Towards Legal Rights for Laboratory Animals; Note

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TOWARDS LEGAL RIGHTS FOR LABORATORY ANIMALS?

Recent debates concerning the use of animals in laboratory research emanate from an increasing awareness of the vulnerable position these creatures occupy under our present legal system. Federal law presently requires that scientists use laboratory animals to test new drugs and cosmetics, but places virtually no limits on the amount of pain and deprivation these animals must endure during experimentation. Congress' failure to promote alternatives to this method of testing consumer products on animals has traditionally been justified by the state of scientific knowledge. As science matures, however, so must the techniques by which it tests new products.

Throughout history, society has attempted to protect the public morality, to protect property, and to preserve the future functioning of our ecosystem by bestowing "rights" upon animals. These allocated "rights," however, are not animal rights but fibers in a long thread of human rights. An historical analysis of philosophies, experiments, and legislative actions relating to animals makes it clear that human needs will always outweigh animal welfare in our society. The challenge lies in attaining a rational balance between human needs and animal welfare. The 97th Congress considered, but failed to pass, several bills, discussed in this note, which sought to reconcile the concerns and interests of both scientists and animal activists. As scientific progress lends support to an evolving social conscience, the law must move towards a system in which the concept of animal rights is not completely subsumed in the sphere of human rights.

PHILOSOPHICAL VIEWS CONCERNING ANIMALS

Since the beginning of recorded time, man has viewed animals as objects which exist for his own use and benefit. Indeed, God's words to Adam and Eve during creation fostered the view that humans should exert control over all other forms of life. In accordance with the Almighty design, animal products have become integral parts of our daily life.
lives. We eat them and we wear them as clothing and cosmetics. We use them to test what we ingest and wear. The use of animals and animal by-products has become so routine that few people consider the implications of such use. The present plight of animals has evolved, however, from centuries of philosophical thought and scientific progression.

Writing in the fourth century B.C., Aristotle outlined the common capacities shared by humans and animals. Admitting that both species shared the ability to experience sensation, Aristotle concluded that man alone possessed the ability to reason. The concept of man's superiority grew out of this theory. It was not until the thirteenth century, however, that any scholar expanded upon Aristotle's idea of animal sentience. Thomas Aquinas, who believed that animals could and did experience pain, promoted better treatment of animals by discouraging unnecessary cruelty. Aquinas believed, however, that the "natural order" contemplated man's use of animals. For Aquinas, prohibitions against cruelty to animals existed merely as safeguards of human morality; kindness to animals might foster kindness to fellow humans. A concern for human morality, rather than a belief in the inherent rights of animals, motivated Aquinas' reputed kindness.

With the seventeenth century French philosopher René Descartes came the nadir of sensitivity toward animals in Western thought. In Descartes' view, animals were "machines" which, lacking reason, could feel no pain. Throughout the seventeenth and eighteenth centuries, the classification and dissection of animals flourished. As the ability to reason acquired new significance, other prominent philosophers opposed Descartes' views concerning animals. François Voltaire and David Hume suggested that animals might not lack the ability to reason. During the Romantic Age, the importance of reason was downplayed.

According to Ralph Waldo Emerson, man's happiness hinged upon his ability to live harmoniously with nature. Hence, the idea of protecting animals not for morality but for their usefulness in our ecosystem emerged as a new thread in the tapestry of animal rights. Charles

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6. ARISTOTLE, 2 ON THE SOUL ch. 3, 414a(28)-415a(10).
7. Sentience is the "capacity for sensation or feeling." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1969). In this context, the term refers to animals' ability to feel pain.
9. Id.
10. There is no evidence that pain and fear are any less terrible to animals than they are to humans. See P. SINGER, infra note 18, at 217-20. In fact, it has been argued that the lack of cognitive ability in animals allows their whole consciousness to be filled with sensation, making pain and fear far more horrible to them than to us. T. REGAN & P. SINGER, ANIMAL RIGHTS AND HUMAN OBLIGATIONS 4 (1976) [hereinafter cited as REGAN].
11. Burr, supra note 4, at 207.
12. See REGAN, supra note 10, at 5.
Darwin's theory of evolution shattered this concept of the Romantic era but preserved the experimental value of animals. Darwin's survival of the fittest theory replaced Aristotle's rational soul theory of superiority, but perpetuated the idea of human superiority nonetheless. From an 1879 study in which Darwin intimated that humans might exhibit correlatives of animal behavior grew the science of ethology and a new justification for animal experimentation.

EXPERIMENTATION ON ANIMALS

The Scope of Testing

For more than a century, the use of animals in laboratories has sparked controversy. Scientists have asserted that research in medicine, surgery, physiology, biochemistry, and other branches of science requires the use of animals. Antivivisectionists have argued, on the other hand, that the end scientists seek cannot possibly justify the means. Proponents of a compromise position reason that human welfare often requires the infliction of pain upon animals, but that such pain must be reduced to protect animals against profitless abuse and neglect. A great portion of the public in the United States, Great Britain, Germany, France, and other nations where the debate has arisen, ascribe to this theory.

An estimated 300 thousand laboratory animals die each day in the United States. Each year, some 100 million animals are driven insane, crushed, battered, radiated, poisoned, suffocated, starved, blinded, scalded, and mutilated in the name of "basic research." In eighty-five percent of these experiments, pain is inflicted without the

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14. Aristotle's rational soul theory first developed a concept of human superiority based on the human ability to reason. Darwin's survival of the fittest theory based human superiority on the human ability to survive the impediments and challenges the world offers. For detailed explanations of Aristotle's and Darwin's theories, see supra note 6 and accompanying text and Burr, supra note 4, at 208. See also C. DARWIN, THE DESCENT OF MAN 193 (1871).
15. Ethology is the study of the biology of behavior.
16. Burr, supra note 4, at 216.
17. This note will be limited to scientific experiments employed to test food, drugs, and other products. Although the comments here are directed solely to biological tests, the actual use of test animals is not similarly limited; psychological experiments account for much animal suffering.
20. Id.
21. See P. SINGER, supra note 18.
22. ANIMAL PROTECTION INSTITUTE OF AMERICA, ANIMAL EXPERIMENTATION (1980) [hereinafter cited as ANIMAL EXPERIMENTATION]. The United States has no complete breakdown of the numbers and types of animals used in laboratory testing, but in 1973 the following were tested: 195,157 dogs, 66,195 cats, 42,298 primates, 447,570 rabbits, 454,986 hamsters, 408,970 guinea pigs, and 38,169 wild animals for a total of 1,653,385. This figure does not include rats, mice, birds, and reptiles. Nor does it include statistics from organizations which do not receive grants or contracts from the federal government. P. SINGER, supra note 18, at 32.
23. ANIMAL PROTECTION INSTITUTE OF AMERICA, supra note 22.
benefit of anesthetics, which researchers claim would mar the results. The United States government not only allows this extensive experimentation; in many cases, it requires it.

The Common Tests

The Food and Drug Administration and the Consumer Product Safety Commission require extensive animal testing of new products before releasing the products into the consumer market. The Food, Drug, and Cosmetic Act of 1938 and subsequent amendments define a new drug as one which is not generally recognized as safe by medical experts. The manufacturer must provide evidence of safety and effectiveness before he can market the drug.

The Lethal Dosage 50 (LD50) represents the standard pre-marketing test for toxicity in consumer products. This test determines the dosage level at which fifty percent of the test animals will die. Scientists routinely use the LD50 to test the acute toxicity of pesticides, drugs, cosmetics, food additives, detergents, and chemicals. Scientists consider it good practice, in the case of fairly harmless substances, to find the concentration that will cause half the animals to die. Often the poisoning process is allowed to run its full course because to put an animal out of its misery might skew the test results.

Animals also undergo tests to determine skin damage which might occur with concentrated doses of cosmetics, insecticides, antifreeze, brake fluids, bleaches, oven cleaners, and thousands of other substances. To perform such tests, the Food and Drug Administration (for cosmetics, ophthalmic products, and other therapeutic agents), the Consumer Product Safety Commission (for household products and consumer items), and the Environmental Protection Agency (for pesticides and chemicals not covered by other acts) generally require the use of the Draize test. The Draize test is an eye irritancy test, frequently performed on rabbits, in which concentrated solutions of a test product are dripped or squirted into the animals' eyes. Researchers measure damage according to the size of the area injured, the degree of swelling.

24. Id.
26. Id.
29. P. Singer, supra note 18, at 50.
30. Some say this test is an indication not of toxicity but of lethality. See Bitter Dose for Laboratory Animals, New Scientist, July 12, 1979, at 84.
31. P. Singer, supra note 18, at 50.
32. Id.
and redness, and the extent of other types of injury.\textsuperscript{34} Though many scientists consider the Draize test unreliable, this testing will continue in the name of public safety until researchers develop alternatives.\textsuperscript{35}

Neither the requirements of the Food and Drug Administration nor those of the Consumer Product Safety Commission, however, mandate animal tests in all cases where industries use them. Doctor Robert Scheuplein\textsuperscript{36} states that "many companies use [animal tests] as protection against possible public liability."\textsuperscript{37} If the Draize test proves that a substance is an eye irritant, manufacturers must place a warning on the label in order to avoid liability.\textsuperscript{38} In many cases, a bit of common sense would be as effective as the test.\textsuperscript{39}

\section*{PUBLIC CONCERN AND THE SEARCH FOR A HUMANE ALTERNATIVE}

Public concern for the welfare of laboratory animals functions as the strongest tool in effecting change. Unfortunately for many classes of animals, this concern normally extends only to animals which humans value.\textsuperscript{40} Public opinion, though, does have a prodding effect upon industry and government.

Reacting to the bad press against industry's use of the Draize test,\textsuperscript{41} many companies have voluntarily assumed the responsibility of searching for alternative testing methods. This sense of responsibility, however, stems not entirely from altruistic goals. Public opinion, and the reality that animals cannot feasibly be used to test the tremendous quantities of new substances being developed, has had an enormous impact upon industry.\textsuperscript{42} There exists a compelling need for faster, less

\begin{itemize}
\item \textsuperscript{34} P. SINGER, supra note 18, at 50-51.
\item \textsuperscript{35} Noguchi, \textit{Laboratory Animals: A Turning Point?}, 30 \textit{ANIMAL WELFARE INST. REP.} (Spring 1981).
\item \textsuperscript{36} Former chief of the Dermal and Ocular Testing Branch of the FDA and present director of the Food Animal Additives Staff.
\item \textsuperscript{37} DEP'T \textit{HEALTH & HUMAN SERVICES, ALTERNATIVES TO ANIMAL TESTS AND OTHER CRUELTIES} (1981) [hereinafter cited as ALTERNATIVES].
\item \textsuperscript{38} 16 C.F.R. § 1500.121 (1982).
\item \textsuperscript{39} For instance, one could without any animal testing place a label on an oven-cleaner warning consumers to keep the product away from their eyes.
\item \textsuperscript{40} The concern extends, in most cases, only to domestic animals. For example, in 1973 when Congressman Les Aspen learned that the United States Air Force and the United States Army planned to purchase a total of six-hundred beagle puppies for use in poisonous gas tests, he informed his constituents. The House of Representatives' Armed Services Commission said it received more letters protesting the slaughter of these animals than it had received for any other subject excepting Truman's release of MacArthur. The Internal Department of Defense said the beagle protests surpassed even the protests condemning the bombings of North Vietnam and Cambodia. In response to public outrage, the government postponed the tests, intending to replace the beagles with other animals. P. SINGER, supra note 18, at 28-30.
\item \textsuperscript{41} The Draize test has become the "target of a coalition of some 400 animal welfare groups who selected it as a cause with public appeal." Holden, \textit{New Focus on Replacing Animals in the Laboratory}, \textit{SCIENCE}, Jan. 1, 1982, at 36.
\item \textsuperscript{42} For example, in Britain alone, almost one hundred new cosmetics and toiletries come into the market every week. P. SINGER, supra note 18, at 52. Corresponding figures in the United States are unknown, but it is clear that traditional methods of research which utilize animals
\end{itemize}
costly, and more reliable methods of testing. A spokesperson for the American Medical Association said in a Congressional hearing:

Drug activity in animals is no assurance of similar activity in humans, and for some human disorders, there are no similar disorders in animals. Frequently animal studies provide little or nothing and are very difficult to correlate to humans. . . . In most instances, the proper formula, dosage form and dosage level can only be determined by clinical trials on human beings.\textsuperscript{43}

There exist many instances in which animal tests have proved unreliable. Researchers extensively tested DES and Thalidomide on various laboratory animals and erroneously found the drugs perfectly harmless.\textsuperscript{44} Red Dye Number 2 did not cause cancer in tests with rats and mice although its carcinogenic properties surfaced with the Ames test.\textsuperscript{45} Many other carcinogens also do not effect humans in the same way they do laboratory animals.\textsuperscript{46} Despite these isolated flaws, the scientific progressions made through animal testing far outweigh the drawbacks. The drawbacks, however, illustrate that animal experiments are not dispositive.

In response to human needs and public concerns, cosmetic companies have begun to fund research for alternatives to animal testing.\textsuperscript{47} Private organizations and private citizens have also contributed to alternative research programs.\textsuperscript{48} Even with this funding scientists have

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\item are inadequate to the task of monitoring the hundreds of new substances entering our environment each year.
\item \textsuperscript{43} Quoted in M. MORSE, ORDEAL OF THE ANIMALS 31 (1968).
\item \textsuperscript{44} Lillie Wilson, Animals’ Rights: A Return to Responsibility (reprinted from NEW AGE, publication date unavailable. On file with JOURNAL OF LEGISLATION).
\item \textsuperscript{45} Id.
\item The Ames test is a means developed by Dr. Bruce Ames, a Berkely biochemistry professor, to test for nutrogens using bacteria and rat livers.
\item \textsuperscript{46} See Gori, Regulation of cancer-causing substances: Utopia or reality, CHEM. & ENG. NEWS, Sept. 26, 1982, at 25.
\item \textsuperscript{47} Avon, Revlon, Bristol Myers, and other members of the Cosmetic, Toiletry and Fragrance Association have committed a total of roughly one million dollars towards the creation of a national center for the study of alternatives and the implementation of special research projects. Telephone conversation with Carol F. Rodgers, Staff Asst. to the Subcomm. on Science, Research & Technology of the House Comm. on Science and Technology, on October 25, 1982.
\item \textsuperscript{48} In July of 1981, Dr. Ethel Thurston (Administrator and Trustee of the American Fund for Alternatives to Animal Research) announced a $176,000 grant to Dr. Joseph Leighton of the Medical College of Pennsylvania to develop a non-animal replacement for the Draize test. ALTERNATIVES, supra note 37. In addition, researchers funded by the Lord Dowding Fund for Humane Research have devised several alternatives that could reduce the number of animals used but not replace them entirely. Id.
\end{itemize}

Examples of new methods include chemical drug assays and cell cultures. Some drugs, however, cannot be assayed chemically. Unlike synthesized drugs like penicillin, biological medicines are derived from animals and may vary greatly in purity and potency. Generally, animals are used to test the potency of different batches of these biological drugs. The search for alternatives responds, in part, to the inevitable margin of error in animal tests. Since 1974, Dr. Derek Calam of the National Institute of Biological Standards and Control in London has been working on a physical method for measuring biological medicines called “high performance liquid chromatography” (h.p.l.c.). Although important for its ability to depict precursors and degradation products in addition to the active hormones that the bioassay detects, it is not yet as sensitive as bioassay is. Cherfas, New Ways to Keep Animals Out of the Laboratory, 84 NEW SCIENTIST, Oct. 25, 1979, at 271. Other possible alternatives
developed few alternatives to replace the tests presently used on laboratory animals. As the search for alternatives continues, the need to reconcile human needs with animal welfare becomes more obvious. The selection of the best alternative involves an important value judgment. Unknown variables, however, make this value judgment a difficult, intimidating chore.

The first variable entails determining who is qualified to make that value judgment. A technical scientist may not have the capacity to make humane and compassionate judgments. Yet, a humanitarian scholar may not understand the complexities of scientific theory. A lawyer, trained to become familiar with various areas of study and proposed solutions, may develop a solution so laden with regulations that it poses new problems. Clearly, no one person can effectively make this value judgment.

The second variable concerns the criteria which should be used in reaching a balance between human needs and animal rights. Which animals deserve protection and why are these animals more privileged than others? Does one dole out rights in accordance with size, intelligence, domesticity, or some other factor?

The complexity of this animal rights issue requires sincere thought from all segments of society. Such a complex issue requires scrutiny by Congress—a body with access to the technical scientists, the humanitarian scholars, and the solution-oriented lawyers. An overview of past legislation and current proposals affecting animals injects a fresh insight into the controversial arena of animal testing and alternatives.

to the Draize test include the use of human and animal corneas from eye banks. Animal Experimentation, supra note 22.

49. The government is attempting to make the present tests less routine and less painful. In 1981, the Consumer Product Safety Commission suspended the routine use of the Draize test for three months to develop anesthetics which would diminish rabbits' pain or suffering without impacting upon the usefulness of the test. Alternatives, supra note 37. Animal suffering, however, is not often alleviated by anesthetics. Modern science is indeed marred by animal pain, much of which is brought about by a needless substantiation of the obvious and by unnecessary duplication. (Admittedly, duplication is valuable in verifying results. The author speaks here of duplication in excess of that needed for verification.) For example, Dr. Roger Ulrich, a former animal experimenter, subjected rats to prolonged shock for a survey of pain as a cause of aggression. This caused the rats to fight, confirming his hypothesis as expected, but he decided he should test further. He heated the floors of their cages, cooled them with dry ice, subjected them to bursts of intense noise, castrated some of them, shocked them after placing hoods over their eyes, and finally one pair had their whiskers removed and were blinded by the removal of their eyes. [sic] . . . Some might say that it is obvious: pain causes animals to be aggressive.

. . . In an experiment at Princeton University dogs were subjected to heat and treadmill exercises. Some of the dogs vomited, others had diarrhea, went into convulsions, lost muscle coordination and salivated excessively. Ten dogs had rectal temperatures of 113.2°F., and five of these died at the moment of maximum rectal temperature; the other five died between 30 minutes and 11 hours after the experiment's conclusion. The researchers came to the conclusion that 'the sooner the heatstroke victim's temperature is brought down, the greater are the chances of recovery.' Animal Experimentation, supra note 22. The government also attempts to improve the lot of animals through drafting legislation.
FEDERAL LEGISLATION AFFECTING ANIMAL RIGHTS: A RESPONSE TO PUBLIC CONCERN

Past Legislation

The first statutory protection of animals occurred in 1641, when the Puritans of the Massachusetts Bay Colony enacted an anti-cruelty statute. Until the mid-nineteenth century, however, few states contemplated the idea of animal welfare. Though property laws provided animals some protection, the few laws enacted between 1641 and the 1800s primarily protected the owners of animals rather than the animals themselves.

Slowly, the protection progressed from protection of property to protection of morality. In 1828, a New York statute made the malicious killing or torture of an animal a misdemeanor. Other states followed with similar legislation, marking the first recognition in our legal system of animals as something more than insensate property. Legislators never went so far, however, as to recognize animal rights per se. Instead, they reverted in the 1870s to drafting modified forms of property protection statutes.

In 1873, Congress enacted the first federal law protecting domestic animals in transit. The law was only sporadically enforced, and finally repealed in 1906 as detrimental to the health of the livestock it purported to protect. In 1891, the 51st Congress passed an Act giving the Secretary of Agriculture the power to regulate cattle exports to foreign countries with respect to “space, ventilation, fittings, food and water supply and such other requirements as he may decide to be necessary for the safe and proper transportation and humane treatment of such animals.” Both the 1873 Act and the 1891 Act provided penalties for violators.

In 1906, Congress redrafted the 1873 law regulating the internal transport of animals. The resulting Twenty-Eight Hour Act was simi-
lar to the 1873 Act, but it did not require that animals be arbitrarily unloaded every twenty-eight hours. These acts, professedly aimed at preventing cruelty to animals, also served the purpose of safeguarding sellers' property rights.

During the late nineteenth century, concerned citizens founded humane societies to protect human morality and human sensibilities. Ensuing advances in science and technology intensified the antivivisectionist movement. Although the antivivisectionist arguments were originally based upon morality, the focus has shifted in recent years. Proponents of animal rights have begun to point out evidence of unnecessary cruelty and wasteful duplication of effort. They cite cases in which the results of experiments performed on live animals proved to have little or no applicability to humans. The body of evidence they present provides some compelling indications that our researchers have gone too long without scrutiny.

In response to growing concerns for animal welfare, the Laboratory Animal Welfare Act of 1966 (the Act) purported to set humane standards for the care of animals in research facilities. Administered and enforced by the Department of Agriculture's Animal and Plant Health Inspection Service, neither the Act nor its 1970 or 1976 amendments have proven as effective as initially envisioned. As presently amended, the Act is incapable of protecting all animals. It only protects those selected "animals" defined within the Act. Furthermore, enforcement of the amended Act has failed to protect, during experimentation, even the categories of "animals" defined in the amended Act.

Although the amended Act regulates the important aspects of care and housing for laboratory animals, it does not deal with the types of procedures to which scientists subject animals during laboratory tests. Though required by the Act to administer anesthetics "when such use


59. Both acts failed to provide for animals transported by truck.

60. The animals were to be unloaded "unless prevented by storm or by other accidental or unavoidable causes which can not be anticipated or avoided by the exercise of due diligence and foresight." Law of June 29, 1906, supra note 58. Mr. Mann, speaking for the Committee on Interstate and Foreign Commerce, wrote, "The theory of the law is that unloading is to afford rest, feed, and water." If unloading would thwart those objectives, carriers were not required to unload.

61. Animals forced to travel under inhumane conditions often become ill, lose weight (thus selling for less), or die.


63. See supra note 49.

64. See supra notes 43 to 45 and accompanying text.


68. Section 2(h) of the act defines the term "animals" as "live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits." Animal Welfare Act, supra note 65.
would be proper;" scientists can avoid that regulation merely by stating that the use of painkillers would interfere with their experiments. The amended Act protects some animals, but for the vast majority of animals, the protection extends only as far as the outer doors of research laboratories.

Recent Legislative Proposals

Since the enactment of the Animal Welfare Act of 1966 and its subsequent amendments, Congress has passed no law dealing specifically with laboratory animals. Beginning with the 92nd Congress, Congress has often attempted to provide more protection for laboratory animals, but proposed bills and resolutions invariably die in committee before being enacted into law.

Although Congress took no action on the House Concurrent Resolution and the four bills introduced during the 96th Congress, interest in laboratory animal welfare continued to rise. On January 22, 1981, Representative G. William Whitehurst (R-Va.) tried to rally this mounting interest by submitting H.R. Con. Res. 38 to the 97th Congress, First Session.

In February, 1981, the National Institute of Health, in collaboration with other agencies participating in the National Toxology Program, sponsored a symposium entitled, “Trends in Bioassay Methodology: in vivo, in vitro Mathematical Approaches.” In crystallizing

69. Id
70. Id
74. The bills that had been pending in the 96th Congress were all reintroduced during the 97th Congress. (H.R. Con. Res. 38, H.R. 220 and 2110 (identical), 556, and 930).
76. The resolution urged the government to develop new research methods where feasible “to complement or eliminate current methods involving the direct or indirect use of animals” in laboratory testing. It further proposed the withdrawal of federal funds from experimentors using animals when other reliable and effective testing methods are available. See H.R. Con. Res. 38, 97th Cong., 1st Sess. (1981).
77. Among organizations represented were academic institutions, industrial corporations, animal welfare organizations, government research agencies, and government regulatory agencies.
78. The National Toxology Program is a unique, multi-agency initiative which assesses the toxicity of chemical substances commonly found in the environment and fosters the development of new toxicity test methods. Participating agencies include the National Institute of Health, the National Cancer Institute, the National Institute of Environmental Health Sciences, the National Center for Toxicological Research of the FDA, the National Institute for Occupational Safety and Health, the Occupational Safety Commission, the Consumer Product Safety Commission, and the Environmental Protection Agency.
79. For discussion in text below, see generally NAT'L INST. HEALTH, SYMPOSIUM ON TRENDS IN BIOASSAY METHODOLOGY: in vivo, in vitro AND MATHEMATICAL APPROACHES (1981) [hereinafter cited as SYMPOSIUM].
the issues, the symposium illuminated the flaws inherent in traditional means of testing products as well as the limitations presented by in vitro methods. The session revealed that although in vitro studies have some application now, they cannot completely replace whole animal studies. By sharpening issues and distinctions, the symposium helped build some common understandings which may evolve into platforms for further discussions and broader based understandings. Public prodding, concluded one sponsor of the symposium, would "do more than anything else to ensure that existing efforts will be intensified and improved."

To effect this public prodding, legislators reintroduced five bills, dealing with animal rights, in the 97th Congress. Of these, two, though controversial, emerged as the most feasible. Both bills are presently pending before the House Committee on Science and Technology. The first, H.R. 556, known as the Research Modernization Act, called for the establishment of a Center for Alternative Research within the National Institute of Health. This Center would: (1) coordinate the development of alternative research and testing methods, and (2) attempt to eliminate unnecessary duplication of research and testing on live animals. Although H.R. 556 proponents saw the bill as an avenue towards alternative testing without new funding, the research community and other interested agencies considered the proposed redirection of funds a threat to ongoing research programs.

On August 4, 1981, Representative Patricia Schroder (D-Colo.) introduced the second controversial proposal, H.R. 4406, a bill "to amend the Animal Welfare Act to insure the humane treatment of laboratory animals." Through this bill, Representative Schroeder at-

80. In the introductory session, Congressman George E. Brown, Jr. stressed the need, in light of the many pending animal welfare bills, for a thorough understanding of the scientific, ethical and social issues involved. Id.
81. Stressing the many instances in which laws and regulations require that specific biological measurements be performed on animals, Dr. Raub asserted that animal tests were imperfect at best. The meeting went on to discuss the pros and cons of the following: biological measurements that have traditionally relied on live animals; tests and test systems that employ cell cultures, bacterial or other lower organisms; and mathematical and computational adjuncts to bioassay. (Dr. Raub is Associate Director for Extramural Research and Training for the National Institute of Health).
82. For some types of investigations, whole animal studies cannot now be replaced; the role of whole body physiology in cell activities is not fully understood. Reactions of cells in culture may differ markedly from responses in situ in the intact body. Moreover, it was generally held that mathematical adjuncts were just that—adjuncts. Intelligently used, these adjuncts could indeed ameliorate the use of live animals in bioassay methods, but they could not realistically be used alone.
83. SYMPOSIUM, supra note 79, at 356 (Comment by Dr. Raub).
84. Supra note 73.
86. The bill would redirect 30-50% of the money appropriated for research using animals into the search for viable alternatives. H.R. 556. Suggested alternative methods included the use of live tissue cultures, computer models, and lower organisms.
87. Id.
89. Id.
tempted to strike an acceptable balance between the needs of scientific research and the concerns of animal welfare activities.\footnote{90}

To consider the various legislative proposals and to respond to public pressure stemming from reports of animal mistreatment in a Silver Spring, Maryland laboratory,\footnote{91} Representative Doug Walgren (D-Pa.) Chairman of the House Subcommittee on Science, Research and Technology, scheduled Congressional hearings for October 13 and 14, 1981. Concluding two days of intense testimony and discussion of the “Use of Animals in Medical Research and Testing,”\footnote{92} Rep. Walgren emphasized the three R’s of laboratory testing alternatives: replacing the use of animals in research, where feasible; reducing the number of animals used; and refining the existing procedures to minimize the level of pain or stress to the animals.\footnote{93} The hearings made it clear that more animal research will be necessary before major reductions in animal testing are feasible.\footnote{94} History indicates that animals are naturally replaced when scientists come to understand the processes for which they were used.\footnote{95} Hence, a funded search for alternatives would probably have a more

\footnote{90}{The bill sought to amend the Animal Welfare Act to provide protection to animals during actual experimentation. Extending the term “animals” to include mice and rats, the bill provided for the humane treatment, proper feeding, and suitable housing of laboratory animals. The bill even went so far as to define the term “pain” as “not only hurtful immediate physical sensations resulting in more than momentary distress but also debilitation and significant physical and behavioral suffering.” \textit{Id.} at 2, line 15.}

\footnote{91}{Backed by veterinarian reports of “torn limbs, ... filthy cages, and lack of rudimentary medical care,” Alex Pacheco claimed that test monkeys were subjected to pain and that he was told “to torment and frustrate them and watch their reactions.” The N.I.H.’s chief investigator, Edward Taub, insisted that the charges of abuse were distortions. The incident, distorted or not, aroused the public and received extensive media coverage. Constance Holden, \textit{Police Seize Primates at NIH-Funded Laboratory}, \textit{SCIENCE}, October 2, 1981, at 32-33. (Alex Pacheco was then a summer student volunteer at the Silver Spring’s laboratory).}

\footnote{92}{In the news release announcing the hearings, Walgren outlined the five major areas of Congressional focus:

1. Excessive, unnecessary, uneconomic, or inappropriate use of animals in current practice;
2. Ways to promote more humane and appropriate use of animals, including alternatives to animal use;
3. Incentives for the development of more and improved alternatives to animal use;
4. Responses from academic, private, and public research institutions to problems raised by pending legislative proposals; and
5. Areas in which animal-based research or testing remains crucial to protection or enhancement of human health.}


\footnote{94}{See Holden, supra note 41, at 37. Donald Kennedy, a former head of the Food and Drug Administration, recently commented that animal testing is “crude, cumbersome, and expensive” when compared with contemporary non-animal techniques. He went on to add, however, that until alternatives are developed or until we come to understand life in all its detail, there is nothing comparable to laboratory animals. \textit{Id.} at 38.}

\footnote{95}{For example, we no longer use canaries to monitor air in mines nor rabbits and frogs to determine pregnancy. \textit{Id.}}
favorable effect on animal welfare objectives than would a federal regulation mandating the reduced or restricted use of animals.

Current Congressional Legislation

In response to the October hearings, the Subcommittee on Science and Technology initiated extensive discussions with scientists, animal groups, and federal agencies in an attempt to develop an animal rights bill that Congress would pass. On April 29, 1982, H.R. 6245, the “Humane Care and Development of Substitutes for Animals in Research Act,” was introduced.\footnote{96} As amended,\footnote{97} H.R. 6928 seeks to reconcile the interests and concerns expressed by both scientists and animal activists in recent years.\footnote{98} The bill places special emphasis on the development of research and testing methods that do not require live animals, that reduce the number of animals used, and that produce less pain and distress in animals used.

As with H.R. 556,\footnote{99} H.R. 6928 stresses the development of alternatives to animal testing. Unlike H.R. 556,\footnote{100} H.R. 6928 supports alternative research through the creation of a separate fund for non-animal testing. Unless existing budgetary resources within the Department of Health and Human Services are increased, however, the adoption of either of these proposed funding provisions will result in the reduction of existing awards.\footnote{101} Thus, H.R. 6928 introduces the necessity of an increase in funding to prevent interference with certain ongoing experiments.

In its attempt to assure humane care of animals used in scientific research, experimentation, and testing, H.R. 6928 resembles H.R. 4406\footnote{102} in that it stresses regular laboratory inspections and the formation of an animal care committee. Unlike H.R. 4406,\footnote{103} H.R. 6928 does not attempt to define pain, but it does extend the term “animal” to include “any living warm-blooded animal.”\footnote{104} The bill is thus capable of protecting a much larger circle of animals than the Animal Welfare Act protects. H.R. 6928, in an effort to promote more responsible plan-

\footnote{96}{Government witnesses testified at a May 4, 1982 subcommittee hearing. 128 CONG. REC. H1696 (daily ed. Apr. 29, 1982). The bill was amended, approved, and sent to the full committee on June 9, 1982. A “clean” bill reflecting the Committee actions was introduced as H.R. 6928 on August 4, 1982. It was ordered reported from the full Committee by a voice vote on August 11, 1982. H.R. REP. NO. 777, 97th Cong., 2d Sess., pt. 1 (1982).

\footnote{97}{Id.}

\footnote{98}{The concerns of the two groups are not antithetical. The difference between them is really only a difference in priorities: the animal people see the reduction of animal use as a desirable goal in itself while the scientists see it as secondary to the goal of scientific progression.

\footnote{99}{See supra notes 85 to 87 and accompanying text.

\footnote{100}{See supra note 86.

\footnote{101}{Absent increased appropriations, (1) either existing medical and scientific research awards must be cut to accommodate the separate fund for new awards proposed by H.R. 6928, or (2) existing medical and scientific research awards must be cut to allow for the rechannelization of funds proposed by H.R. 556.

\footnote{102}{See supra notes 88 to 91 and accompanying text.

\footnote{103}{See supra note 90.

\footnote{104}{The definition includes birds and mammals. § 205(3) H.R. 6928.
ning and performance in laboratory situations, also requires that federally funded research entities abide by rigorous accreditation standards. Opponents of H.R. 6928 warn that ongoing research will suffer not only "as a result of the foreseeable reduction in the awarding of research grants by the Department of Health and Human Services, but also as a result of the compliance costs required by this legislation." In this age of federal budgetary cutbacks, economics always loom as a serious obstacle. It is, however, an obstacle that sometimes defers to human needs. In spite of its drawbacks, H.R. 6928 attempts, in a principled manner, to reconcile animal welfare with human needs. The reconciliation attempted by H.R. 6928 is the most comprehensive, yet viable, proposal to date.

CONCLUSION

It seems clear that only human needs, as opposed to animal needs, have the ability to propel Congress to act. We presently seem no closer to a statutory embodiment of the animal rights concept than when Thomas Aquinas prohibited cruelty to animals while justifying man's use of them. Animals are dealt "rights" only when humans have playing cards to spare. If we could exist in a vacuum, our consciences would dictate that absolute rights be accorded both animals and humans. But in our interdependent society, the essential irreconcilability of this controversy creates an antinomy which has indeed become "irresolvable in light of present knowledge." For the present both in vivo and in vitro testing may well be necessary.

Modern society, however, is troubled by the inequity inherent in allowing mankind absolute rights while according the animal world absolutely no rights. Animal testing can be improved. Testing can also be restricted to situations in which the tests are scientifically necessary. Animal rights develop, it seems, in inverse proportion to man's knowledge and man's needs. Congress, as an embodiment of the people,
must seek a balance as it prods science along, for only as science progresses will animal testing regress.

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