

BOOK REVIEWS

MAKING THE CHANGE,
ONE CONSERVATIVE AT A TIME:
A REVIEW OF *DOMINION: THE POWER OF MAN, THE
SUFFERING OF ANIMALS, AND THE CALL TO MERCY*
BY MICHAEL SCULLY

by
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I. INTRODUCTION

*The greatness of a nation and its moral progress can be judged by the way its animals are treated.*¹

January 28, 2003. President Bush was making final preparations for his State of the Union Address as I was led through the West Wing of the White House into the office of George W. Bush's Special Assis-

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¹ Mohandas K. Gandhi, *The Moral Basis of Vegetarianism* (Navajivan Publ. H. 1959).

tant and Senior Speechwriter, Matthew Scully. I was not in the White House to discuss the upcoming State of the Union Address or the politics of the Republican White House, but to talk about Scully's book, *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*.² During the few hours I spent with Scully, my initial reservations concerning his advocacy for animal welfare issues slipped away. He truly abhors cruelty to animals, and he genuinely wants to do as much as he can to help animals. He also just happens to be a conservative Republican working for the President.³ Scully wrote this book to address the fact that people, especially conservatives, are casually ignoring the issue of blatant animal cruelty. He wanted to examine the thinking of many skeptics, some of whom are his fellow conservatives, and the lengths to which they avoid animal welfare as a serious moral issue. More importantly, he wanted to connect with his religious, conservative colleagues because, in his opinion, "no great cause gets attention without religious conviction."⁴

Dominion does not advocate that animals should have rights equal to those of humans, but instead argues that the human right of dominion over animals creates a duty to show empathy toward them.⁵ Scully advocates that we should treat animals with kindness, not because they have rights, power, or some claim to equality, but precisely because they do not; they stand unequal and powerless before us. The illustration on *Dominion's* jacket depicting a helpless, submissive lamb with its four legs bound uncomfortably together is a powerful beginning to a book about dominion and our duty to be merciful.⁶

In the face of every scientific, religious, economic, and sustainable use conservation argument supporting animal use, Scully, who is not a likely friend of animal advocates, artfully breaks down and refutes the basic tenets of each theory. As he breaks down the arguments, he adds a little emotional sarcasm, strongly emphasizing the absurdity of the arguments. Throughout the book, Scully criticizes society for fearfully turning away from seeing the animals suffering all around them; in particular, he stresses the lack of necessity for animals' pain:

When a man's love of finery clouds his moral judgment, that is vanity.
When he lets a demanding palate make his moral choices, that is gluttony.
When he ascribes the divine will to his own whims, that is pride. And when
he gets angry at being reminded of animal suffering that his own daily
choices might help avoid, that is moral cowardice.⁷

² Matthew Scully, *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy* (St. Martin's Press 2002).

³ Interview with Matthew Scully, Spec. Asst. to the Pres. of the U.S. and White H. Senior Speech Writer (Jan. 28, 2003) [hereinafter Interview with Scully].

⁴ *Id.*

⁵ Scully, *supra* n. 2.

⁶ *Id.* (the jacket illustration depicts *The Bound Lamb* by Francisco De Zurbarán). The lamb is a symbolic biblical creature and represents "a helpless, harmless creature" that is used in the Bible to illustrate the Christian way. *Id.* at 97.

⁷ *Id.* at 121.

The pictures he draws of human cruelty towards animals are often painful to read. This is especially so in those depicting factory farming, a subject for which he demonstrates particular passion. Scully concludes the book by asserting that we must stop asking *whether* creatures consciously suffer, and end the suffering today with legal reform and individual acts of mercy.

However, despite his sharp criticism of tolerance of misery and unlimited cruelty inflicted upon animals, Scully does not resolve all of the issues he raises. For instance, how do we stop or significantly reduce the culture of sport hunting? How do we stop or reduce whale hunting? Scully does not realistically answer these questions or numerous others, leaving the reader anxious for more. But *Dominion* does leave the reader with the understanding that compassion and mercy towards our fellow creatures is of paramount importance if we are to lead good lives. Essentially, Scully throws aside all the scientific, moralistic, and philosophical excuses for relentless animal cruelty and makes a simple plea for mercy.⁸ Only time will tell if this book elicits a powerful and productive response to that plea.

II. ORGANIZATION OF BOOK

Scully has organized his book into eight chapters, the first seven overflowing with descriptive detail about the theories and practices that support human cruelty to animals.⁹ Chapter 8, his "parting chapter," presents potential reforms for some of the issues he raises in the previous seven chapters. Scully asks all of the right questions and bores holes into the many callous arguments supporting the cruel use of animals.

In the early part of the book, Scully claims that the inhumane treatment of animals is a moral issue that needs to be addressed as seriously as—and not instead of—the injustices inflicted on many people.¹⁰ He effectively disputes the conservative biblical concept of un-

⁸ Scully, *supra* n. 2 (arguing that we must assert rights for animals *because* animals have no rights). While this may be an obvious concept, Scully is correct in his assessment that this society ignores this concept as far as animals are concerned. Legislators enact most laws to protect those who cannot protect themselves. *E.g. Civil Rights of Institutionalized Persons Act*, 42 U.S.C. § 1997 (2000) (protecting the constitutional and federal statutory rights of persons confined in certain governmentally owned institutions, including those for the mentally ill and developmentally disabled).

⁹ Scully, *supra* n. 2.

¹⁰ *Id.* at xii (at the beginning of his book, Scully swiftly deals with the argument that injustices against humans are of paramount concern to those against animals by stating: "Where we find wrongs done to animals, it is no excuse to say that more important wrongs are done to human beings . . . [a] wrong is a wrong.")

Often, critics detract from the work of animal rights groups by criticizing animal rights advocates for preferring critters to humans. Advocates like Adam M. Roberts, Senior Research Associate with Animal Welfare Institute, finds the time to advocate against human *and* animal injustices. Mr. Roberts has written endless articles covering a wide variety of animal welfare and rights issues and recently made the time to formulate the "\$10 Club" to purchase medical supplies, food supplies, and organic agriculture

checked dominion over animals, and instead argues that the Bible requires “wise dominion” or compassion.¹¹

Dominion is informative and passionately written, but it is not an easy read. There are bookshelves filled with books covering only one topic, such as animals for food,¹² animals for sport, animals for experimentation, or animal rights.¹³ *Dominion* attempts to address all these issues. To his credit, Scully tackles a controversial set of animal welfare topics as thoroughly as possible. The result of such thorough coverage, however, is an overload of information. For instance, *Dominion's* first chapter is a melting pot of theories and their aspects surrounding the animal welfare issue. One section discusses Christian hypocrisy, another section criticizes animal liberation theorist, Peter Singer,¹⁴ another section returns to the Christian concept of “Man the Conqueror,” another section introduces the reader to the ugly business

tools to send to people living in extreme poverty in rural areas. In January 2003, the club's money funded the purchase of solar cookers for 47 families at Kakuma Camp in Kenya. Telephone Interview with Adam M. Roberts, Senior Research Assoc., Animal Welfare Inst. (Feb. 3, 2003).

¹¹ Scully, *supra* n. 2, at vii (citing *Genesis* 1:24–26, 28–29) (*Dominion's* book title and the concept of dominion over creatures come from *Genesis* 1:24–26):

And God said, Let us make man in our image, after our likeness; and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.

However, Scully cites another biblical passage demonstrating the misinterpretation of dominion, *Genesis* 1:28–29 (*Id.* at 44): “And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in which is the fruit of a tree yielding fruit; to you it shall be for meat.”

The Old and New Testaments include many stories involving animals representing the incredibly subtle yet important role of animals in understanding the lessons of life on earth. In the Old Testament: *Genesis* 1:20–26 (the story of creation); *Genesis* 8:8–12 (Noah's dove); *Psalms* 104:10–12, 16–28, 31 (a description of God's care for the animals); *Psalms* 102:6 (the pelican of the wilderness; the owl of the desert); *Proverbs* 30:18, 19, 24–31 (eagle, serpent, ants, conies, locusts, spider, lion, greyhound, and goat); and *Jeremiah* 8:7 (stork, turtle, crane, and swallow observing the time of their coming). In the New Testament: *Luke* 2 (animals at the manger); and *Isaiah* 11:4–9 (peace in the kingdom: the wolf and the lamb; the leopard and the kid; the calf and the young lion; the cow and the bear).

¹² See e.g. Animal Welfare Inst., *Factory Farming: The Experiment That Failed* (Diane Halverson ed., Animal Welfare Inst. 1987) (a compilation of articles and photographs of animals in factory farms: veal calves, hogs, laying hens, as well as humane equivalents).

¹³ See e.g. Animal Welfare Inst., *Animals and their Legal Rights* (4th ed., Animal Welfare Inst. 1990) (presenting a survey of American laws from 1641 to 1990).

¹⁴ Interview with Scully, *supra* n. 3 (he challenges the chilly “eminence” of Peter Singer, who some people have referred to as the intellectual pioneer of the animal rights movement; Scully criticizes Singer for defending the killing of infants while arguing for kindness towards animals).

of factory farming,¹⁵ and yet another section presents an international (Great Britain's) twist into the ethics debate of meat consumption.¹⁶

The chapters that focus on sport hunting are some of the most interesting chapters to read, not only for the amazing insight into this traditional human pastime, but also for the entertaining sarcasm Scully uses as he exposes the hypocrisy in the argument for sport hunting. The fourth chapter, *Riches of the Sea*, brings to light the complicated world of whale hunting along with its symbolic baggage. This chapter lays out the whale hunting issue from cultural considerations to the international laws intended to offset the current hunting rates to the rubric of using whales for scientific research. This is the most difficult chapter to finish because Scully filled forty-nine pages with excessive detail on the topic of animal welfare for which Scully offers little resolution. Chapter 6, *Deliver Me from My Necessities*, which focuses on factory farming and human cruelty at its worst, is his most powerful.

In essence, *Dominion* is a book about humans and human corruption, with the animals in the background merely looking back through a complex prism. The book's central theme is that despite all of the various philosophical arguments concerning whether animals truly experience pain and whether that pain is justified, we need to rescue these creatures now:

The fact that the creatures cannot act morally toward us in no way diminishes our ability to act morally toward them . . . As a moral restraint to be observed by us, it matters little, least of all to the objects of cruelty, whether we say they have a "right" not to be mercilessly confined, beaten, dissected, or neglected. The point is that we should not mercilessly confine, beat, dissect, or neglect them.¹⁷

The book begins by reflecting on the moral problems raised by animal suffering and ends by advocating for laws with actual and compassionate consequences that intervene on behalf of the animals.

III. SOMETHING HAS GONE WRONG

There are theorists who believe that animals cannot feel "meaningful" pain and, therefore, cruelty to animals does not exist. Intuitively, this belief is nonsense, but how wonderful if it were true? Cruelty to animals would be as little of a concern as cruelty to a book. However, Scully devotes a substantial number of pages to revealing the philosophies of the "no-pain" theorists, or behaviorists, such as Ste-

¹⁵ Scully, *supra* n. 2, at 31–32.

¹⁶ *Id.* at 41. In January 2002, Great Britain enacted a law banning fur farming: "It shall be an offense for any person to keep or knowingly cause or permit to be kept for production of fur any mink, fox, or other fur-bearing animal."

¹⁷ *Id.* at 340.

phen Budiansky,¹⁸ Professor Peter Carruthers,¹⁹ and philosopher David Oderberg.²⁰ He then dissects their theories down to the ridiculous themes they have always represented.²¹ Scully accurately points out that all of these abstract theories questioning whether or not animals feel, anticipate, or avoid pain, hold animals to “an impossible standard of evidence, an ever receding empirical horizon, allowing us to declare in theory that since we can never *really* know they think and feel, we may safely conclude that they do not and act accordingly.”²² Scully’s evidentiary argument against all of these convoluted speculations is that “[a]nimals act *as if* they have conscious thoughts, react *as if* they have emotions, cry and wail *as if* it really hurt.”²³

Scully asserts that there is nothing wrong with these “theories” that animals do not suffer, provided they remain active only in the academic field; unfortunately, however, these theories give license to people to do vicious things to animals.²⁴ “[T]he euphemisms of cruelty

¹⁸ *Id.* at 6. Mr. Budiansky, a former nature writer for the *U.S. News & World Report*, claims that animals feel, if at all, only “mere pain” which is “not meaningful and profound like *our* pain.” Budiansky further believes that since animals lack (human) language, they lack the ability to form concepts, and that therefore, since they lack consciousness, they cannot suffer. *Id.* at 198.

¹⁹ *Id.* at 224 (Professor Peter Carruthers has attempted to prove that animals are in a sense unconscious because they cannot feel in any conscious or moral way).

²⁰ *Id.* at 196–97 (citing David S. Oderberg, *Applied Ethics: A Non-Consequentialist Approach* 116 (Blackwell 2000)). David Oderberg, a British philosopher, agrees that while “some animals have a sense of *their own future*,” such behavior is “mere defensive behavior.” *Id.* (emphasis in original). Oderberg concludes that animals “‘are governed wholly by instinct,’ incapable of any conscious intention, action, or feeling whatsoever.” *Id.* at 227. *But see* Susan McCarthy & Jeffrey Moussaieff Masson, *When Elephants Weep: The Emotional Lives of Animals* xix (Delta 1996) (presenting a compelling argument, through animal stories, that animals lead complex emotional lives, asking “how can anyone know that an animal feels nothing . . . To conclude without study . . . is to proceed on a prejudice . . . in the name of science.”). *See also* Jeffrey Moussaieff Masson, *The Nine Emotional Lives of Cats* (Ballantine Books 2002) (relating stories showing the deep connection between humans and their cats).

²¹ The Federal Bureau of Investigation considers animal abuse by children an indicator of future criminal conduct towards humans. *See e.g.* Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 *Animal L.* 1 (2000) (Assistant District Attorney in Philadelphia states that the cycle from animal cruelty to violence towards humans is not an aberration); *see also* Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 *Animal L.* 81 (1999) (cruelty to animals is associated with antisocial, violent, or criminal behavior); Alan R. Felthous & Stephen R. Keller, *Childhood Cruelty Toward Animals Among Criminals and Noncriminals*, 38 *Human Rel. J.* 1113, 1115 (1985) (serial killers, mass murderers, and other violent offenders often abused animals in their childhood); Ian Shapira, *A Dead Man, an Injured Dog, and a Mystery*, *Wash. Post* A1, A10 (Jan. 25, 2003) (reporting a man found dead from a gunshot wound to his abdomen and a dog found still alive with its throat torn open and gashes on its face; the owner, who was alleged to be violent, had attempted to kill the dog).

²² Scully, *supra* n. 2, at 230 (emphasis in original).

²³ *Id.* at 229 (emphasis in original).

²⁴ *Id.*

do convey . . . an acknowledgment . . . that something has gone wrong" because animal cruelty is too often ignored.²⁵

Scully admitted in his book and to me that he is not a practicing Catholic, but his book delves into the tenacious connection between Christianity and animal cruelty. While he ultimately employs the religious angle of Christian compassion as a basis of mercy towards all animals, Scully first reveals the hypocrisy of Christians who "defend" their practice of ignoring the subject of animal welfare altogether.²⁶ He believes Christians ignore animal welfare because the animal rights movement is often stereotyped as pagan.²⁷

The relationship between animal welfare advocates and dominion theorists is antagonistic and infuriating. The debate is over whether animals experience pain and whether humankind has complete control over all things. *Dominion* attempts to remove the debate from the theoretical realm into the real world of indifferent cruelty. In support of his theme that we should show more mercy and compassion in our relationship with creatures, Scully goes to the heart of the matter: the suffering animals. Scully's most powerful illustrations of animal cruelty evolve more from what he saw in the field than from what he researched in the library. His depictions reflect the worlds of factory farming, whale and sport hunting, and to a slight extent, animal experimentation.

IV. ANIMALS FOR FOOD

*Wilbur burst into tears. "I don't want to die," he moaned. "I want to stay alive, right here in my comfortable manure pile with all of my friends. I want to breathe the comfortable air and lie in the beautiful sun." "You shall not die," said Charlotte, briskly. . . "I am going to save you."*²⁸

Wilbur, the pig in *Charlotte's Web*, led a charmed life compared to the animals Scully visited at the hog farms in North Carolina.²⁹ In

²⁵ *Id.* at 11.

²⁶ *Id.* at 18.

²⁷ Interview with Scully, *supra* n. 3 (Scully says that religious conservatives ignore groups like People for the Ethical Treatment of Animals "for the truths they reveal").

²⁸ E. B. White, *Charlotte's Web* 53-54 (Harper & Row, Inc. 1952).

²⁹ Scully, *supra* n. 2, at 257. North Carolina raises approximately ten million hogs—a number larger than the state's human population. In an effort to offset the costs of the environmental damage left by the untreated waste, the industry is seeking a multi-billion dollar federal subsidy, proposed by Republican Representative Frank Lucas of Oklahoma. See also Marilyn Lee Nardo, *Feedlots—Rural America's Sewer*, 6 *Animal L.* 83 (2000) (citing U.S. Env'tl. Protection Agency's finding that in 1995, North Carolina feedlots discharged 63.5 million gallons of animal manure into rivers, lakes, and ponds, killing over ten million fish).

Furthermore, local residents tend to have a high incidence of respiratory, gastrointestinal, and infant sickness. Scully, *supra* n. 2, at 249. Indeed, the Env'tl. Protection Agency has determined that this high incidence is no medical coincidence. See Nardo, *supra* n. 29. See also Aaron Lake, *1998 Legislative Review*, 5 *Animal L.* 89, 105-107 (1999) (Colorado passed an initiative holding large hog feeding operations (housing approximately 3,000 hogs) responsible for the wastes produced).

graphic detail, Scully forces his reader to look behind the closed doors of the factory farms at the cruel confinement of smart, resourceful, feeling creatures. Factory farming represents an endless enterprise of feeding creatures hormones, laxatives, antibiotics, and recycled pigs.³⁰ It also represents the tumors, lesions, and broken limbs left untreated.

The depictions are painful to read; they must have been even more painful to witness. These pigs spend their entire lives in concrete and metal pens, "never leaving except to die, hardly able to turn or lie down, horror-stricken by every opening of the door, biting and fighting and going mad."³¹ He describes the systematic cruelty he witnessed as he wandered around the complex with the agricultural scientist; cruelty that many would have been unable to stomach. The first thing he noticed was the incredibly disagreeable and pervasive odor. He asks the reader to consider what the odor must be like for the pigs who "have olfactory powers many times our own."³² Then he describes the 500-pound pigs in their crates approximately twenty-two inches wide. Number NPD 88-308, nicknamed "Baby," was "lying there covered in feces and dried blood, yanking maniacally on chains that have torn her mouth raw, as foraging animals will do when caged and denied straw or other roughage to chew."³³ Scully learned from his tour guide that this behavior was "normal." Number NPD 50-375's legs were "swollen and [her] body covered with open sores."³⁴ Then Scully realized that the pigs were "all covered with sores. They all have crate injuries."³⁵

Scully wants the reader to pay attention to what is actually going on in the world of factory farming. He does so by describing the sprained, fractured and (untreated) limbs, as well as the

³⁰ Scully, *supra* n. 2, at 261 (despite the incidence of Mad Cow disease, the United States continues to feed swine and poultry remains to other swine, poultry, cows, sheep, and goats). See *cf. Substances Prohibited From Use in Animals Food or Feed; Animal Proteins Prohibited in Ruminant Feed*, 62 Fed. Reg. 30936 (June 5, 1997) (Food and Drug Administration's regulations prohibiting the feeding of ruminant remains (cows, sheep, goats) to other ruminant animals).

Factory farming also produces other diseases, such as the outbreak of avian influenza in Hong Kong where tens of millions of birds were "shoveled into trash bags, gassed, and buried in a landfill." Scully, *supra* n. 2, at 129. In addition, four counties in California, including San Diego, discovered sick birds infected with a deadly avian virus that causes Exotic Newcastle Disease. In 1971, California's last virus outbreak resulted in the destruction of twelve million chickens, threatening to bring the national egg industry "to its knees." To date, California has destroyed 5,700 birds. William Booth, *As California Fights Avian Disease, Poultry Growers Suffer a Toll*, Wash. Post A2 (Jan. 5, 2003).

³¹ Scully, *supra* n. 2, at 260.

³² *Id.* at 266 (these animals' olfactory senses are so strong that "the earlier woes for some sows in confinement is constipation because they refuse, at first, to foul their own stalls").

³³ *Id.*

³⁴ *Id.* at 267.

³⁵ *Id.*

[s]ores, tumors, ulcers, pus pockets,³⁶ lesions, cysts, bruises, torn ears, swollen legs everywhere. Roaring, groaning, tail biting, fighting, . . . Frenzied chewing on bars and chains. . . . And “social defeat,” lots of it, in every third or fourth stall some completely broken being you know is alive only because she blinks and stares up at you like poor NPD 50-421.³⁷

He aptly portrays the farm as an example of the “profound betrayal of veterinary ethics.”³⁸ The North Carolinian company, on the other hand, claims that factory farm animals do not suffer, and that these farms or systems “have evolved over time” and are actually “scientifically based.”³⁹ In true fashion, Scully refutes this claim by laying out, in stomach-turning detail, many reports and undercover investigations proving that no matter how scientifically-based these productions may be, the “products” undoubtedly suffer. The following reports are just two examples:

They come at night, when the pigs are sleeping. . . The antibiotics are withdrawn a week before slaughter, so that many of the pigs, on their journey to Tar Heel [the North Carolina slaughterhouse], are suffering from pneumonia. Trembling and shaking, many lose control of their bowels and the floors must be constantly washed. . . . Squealing hogs [are funneled] into an area where they are electrocuted, stabbed in the jugular, then tied, lifted and carried on a winding journey through the plant. [The hogs] are dunked in scalding water, their hair is removed, they are run through a fiery furnace (to burn off residual hair), then disemboweled and sliced by an army of young, often immigrant laborers.⁴⁰

Kill-floor work is hot, quick and bloody. The hog is herded in from the stockyard, then stunned with an electric gun. It is lifted into a conveyor belt, dazed but not dead, and passed to a waiting group of men. . . . At 16,000 kills per eight-hour shift in the Tar Heel plant, 2,000 per hour, and 33 every minute, all of this done by transient, unskilled laborers, there are mistakes.⁴¹

Scully did not actually enter the facility’s slaughter house, but as he told me:

³⁶ *Id.* Ironically, “pus pockets,” which are normal among the confined population, are treated with “Kopertox.” Kopertox carries a warning that it should not be used on “animals which are used for food production.”

³⁷ *Id.* at 267–68. Scully comments that “[w]hen [scientists] have conquered the ‘stress gene,’ maybe the Ph.D.s and guys in white coats can find us a cure for the despair gene, too.” *Id.* at 268.

³⁸ *Id.* at 268.

³⁹ *Id.* at 280. Discussing modern genetics, Scully describes the pork industry’s attempt to eliminate the “Porcine Stress Syndrome (PSS)” in order to produce the greatest amount of high quality protein possible. Another goal involves engineering pigs to have decreased “pale soft exudative (PSE)” (decreased PSE leads to higher quality meat). *Id.* at 236–37. However, by attempting to decrease PSE, the stress increased!

⁴⁰ *Id.* at 282 (quoting David Barboza, *Goliath of the Hog World: Fast Rise of Smithfield Foods Makes Regulators Worry*, N.Y. Times C1 (April 7, 2000) (an account of the same plant’s slaughterhouse)).

⁴¹ *Id.* at 283. See also *id.* at 282 (undercover reporter found that the turnover rate for slaughterhouse workers in Tar Heel is 100% (citing Charlie LeDuff, *In the Hog Factory, the Lines are Clear*, Intl. Herald Tribune, (June 29, 2000)).

It wasn't necessary for me to go in there. Killing is bad to see no matter how humanely it is done. That is the nature of the business. What is more important, is seeing how these creatures lived their lives *before* they were killed. . . . People have this false sense of security that before death, these animals had some sort of life.⁴²

Chapter 6, *Deliver Me From My Necessities*, replaces the reader's sense of security with complete exposure to an alarming reality.⁴³ Unfortunately, this factory farming method that brings home the bacon to everyone's table is not limited to hogs. The United States slaughters 38 million cows and calves annually; killing approximately 300 to 400 per hour. Scully describes an investigation by the *Washington Post*, finding it was common for employees to skin and dismember animals that are still alive and conscious.⁴⁴ One employee stated that, "[t]he line is never stopped simply because an animal is alive."⁴⁵ Another employee who cuts off the hooves of strung-up cattle passing by at a rate of 390 per hour, reported that, "[T]hey blink. They make noises. The head moves, the eyes are open and still looking around. They die piece by piece."⁴⁶ The critics of these reports nonetheless argue that the radical animal welfare activists use these extreme video investigations to promote their cause on an emotional level. One wonders how many examples of these "extreme" videos it will take to end the criticism.

Factory farming is a grim business, whether or not one believes animals actually feel pain like humans. Scully packed *Dominion* with pages and pages of in-depth research about the business of factory farming, forcing the reader to digest the numbers. Farm workers in the United States slaughter 103 million hogs, 250 million turkeys, and 8 billion chickens annually.⁴⁷ The reality of these numbers leads to a large number of processing mistakes. It is too convenient to believe these animals truly do not experience pain.

Not all animal cruelty can be prevented, but as *Dominion* suggests, we can prevent the cruelty of factory farming.⁴⁸ It is true that

⁴² Interview with Scully, *supra* n. 3.

⁴³ Scully, *supra* n. 2, at 289 ("Factory farming isn't just killing: It is negation, a complete denial of the animal as a living being with his or her own needs and nature.").

⁴⁴ A videotape obtained from a slaughterhouse in Wallula, Washington, showed cows being skinned and their legs cut off without first being stunned. Laurie Fulkerson, 2001 *Legislative Review*, 8 *Animal L.* 259, 277 (2002) (citing six farm animal stories).

⁴⁵ Scully, *supra* n. 2, at 284 (citing a *Washington Post* exposé in 2001).

⁴⁶ *Id.* The Humane Slaughter Act requires that "all animals [be] rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective." *Humane Slaughter Act of 1958*, 7 U.S.C. §§ 1901-06 (2002). This provision does *not* apply to chickens. See 9 C.F.R. § 301.2 (2003).

⁴⁷ Scully, *supra* n. 2, at 284-85 (in all, approximately 15,000 beheadings per second). There are 95 million hogs slaughtered annually. *Id.* at 29.

⁴⁸ See e.g. Fla. Const. art. 10, § 21 (providing the first measure in the United States led by the Animal Rights Foundation of Florida banning the caging of pigs in gestation crates—tiny, two-foot by seven-foot cages in which pregnant pigs are housed for almost all their whole lives).

the average person likes the taste of meat, and that while eating that steak dinner or chicken salad, the average person does not consider the once living and breathing (sentient) animal or the life the animal endured. However, if these consumers actually toured the factory farms as Scully did, there would likely be a significant decrease in meat consumption or a move towards more humanely raised meat products. So what is the point Scully intends to make by writing these gut-wrenching stories? Why does he spend so many pages illustrating the depressing, yet arguably efficient business of factory hog farming?⁴⁹

Perhaps he intends to demonstrate the factory farm business's complete and casual disregard for animals by denying that animals are living beings that have needs. Perhaps he simply intends for people to finally take notice. Personally, after reading this chapter, I nearly did not finish reading the book. I am ashamed to admit that I sometimes have contributed to this business by purchasing its products—perhaps that is Scully's goal. As he ends his strongest chapter, *Deliver Me From My Necessities*, Scully describes the loneliness he felt for the creatures as he left the facility, "I felt as if I hadn't done anything for them."⁵⁰ The reader is left with the realization that "[f]or the sake of a little flesh we deprive them of sun, of light, of the duration of life to which they are entitled by birth and being."⁵¹

V. ANIMALS FOR SPORT

*I kill, therefore I am.*⁵²

Scully makes no effort to hide his utter loathing for exotic sport hunting and its supporters. In fact, he wrote these chapters because, "Safari Club hunters are not used to being made fun of. And that is

⁴⁹ Scully, *supra* n. 2, at 276. Every procedure in hog farming has a purpose. For instance, docking involves only *partial*, and not complete, amputation of piglets' tails. Premature weaning leaves piglets with the undesirable habit of searching for something to chew or suck, and they tend to snap at the tails of their closely located penmates. Therefore, by removing only *part* of the tail, the tail becomes more sensitive, "so that the pain of a bite is sharper and the pigs will therefore try harder to avoid attack." Without the aid of this "short-term stressor," the pigs display "learned helplessness" and they "just give up, their tails get chewed and infected, the infection spreads, and they die an unauthorized death." *Id.*

More examples of such farming "efficiency" include: "Castration [which] is done to check early signs of aggression" even though death usually occurs before the pig's puberty. "The teeth clipping, removing the tips of incisors, is another 'protection' for the mother, whose udders get lacerated by twice the number of mouths they're designed for." *Id.* Although every state has an anti-cruelty statute, 30 states exempt animal husbandry practices such as dehorning, castrating, and branding. See Pamela D. Frasch, et. al., *State Animal Anti-Cruelty Statutes: An Overview* 5 Animal L. 69, 77 (1999). Iowa and Utah specifically exclude livestock from protection under their cruelty statutes. *Id.* at 78 (citing Iowa Code Ann. § 717B.1 (West 1993 & Supp. 1998); Utah Code Ann. §§ 76-9-301(11)(B)(ii) (Supp. 1998)).

⁵⁰ Interview with Scully, *supra* n. 3.

⁵¹ Scully, *supra* n. 2, at 14 (citing Plutarch, *On the Eating of Meat*, in *Moralia* 994E).

⁵² *Id.* at 55 (critiquing James A. Swan, *In Defense of Hunting* 15, 35 (Harper 1995)).

what I wanted to do—make fun of them, expose them as weaklings, and attack their excuses from a position of strength.”⁵³ After all, it is highly unlikely that Scully would convert a significant portion of the American hunting population into vegetarians. His design, however, was successful; I certainly laughed out loud at his cartoon-like descriptions in the book of the exotic Safari Club hunters, as he exposed the hypocrisies in the excuses for sport hunting.

In field journalist style, Scully takes the reader into the jungle setting of the Safari Club International annual conference where booths, “manned by more than three thousand guides and outfitters [serve] the 13,554 naked apes attending the convention.”⁵⁴ Similar to the practice of factory farming, the entire Safari Club concept proves that “something has gone horribly wrong.”⁵⁵ Around the convention hall, the evidence is everywhere: there are “kill” pictures proudly displaying downed elephants. One in particular depicts an elephant corpse photographed alongside “some grinning little bantamweight in a polo shirt.”⁵⁶ Another full-color photograph displays a dead giraffe, lying “on his stomach and folded legs, the neck forming an arch off to the side, providing an elbow rest for the posing hunter, a woman.”⁵⁷ There are elephant trophy hunts, or “big tuskers” for sale at \$10,500 apiece.⁵⁸ Rhino trophies go for about \$23,000. Tourngat Wilderness Adventures in Goose Bay, Labrador, Canada offers the biggest caribou racks anywhere, and a plane—in case the caribou do not get close enough to the lodge.⁵⁹

There are seminars such as the one on bow hunting covering the “finer points of effecting maximum internal hemorrhaging.”⁶⁰ The “ethics of hunting” seminar, on the other hand, was delivered to 19 listeners and 112 empty chairs.⁶¹ A video runs footage showing “four dramatic brain shots” to a bull elephant protecting his herd.⁶² A brochure handed out during the prayer breakfast warns against “The Pa-

⁵³ Interview with Scully, *supra* n. 3.

⁵⁴ Scully, *supra* n. 2, at 49.

⁵⁵ *Id.* at 88.

⁵⁶ *Id.* at 89.

⁵⁷ *Id.* at 51.

⁵⁸ *Id.* at 47. Lifting the ivory ban is a controversial possibility. On one hand, Kenya lost about 85% of its native elephant population between 1973 and 1987 when there was no ban against trading of ivory. If legal trading is allowed to flourish again, Kenya's profitable tourism business will suffer. On the other hand, people argue that the elephant population is increasing and that the animals now destroy villagers' crops. See e.g. Emily Wax, *Ivory Ban Has High Cost for Rural Africans; Resurgent Elephants Trample Harvests*, Wash. Post A1, A30 (Nov. 10, 2002). See also John A. Hoyt, *Animals in Peril* (Avery Publ. Group 1994) (arguing that the African elephant situation is the best example of how the theory of consumptive sustainable use can result in tragic and often irreversible consequences).

⁵⁹ Scully, *supra* n. 2, at 61.

⁶⁰ *Id.* at 50.

⁶¹ *Id.* at 61 (“Ethics at Safari Club is ordered libertinism, like teaching cannibals to use a table napkin and not take the last portion.”).

⁶² *Id.* at 48 (referring to the video *With Deadly Intent*).

gan Roots of Environmentalism.”⁶³ And everywhere Scully looks, there are beautiful animals—deer, zebras, kudu, impalas, leopards, cougars, rabbits, wolves, baboons, elk, wildebeests, giraffes, bears—all stuffed, that is⁶⁴

In essence, the convention is a one-stop shopping mall for exotic hunters. Here, a hunter could arrange to experience the challenge of hunting New Zealand sheep—from a helicopter.⁶⁵ An outfitter from Tulsa, Oklahoma, assures another shopping hunter concerned with the “danger” involved in elephant hunting that she could shoot from the safety of the car after an elephant has been lured in by food or water.⁶⁶ No matter how unskilled a hunter may be, there are hunting outfitters at this convention who will guarantee—for a price—a trophy kill.

Scully reveals that being a Safari Club hunter takes money. “[T]he average Safari Club member owns eleven rifles, six shotguns, five handguns, and a bow” and “spends \$14,000 a year on hunting, compared to \$1,500 for the average American hunter.”⁶⁷ To achieve Diamond Level status in the Safari Club, a member must have already killed a minimum of seventy-six different species of creatures, and must now kill eighteen different species of Asian and African animals.⁶⁸ Safari Club International, with over fifty percent of its members reporting annual income *exceeding* \$100,000, is a 501(c)(3) tax-exempt charity “organized for exclusively charitable and educational purposes.”⁶⁹

⁶³ *Id.* at 55.

⁶⁴ *Id.* at 49. In further describing men of influence in the hunting arena, Scully quotes a famous hunter: “I am a *hunter*, and I don’t apologize to anyone.’ This opening line from General Norman Schwarzkopf brings such loud applause that you half-expect the [stuffed] giraffe to bolt from the grand ballroom.” *Id.* at 67 (emphasis in original).

⁶⁵ *Id.* at 51 (New Zealand Wildlife Safaris offers the opportunity to fly with Kulu Hunting Company of Magadan, Russia, and shoot at rare snow sheep at a cost of \$14,900).

⁶⁶ *Id.* The more glamorous hunter, (or more stereotypically his wife), can also purchase diamond jewelry at such a convention. *Id.* at 52.

⁶⁷ *Id.* at 53. Scully distinguishes between the average American hunter who lives a hurried, worker-bee existence with only weekends to spare for hunting, and the professional hunter who knows that certain species have social lives, but who also knows that a trophy elephant is worth more to his pocketbook dead than alive. *Id.* at 84–87.

Occasionally, there are contradicting portrayals in *Dominion*. On one hand, Scully seems to prefer the “simple” hunter who just hopes to “take” one or two deer per season. On the other hand, he exposes the unreasonable cruelty that large numbers of these “simple” hunters exert onto their prey. For instance, he reports that Pennsylvania alone issued over one million hunting and fishing licenses in 2001 (thereby adding approximately \$2 million to the state’s economy).

⁶⁸ *Id.* at 57. Safari Club has approximately 42,000 members. See generally Safari Club Intl. Wis. Chapter, *Safari Club Intl. Wis. Chapter* <<http://www.sciwi.org/>> (accessed Mar. 1, 2003).

⁶⁹ Scully, *supra* n. 2, at 78 (emphasis added).

*"If elk could scream, . . . the woods would have fewer hunters."*⁷⁰

Scully sums up the whole Safari Club phenomena as "a deeper psychodrama, . . . some sort of ass-backward coming-of-age rite that . . . makes boys of men. Nature, in this holy rite, is transformed into an endless theme park."⁷¹ After analyzing the Safari Club, Scully ventures into the less glamorous world of canned hunting.⁷² The Pico Ranch in Wimberly, Texas, for example, offers 2,000 high-fenced acres enclosing deer. The brochure depicts two successful hunters "done up head-to-toe in leafy camouflage—in their imaginations, so it seems, at Normandy or in the jungles of Nam instead of inside a large pen where they have just ambushed two trapped animals."⁷³ Here, hunting deer within the confines of barbed wire fences seems normal, almost acceptable. So does the common practice of luring deer to timed feeders releasing food for several weeks to "train" the deer to show up predictably at the same feeding spot. But what about the practice of transporting thousands of deer, wild sheep, boars, big cats, wolves, or bears (after first tracking them down via a helicopter and shooting them with tranquilizers) to a game ranch where they are then released and shot by trophy hunters? Or what about purchasing aging tigers from zoos, releasing them from their transport cages, and then shooting them on the spot?⁷⁴ These hunting practices beg the question that Scully specifically asks: "How could anyone hunt a trapped animal?"⁷⁵

We have heard the argument that wildlife "would run loose across our towns and cities were it not for sport hunters to control their population."⁷⁶ We also have heard the argument that the "[w]eaker animals in the wild . . . will only die miserable deaths by starvation and exposure without sport hunters to control their populations."⁷⁷ Scully effectively points out the inherent contradictions in such arguments by revealing that wild animals are still being bred to replenish the stocks

⁷⁰ *Id.* at 59–60 (citing George N. Wallace, *If Elk Could Scream*, in *A Hunter's Heart: Honest Essays on Blood Sport* 96 (David Petersen ed., Henry Holt & Co. 1996) (emphasis added)).

⁷¹ Scully, *supra* n. 2, at 59.

⁷² Canned hunting—releasing captured animals in enclosed pens where they are then hunted—is legal in over 30 states, and some of these states permit the importation of African animals to America for the sole purpose of being shot. Laura J. Ireland, *Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned "Hunting,"* 8 *Animal L.* 223, 241 (2002) (asserting that the canned hunt caters to "wealthy trophy hunters who exploit hand-raised game, zoo, and circus animals" and that strong legislation is necessary to end this cruel sport).

⁷³ Scully, *supra* n. 2, at 63.

⁷⁴ *Id.* at 64 (an ABC Primetime Live investigation showed this exact footage). A two-year investigation revealed that "of the 19,361 mammals that left the nation's *accredited* zoos from 1992 through mid-1998, 7,420—or 38%—went to dealers, auctions, hunting ranches, unidentified individuals or unaccredited zoos or game farms." *Id.* (citing Linda Goldston, *Animals Once Admired at Country's Major Zoos Are Sold or Given Away to Dealers*, *San Jose Mercury News* (Feb. 11, 1999)) (emphasis added).

⁷⁵ *Id.*

⁷⁶ *Id.* at 66.

⁷⁷ *Id.*

and that the bigger, stronger animals with the largest racks are the ones being culled, not the weak animals. Who is better: the hunter who admits he likes to kill animals, or the hunter who attempts to present the good-for-all justifications for a gruesome pastime?

Upon exposing the cruel world of exotic and canned hunting, Scully wonders in his sarcastic tone where these “Nimrods and Dr. Deers and Christian gentlemen hunters and Safari Clubbers of the world. . . got this idea of dominion as a relentless, merciless merchandising and pillaging of our forests and their inhabitants.”⁷⁸ He disagrees that the Bible is the source and spends the next several pages explaining why not. Throughout the book, Scully argues that showing mercy towards creatures with lesser value than humans is a thing we must do, though he also stresses that animals should have value of their own and not as compared with people. Likewise, showing cruel and merciless dominion over these same creatures merely because we can is a thing we must absolutely *not* do. The Bible preaches mercy; “[i]t doesn’t say you can baiteth and slayeth and stuffeth everything in sight, either, let alone deducteth the cost.”⁷⁹

The closing of the sport hunting chapters brings an end to Scully’s powerful and comical criticisms of the Safari Club International hunting tradition. Scully also repeats his theme that all animals deserve to be treated with mercy and humanity, whether the majestic elephant in the African Serengeti or the 500-pound hog in the factory farm. Animals are animals; cruelty is cruelty. The mink and fox in America who are skinned for their coats, for instance, deserve the same attention as the dogs and cats in China who are also skinned alive for their coats.⁸⁰

⁷⁸ *Id.* at 90.

⁷⁹ *Id.* at 92.

⁸⁰ *Id.* at 121 (asserting that we should pay attention to the *cruelty* exerted on *all* animals and not just on animals we favor). Scully’s example is that humans take creatures such as mink, beaver, and foxes, stuff them into cages, and electrocute them for their fur. Many members of society casually dismiss the people fighting for these creatures’ rights as animal rights extremists. However, when the plight of cats and dogs is raised, even the resistant conservatives take notice. *See also* Fredrick Kunkle, *A Swanky Spa Where Fur is de Rigueur; Deluxe Fairfax Resort Offers Dogs, Cats Creature Comforts*, *Wash. Post*, A1 (Dec. 22, 2002) (revealing that U.S. owners will spend nearly \$30 billion this year on their pets).

Scully reveals that in 1998, the NBC News program *Dateline* aired footage of the fur industry in China, where workers “manufactured” approximately two million cats and dogs for export mostly to the United States. The footage revealed

dogs tied down while being skinned alive, whimpering for mercy, actually licking the hand of the skinner, and the cats stuffed into little cages, huddled in terror as one after another was strangled to death—literally noosed and hung inside the cage, this to avoid bleeding or other damage to the fur.

Scully, *supra* n. 2, at 121. Scully’s sole purpose in citing this distressing footage is to demonstrate that there is no difference in what the Chinese do for fur and what Americans do for fur. *See also* Va. Code Ann. § 3.1-796.128:2 (2002) (making it unlawful for any person within the state to sell any garment knowingly made from the hide, pelt, or fur of a domestic dog or cat.); Or. Rev. Stat. Ann. § 167.390 (2001) (banning the sale of products containing domestic dog or cat fur from animals killed and maimed for their fur).

More importantly, cruelty is not justified on any grounds, especially economic grounds. In our everyday lives at home and work, Scully argues, we should be neither "arbitrarily cruel" nor "arbitrarily compassionate."⁸¹

VI. WHALE HUNTING

One of the most controversial animal welfare subjects, which has lasted throughout the decades, is whale hunting. Scully estimates that ninety-nine percent of the world's whale resources are gone. In fact, next to the fate of the elephant, the destruction of the whale population "is one of the greatest human onslaughts ever visited upon any animal."⁸² At one point, in a typical whaling season, whalers would kill 35,000 great whales from the Antarctic waters alone.⁸³ "The year 1938, with forty-one factory ships at work, saw a record take of 45,010 great whales just in the Antarctic."⁸⁴ In 1931, approximately 32,000 blue whales were slaughtered.⁸⁵ The fifties "brought a yield of no fewer than 300,000 great whales. The sixties . . . some 380,000. The seventies . . . more than a quarter million."⁸⁶ Today, even though it is difficult to state with certainty the actual numbers, it is estimated that there are "2,000 southern right whales, 300 northern rights, 5,500 humpbacks, 47,000 fins, 21,000 grays, 40,000 Bryde's, 7,500 bowheads, 10,300 sei whales, and 3,000 blue whales in all the seven seas."⁸⁷ The aggressive dominion over whales, some the size of a fully-fueled 737 airplane, is just as merciless as people's callous treatment of animals in the factory farms.⁸⁸

Despite the present moratorium on whale hunting, Japan and Norway continue to kill approximately 1,000 whales each year.⁸⁹ Searching for reasons for these permitted loopholes, Scully discusses the 52nd annual meeting of the International Whaling Commission in

Another contradiction in attention to cruelty is that Americans love their hamburgers but show distaste for the consumption of horsemeat, which humans frequently consume overseas. See Tamara Jones, *An Ugly Fate in an Auction Ring? Horse Slaughter for Human Diets Debated; From Auction to Slaughter, a Painful Debate*, Wash. Post A1 (Jan. 19, 2003) (arguing that horsemeat is not used to feed starving people but is instead a delicacy in Canada, Europe, and Asia, and therefore, the slaughter of American horses is considered inhumane).

⁸¹ Scully, *supra* n. 2, at 39.

⁸² *Id.* at 155.

⁸³ *Id.* at 158.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 159.

⁸⁷ *Id.* (citing Intl. Whaling Commn., *Whale Population Estimates*, in *The Lives of Whales* 6 (June 2000)).

⁸⁸ *Id.* at 152-54 (even though whales are targeted with grenade shots to their brains, some whales take approximately five minutes to die. However, the job might not be that efficient, "as in the case of one whale this year [2000] who took 96 minutes to expire and another who took 130 minutes," and there are other whales that are "struck and lost" who die at sea).

⁸⁹ *Id.* at 142.

Adelaide, Australia, in 2000.⁹⁰ In this setting, Japan and Norway fiercely argued for the right to trade in these huge sea mammals. The characters Scully encountered were as interesting and loyal to their “cause” as were the Safari Club hunters, but Scully refrains from poking fun at them in his book.

The Japanese team was at the meeting to convince the anti-whaling delegates that millions of whales are alive today. Alternative arguments put forth by the pro-whaling countries, like Japan, claim a right to eat whale meat, just like Westerners have a right to eat hamburgers, and they should be allowed to take whales. In yet another alternative, Japan claims it needs to capture and kill 600 to 700 whales each year for “scientific research.”⁹¹ Therefore, they should be allowed to take whales. Finally, Japan argues for whaling as a “cultural right,” indeed a kind of religious duty.⁹² This view of the whaling industry as a proud symbol of cultural diversity creates a sensitive subject.⁹³

The International Whaling Commission (IWC), according to Scully, “is a useless academic bureaucracy,” directing its moral authority through weak requests that suggest disobedient countries like Japan should refrain from issuing any special permits for the take of minke whales from the Southern Ocean Sanctuary.⁹⁴ The IWC also sent a letter to Canada, another noncompliant country, urging Canada to refrain from issuing permits to kill endangered whales in the eastern Canadian Arctic.⁹⁵

After pouring through this long chapter, it becomes apparent that Japan and the other pro-commercial whaling advocates are getting closer to their goal of expanding the quotas and one day resuming commercial whaling; so, whaling will survive. Unfortunately, it is common for an international arena to treat issues of animal welfare as illegiti-

⁹⁰ *Id.* at 141.

⁹¹ *Id.* at 164–66. In Article VIII of its charter, the 1946 *Convention in International Whaling* provides that

Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this article shall be exempt from the operation of this Convention.

Id. at 165. The Japanese Fisheries Agency in the *Nikkei Weekly* wants to “study their earplugs, ovaries, muscle tissue, and stomach contents” and so better calculate whale recovery rates.” *Id.* (citing Masako Fukui, *Australia, Japan at Odds Over Whaling*, *Nikkei Weekly* (Asia-Pacific section) 20 (Mar. 6, 2000)).

⁹² Scully, *supra* n. 2 at 169.

⁹³ *Id.* at 175–76 (Scully states that Japan perverts the meaning of culture “by stirring up phony indigenous movements to revive long-gone traditions decades after the whaling industry should have died its natural death.”).

⁹⁴ *Id.* at 185 (citing Intl. Whaling Commn., *Resolution on Whaling under Special Permit in the Southern Ocean Sanctuary*, IWC/52/37, agenda item 13).

⁹⁵ See *id.* at 185–86 (citing Intl. Whaling Commn., *Resolution on Whaling of Highly Endangered Bowhead Whales in the Eastern Canadian Arctic*, IWC/52/38, agenda item 10.3.2).

mate or subordinate agenda items.⁹⁶ As a result, chapter 4, *Riches of the Sea*, was a frustrating read because Scully only hints at a resolution to the massive whaling dilemma.

VII. ANIMALS FOR EXPERIMENTS

*"[S]inning bravely" in the name of science.*⁹⁷

No single chapter is dedicated to the discussion of cruelty to laboratory animals. However, Scully makes it apparent that he is interested in the topic, scattering bits and pieces throughout *Dominion*. In fact, he now regrets that he did not include a separate chapter concerning the plight of laboratory animals.⁹⁸

Scully asks the right questions about continued justifications for the scientific use of animals. The thought of what actually occurs in the laboratories is an uncomfortable one, especially if one has seen photographs of animals during the process. The vision is, in many ways, surreal. Often, the experimentation involves painful procedures and a slow recovery, if any. However, the scientists condone the experimentation because the results are intended to serve a higher purpose, or at least, that is the hope. But as Scully points out, that is not always the case. He insists that scientists attempt to justify any use of animals in experiments and asks that they instead pay attention to the cruelty they are inflicting on their subjects. "[U]ntil you see the cost, you cannot rationally weigh what is essential and what is not."⁹⁹

In one example of experimentation, he expresses sadness that a colleague can find humor in a story of a laboratory in Indiana,

where, to silence the yapping of some sixty dogs, the researchers cut out the vocal cords of each one. The dogs still try to bark . . . only it looks like

⁹⁶ See *id.* at 184 (in the 1990s the United States attempted to ban tuna caught by Latin fisherman because their practices caused the cruel deaths of countless dolphins.). The World Trade Organization, however, compelled Congress to remove the ban on tuna caught by Latin fisherman, because it served as an unfair barrier to trade. In 1996, the European Union attempted to ban the import of fur caught by U.S. furriers employing the steel-jawed, leg-hold traps. American furrier lobbyists were able to prevail on the Clinton administration to sue at the World Trade Union, thereby forcing the European Union to retreat. Similarly, the European Union attempted to ban the marketing of cosmetics containing ingredients tested on animals. Because the proposed ban was intended to include imports, The General Agreement on Tariffs and Trade (GATT) rules were in effect, and the European Union backed down.

GATT's Article XI prohibits countries from imposing bans or restrictions on imports and exports. The European Union exports approximately 300,000 live cattle annually to the Middle East and North Africa. Although the transportation involves "brutal unloading and slaughter methods," it cannot be banned because of GATT's Article XI. *General Agreement on Tariffs and Trade*, Oct. 30, 1947, Art. IX, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* 485-558 (GATT Secretariat 1994). See also Peter Stevenson, *The World Trade Organisation Rules: A Legal Analysis of Their Adverse Impact on Animal Welfare*, 8 *Animal L.* 107, 119-20 (2002).

⁹⁷ Scully, *supra* n. 2, at 379 (quoting philosopher Paul Ramsey).

⁹⁸ Interview with Scully, *supra* n. 3.

⁹⁹ Scully, *supra* n. 2, at 379.

someone has pressed the mute button, and now the scientists can go about their work in peace and quiet.¹⁰⁰

Scully asks the reader to imagine what would happen if her own dog or cat wandered off without its identification tag and entered into "a different moral world where cruelty statutes no longer apply."¹⁰¹ He introduces the world of the March of Dimes' laboratories, where researchers worked on experiments such as *The Morphology of Retinogeniculate X- and Y-Cell Axonal Arbors in Dark-Reared Cats*.¹⁰²

For the researchers, it meant taking a group of kittens, sewing shut the eyelids of half of them while rearing the others for one year in total darkness, and then killing them all to examine the effects of this experience on their brains.¹⁰³

March of Dimes also has sponsored "experiments administering massive doses of cocaine, nicotine, and alcohol to animals" to expand knowledge of the harmful effect of these substances.¹⁰⁴ One wonders if any of these experiments were necessary. Another experiment included "implanting wires into the uteri of pregnant monkeys who spend fifty to sixty days at a time in a cage, in a straitjacket, tethered to a wall."¹⁰⁵

Scully suggests that the word "science" is used to justify trivial and often useless experiments on animals because we have a "presumptive respect" for the scientific profession.¹⁰⁶ Some scientists manifest a complete disregard for the subject animals and for creation itself by cloning animals and embryos, and creating featherless chickens and fear-free pigs. Scully raises facts that the average person may not know. For example, scientifically sound alternatives to animal experimentation are available with many more becoming available. The Draize Test, which involves "dripping chemicals and personal-care products into the eyes of immobilized rabbits"¹⁰⁷ can be replaced with the use of human tissue systems mimicking the eye. Instead of subjecting live animals to commercial and industrial chemicals, "[a]cute toxicity is determined more accurately by *in vitro* methods using human cell cultures obtained from cadavers."¹⁰⁸

¹⁰⁰ *Id.* at 18.

¹⁰¹ *Id.* at 379.

¹⁰² P.E. Garraghty, et. al., *The Morphology of Retinogeniculate X- and Y-Cell Axonal Arbors in Dark-Reared Cats*, 66 *Experimental Brain Research* 115-127 (1987).

¹⁰³ Scully, *supra* n. 2, at 379. See Animal Welfare Inst., *Beyond the Laboratory Door* 109, 134 (Animal Welfare Inst. 1985) (providing descriptions and photographs of similar experiments involving kittens).

¹⁰⁴ Scully, *supra* n. 2, at 379 (citing various medical studies).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 380. The Environmental Protection Agency's proposed Endocrine Disrupter Testing Program, which will result in the death of as many as 150 million animals, has been criticized as having a scientifically flawed basis. See Aaron Lake, *1999 State and Federal Legislative and Administrative Actions*, 6 *Animal L.* 151, 178 n. 273 (2000).

¹⁰⁷ Scully, *supra* n. 2, at 384.

¹⁰⁸ *Id.* (emphasis in original).

The most interesting question Scully poses in his discussion of animal experimentation is: "Where did the ethical barriers first begin to fall?"¹⁰⁹ In particular, he is referring to recent public attention to animal cloning, which Scully feels is quickly approaching human cloning. Society did not initially view the cloning and patenting experimentation on animal life as controversial, and perhaps that was the fatal mistake. Scully quotes a biomedical researcher opposed to human cloning, "You can dispose of these [cloned, abnormal] animals, . . . but tell me, what can you do with abnormal humans? . . . [Human cloning is] an outrageous criminal enterprise to even attempt."¹¹⁰ The researcher goes on to warn against the inherent callousness of cloning as a utilitarian and arrogant way of life. Scully suggests that the ethical barriers began to fall with that first experiment on a small, white mouse.

Scully's stories about animals for food, animals for sport hunting, and animals for experimentation lead to these essential questions: Is all this necessary anymore? Is there no better way? *Dominion's* parting chapters demonstrate that this merciless treatment of animals not only is preventable, but there is a better way for humans to treat animals.

VIII. THERE MUST BE ANOTHER WAY

*What shall be done for these innocents?*¹¹¹

Scully dedicated most of *Dominion's* pages to "setting the scene" by illustrating the way humans dominate creatures, then by contradicting such useless arguments, such as: animals feel no pain or animals are on Earth for our disposal. It is irrelevant that animals cannot communicate and conceptualize like humans¹¹² or act morally towards humans. It is irrelevant that factory farming is more efficient than small business farming. It is irrelevant that creatures have lesser "value" in this world than humans. What is relevant is that today, at

¹⁰⁹ *Id.* at 382.

¹¹⁰ *Id.* (quoting Rick Weiss, *Human Cloning Bid Stirs Experts' Anger: Problems in Animal Cases Noted* Wash. Post (Mar. 7, 2001)). Texas A&M University is conducting cloning experiments with the intent to create the perfect cow, which has the girth of a beef cow and the udder of a Holstein. To date, their experiments have been unsuccessful, but they have achieved "hundreds of spontaneous abortions, miscarriages, disfigured fetuses, and horribly malformed live births. . . pictures of these creatures, scarcely recognizable as calves, lining the walls inside the department." *Id.* at 375-76 (Scully visited this lab.).

¹¹¹ *Id.* at 350 (citing C.S. Lewis, *The Problem of Pain: How Human Suffering Raises Almost Intolerable Intellectual Problems* 136 (Macmillan 1962)).

¹¹² There are other views into whether animals can communicate or conceptualize. See e.g. Shankar Vedantam, *From Orangutans, A Cultural Display*, Wash. Post A3 (Jan. 3, 2003) (recent research indicates that orangutans display "culture"). See also *Christmas Tree Now Toys at Zoo*, Wash. Post A7 (Jan. 12, 2003) (Rockefeller Center Christmas tree was transformed into toys for polar bears, otters, monkeys, and other animals at Central Park Zoo to serve as "enrichment toys" or "sensory-stimulating toys.").

our level of technology and civilization, we have discovered unimaginable ways to torture and maim animals and make their lives miserable. What is relevant is that today “people pour so much energy into being cruel towards animals . . . It is time we stop wasting so much human energy and start channeling that energy towards a more humane effort.”¹¹³

The end of Scully’s book discusses the alternatives and possible resolutions to address such inhumanity. Most of his resolutions are short and practical. Scully’s statutory resolutions might be impossible given the present administration’s traditionally conservative view of animal welfare, but optimism is always welcome. His central theme is that we have run out of excuses for the collapse of standards in our treatment of animals, and that it is time to formulate practical reforms and move towards necessary change. Scully also emphasizes that we can continue wasting time debating over animals and their rights, or we can utilize the human attribute of common sense to pass laws that show our development. He asserts that once the subject of animal welfare receives the public attention it deserves, legal reforms could be implemented in an effort to protect animals from cruelty.¹¹⁴ In the area of game hunting, he calls for reforms such as:

- (1) Game hunting and canned hunting are “the most easily outlawed;”¹¹⁵
- (2) Bow hunting, which tortures its target with a slow death, should be restricted to nonliving targets;
- (3) Safari Club International should not enjoy tax-exempt status similar to organizations such as the Salvation Army;¹¹⁶ and
- (4) Conservation and eco-tourism initiatives should be directed towards countries such as Africa and Asia, helping both wildlife and people.¹¹⁷

Additionally, Scully suggests the following reforms:

- (1) Strengthen the Animal Welfare Act by redefining key words such as “animal” and “scientific necessity;”¹¹⁸ and
- (2) Reform the Animal Welfare Act to require that scientists use scientifically sound alternative experiments to those on animals.¹¹⁹

¹¹³ Interview with Scully, *supra* n. 3.

¹¹⁴ *Id.* at 356. Every state has an animal anti-cruelty statute, most of which are misdemeanor offenses. *Id.* at 296–97.

¹¹⁵ *Id.* at 356 (apparently, such practices are still legal in 30 states). However, he refers to the Captive Exotic Animal Protection Act recently endorsed by Senator Joseph Biden (D-Del.) which would effectively ban domestic canned hunting. *Id.* at 358.

¹¹⁶ Scully, *supra* n. 2, at 359–60. *But see Exemption Tax for Pig Shelter*, Wash. Post C3 (Jan. 12, 2003) (Mini-Pigs, the only nonprofit organization in Virginia that rescues miniature pigs abandoned as they age, was recently warned that it might not be granted tax-exempt status next year because of the state’s recent budget woes).

¹¹⁷ Scully, *supra* n. 2, at 360–67.

¹¹⁸ *Id.* at 383–84 (for example, experimenters themselves are permitted to assess whether any experiment without the use of anesthesia is of “scientific necessity”).

¹¹⁹ *Id.* at 387–88. *See also* Animal Welfare Inst., *Beyond the Laboratory Door* (Animal Welfare Inst. 1985) (reporting on massive noncompliance with the Animal Welfare Act).

Scully admits his suggested reforms in factory farming would require paying higher prices for meat, but suggests enacting a new statute:

The Humane Farming Act would require specific standards such as the space afforded each animal and would ban mass confinement, veal crates, gestation crates, and battery cages.¹²⁰

Scully's resolution for the tremendous whale hunting controversy is perhaps too simple because he suggests that the United States and the other anti-whale hunting delegates should proclaim that a moratorium against whale hunting is, in fact, a moratorium. And, science cannot be used as a false justification for whale killing.¹²¹

Dominion's last chapter ends not with the usual blasting demand for the reforms Scully lays out, but rather with a few endearing stories portraying the more compassionate side of human treatment toward animals. Scully humbly admits that while he had been "busy worrying" about cruelty towards animals, he discovered all around him the many men and women who have been working for years for the cause.¹²² He writes about animals that some consider worthless rescued by the Farm Sanctuary from factory farms, stockyards, and slaughterhouses.¹²³ He also tells of the Elephant Sanctuary that removed Sissy, an abused 38-year-old female, from the El Paso Zoo and took her on a long road trip to the Tennessee sanctuary.¹²⁴

These stories represent Scully's ultimate purpose in writing the book. He reminds people to think about their actions, daily contribu-

¹²⁰ Scully, *supra* n. 2, at 391–93 (providing a checklist of provisions). Scully quotes Senator Robert Byrd (D-W.VA), eight-term senator, as being "aghast" when he toured a hog factory in his home state. "Our inhumane treatment of livestock is becoming . . . more and more barbaric. . . . These creatures feel; they know pain. . . . Let us strive to be good stewards and not defile God's creatures or ourselves by tolerating unnecessary, abhorrent, and repulsive cruelty." *Id.* at 390 (citing 148 Cong. Rec. S7310 (daily ed. July 9, 2001)). Scully also hints that perhaps Senator Byrd should be the legislative author for the Humane Farming Act. *Id.* at 391.

Four animal protection amendments to the Farm Bill passed through the House of Representatives on Oct. 4, 2001, representing "the single most productive day for animal protection in history." Laurie Fulkerson, 2001 *Legislative Review*, 8 *Animal L.* 259, 272–73 (2002) (similar amendments passed in the Senate on Feb. 13, 2002). The amendments "seek to end the inhumane practices of dragging sick or injured animals to slaughter, to ban the interstate and foreign transport of animals used for fighting, and to protect animals destined for slaughter from the needless suffering they currently endure." *Id.* See also Joby Warrick, *They Die Piece by Piece: In Overtaxed Plants, Humane Treatment of Cattle is Often a Battle Lost*, Wash. Post A01 (Apr. 10, 2001) (exposé of slaughterhouse cruelty).

¹²¹ Interview with Scully, *supra* n. 3 ("Just do it!"). See Laurie Fulkerson, 2001 *Legislative Review*, 8 *Animal L.* 259, 287–88 (2002) (citing H.R. Con. Res. 180, 107th Cong. (2001)); Sen. Res. 121, 107th Cong. (2001) (proposing to ban whale hunting based on scientific grounds).

¹²² Scully, *supra* n. 2, at 393.

¹²³ *Id.* at 396–97. See also Farm Sanctuary <<http://www.farmsanctuary.org>> (accessed Mar. 29, 2003).

¹²⁴ *Id.* at 397–98.

tions, and final epitaphs. Scully believes that true change will occur only when people recognize that to be decent human beings, there are actions that we *must* take and then there are actions that we *could* take.¹²⁵

IX. CONCLUSION

Dominion: The Power of Man, the Suffering of Animals, the Call to Mercy raises serious questions about life and the way we demonstrate our civilization. Scully shows us the facts, as they exist—with no sugarcoating—especially in the area of factory farming. Although *Dominion* is sometimes difficult to read because of its vivid detail, this empowering book illustrates persuasive reasons for a resurrection of compassionate spirit. While the argument that the humane treatment of animals is a moral responsibility is not new,¹²⁶ it is unusual for a working member of a Republican White House to speak out on behalf of the animal welfare movement. Scully's résumé is not one I would have initially selected to fill the role of such a compelling advocate. He is a conservative Republican, but he is also a vegetarian and an animal welfare advocate. He is an advocate who argues that one's political or religious tendencies should not dictate a position "for" or "against" merciless cruelty to animals; regardless of your political or religious beliefs, there are no excuses for systematic and merciless cruelty to animals—none whatsoever.

Dominion asks tough questions and forces us to face the reality of civilization's needless cruelty toward animals. While the book ends with a few unanswered questions and with a feeling of "what's next?" the book's theme is clear: we must protect animals from cruelty; humans must assert animals' rights to mercy, because the victims—the animals—cannot make such assertions for themselves.

Dominion is not a book urging equal rights for animals. It is a book about humans and humane treatment of animals.¹²⁷ *Dominion*

¹²⁵ Interview with Scully, *supra* n. 3.

¹²⁶ See e.g. David J. Wolfson, *McLibel*, 5 Animal L. 21, 46 (1999) (quoting a judicial opinion stating McDonald's had an unpracticed public relations policy, which stated that the humane treatment of animals was a moral responsibility).

¹²⁷ See e.g. Henry Beston, *The Outermost House* (5th ed., Henry Holt & Co. 1992) (originally published in 1928) (written for Judge A. Newson). I noticed this poem hanging in a doctor's office:

We need another wiser
and perhaps more mystical
concept of animals. . . .
We patronize
them for their incompleteness, for their tragic fate
of having taken form so far below ourselves.
And therein we err, and greatly err. . . . They are not
brethren, they are no underlings; they are
other nations, caught with ourselves in the net of
life and time, fellow prisoners of the splendour
and travail of the earth.

also opens the debate for the need and the obligation to show mercy toward animals as we use them for food, sport, experimentation, or other "needs." If you care about animals, ask yourself "why do you care?" Then ask, "what do you intend to do to express that concern?" That is Matthew Scully's purpose: to prompt people to live good, compassionate lives, and to be merciful toward animals.

Perhaps because Scully is a Republican employee in the White House, those conservative compassionate voters who would routinely dismiss the radical animal rights advocate will stop ignoring the cruelty and instead realize that we must do something—sooner, not later. Perhaps Scully, in his role as speechwriter to the President, will discuss his book and its important issues with his White House co-workers. While his book might not convince his conservative colleagues to stop serving meat at their family tables, it might trouble his co-workers' consciences enough to make small changes, perhaps deciding to buy meat only from reputable non-factory farms. Perhaps Matthew Scully will refrain from giving his controversial book to President Bush, but will bestow a copy on Mrs. Bush instead.

[T]he concept of "mercy" seem[s] to cause uneasiness in man, who, thanks to the enormous development of science and technology, never before known in history, has become master of the earth and has subdued and dominated it. This dominion over the earth, sometimes understood in a one-sided and superficial way, seems to leave no room for mercy.

-Pope John Paul II, *The Mercy of God*¹²⁸

¹²⁸ Scully, *supra* n. 2, at 287 (citing *The Mercy of God*, in *Encyclical Letter of Pope John Paul II* 1:2).

A REVIEW OF *MINDING ANIMALS: AWARENESS, EMOTIONS, AND HEART* BY DR. MARC BEKOFF

By
Michael Tobias*

Dr. Marc Bekoff's book, *Minding Animals: Awareness, Emotions, and Heart*,¹ like much of his work, is a tantalizing and ambitious overview of animal rights and liberation, approaching the subject through the lens of ethological data, anecdote, and philosophy. For more than three decades, Bekoff, who recently coined the expression "deep ethology,"² has been observing a variety of species at close quarters, from Adelie penguins to coyotes to wolves. His tent sites have ranged from the Western Peninsula of the Antarctic to Yellowstone to Boulder, Colorado, where he is a professor. Bekoff expects the best from humanity and asks scientists and the public to endorse a code of ethics that recognizes the cognitive and emotional mysteries of all other life forms. It is a simple, if utopian, plea against global ecological mayhem, animal cruelty, and runaway consumerism—but what distinguishes his approach in this book is the overwhelming evidence he elicits to support his goals.

Bekoff left a graduate program in neurobiology at medical school because he refused to kill animals as part of the curriculum. Paul Ehrlich refers to the dilemma as the "world of wounds" for students entering the study of ecology with a dream of healing the world.³ In the years since then, Bekoff has campaigned to raise awareness in the scientific world to the possibility of healing—to understand there is a "deep science" merging traditional disciplines, induction, and the old style of intrusive experiments with a new paradigm of "aesthetic and sentient experiences." His book is a feast of convincing arguments and analogies that leaves no doubt about the impending revolution in the scientific, legal, and consumer realms regarding our treatment of other species. Bekoff questions every traditional method prized by field bi-

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¹ Marc Bekoff, *Minding Animals: Awareness, Emotions, and Heart* (Forward by Jane Goodall) (Oxford U. Press, Inc. 2002).

² The phrase "deep ethology" is a twist on the phrase "deep ecology." The "deep ethology" concept combines the ideas of minding animals and recognizing human responsibilities in nature.

³ Paul Ehrlich, *Excellence in Ecology, Book 8, A World of Wounds: Ecologists and the Human Dilemma* (Ecology Inst. 1997).

ologists, including tagging and observation. He attaches serious consequences as much to scientists' fundamental beliefs and ethical priorities as to their methods.

Bekoff's approach to this ultimately spiritual challenge gains momentum from the beginning of the book through his accumulation of wisdom in the company of his (now deceased) companion, Jethro, a dog who, one comes to believe, instructed Bekoff in all the ways that medical school did not. It appears that Jethro taught Bekoff how to think and behave like a dog; where to urinate, how to play, grieve, meditate, and marvel at nature—aspects of Bekoff's deep ethology. How Bekoff's universal Jainism⁴ of animal rights will play out in the real world is a recurring question, but it never worries the eternal optimist. For example, Bekoff recognizes that socially responsible science, compassion, heart, and love can be blended into a productive recipe to learn more about the lives of other animals and the world where each one of us lives. He says that many scientists pay lip service to this idea, often dismissing those scientists who want to imbue science with compassion. In Bekoff's opinion, such narrow views of science are extremely outdated.⁵ He cites one example of this new scientific blending theory, the landmark speech Senator Robert Byrd (Democrat, West Virginia) delivered in July 2001, in which Senator Byrd called upon the United States Department of Agriculture to work more diligently to end the pain, suffering, and cruelty of slaughterhouses. As chairman of the Senate Appropriations Committee, Senator Byrd also demanded an additional \$3 million to enforce the Animal Welfare Act and Humane Slaughter Act.⁶ Bekoff sees a new paradigm eclipsing the old-world school—from society's increasing concerns about the legitimacy of zoos, to the debates within the field of conservation biology between those focused on whole populations and those more concerned with individuals.⁷

In medical schools, students increasingly demonstrate their preferences for non-invasive alternatives to animal studies.⁸ Rates for dis-

⁴ Jainism is the oldest religion in India, devoted to non-violence (ahimsa), and characterized by a remarkable set of ecological insights. In particular, the deeply-held belief that every being of every species is an individual endowed with a soul that must be respected. See generally Michael Tobias, *Life Force: The World of Jainism* (J'ai lu Editions 2000).

⁵ Bekoff, *supra* n. 1, at 10.

⁶ *Id.* at 160–61.

⁷ *Id.* at 188. Bekoff quotes extensively from biologist Jim Estes who argues that conservationists must “somehow build a program that embraces the goals and values of individualists because the majority of our society has such a deep emotional attachment to the welfare of individual animals.” Even Nobel Laureate Barbara McClintock, says Bekoff, spoke of her “feeling for the organism” when speaking of corn. *Id.* at 186.

⁸ Kristine Kieswer, *Top Ten U.S. Medical Schools Abandon Animal Labs: Others Abandon Change*, 10 No. 3 Physicians Comm. for Responsible Med. Mag. (Summer 2001) (available at <<http://pcrm.org/magazine/GM01Summer/GM01Summer02.html>>); for a list of schools that still have live animal labs and schools that do not, see PCRM, *Ethics in Medical Education* <<http://www.pcrm.org/resch/meded/index.html>> (accessed

section preferences are down throughout Europe, and outright revolt by biology and medical students is increasingly common.⁹ Alternatives to the use of animals in medical schools are increasingly popular, including a program at Johns Hopkins that has explored such options for many years.¹⁰ In one study of first-year medical students at the National University of Singapore, a human patient simulator was more effective and more eagerly received than using actual cadavers.¹¹ But-tressing this movement is the realization that the scientific value of studying animals in captivity is undermined by the stress and torment that incarcerated animals endure; behavioral gloom compromises emotional and physiological studies from the very start. For example, a common response to captivity in both zoos and biomedical research labs is known as stereotypies, a psychological disorder identified by frantic pacing, and a behavior that does not exist in the wild.¹² In the wild, animals show great behavioral complexity. Bekoff himself noted at least fifty or more forms of behavior in coyotes during one study, and cited the work of Stuart Altmann who witnessed "more than 120 behavior patterns for rhesus monkeys."¹³ Not so, for captive animals.

If this diversity of behavior is so common outside traditional research, imagine, says Bekoff, what the cognitive and emotional counterparts must be in the wild, where few humans ever observe animals. Some people may see a scavenging bear on a roadside in Yellowstone from the comfort of their car, but most people know only domesticated animals, and even in their presence, as Bekoff describes, there is contradiction. Americans lavish some \$23 billion per year on their beloved pets on pet food alone,¹⁴ but also consume over 9 billion animals as

Apr. 5, 2003); see generally PCRM, *Research Controversies & Issues* <www.pcrm.org/news/issues021119.html> (accessed Apr. 5, 2003).

⁹ See e.g. Bekoff, *supra* n. 1, at 157–59.

¹⁰ See Johns Hopkins Center for Alternatives to Animal Testing, *Alternatives to Animal Testing on the Web, Reduction, Refinement, Replacement* <<http://altweb.jhsph.edu>> (accessed Apr. 5, 2003). In addition to the Johns Hopkins Center for Alternatives to Animal Testing, countless other programs now exist to rigorously question the wisdom, effectiveness, and necessity of a paradigm involving the invasive animal experiments guiding most research for the last five centuries. Examples of such programs include the Alternatives Research & Development Foundation, the European Consensus-Platform for Alternatives (ECOPA) and European Resource Centre for Alternatives in Higher Education (EURCA), the Fund for the Replacement of Animals in Medical Experiments, the Interagency Coordinating Committee for the Validation of Alternative Methods, the University of California Center for Animal Alternatives at UC Davis, and the Netherlands Centre for Alternatives to Animal Use.

¹¹ G.M. Tan et al., *Teaching First-Year Medical Students Physiology: Does the Human Patient Simulator Allow for More Effective Teaching?* 43(5) *Singapore Med. J.* 238 (2002) (available at <<http://www.sma.org.sg/smj/4305/4305a4.pdf>>).

¹² Andrew N. Rowan, et al., *Farm Animal Welfare: The Focus of Animal Welfare in the U.S.A. in the 21st Century* (Tufts Ctr. for Animals & Pub. Policy 1999) (available at <<http://www.tufts.edu/vet/cfa/faw.pdf>>).

¹³ Bekoff, *supra* n. 1, at 52.

¹⁴ Consumer Insight Magazine, *Fighting Like Cats and Dogs for Share of the Pet Supply Category* <<http://acnielsen.com/pubs/ci/2000/q4/features/fightingcatsdogs.htm>> (accessed Apr. 5, 2003).

food every year.¹⁵ In Pasadena, California, feeding wild pigeons is considered a crime,¹⁶ and in Utrecht, Netherlands, the city council is considering ways to remove such birds, arguing that they are a nuisance.¹⁷

Bekoff's model of compassion and appreciation of the individual is key to his message, and dates back within his profession to the work of Charles Darwin who spoke about differences in degree, rather than in kind, when gazing upon the vast number of species gracing this planet. Bekoff elaborates on the idea of the universal individual who inhabits every species, whether among predator-savvy pronghorns and moose, hypersensitive wolves, or monkeys peeling the bark off the mjonso tree and chewing its pith for medicinal effects. In legal terms, such know-how in the wild provides evidentiary substance to the long-debated appeal for personhood at every juridical juncture. Bekoff's own mother endured a series of strokes that left her physically and mentally impaired. She can hardly move, is wheelchair and bed-bound, but, as Bekoff described to me recently, "every now and again there's a glimmer that shows she is processing some things." Ms. Rose may have no physical autonomy, but she has a large array of legal rights derived solely from her personhood. Yet humans grant little legislative protection to the tens of billions of animals slaughtered annually throughout the world,¹⁸ even though each animal possesses its own distinct glimmer of life, and can be said unambiguously, to be a remarkable being, an individual.

Bekoff, like many of us, is puzzled by this difference in legal and moral attribution to humans and nonhumans that has no scientific basis. Even in California, which boasts some of the most stringent anti-cruelty laws in the United States, the law still exempts farm animals—a typical feature of anti-cruelty legislation.¹⁹ As Steven Wise points out, this legal void dates back to the Roman law of Emperor Justinian.²⁰ Modern lawmakers mindlessly borrowed such ancient legal rules from a time when rulers slaughtered large wild animals for entertainment. Today, these primitive ideas persist in the common law

¹⁵ USDA, *Livestock Slaughter 2002 Annual Summary* 1 (National Agriculture Statistics Service 2003) (available at <<http://jan.mannlib.cornell.edu/reports/nassr/livestock/pls-bban/>>); USDA, *Poultry Slaughter 2002 Annual Summary* 2–3 (National Agriculture Statistics Service 2003) (available at <<http://jan.mannlib.cornell.edu/reports/nassr/poultry/ppy-bban/>>). This includes 36.75 million cattle and calves, 100.3 million pigs, 3.29 million sheep and lambs, 8.72 billion chickens, 271 million turkeys, and 24 million ducks.

¹⁶ Pasadena Mun. Code (Cal.) § 6.28.040 (1964).

¹⁷ European Environmental Press Newsletter, Dec. 7, 2001: Issue 15, <<http://www.eep.org/newsletters/newsletter071201.htm>> (accessed Apr. 5, 2003).

¹⁸ For worldwide statistics of animal slaughter, see Food and Agric. Org. of the U.N., *FAOGLiPHA* <<http://www.fao.org/ag/aga/glipha/index.jsp>> (accessed Apr. 5, 2003).

¹⁹ Cal. Penal Code § 599(c); see Michelle K. Albrecht, *Genetic Engineering Of Domestic Animals: Human Prerogative Or Animal Cruelty?* 6 *Animal L.* 237 (2000).

²⁰ David J. Wolfson, *Book Review* 6 *Animal L.* 262 (2000) (reviewing *Rattling The Cage: Toward Legal Rights For Animals*).

that denies personhood to nonhuman species. Yet Bekoff writes that a mountain of scientific evidence shows that “tool use, language use, and self-consciousness, culture, art, and rationality no longer can reliably be used to draw species boundaries that separate humans from other animals.”²¹ If I interpret Bekoff correctly, he believes that “person” should be broadly defined to encompass all living beings. After all, to cite but one broad comparison, the neurochemicals underlying our emotional states, our genes, and even our rituals are similar to nonhuman species.

Bekoff recounts dozens of ethological observations to underscore his assertion that there is unity in the natural world, despite the wealth of diversity; and that this unison cries out for moral, and hence, legal standing. Bekoff describes seeing one red fox burying another, an occurrence rarely observed by scientists. I personally witnessed a sea otter paying last respects—for three days—to his mate, on an isolated rocky shore in Big Sur. He cites the case of his own dog, Jethro, saving the lives of a rabbit and a bird. Bekoff also refers to the work of biologist Bernd Heinrich who points to true love among ravens; the monogamous nature of at least ninety percent of all bird species; and the “yearning” and “entreaty” calls among raccoon dogs and male golden jackals. Bekoff describes biologist Joyce Poole’s remarkable observations of grief among elephants; instances of surveillance times and self-inventories by flocks of western evening grosbeaks; EEGs that suggest that rats dream of the mazes they have conquered;²² energy savings of V-shaped flight patterns of birds as calculated by scientists at the University of Aberdeen; Rupert Sheldrake’s research into canine telepathy; Nobel Laureate Karl von Frisch’s classic study of brainpower in bees; Dr. Con Slobodchikoff’s research into prairie dog cognition and language-making; Michael Cabanac’s discovery that iguanas seek pleasure; and Barbara Smuts’ encounter with an African antelope grieving over her infant that was killed by an olive baboon.²³ In a similar vein, Bekoff describes an incident in the town of Tezpur, India, where

about one hundred rhesus monkeys brought traffic to a halt after a baby monkey was hit by a car. The monkeys encircled the injured infant, whose hind legs were crushed and who lay in the road unable to move, and blocked all traffic . . . Some of them massaged its legs. Finally, they left the scene carrying the injured baby with them.”²⁴

²¹ Bekoff, *supra* n. 1, at 13.

²² Brown University, *EEG Course and Glossary* <http://www.brown.edu/Departments/Clinical_Neurosciences/louis/eegcrs.html> (accessed Apr. 5, 2003); Bekoff, *supra* n. 1, at 113. Bekoff also reports on research by Steve Sivy of Gettysburg College who has discovered that rats, when anticipating play, show increases in dopamine activity.

²³ Bekoff, *supra* n. 1, at 113. Bekoff writes, “Pala [the antelope mother, named by Smuts] watched a baboon eat her infant, and then she chased the baboon away and gazed at the remaining skin and bones. Pala continued to stand motionless over her infant’s body through the night.”

²⁴ *Id.* at 102.

Bekoff quotes the great ornithologist Alexander Skutch, from his book, *The Minds of Birds*: "Birds so frequently respond to events in tones such as we might use that we suspect their emotions are similar to our own."²⁵ The data pours in. People for the Ethical Treatment of Animals (PETA) has long argued that fish evidence pain, and the organization fights to save fish from commercial fishing.²⁶ Even invertebrates are given their due, with nerve cells and pain sensors similar to our own.²⁷

We read numerous incidents of this kind, almost as if encountering evidence of extraterrestrial intelligence, only to be reminded that this is our world, the one we live in, and the one we share with millions of other species about whom we know next to nothing, yet presume to control. Notably, Bekoff attempts to force hard science to acknowledge such mystical, emotional truths and endow them with substance. Any rational scientist who reads this book may well surrender to such emotional truths—the clear goal of Bekoff's book.

But this euphoria of scientific understanding, this Buddhistic embrace of a feeling, loving, grieving, all-knowing universe, leads Bekoff to be "victimized by hope." He openly realizes that he is a member of the one species on earth that may properly be accused of not playing fair. Where does that leave him, and the science of ethology that he champions? Does it leave him with a science that, regrettably, continues to evolve in the wake of cruel experimental standards?²⁸ Bekoff and Goodall propose guidelines for reducing the number of animals that suffer because of humans. Bekoff writes, "The guiding principles for all of our interactions with animals should stress that it is a privilege to share our lives with other animals; we should respect their interests and lives at all times, and the animals' own views of the world must be given serious consideration."²⁹ Would scientific guidelines counter legal apathy? In some states, parking tickets can be more expensive than the misdemeanor fine for spotting a bear at night with bright lights and shooting it.³⁰ Can we muster the kind of strength and

²⁵ *Id.* at 107.

²⁶ PETA, *People for the Ethical Treatment of Animals* <<http://www.peta.org>> (accessed Apr. 5, 2003).

²⁷ Extending rights to invertebrates is a legal challenge, to be sure. Notably, New Zealand's recent Animal Welfare Act of 1999 is still unwilling to concede that insects have feelings. Ministry of Agriculture and Fishery, *The Animal Welfare Act – A Framework for the 21st Century* <<http://www.maf.govt.nz/biosecurity/legislation/animal-welfare-act/index.htm>> (accessed Apr. 5, 2003).

²⁸ Marc Bekoff and Jane Goodall founded an organization known as Ethologists for the Ethical Treatment of Animals/Citizens for Responsible Animal Behavior Studies. EETA/CRABS, *Mission Statement* <<http://www.ethologicaethics.org/>> (accessed Apr. 5, 2003).

²⁹ Bekoff, *supra* n. 1, at 139.

³⁰ See Ruth S. Musgrave, *State Wildlife Laws Handbook*, Govt. Inst. (1993). Ruth Musgrave and friends at the Center for Wildlife Law at the University of New Mexico have documented the vast variations in existing statutes from state to state. Similarly, Bekoff points to the fact that the Institutional Animal Care and Use Committees (IACUCs) at various universities are also in some state of disarray with respect to the

persuasiveness needed to battle the agricultural lobbies that exert so much power over Congress?

It is at this point in *Minding Animals* that Bekoff posits his most difficult question: "How does one decide that the pain, suffering, and lives of a million mice cost less to the mice than the benefits that are gotten by one or more humans?"³¹ He lists the ethical variables, examines utilitarian and welfare arguments, and adds that, perhaps other mice or chimpanzees will benefit from the suffering of their peers. This argument, however, is intentionally unpersuasive. Bekoff stresses the work of two British scientists, William M. S. Russell and Rex Burch, who published in 1959, *The Principles of Humane Experimental Technique*, in which they argued for "three R's . . . reduction, refinement, and replacement."³² Bekoff wonders if these principles were applied broadly in society, would we see more opinions like that of Justice Eric Andell of the Texas Court of Appeals. In 1994, Judge Andell declared:

It is not simplistic, ill-informed sentiment that has led our society to observe with compassion the occasionally televised plights of stranded whales and dolphins. It is, on the contrary, a recognition of a kinship that reaches across species boundaries. The law must be informed by evolving knowledge and attitudes. Otherwise, it risks becoming irrelevant as a means of revolving conflicts. Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, mere property.³³

Bekoff takes heart that his colleagues are increasingly willing to explore alternatives to intrusive animal research; that vegetarianism is on the rise; that academics are asking questions pertaining to the biophilia hypothesis—the notion, posited by E.O. Wilson at Harvard University, that all sentient beings take pleasure in affiliating with one another; and that students demand humane standards and a more compassionate culture during their education.³⁴ Even Prime Minister Tony Blair demanded, along with his outraged constituency, that at least two pigs—Porky and Phoenix—be spared during the 2001 outbreak of foot-and-mouth disease, while millions of other animals were cruelly exterminated. In a study by Stephen Kellert, between seventy and ninety percent of the public in Europe and the U.S. acknowledged "the right of nature to exist even if not useful to humans in any way."³⁵ Additional data support this poll, and suggest that people will pay for nature's services. In a study of 164 students (a few of whom were vege-

standards by which they exert oversight upon animal research protocols. See Bekoff, *supra* n. 1, at 31.

³¹ Bekoff, *supra* n. 1, at 146.

³² Johns Hopkins Center for Alternatives to Animal Testing, *Alternatives to Animal Testing on the Web* <http://altweb.jhsph.edu/publications/humane_exp/het-toc.htm> (accessed Apr. 5, 2003).

³³ *Bueckner v. Hamel*, 886 S.W.2d 368, 377–78 (Tex. App. 1994).

³⁴ See Bekoff, *supra* n. 1, at 60–61.

³⁵ Stephen R. Kellert, *The Value of Life: Biological Diversity and Human Society* (Island Press/Shearwater Books 1996).

tarian, 64 of whom were psychology students and 48 economics students), Bennett and Blaney found that when armed with more information concerning the moral dimensions of an animal welfare issue the respondents showed a "greater perception of social consensus" which resulted in "a higher level of moral intensity [moral imperative] associated with the issue, which in turn was reflected by a higher wtp [willingness to pay] for policy to address the issue."³⁶ This is good news, indeed. But whether this demonstrates any general principle regarding attitudes toward animal welfare has yet to be seen. The human population is poised to grow to as many as 11 billion in the twenty-first century, while the gap between rich and poor continues to grow wider.³⁷ How other species, most of which are in rapid decline, will fare under this demographic winter, this human fertility game of chicken, with all the consumption, climate, terrestrial and marine arrogation it implies, will be the chief criterion by which legal minds, judges and juries shall find, or not, the necessary calm, cognitive empathy, and trans-species motivation to provide an enriched legal net for animals in the future.

The voice of a past generation rings loud and clear throughout Bekoff's work and in the words of Barbara Smuts, who Bekoff quotes: "My own life has convinced me that the limitations most of us encounter in our relations with other animals reflect not their shortcomings, as we so often assume, but our own narrow views about who they are and the kinds of relationships we can have with them."³⁸

³⁶ Richard Bennett & Ralph Blaney, *Social Consensus, Moral Intensity and Willingness to Pay to Address a Farm Animal Welfare Issue*, 23 *J. of Econ. Psychol.* 501-520, (2002) (available at <<http://www.sciencedirect.com/science/journal/01674870>>).

³⁷ United Nations Population Division, *World Population Prospect: The 2002 Revision Population Database* <<http://esa.un.org/unpp>> (accessed Apr. 5, 2003).

³⁸ Bekoff, *supra* n. 1, at 99.