Martin Lipset ed., Cong. Q. Inc. 1995) (stating that in democracies, public opinion is an important influence on politics and an important means of evaluating the effectiveness of a democracy).

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statement, Byrne describes this attitude as “passing the buck,” and continues: “Speaking as the European Commissioner with responsibility for key areas of public concern, such as health and consumer protection and food safety, I am always prepared to accept my responsibilities. But, equally, I insist on ensuring that others should not hide behind others in evading their responsibilities.”⁶⁹

Byrne’s reasoning deserves to be read at length:

The public should be in a position where they can be confident that animals are treated humanely. And that their elected representatives and the public authorities take the issue seriously. But the question obviously arises, which authorities? Is it, for example, the role of the European Commission to ensure that animals are treated humanely? I will not duck the issue. The Commission role relates only to its legal powers and competence. *We cannot ensure that animals are humanely treated throughout the EU. For a number of reasons – we do not have the resources, the powers or the legitimacy to do so.*⁷⁰

Byrne underlines the point in even more stark language:

*Again and again, often in the area of animal welfare, Member States are found to be at fault in not meeting acceptable standards. . . . I am growing increasingly weary at the repeated reports of my officials on continued non-respect of Community provisions on animal welfare.*⁷¹

Byrne’s message seems overwhelmingly clear. Not only may Member States act, they have a responsibility to do so. Under the 1999 protocol, they have a responsibility to “fully consider animal welfare,” as well as the freedom to initiate appropriate legislation.⁷² Far from expecting the European Commission to act, Byrne makes clear that it has neither the resources nor the powers (nor even, apparently, “the legitimacy”) to enforce existing regulations when it is inadequately respected by some Member States. In light of these frank admissions, the case for Member States to act positively on their own is overwhelming. To wait for the European Commission to act on a Europe-wide basis is, in the words of Commissioner Byrne, to “pass the buck.”⁷³

The fifth objection is that the notion of public morality is misconceived, or even a “truly terrifying concept.”⁷⁴ But we have shown that the development of animal protection, as well as the protection of weaker human subjects, has often entailed an appeal to social val-

⁶⁹ E-mail from the Swedish Foreign Ministry, Material2001@foreign.ministry.se, *Address by Commissioner David Byrne to the Conference of Ethics and Animal Welfare in Stockholm, Tuesday, 29 May 2001* (May 30, 2001) (copy on file with *Animal L.*).

⁷⁰ *Id.* (emphasis added).

⁷¹ *Id.* (emphasis added).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Andrew Hunter, *Oral Answers to Questions: Fur Farming (Prohibition) Bill*, Hansard col. 64 (May 15, 2000) (available at http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo000515/debtext/00515-10.htm#00515-10_head1) (response to Elliot Morley’s comment about morality).

ues.⁷⁵ It should be accepted, however, that morality cannot be decided by opinion polls. Majorities are not always right, and popular sensitivities can be misguided.⁷⁶

But such considerations should not blind us to the fact that animal protection legislation in a democratic society has always depended, as a last resort, on popular support.⁷⁷

Neither is such an appreciation reprehensible. In a changing world with developing moral sensitivities, it follows that the law should reflect those changed moral perceptions. In the case of fur farming, opinion polls in the United Kingdom have shown that up to seventy-six percent of the population supports an outright ban on the practice.⁷⁸ The movement for the protection of animals needs just that type of public support in order to achieve legislative change. The law is the outward and visible sign of a changed, or changing, moral consensus.⁷⁹ Given such a longstanding consensus in a democratic society, those who wish to frustrate the majority view must provide convincing arguments for the status quo.

The final objection is that changing the law, even if justifiable in terms of preventing abuses, should be used sparingly, especially when abolitionist legislation is proposed. This argument may be generally sound, because not everything that the public dislikes should be made illegal. Consequently, arguments for prohibition or abolition have to be well made. But even if arguments for the prohibition of existing practices should be treated with caution, it does not follow that such arguments cannot be made, and reasonably so. Fur farming is an excellent case in point. Some systems of abuse cannot be reformed, because, although their worst aspects may be ameliorated through regulation, they constitute a moral offense that is so grave and so ingrained that abolition is the only proper course of action.

VIII. CONCLUSION: THE NEED FOR ACTION

Fur farming should be done away with. Nothing morally essential would be lost, and much would be gained from a ban on the practice. A failure to legislate would mean turning our backs on the long history of progressive anti-cruelty legislation. It would signal that we have, in

⁷⁵ See e.g. Cass R. Sunstein, *Introduction: What Are Animal Rights?* in *Animal Rights: Current Debates and New Directions*, 3, 8 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (describing how the balancing of human and animal interests depends on personal values).

⁷⁶ See e.g. Steven M. Wise, *Animal Rights, One Step at a Time*, in *Animal Rights: Current Debates and New Directions* 19, 21–22 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (discussing popular support for slavery in British history and the similarities to animal rights).

⁷⁷ Sunstein, *supra* n. 75, at 7–8.

⁷⁸ MORI, *Attitudes towards Fur*, <http://www.mori.com/polls/1997/fur.shtml> (accessed Nov. 12, 2006).

⁷⁹ Lynne L. Dallas, *Law and Public Policy: A Socioeconomic Approach* 193 (Carolina Academic Press 2005) (describing how law reflects changes in public perception).

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effect, given up on the struggle to eliminate unjustifiable suffering in our society. It would constitute a worrying precedent that commercial concerns are immune from public moral sensibility. It would be to act in ignorance of the knowledge that we have acquired about the sentience and behavioral complexity of the other creatures with whom we share the earth. In short, any system of farming that inherently exposes animals to high levels of suffering for trivial ends cries out for abolitionist legislation. The European Union Member States should give this matter their urgent attention.

