

WHEN ACTIVISM IS TERRORISM: SPECIAL INTEREST
POLITICS AND STATE REPRESSION OF
THE ANIMAL RIGHTS MOVEMENT

by

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DISSERTATION ABSTRACT

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Title: When Activism Is Terrorism: Special Interest Politics and State Repression of the Animal Rights Movement.

The radical animal rights movement has been labeled a terrorist movement by federal law enforcement and elected officials, and there have been laws passed making direct action in the name of animal rights a federal offense of domestic terrorism. This dissertation explores the ways in which terrorism has been socially and politically constructed to marginalize the animal rights movement, to the benefit of powerful and well connected interests. I do this by comparing the radical animal rights and extreme anti-abortion movements, especially in the ways each gets labeled by federal law enforcement. The animal rights movement is more likely to be referred to as a terrorist movement, even though the extreme anti-abortion movement has been responsible for the murders and assaults of health clinic workers and doctors. This in spite of the fact that no one has been physically harmed by the animal rights movement. I examine the ways in which the pharmaceutical and bio-medical industries have been able to get laws passed, at both the state and federal levels, criminalizing animal rights activism. I also explore the various ways animal rights activists have faced political repression based on their political beliefs, as well as the response of animal rights activists and civil liberties lawyers to this form of state repression.

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To those that sacrifice so much to make the world a better place for all living beings.

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CHAPTER I

INTRODUCTION

That social movements are a part of political and social life in the US is a well established fact. There are movements for dozens upon dozens of concerns, each engaging power structures and the general public in an attempt to sway public policy and opinion in their favor. The modern nation state developed in many ways as a response to social movements, and social movements developed as a response to the modern nation state, making social movements an intricate part of understanding our modern political, social, cultural and economic worlds (Tilly 2004). States respond to the challenge of social movements in multiple ways, one being the use of repression. Early social movement scholars assumed that only authoritarian states repressed social movements, but after decades of research we now know that social movement repression occurs within the context of all types of political systems, from authoritarian regimes to pluralistic democracies (Davenport 2007). Repression can take on a number of forms, everything from the policing of public protest (Della Porta 1996; Earl, Soule and McCarthy 2003), to the assassination of movement leaders (Bob and Nepstad 2007). It can be overt or covert, legal or illegal (Earl 2003).

That specific movements or activists are targeted for repression is also well established (Goldstein 2001). In the US, radical animal rights and environmental activists have faced increased attention and repression from federal law enforcement, the court systems and elected representatives. Animal rights activists associated with the Animal Liberation Front (ALF), along with its sister group the Earth Liberation Front, have been declared the number one domestic terrorist threats by the FBI (Jarboe 2002).

These are movements that have never killed or physically harmed anyone. In comparison to other movements that have used assassination and the indiscriminate killing of civilians, such as the anti-abortion and the right-wing militia movements, this poses interesting questions about the ways in which terrorist threats are ranked. The way threats are ranked affects the amount of attention paid to these movements by federal law enforcement and elected officials. Radical animal rights activists have caused millions of dollars in damages through attacks on property, and have targeted politically and economically powerful entities, such as the pharmaceutical, bio-medical and animal agriculture industries. The amount of economic damage done by animal rights activists, as well as high profile incidences such as the arson at a ski lodge in Vail, Colorado¹ that caused an estimated \$12 million in damages, can help explain to some degree why the radical animal rights movement became a target of federal law enforcement and animal enterprise terrorism laws. But there have also been high profile acts committed in the name of the anti-abortion movement that don't get labeled terrorism by federal law enforcement or the federal court system. This divergent treatment has something to tell us about the intersection of social movements, political systems and private interests in the United States today.

In this dissertation, I examine repression of the animal rights movement through the use of animal enterprise terrorism laws like the Animal Enterprise Terrorism Act passed in 2006. When examining this repression I use Robert Justin Goldstein's framework, developed in his work *Political Repression in Modern America, 1870-1976*. Goldstein (2001) examined in depth the political repression of social movements in modern American history, and defines political repression as consisting of "government

¹ The fire targeted the ski lodge because it was being built in endangered lynx habitat.

action which grossly discriminates against persons or organizations viewed as presenting a fundamental challenge to existing power relationships or key governmental policies, because of their perceived political beliefs” (xxviii). Because it’s difficult to create a comprehensive definition of a social phenomena that can vary so drastically across time and space, he supplemented his definition with a list of eleven instances of political repression, several of which apply to the passage and implementation of the AETA and similar animal enterprise terrorism laws. These instances of repression include:

- Laws imposing additional penalties on already existing criminal conduct which tend to have a chilling effect on free speech through their vagueness
- Laws banning “action” which clearly is symbolic exercise of freedom of speech.
- Violations of due process procedures, such as illegal searches and seizures, biased judges and juries, etc., in cases involving political dissidents
- Legislative investigations which tend to harass and hold up to public obloquy persons and organizations for their political views without any clearly legitimate legislative purpose (Goldstein 2001: xxxi-xxxii).

Animal enterprise terrorism laws are the focus of this dissertation, with a special emphasis on the AETA. The AETA is a two-page law passed with little deliberation in 2006, and is vaguely worded in its definition of what constitutes animal enterprise terrorism. This vagueness increases the potential for the law to be used as a repressive tool, as I discuss in Chapter VI.

In this dissertation I explore the multi-organizational field that the animal rights movement operates within, including the relationships between activists, political systems and private interests. There are several research questions that guide this research, and include:

- How has terrorism been socially and politically constructed to serve specific interests?

- What is the process by which a law that specifically benefits one population at the cost of another (industry vs. activists) is developed and signed into law?
- Is there a generalized atmosphere that allows for the creation and implementation of repressive laws? And are there aspects of the animal rights movement that makes the movement an appropriate target of repressive policies?
- How has animal rights activism been affected by animal enterprise terrorism laws like the AETA, and how do activists respond to these forms of state sanctions?
- How do civil liberties activists view animal enterprise terrorism laws, especially in the context of larger attacks on civil liberties since 9/11?

For this dissertation I am especially interested in those activists ensnared by the legal system for their social movement activity, as well as above ground activists, civil liberties lawyers, and defense lawyers who have worked on animal activist's cases.

In this dissertation I give special attention to the Animal Enterprise Terrorism Act, largely because it has the harshest penalties and significantly expands the number and type of enterprises protected from direct action by animal rights activists. The AETA is not a new law, but rather a variation on a law that had passed in 1992. The AETA's predecessor, the Animal Enterprise Protection Act (AEPA), became law in 1992, and had been amended twice in the intervening years. Versions of this bill had also been introduced in several prior congressional sessions. The bill aimed to add to the list of crimes that could be considered animal rights 'terrorism,' and increased the punishment for various levels of crime and the dollar value of the damage they did (see Appendix D for AEPA and AETA statutes).

Both the AEPA and the AETA define the crime of 'Animal Enterprise Terrorism.' The AEPA defines it as the causing of "physical disruption to the functioning of an animal enterprise" (Animal Enterprise Protection Act 2002: 1) and the AETA as the "damaging or interfering with the operations of an animal enterprise" (Animal Enterprise Terrorism Act 2006: 1). As can be seen the AETA uses language that expands the

definition of animal enterprise terrorism as compared to the AEPA (interfering with vs. physical disruption). Another way in which the AETA differed from the AEPA is by including tertiary, or third party targeting, which included “a person or entity having a connection to, relationship with, or transactions with an animal enterprise” (Animal Enterprise Terrorism Act 2006: 1). This greatly expanded the number of enterprises protected under the AETA as opposed to the AEPA. This included not just enterprises using animals for profit or research, but those entities that have a relationship with those enterprises, which includes entities as diverse as janitorial services, paper supply companies and investment banks.

Punishments under the AETA were also significantly increased. Where both the AEPA and the AETA delineated punishment according to the amount of economic damage done, the AETA increased the dollar amount of the fines and/or the length of potential prison terms. As an example, the 2002 version of the AEPA mandated a fine, a prison term not to exceed three years, or both for economic damage exceeding \$10,000 (Animal Enterprise Protection Act 2002). The AETA mandated a fine, a prison term of not more than five years, or both for economic damage exceeding \$10,000 but not more than \$100,000, or if “the offense instills in another the reasonable fear of serious bodily injury or death” (Animal Enterprise Terrorism Act 2006: 1). It also established another level of punishment, mandating a prison term of not more than ten years, a fine, or both for economic damage exceeding \$100,000, or if “the offense results in substantial bodily injury to another individual” (Animal Enterprise Terrorism Act 2006: 1). It also would seem to make conspiracy charges easier to obtain. Both the AETA and the AEPA include language that allows the prosecution of those who conspire to act, but the AETA

differentiates itself from the AEPA by explicitly using language that makes conspiracy to violate the act the same as actually causing economic damages. Under the penalty subsection of the AETA it states that a “fine under this title or imprisonment not more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and...*the offense results in no economic damage or bodily injury;* or...the offense results in economic damage that does not exceed \$10,000” (emphasis mine) (Animal Enterprise Terrorism Act 2006: 1).

Although some form of the law had been on the books for the fourteen years previous to the passage of the AETA, it had resulted in only two prosecutions. The AETA greatly expanded the penalties for animal activists convicted of direct action as well as greatly expanded the number of entities protected by the act. It also included the word ‘terrorism’ in the title. In a post 9/11 world, anything with the word terrorism attached to it took on extra significance, as terrorism is seen as a pejorative term (Hoffman 1998). The coupling of the expanded use of the term terrorism, exemplified by the AETA, as well as its casual use by members of Congress, federal law enforcement and industry representatives after 9/11 made the AETA fundamentally more serious than its predecessors in the ways it labeled animal rights activists.

Literature Review

There are several sets of literature that inform this study. These include the social movement repression literature and the history of the animal rights and welfare movement. I also include a short section on theories of the state. It is state repression of the animal rights movement that I am interested in, and therefore requires at a least a cursory understanding of what the state is, what the state does, and for whom it does it.

Social Movement Repression

Social movements are an intricate part of our political, economic, social and cultural world. But social movements do not operate in a vacuum. They are in constant contention with political opponents as they attempt to sway the public and policy makers to their side. This can come in the form of counter-movements that attempt to resist the changes that social movements aim to create, or to beat back the gains that have already been made. It can also come in the form of repressive policies implemented by elected officials and other agents of the state.

In the US, state repression of social movements has been well established, dating back to at least the 1870's, when state and private actors used both legal and illegal action (including murder) to repress a nascent labor movement. The relationship between the labor movement and the often times violent repression it faced would continue through the 1930's, and resulted in a more conservative labor movement than would have most likely occurred had it not been for severe repression (Goldstein 2001). More recently the FBI's Counter Intelligence Program (COINTELPRO), which operated from 1956 to 1971, used infiltration, trumped up charges, illegal surveillance and, according to some accounts assassination, in an attempt to alter or destroy the Civil Rights Movement, the Black Power Movement, the American Indian Movement, and other movements (Churchill and Vander Wall 1988).

Given this long history of social movement repression and the effects it has had, the study of repression on social movements is relatively understudied. Much of the research tends to revolve around state responses to discreet events or how protesters respond to repression, but little work has been done on the systematic repression by the

state or by counter-movements (Davenport 2007). The literature has few examples of how legislators and other powerful interests develop systems of repression, and how those decisions and laws are implemented on the ground. Social movements are shaped as much by external factors as internal ones, with counter-movements and state repression being factors in how movements change and develop (Tilly 2004). In order to understand social movements, and by extension our modern political life, one must understand the repressive forces at work in the multi-organizational field that any social movement operates in.

Despite the presence and acknowledgment of repression by scholars, it is still somewhat of an ambiguous term. Repression takes on many forms, and can look quite different in varying social and political situations. Creating a definition risks being so broad as to not explain anything, or so narrow as to miss many instances of real repression. Goldstein (2001), in his work *Political Repression in Modern America: From 1870 to 1976*, defined it as consisting of “government action which grossly discriminates against persons or organizations viewed as presenting a fundamental challenge to existing power relationships or key governmental policies, because of their perceived political beliefs” (xxviii). There is no definition that could capture all of the nuances of political repression, but other scholars have found this definition useful and have used it in their work (Davenport 2007).

Repression can be better understood by looking at what constitutes repression. Earl (2003) created a twelve-cell typology in an attempt to develop a theory of repression, and to explain the various types of repression that a state or counter-movement can engage in. The variables in her typology involve who represses (state

agents either tightly or loosely connected to national elites, or private agents), whether the repression is coercive (e.g., use of force) or channeled into more legal means (e.g., tax law in the US), and whether the repression is observable or not. Although the typology is somewhat cumbersome, it provides a way of thinking about repression variables.

Goldstein (2001) also understood the murkiness of the terms within his definition ('grossly discriminates' and 'perceived political beliefs,' for example) and listed eleven specific incidents to help clarify what did and did not constitute repression. (Insert Table – list of repression incidents)

Much of the literature deals with state responses to discreet events, which tells us little about systemic repression, and how policies of repression are developed and implemented by governments. Although a rich literature of police and state responses to specific events exists, it does little to inform this dissertation. A less visible form of repression, yet widely used by various types of regimes, is the use of covert actions and infiltration of social movements. One of the most famous cases of this type of repression in the US was the Counter Intelligence Programs (COINTELPRO) conducted by the FBI against a wide range of organizations and activists from 1956 to 1971 (Earl 2003, Churchill and Vander Wall 1988). The use of covert operations to divide and destroy movements is well established, with COINTELPRO being one of the better-known examples. The fear of covert action and infiltration still hangs over activists, as Starr et al (2008) found in their interviews with social justice activists. They interviewed members of seventy-one social justice groups in 2006 and found that the fear of state surveillance led to a pacification of activist groups and closed down space for dialogue. Animal enterprise protection laws operate in the open and do not need to be covert to be

effective. In animal enterprise terrorism cases, the repression takes place in full public view, but commonalities with prior instances of covert social movement repression exist.

Criminal prosecutions provide another avenue of state repression, but it's not as simple as the breaking of laws leads to criminal prosecution. Balbus (1973) found that prosecution of African American protesters involved in riots in the 1960's depended not only on the level of violence, but also on factors external to the case at hand, including cohesion of the local political authorities and cohesion of the local criminal defense community. Oliver (2008) argues that mass incarceration for what we consider common crime actually has a repressive effect on dissent, especially in African American communities. Klandermans (1990) found counter-movement tactics include the criminalization of social movements and their activities, of which animal enterprise protection and terrorism laws are an example.

Movements not only face repression in the form of state action. They also face repression in the form of counter-movements. Mottl (1980) defined a social movement as "a conscious, collective organized attempt to bring about social change" (620). In response, a counter movement he defined as "a conscious, collective, organized attempt to resist or reverse social change" (Mottl 1980: 620). Pichardo (1995) studied a counter-movement formed to resist farm workers attempts to unionize and strike in California in the 1930's, and which included members from powerful farm interests, Chambers of Commerce, and conservative citizen's groups. Lo (1982) studied conservative counter-movements in response to the liberation movements of 1960's and 70's. He states that right wing movements are unique in that rather than trying to bring about change in society they try "to maintain structures of order, status, honor, or traditional social

differences or values” (Lo 1982: 108). Lo also found that counter-movements, including the anti-ERA, anti-busing, and the right-to-life movements, were attempting to resist change. Finsen and Finsen (1994) listed industries like meat, dairy and egg, biomedical and fur that formed counter-movements in response to the successes of the animal rights and animal welfare movements in the United States. Munro (1999) also found that counter-movements challenged the moral capital that the animal rights movement had accumulated. The more successful a social movement, the more likely that a counter-movement will develop to challenge the movement’s successes. The animal rights and welfare movements have been very successful in challenging human use of non-human animals and swaying public opinion in their favor, and therefore the rise of a counter-movement should come as no surprise (Munro 1999).

Counter-movements tend to use many of the same tactics and strategies as the movements they are resisting. Garnering sympathy for animals and their treatment at the hands of humans has been one of the most effective aspects of the animal rights and welfare movements (Beers 2006). Thus the meat, egg and dairy industry challenge this moral capital by framing the issue as one not of animal welfare, but one of personal choice, and the biomedical industry challenges this moral capital by arguing that they are saving human lives through their use of animal research subjects (Munro 1999). Counter movements arise to protect their own economic interests or statuses in society. The relationship between movement and counter-movement is a dynamic one. In the multi-organizational field any social movement operates within, movements not only have to contend with possible state sanctions and repression, but also with counter-movements led by private citizens and groups. There has been a well-established and powerful

counter-movement in response to the gains of the animal rights movement, and as I will show in Chapter IV, this counter-movement has been able to use the levers of government to implement laws criminalizing certain aspects of the animal rights movement.

Another area of study that raises as many questions as it answers is the relationship between repression and dissent. Activists have a range of responses to repression, and the literature is full of contradictory findings on exactly how activists respond to state repression. Lichbach (1987) was one of the first to try to make sense of conflicting findings around the nexus of repression and dissent, and found that repression increases violent dissent while decreasing non-violent dissent. Another variable was whether governments engaged in repression or accommodation. He found that consistent government action (either accommodation or repression) decreased dissent activity, where inconsistent action increased activity. But this does not hold across all cases. Gupta, Singh and Sprague (1993) found that the relationship between repression and dissent is not a bivariate one. Many factors affect how dissenters respond to repression. For one they found that the expectation of coercion and actual coercion yielded the same response, and that increases in magnitude in repression led to more violent dissent in non-democracies and more non-violent dissent in democracies, demonstrating the importance of regime type. Opp and Roehl (1990), in studying the anti-nuclear movement in West Germany, found that repression leads to more dissent for those integrated into protest networks, largely because of the positive sanctions accrued for having faced repression, while those not well integrated into protest networks were less likely to continue to protest after facing repression. Zwerman and Steinhoff (2005) had a similar finding

when they studied militant cohorts that came out of the new left in Japan and the United States. For some the experience of repression radicalized them even more and they were the group that became more militant after most of the new left had long ago stopped protesting. In the South Korean democracy movement repression led to less protest activity, but strengthened informal ties within the movement over the long run (Chang 2009). In this way, Chang argues, measuring protest activity misses subtle and nuanced changes in social movements. The relationship between repression and dissent is a complex one, and we are far from having a definitive understanding about the probability and predictability of repression leading to more or less dissent. And as we will see in chapter VI, the response to repression by animal rights activists was as varied as the literature would suggest.

As we have seen, repression can take a number of forms. Pointing out when and where repression takes place is one of the easier aspects in the study of social movement repression. Other aspects of movement repression are murkier. When and why states use repression is one of those aspects. In his review of the repression literature Davenport (2007) found that even though state repression of social movements is well founded across space and time, the processes and mechanisms that result in state repression are not well understood. Also not well understood are the role of regime type, the range of repressive methods, when and how they are used, and the dynamic between dissent and repression. It's not that these aspects of repression have not been studied, but that it is common to find conflicting conclusions. None the less, there is a rich literature surrounding these issues, with at least some findings being verified by multiple studies. In this dissertation, I will show how repression of the animal rights movement was a

systematic process involving a counter-movement and agents of the state working together to craft laws targeting animal rights activists, and the prosecution of animal rights activists under these laws.

History of the Modern Animal Rights Movement

There has been an active movement around the treatment of animals since at least the 1820s, and in the course of the last 190 years the movement has changed its philosophies, tactics, strategies and targets in fundamental ways. The first anti-animal cruelty law was enacted in England in 1822, and the first organization dedicated to the treatment of non-human animals, the Society for the Prevention of Cruelty to Animals, was founded in England in 1824 (Niven 1967). The movement soon migrated to the United States. New York and Massachusetts passed animal protection laws in the 1830s, with other states soon following (Niven 1967; Beers 2006). The American Society for the Prevention of Cruelty to Animals (ASPCA), the first animal welfare organization in the United States, was founded in 1866. By 1907, anti-cruelty laws had been passed in every state in the US, dealing with a variety of issues, including humane slaughter, cock fighting, the malicious killing of another's animal, and the banning of certain types of traps (Finsen and Finsen 1994).

Vivisection (testing on live animals) was a practice that caused an early split in the animal welfare movement. The now Royal Society for the Prevention of Cruelty to Animals (RSPCA), not wanting to appear anti-science, did not oppose vivisection, but rather lobbied for a bill creating guidelines for the practice (Beers 2006). This led to an anti-vivisection movement that split from the more conservative parts of the movement. This would be the first division between radical and conservative factions of the

movement, and in many ways laid the groundwork for the debates that still rage within the animal rights/welfare movements to this day. It was the anti-vivisection stance of the more radical parts of the animal rights movement that would lead to the first counter-movement as well, as the medical establishment began to organize against the anti-vivisection movement.

The animal welfare movement has been diverse in its concerns, dealing with the treatment of cattle and other domestic animals, the treatment of wild animals in zoos and circuses, hunting and trapping, endangered species, and the response of municipalities to stray animals. Many organizations were formed throughout the twentieth century, especially in the post World War II period, including the Humane Society of the United States, the Animal Welfare Institute, Catholic Society for Animal Welfare, and Friends of Animals. It was also this period that led to the passage of legislation concerning animal welfare, including the Laboratory Animal Welfare Act of 1966, the Endangered Species Act of 1966, and the Marine Mammal Protection Act of 1972 (Beers 2006).

In the 1970s a significant shift took place within the animal welfare movement that gave rise to the modern animal rights movement. Although both movements have at their core a concern for the ways non-human animals are treated, the philosophical orientations of the two movements vary in significant ways. The term ‘speciesism’ was coined in 1970 by psychologist Richard Ryder (Dunmayer 2004), making a direct connection with terms like racism, sexism and classism, and to the cycle of liberation and protest movements of the 1960s. Peter Singer’s seminal work *Animal Liberation*, first published in 1975, brought the term to a wider audience. In *Animal Liberation* Singer laid out a philosophical argument for why non-human animals should receive the same

moral concern as humans, meaning that if we are to make animals suffer against their will, we need to morally justify that behavior in the same manner as we would with humans. Where the mainstream animal welfare movement attempted to limit the suffering of animals, it didn't challenge in a fundamental way the inherent power relations between human and non-human. The rise of the animal rights movement would challenge the philosophical underpinnings of the animal welfare movement, and by extension the wider society's relationship to non-human animals. This new orientation gained adherents in the fields of philosophy, law and the social and physical sciences, and resulted in works that continued to challenge our relationship with non-human animals, most notably Tom Regan's *The Case for Animal Rights* (1983) and Steven Wise's *Rattling the Cage: Toward Legal Rights for Animals* (2000). Singer, coming from a utilitarian perspective, argued that it was not inherently wrong to make animals suffer, but that we had to justify it and take into moral consideration the use of non-human animals. Although Singer gave a philosophical foundation to the animal rights movement, his utilitarian perspective would be rejected by later animal liberationists who argued that humans have no right to use non-human animals for our own gain or pleasure (Regan 1983; Wise 2000).

This wasn't just a philosophical exercise though, as a new radical animal rights movement would innovate with new strategies and tactics that would significantly change the relationship between radical movement activists and animal-using industries. Guither (1998) writing of the authors providing a philosophical and legal basis for the movement, noted: "Their writings have activated the latent support of millions of citizens, stimulated new movements, driven the development of new organizations, and generated intense

political activity” (13). Groups like the Hunt Saboteurs and the Band of Mercy, which formed in England in 1963 and 1972 respectively, provided a model for the use of direct action that would define the radical animal rights movement over the next four decades (Finsen and Finsen 1994). This new generation of activists had less interest in lobbying and legislation than in challenging those they deemed injurious to non-human animals, employing a strategy of direct action. Direct action employed disruptive tactics targeted at enterprises using non-human animals, as well enterprises associate with those animal enterprises. These tactics include blockades, protests, property destruction, arson, vandalism, harassment and stalking. The Band of Mercy would rename itself the Animal Liberation Front in 1976, and spread its brand of direct action throughout Europe, Canada, Australia, South Africa, New Zealand and the United States (Guither 1998; Liddick 2006). In the US, animal-using industries including fur farms, slaughterhouses, fast food restaurants, fur retailers, leather and wool shops, animal testing facilities, and university research labs became targets of direct action by animal activists². This direct action included minor vandalism (gluing of locks, breaking windows), animal releases, harassment and arson (Young 2010). This was a new form of animal activism that differed significantly from previous forms of animal advocacy and activism.

Not only would the radical animal rights movement innovate in terms of tactics and strategies, but in organizing as well. Mainstream organizations were formed that shared an animal rights and liberation philosophy with the likes of ALF, including People for the Ethical Treatment of Animals (the largest and most well funded animal rights

² The Farm Animal Rights Movement, an animal rights organization focusing on animals used for agriculture, estimates that 10 billion land animals are killed for food each year (FARM 2012). The Humane Society of the United States estimates that at least twenty-five million animals are killed each year for the purpose of bio-medical research, but that number is likely significantly higher due guidelines that exempt certain species from reporting requirements (Humane Society of the United States 2012).

organization in the US), In Defense of Animals, and the Farm Animal Rights Movement. It is impossible to know just how many activists are involved in animal rights direct actions, but Young (2010) has catalogued well over a thousand actions across the US by animal liberationists and animal rights activists over the course of the last two and a half decades³. These actions range from minor vandalism to arson that caused millions of dollars in damages. Previously established groups also changed their focus and philosophies. “After 1975, the words rights and liberation emanated more frequently from diverse animal advocacy organizations” (Beers 2006: 199). But one of the most important developments, and one that would significantly challenge animal using industries and law enforcement was the use of a decentralized organizing model. The Animal Liberation Front has no central organization, no hierarchy, no declared or undeclared leaders, and no headquarters. The Animal Liberation Front is more of a philosophy than an organization. As they state on their website, “Any group of people who are vegetarians or vegans who carry out actions according to the ALF guidelines have the right to regard themselves as part of ALF” (Animal Liberation Front 2011). Unlike formal social movement organizations, ALF doesn't engage in the public policy sphere. They don't create or push policy proposals, don't lobby elected officials, or debate issues in public. ALF activists take direct action against those they see as harming non-human animals. Activists associated with other campaigns like Stop Huntingdon Animal Cruelty (SHAC) also engaged in this type of direct action and decentralized organization. These are central hallmarks of the modern radical animal rights movement.

³ Jerry Vlasak, press officer for ALF, stated in an interview “It's doubtful that there is anyone in the world who would have an accurate number of how many people are involved in *ALF* cells at any given time” (Greenmuze.com 2008).

The use of these new strategies and tactics has created a division in the animal rights movement, as aboveground mainstream groups often distance themselves from the underground activists that use property destruction and other forms of direct action as a tactic. In this dissertation, I will be focusing solely on the radical animal rights movement. There have been attempts by opponents of the animal rights movement to tie aboveground, mainstream groups to the radical underground, but the government's response to this movement has largely targeted the underground direct action of groups like Stop Huntingdon Animal Cruelty and the Animal Liberation Front.

One of the forces that shaped the modern animal rights movement is the rise of a powerful and politically connected counter-movement. This counter-movement has existed for at least a century, when the medical establishment organized against the anti-vivisection movement. In the last 25 years the counter-movement, still led by the medical industry (mainly bio-medical and pharmaceutical), has been successful at getting legislation passed further criminalizing the direct action that has come to define radical animal rights activism. The bio-medical, fur, dairy, meat and egg industries, as well as hunting interests have all been active in a counter-movement, trying to beat back the gains made by the animal rights movement (Finsen and Finsen 1994). These gains come in the form of legislation like the Animal Welfare Act of 1966 and the recent decision by the National Institutes of Health to halt funding of new research involving chimpanzees (Gorman 2011). There has also been a general shift in social attitudes towards our use of animals. From 2001 to 2011, opposition to vivisection, or the testing on animals, rose from 33 to 43% (Goodman, Borch and Cherry 2012).

In response many states and the federal government began passing laws increasing the punishment for those convicted of crimes in the name of animal rights. The latest iteration of this came in 2006 with the passage of the Animal Enterprise Terrorism Act (AETA). This was an update of a previous law called the Animal Enterprise Protection Act that passed in 1992 and was amended twice, in 1998 and 2002. But even prior to the AETA, states were passing laws increasing penalties for crimes committed in the name of animal rights, and became the focus of model legislation pushed by the American Legislative Exchange Council (ALEC), an industry friendly political non-profit organization consisting of state legislators and representatives from a plethora of industries. The AETA is aimed at the animal rights movement generally, and the radical wing of the animal rights movement more specifically, and is an attempt to increase the costs, through increased prison time and fines, of participating in direct action in the name of the animal rights movement.

Like many social movements, there is a large range of philosophies, tactics and strategies that are employed by activists. Some of the most well known and well funded animal advocacy groups in the US don't hold an animal liberation philosophy, but are more closely aligned with the animal welfare movements of the past. These movements don't fundamentally challenge the social and power relationships between human and non-human, but have a narrower focus of improving the treatment and conditions of non-human animals. These groups tend to engage in campaigns that appeal to the public to adopt stray cats and dogs or help fund animal shelters, but say little about vivisection or animal agriculture. Throughout this dissertation, unless noted otherwise, when I refer to animal rights activists I am referring to activists using or advocating underground, direct

action as a social movement strategy, and not mainstream animal rights or animal welfare activists.

Theories of the State

The role of the state is another important aspect that will inform the current study. Because it is state policies targeting animal rights activists, it is necessary to have at least a cursory understanding of what the state is and what the state does. Although not central to the research questions at hand, I cannot speak about what the state does without at least a cursory understanding of what theorists say the state is. As Vincent (1987) states “Reflection on concepts such as law, rights and obligations implies the existence of some form of State; these concepts are meshed into the State” (3). Defining what constitutes the state is no easy task. The boundaries of where the state begins and ends has led to numerous and varied definitions and theories. The problem with defining the state is that it is not a material thing but a conceptual abstraction (Hay and Lister 2006). There are a number of theories of the state, including pluralistic, elite, and Marxist/Class theories that attempt to define and explain what the state is, what the state does, and for whom.

One of the most well-known definitions of the state was posited by Max Weber (1978), where he defined the state as a “system of administration and law which is modifiable by statute and which guides the collective action of an executive staff” (41), and an “institution with a territorial basis” (41) that permits the legitimate use of force. This definition has been a starting point for many later attempts at defining the state, but even Weber understood the difficulty of trying to define the state when it could look very different in various places, as he noted “It is also advisable to leave out of the definition the varying substantive purposes which we find states serving at the present time” (41).

Miliband (1969) defines the state as the institutions of the government, administration, military and police (coercive forces), judicial branch, sub-central government (state, county, city), and parliamentary assemblies, and whose shape is defined by the interrelationship of the institutions. This seems to be a definition that closely aligns with other's definitions of the state as well.

Most theories of the state allow that certain groups have more influence as far as public policy goes. Marxist/Class and elite theories explicitly state that the interests of capital have primacy in public policy decisions, and that the interests of the state and the interests of capital are closely aligned. Evans (2006) states, in explaining Elite Theory, that public policy outcomes are the result of the interaction between policy networks, governmental structures, and markets. Marxist theorists tend to see the state as inextricably linked to capital. Early Marxist theories saw the state as the protector of capitalism and the class system, while later Marxist theorists saw the state alternately as a neutral instrument that is easily manipulated or controlled by the capitalist class (but is not a given), or as being intricately aligned with the interests of capital, even if the two are not one and the same (Hay 2006). Pluralist theories of the state tend to be the most forgiving as far as whether or not there is a dominant class and whether the state acts in the interests of that class, but even neo-pluralists after the 60's admitted that the interests of business and capital had a greater amount of influence over public policy than other groups (Smith 2006). Through this varied thinking on the state it can be seen that a dominant class exists in advanced capitalist countries, which consists of the owners and managers of capital and other business interests, along with state elites that make and enforce public policy, and that the state tends to act in the interests of that dominant class

(Miliband 1969). Although not all state theorists agree on the extent of class domination, there is at least some amount of agreement that the interests of the state and the interests of capital are at least somewhat closely aligned, and this alignment has a real-world effect on public policy outcomes. These theories will provide insight into how the state works, and for whose benefit.

The rise of the use of the term terrorism, and especially eco-terrorism, to describe animal rights activism is relatively new, and as I will argue in Chapter II, was socially and politically constructed to serve specific interests. Terrorism is a politicized term that serves the interests of some groups at the cost of others (Stohl 1988). Social movement activity in the US is as old as the country itself, and although that activism has in many cases been violent in nature, it hasn't always been considered terrorism, at least as far as criminal prosecution is concerned. Theories of the state will help frame the conflict between movement and counter-movement, as the state is not always a dispassionate mediator between various interest groups, but often injects itself on one side during a dispute. As these various theories show, the state often interjects on the side of capital. This results in public policy that benefits some while harming others. This dissertation explores the conflict between animal rights activists and powerful industry interests, where the state has taken the side of capital.

Dissertation Outline

In this dissertation I examine how the label 'terrorism' was a purposeful social and political construction that resulted in the creation of criminal statutes targeting animal rights activists. The targeting of animal rights activists for their activism results in, according to Goldstein's framework, political repression of the animal rights movement.

In chapter II, I draw a comparison between the animal rights and anti-abortion movements. These are two movements that use direct action as a movement strategy, and use that direct action in similar ways, with distinction between the two is that one is often referred to as a terrorist movement while the other isn't. This will provide a sense of the ways in which terrorism is socially and politically constructed to serve specific interest groups in the US. In Chapter III, I examine the development and passage of animal enterprise terrorism laws as examples of interest group politics at work. At the state level, many animal enterprise protection and terrorism laws were implemented, aided by model legislation developed within the American Legislative Exchange Council. At the federal level laws like the Animal Enterprise Protection Act of 1992 and the Animal Enterprise Terrorism Act of 2006 were passed. I show how wealthy and powerful private interests were able to use the levers of government to effectively criminalize direct action on the part of the animal rights movement. This counter-movement, led by the pharmaceutical and bio-medical industries, used political connections and campaign contributions to create an atmosphere that was conducive the passage of favorable legislation attempting to limit social movement activity on the part of the animal rights movement. In Chapter IV, I use Goldstein's (2001) framework of political and social variables to examine the atmosphere that led to more favorable conditions for the implementation of repressive policies, especially in the wake of 9/11. In this chapter I also look at unique traits that make the animal rights movement more likely to be a target of repressive policies. In Chapter V, I use Goldstein's instances of repression as a framework to show how repressive actions and policies aimed at the animal rights

movement were implemented. In Chapter VI, the concluding chapter, I will sum up my findings and suggest avenues for further research.

Methods

This dissertation relies on in-depth personal interviews and documentary research. The set of interviewees was a non-probability sample of individuals, including animal rights activists, defense attorneys that worked on activist's cases, and civil liberties attorneys concerned with laws limiting social movement activity. A detailed methods section can be found in Appendix A. Documentary research was used to examine how the animal rights movement was targeted by Congressional hearings. I also used documentary research to examine the role of campaign contributions by industry interests in the political process. Documentary research was also used to examine the history of animal enterprise terrorism laws and prosecutions, as well as the history of laws limiting anti-abortion movement activity and prosecutions of anti-abortion activists. Twenty-three in-depth interviews were conducted, each lasting approximately forty-five minutes to an hour.

The combination of interviews and documentary research allowed me to gauge the views of various populations in relation to animal enterprise terrorism laws. These included animal rights activists of various stripes, including those that had served time in prison for their activism, radical activists that had not been prosecuted, activists involved in above ground mainstream non-profit groups, and animal welfare activists who do not share an animal rights/liberation philosophy with the more radical faction of the movement. I also interviewed defense lawyers who worked on cases involving animal rights activists charged and/or convicted as domestic terrorist, as well as lawyers who

focused on issues of civil liberties and animal enterprise terrorism laws. Additional documentary research included transcripts of Congressional hearings examining animal rights movement activity. I also examined reports from and about the American Legislative Exchange Council regarding their push for animal enterprise terrorism laws at the state level. Documentary research also allowed me to track the number and types of crimes committed by both the animal rights and anti-abortion movements.

Interviewees were contacted using a combination of snowball and purposive sampling. Most respondents waived confidentiality, and those who did not were assigned pseudonyms. Interviews were voluntary, semi-structured and open-ended, and geared towards people's personal experiences with animal enterprise terrorism laws. I used various interview guidelines depending on the social and professional position of the interviewee. I did not use information from all of my interviewees. As the dissertation took shape, I found that several interviews did little to inform the research questions guiding this research. I recorded all interviews, downloaded the audio onto my password-protected computer and transcribed the interviews that were relevant to the research, and then coded the interviews.

Conclusion

In studying the contentious politics that go into the creation of a law like the AETA, I aim to answer questions about what it means for animal rights activism, as well as the future of social movements that use civil disobedience and direct action as part of their movement repertoire. The post 9/11 environment in the US led to an expansion of governmental powers in relation to civil society, which can be seen in the expansion of the use of the terms 'terrorism' and 'terrorist' to label political opponents and radical

challengers of entrenched power. The expanded use of the term terrorism means something for protest activity and civil disobedience in the US, and I hope to elucidate to some degree what that change means.

Social movements are a deep-rooted part of the political process in the US, leading to significant changes in the political and economic lives of every American. But social movement activity isn't always welcome, especially by established groups whose power and resources are challenged by such activity. That movement activists could be labeled terrorists and subjected to additional penalties for non-violent crimes isn't unprecedented in American history, but animal enterprise terrorism laws label opponents of a single set of industries as terrorists, and that is unique. For the first time a set of industries has essentially been given the benefits of a protected class. Understanding how private, powerful interests come to be protected from social movement activity will contribute to our understanding of the ever-evolving relationship between movement, counter-movement and the state.

CHAPTER II

ANTI-ABORTION, ANIMAL RIGHTS AND THE SOCIAL CONSTRUCTION OF TERROR

The Animal Liberation Front, along with its sister organization the Earth Liberation Front, have been declared the number one domestic terrorist threats in the United States by the FBI (Jarboe 2002). As the activists and lawyers I interviewed mentioned repeatedly, these are movements that have never physically harmed or killed anyone. The labeling of these movements as the number one domestic terrorist threats raises a number of questions, especially about how terrorism is defined and who gets to do the defining. In this chapter I will show how the terrorist label has been socially and politically constructed. I will examine how ‘animal rights terrorism’ fits within a larger discourse on terrorism, including the history of eco-terrorism as a label. I will also compare the animal rights and anti-abortion movements, as both movements use direct action in similar ways yet are labeled quite differently by federal law enforcement and elected officials. Those I interviewed often made this comparison, noting that it is animal rights activists who are labeled terrorists even though interpersonal violence, including assassination, is a tactic of the extreme wing of the anti-abortion movement. I will also examine the view of animal rights activists and civil liberties lawyers regarding the labeling of animal rights activism as terrorism.

The Defining and Construction of Terrorism

In this section I will explore how terrorism is defined and how terrorist threats have been socially constructed to legitimate certain points of view while delegitimizing others. That terrorism isn’t a thing in and of itself is well accepted in the sociological

literature. As Turk (2004) states, “Terrorism is not a given in the real world but is instead an interpretation of events and their presumed causes. And these interpretations are not unbiased attempts to depict truth but rather conscious efforts to manipulate perceptions to promote certain interests at the expense of others” (271). The term terrorism is also used as a form of condemnation, casting those labeled terrorists as illegitimate actors, making them and their points of view unworthy of consideration (Gibbs 1989). This in turn biases public discussion of social and political issues. It is thus appropriate to think of the terrorism label as a tool that is employed by certain interests against others, rather than as an objective characteristic of persons or their actions.

On Defining Terrorism

There are a multitude of definitions of terrorism that can vary in significant ways. It is nearly impossible to define terrorism in a way that captures the essence and complexity of what terrorism is and isn't, as it can look very different at different times and in different places (Hoffman 2004). Government officials, philosophers, sociologists, political scientists and criminologists have been among those who have attempted to define terrorism, each with ideas of and limitations on what terrorism is.

Schmid and Jongman (1988) examined 109 different definitions of terrorism and found that there were 22 distinct elements that surfaced, elements that include violence, fear, threats, systematic, organized action, coercion and publicity aspect to name a few. But even with these 22 elements, Schmid conceded that most likely there weren't enough elements to accurately create an adequate definition of terrorism (Hoffman 2004). As an example of the complexity of defining terrorism, various agencies in the federal government have defined terrorism in their own way, including the Defense Department,

the FBI and the State Department (Hoffman 2004). A widely accepted definition might not be easy to come by, but “On one point, at least, everyone agrees: terrorism is a pejorative term” (Hoffman 1998: 23). My goal here is not to parse the many definitions of terrorism that exist, but to show that because it isn’t a well defined phenomenon, terrorism as a label can be shaped and constructed to serve very specific purposes and interests. The defining of terrorism is not just an academic pursuit, but has policy implications that have consequences on activists and movements. Attaching a terrorist label to an act or movement can have the result of delegitimizing movements and their points of view.

Social Construction and Terrorism

The theory of social construction of reality is well established, and has been used as a way to explain gender (Lorber 2010), crime (Barak 1994), emotion (Harre 1986), and nature (Eder 1996), amongst many other aspects of social life. The strength of social construction as a framework is that it allows us to examine how meaning and knowledge are created, rather than blindly accepting what may otherwise go unquestioned. Berger and Luckman (1966), in *The Social Construction of Reality*, argue that “reality is socially constructed and that the sociology of knowledge must analyze the processes in which this occurs” (1). They go on to state, “Knowledge must always be knowledge from a certain position” (Berger and Luckman 1966: 9), the argument being that the ways in which we understand and relate to the world are largely defined by the social position we inhabit, and therefore understanding and knowledge are constructed from specific points of view.

We can extend a social construction framework to our thinking about terrorism as well. As Turk (2004) states, “Probably the most significant contribution of sociological

thinking to our understanding of terrorism is the realization that it is a social construction” (271). To say that terrorism is a social construction means that our thinking and understanding of the phenomenon is a product of social interaction. Terrorism is not a single, definitive thing, but is a tool used in social and political conflicts. As Noam Chomsky states, “It is close to a historical universal that our terrorism against them is right and just (whoever we happen to be), while their terrorism against us is an outrage. As long as that practice is adopted discussion of terrorism is not serious. It is no more than a form of propaganda and apologetics” (Best and Nocella 2004: 1). Acts that are labeled terrorism are injected with meanings that are contestable, with various parties putting forth competing narratives in an attempt to define a political conflict. There are instances that are widely accepted as terrorism (bombing a bus full of civilians for example), but what about instances that are significantly less damaging to property and life? When ‘terrorism’ encompasses both the mass killing of innocent civilians and the release of mink from fur farms, it becomes apparent that ‘terrorism’ is open to many different interpretations and definitions.

Animal Rights and the Terrorist Label

The history of the term eco-terrorism provides a unique look at how ‘terrorism’ has been socially and politically constructed to benefit very specific interests, namely animal-using and resource extraction industries. Ron Arnold, one of the founders of the Wise Use Movement⁴, coined the term in a series of articles for Reason Magazine in 1983 and has taken credit for turning Earth First! and the Animal Liberation Front into terrorists in the public eye (Kuipers 2009: 50). But the use of the term eco-terrorism

⁴ The Wise Use Movement is best described as being an opponent of the environmental movement and the public ownership of lands in the American west (Source Watch 2012).

didn't necessarily take hold immediately. Prior to the passage of the Animal Enterprise Protection Act (AEPA) in 1992, industry trade publications were still describing direct action by the animal rights movements as vandalism (Kuipers 2009). The codification of the term terrorism to describe animal rights activism came with the passage of the AEPA, where it described 'Animal Enterprise Terrorism' as whoever:

- (1) travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility in interstate or foreign commerce, for the purpose of causing physical disruption to the functioning of an animal enterprise; and
- (2) intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding \$10,000 to that enterprise, or conspires to do so. (Animal Enterprise Protection Act of 1992: 1) (See Appendix C for legislation)⁵.

The AEPA was amended twice in the next decade, in 1998 and 2002 (Potter 2011). The latest iteration came in 2006 with the passage of the Animal Enterprise Terrorism Act (AETA), further codifying 'Animal Enterprise Terrorism' into law.

The term 'ecotage' began being used by the media, activists and policy makers in the 1970s to describe direct action in the name of environmentalism and animal rights, (Wagner 2008). This included actions like property destruction, vandalism, arson and harassment. But since 1983, when the term eco-terrorism was coined, ecotage has been systematically replaced by the term eco-terrorism. Wagner (2008) examined the way newspapers described environmental direct action from 1984 to 2006, and found that beginning in 1998 there was a sharp increase in the use of the term eco-terrorism rather

⁵ The FBI defines terrorism as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" (Hoffman 2004: 19). Under the AETA one does not need to commit a substantive crime or engage in direct action to be charged under the law, thereby expanding the definition of terrorism so that force and violence are no longer necessary conditions for committing 'terrorism'.

than ecotage. This trend accelerated after 2001, with 52% of the use of the term eco-terrorism occurring in the five years between the years 2001 and 2006, as opposed to 48% of the usage in the seventeen years prior (Wagner 2008)⁶. This is an important shift in how radical environmental and animal rights activism is discussed in the media because the use of the term terrorism injects a bias into political and social matters (Norris, Kern & Just 2003). This was a conscious and purposeful campaign by industry representatives and their political allies to reframe what was once considered ecotage as eco-terrorism.

By the mid-00s, a majority of panelists in Congressional hearings on animal rights did not refrain from using the term terrorism to describe animal rights activism. Most referred to the direct action that radical animal rights activists preferred, such as harassment, home demonstrations, animal liberations and property destruction as terrorism. Congresspersons commonly referred to animal rights activists as terrorists. On occasion those in Congressional hearings conflated animal rights activism with that of international terrorist threats, such as that posed by Al Qaida. Howard Coble, the Chair of a House subcommittee that held a hearing on the AETA, made a not so subtle connection between Al Qaida and animal rights activism:

H.R. 4239 (AETA) was introduced in response to a growing threat commonly referred to as eco-terrorism. While we are still responding to the threat about international terrorism, groups of impassioned animal supporters have unfortunately employed tactics to disrupt animal research

⁶ Although Wagner was looking at the framing of environmental actions, the radical animal rights and radical environmental movements are often lumped together, so that the term eco-terrorism is used to describe the radical animal rights movement as well. As an example, the Senate Committee on the Environment and Public Works held a hearing called *Eco-Terrorism Specifically Examining Earth Liberation Front and Animal Liberation Front*, where Senator James Inhofe (R-OK) said in his opening statement, “the Earth Liberation Front (ELF) and the Animal Liberation Front (ALF) which, by all accounts, is a converging movement with similar ideologies in common personnel” (Senate Committee on Environment and Public Works 2007: 1).

and related businesses by terrorizing their employees (House Subcommittee on Crime, Terrorism and Homeland Security, 2006:1).

Mark Bibi, general counsel for Huntingdon Life Sciences (HLS), when discussing HLS being denied a listing on the New York Stock Exchange, stated “A handful of animal extremists had succeeded where Osama bin Laden had failed” (Senate Committee on Environment and Public Works 2008: 17). The linking of animal rights activism and terrorism would occur regularly throughout several Congressional hearings on animal rights activism, as industry representatives, federal law enforcement and elected officials all made these connections.

Three Senate hearings on animal rights activism were held between 2004 and 2006. Of the panelists that testified during these hearings, eleven of the fifteen referred to the animal rights movement as a terrorist movement. Skip Boruchin, a market maker for HLS, in referring to the Stop Huntingdon Animal Cruelty (SHAC) campaign, stated SHAC “launched an all-out terrorist attack on too many other market makers, Merrill Lynch, Charles Schwab, Goldman Sachs, to name a few” (Senate Committee on the Environment and Public Works 2008: 18). Jonathan Blum, Senior Vice President for Public Affairs for YUM! Brands, owner of many restaurant chains and snack food companies, said of a campaign targeting KFC, “In my view, PETA’s campaign has been nothing short of what I would call corporate terrorism,” (Senate Committee on Judiciary 2005: 11). David Martosko, research director for the Center for Consumer Freedom, a restaurant industry lobbying organization, stated, “I want the committee to note and be aware that the growing movement of ALF and ELF terrorism can be legitimately considered a national security threat” (Senate Committee on Environment and Public Works 2007: 38). John Lewis of the FBI stated in a Senate Judiciary Committee hearing,

“the FBI’s investigation of animal rights extremists and ecoterrorism matters is our highest domestic terrorism investigative priority” (Senate Committee on Judiciary 2005: 4). These statements were not untypical of the language used in these hearings, which included federal law enforcement officials, industry representatives, and Congresspersons. (I go further in depth into the language employed in these hearings in chapter IV).

The idea that the radical, underground wing of the animal rights movement, if not the entire movement itself, should be considered a terrorist movement had worked its way into the halls of Congress within two decades of the coining of the term ecoterrorism. This acceptance of a terrorist label to describe radical animal rights activism resulted in legislation with ever increasing penalties. These penalties would have real effects on activists caught in the legal system. The entry of ‘eco-terrorism’ into the popular lexicon and in the halls of power was a conscious effort by powerful interests to delegitimize and criminalize the radical animal rights and environmental movements.

Anti-Abortion and Animal Rights Activism: A Comparison

In this section I compare the animal rights and anti-abortion movements and the disparate treatment each has received from federal law enforcement and elected representatives. The two movements display important similarities, including the tactics and strategies each employs, including picketing, vandalism, property destruction and harassment. They share other commonalities as well, including a moral motivation that defines their activism and a similar time frame. There are also significant differences between the two movements, including place on the political spectrum, economic and political power of movement targets, and percentage of the public who, at least

nominally, support the goals of the movement. Another major difference is that the extreme wing of the anti-abortion movement employs murder and assault as part of their movement repertoire. This comparison will illustrate how two movements that share a penchant for direct action are constructed differently by law enforcement and elected officials.

The Similarities of the Anti-Abortion and Animal Rights Movements

In this section I explore the timeframe, the moral basis, and the strategies and tactics employed by the animal rights and anti-abortion movements. On the core issues of social movement tactics and strategy they share many similarities, and it's these similarities that should result in similar treatment at the hands of policy makers and federal law enforcement. In reality, the similarities between these movements and their divergent treatment exemplify the ways in which 'terrorism' has been socially and politically constructed.

These movements share a similar timeframe during which they have been active. The use of direct action by each movement first occurred in the mid-70s. The first arrests of anti-abortion activists during a clinic sit-in occurred in 1975 in Rockville, Maryland (Baird-Windle and Bader 2001), while the first recorded animal liberation happened in 1977 with the release of two dolphins from a lab in Hawaii (Young 2010). Over the course of the following decades, direct action became a staple in each of these movement's repertoires, including arson, property destruction, and harassment. Within two years of each other, both movements were singled out for federal legislation that attempted to limit activism. The Animal Enterprise Protection Act passed in 1992, while the Federal Access to Clinic Entrances (FACE) Act passed in 1994. The language

in each of these statutes is quite similar as both make it a federal offense to interfere with the operation of certain enterprises, reproductive health centers in the case of the FACE Act and animal enterprises in the case of the AEPA (see appendix D for statutes). This similarity in timeframe limits institutional differences that may develop over time in the way federal law enforcement defines terrorism.

Another similarity is that the anti-abortion and animal rights movements share a moral belief in the rightness of their cause, and this moral belief separates them from other movements in significant ways. Rather than being based on access to or demands for redistribution of society's resources, the motivation for these movements lies in moral indignation, not personal gain. Jasper (1997) considers both to be post-citizenship movements, meaning that activists are not fighting for acceptance of or inclusion into political, economic and social life for some excluded group, but instead see themselves as protecting 'innocent lives.' He also compares the similar ways each of these movements use graphic images to both express their moral outrage and to gain sympathy and recruits: "Like animals for the animal activist, fetuses are innocent victims to the anti-abortionist; the idea of killing one is a sufficient moral affront to draw many new recruits" (Jasper 1997: 176)⁷. Moralistic movements, because they are based on a well defined 'right thing', leave little room for compromise. As Lake (1986) states, "Anti-choice forces appear single-minded and indefatigable, impervious to compromise" (479). The title of the Animal Liberation Front's movement publication expresses a similar sentiment: *No Compromise*.

⁷ Jasper compares the ways in which the anti-abortion movement uses images of fetuses while animal rights activists often use images of abused and/or suffering non-human animals.

Both movements employ direct action and civil disobedience in ways that few modern movements do, including picketing, blockades, harassment, stalking, vandalism, and arson. An important distinction between the two movement's repertoires is the use of physical assault and assassination by the most extreme anti-abortion activists. At least a portion of the anti-abortion movement views these assassinations as justifiable homicide (Baird-Windle and Bader 2001). There have been animal rights advocates that have argued that the use of interpersonal violence against animal researchers is justified, but at this point it has only been rhetorical as no one in the animal rights movement has ever been accused of physically harming another person (Senate Committee on the Environments and Public Works 2007).

That both movements use various forms of direct action as part of their movement repertoire is well documented. Arson and bombings are common tactics for both the anti-abortion and animal rights movements. According to the *National Abortion Federation* (2010), there were 104 attempted or actual arsons or bombings in the decade before the passage of the FACE Act in 1994, with 64 in the decade that followed. Peter Young (2010), an animal rights activist who has catalogued direct action by the Animal Liberation Front and other groups, counted 40 arsons, bombings or bomb threats in the decade prior to the passage of the AEPA in 1992, and 104 such incidences in the decade that followed⁸. It's likely that the numbers for each movement are higher due to reporting guidelines and the difficulty of collecting completely accurate numbers⁹. But what this limited data does show is that the use of arson, bombings and bomb threats are

⁸ I use these years because it gives a sense of the level of this kind of activism leading up to legislation targeting the two movements, and the level of this kind of activism after.

⁹ For example, an arson at a reproductive health clinic in Seattle in 2005 that caused \$500,000 in damage was determined not to be an act of anti-abortion activism by law enforcement officials.

key aspects of both the animal rights and anti-abortion movement repertoires. Over the course of these movements' lifecycles, both have also committed thousands of acts of vandalism, theft and trespass. Between the arsons and the vandalism, millions of dollars of damages have been inflicted upon those targeted by these movements (National Abortion Federation N.d.; Young 2010).

The use of threats by both movements has been well documented. Doan (2007) reported that between 1991 and 1999 there were 250 death threats targeting clinic workers. There is not a reliable figure on the exact number of threats by animal rights activists, but it has been documented well enough to state that it is a real and regular part of animal rights activism (National Association of Biomedical Research 2005; Senate Committee on the Judiciary 2005; Liddick 2006; Senate Committee on Environment and Public Works 2008; Young 2010).

The anti-abortion movement has used interpersonal violence for close to twenty years. Since 1993, when Dr. David Gunn became the first casualty of the anti-abortion movement, seven others have been killed by anti-abortion activists, including doctors and clinic workers. There have also been multiple attempted murders and physical assaults on clinic workers and doctors over the last two decades (Baird-Windle and Bader 2001; Doan 2007). The latest example of this is the 2009 murder of George Tiller, a doctor in Kansas who provided abortion services. Threats of death and physical assault have been part of the animal rights movement, but ultimately they've only been threats. No one has ever been killed or injured in the use of direct action by the animal rights movement, while physical assault and murder are well documented as tactics of the anti-abortion movement.

The animal rights and anti-abortion movements share many facets of their activism. They both share a similar lifecycle and a moral motivation to their activism. Most importantly, they share a penchant for direct action as social movement strategy. Both movements use picketing, vandalism, arson, theft, harassment and threats as forms of direct action, and both have caused millions of dollars of damages in the carrying out of their activism. A major difference is the use of physical assault and assassination that is employed by the anti-abortion movement. Yet it is the animal rights movement that is labeled a terrorist movement by federal law enforcement, despite a lack of interpersonal violence. As compared to the anti-abortion movement, this poses contradictions in the way certain activism gets labeled as terrorism.

Differences between Anti-Abortion and Animal Rights Movements

While there are several significant similarities between the animal rights and anti-abortion movements, there are also important differences between the movements that need to be acknowledged. These differences, though, are not significant enough to result in the divergent treatment of these movements. To paraphrase, the FBI defines terrorism as the use or threat of violence in order to coerce a government, a populace or any segment thereof, in order to create political or social change (Hoffman 2004). They make no distinction on the movement's political orientation, power of their opponents, or on level of public support. But these differences do result in disparate treatment of these two movements, and shed on light on the way terrorism is socially constructed.

The animal rights movement is best described as a leftist movement, especially in the way that it employs the language of liberation (Jasper 1997; Singer 1990), while the anti-abortion movement is rooted in evangelical Christianity, and therefore is best seen as

a right wing movement (Lake 1986, Maxwell and Jelen 1996; Jasper 1997). This is an important distinction because, as Goldstein (2001) found, movements of the left have historically been more likely to face political repression because leftist movements are more likely to challenge core aspects of political and economic beliefs in the United States, especially the primacy of free enterprise.

Another difference between the two movements is that the public is more amenable to the goals of the anti-abortion movement, as polling data shows. Seventy-five percent of the public believes there should be at least some restriction on abortion, with twenty-two percent saying it should be absolutely illegal (Saad 2009)¹⁰. In a 2003 poll only twenty-five percent of people were supportive of the idea that non-human animals deserve equal rights to humans, but this number is highly inflated upon further inspection. Upon further questioning, 38% of people saying animals should have equal rights to humans believe that we should not ban product testing, 44% believe we should not ban medical testing, and 55% believe we should not ban hunting. This makes support for actual animal rights much lower than the 25% would have us believe. (Moore 2003)

Abortion has been one of the most contentious issues of political life for most of the last four decades, while animal rights is much less likely to divide the population (Saad 2004; Saad 2010), resulting in a much higher profile for anti-abortion versus animal rights contestations. The power of the anti-abortion movement's political allies is also more entrenched and institutionalized, as the whole of the Republican Party, at least rhetorically, is on the side of anti-abortion activists (Miller and Schofield 2008).

¹⁰ These numbers have been relatively stable for the last fifteen years. See <http://www.gallup.com/poll/1576/abortion.aspx>

The economic power of their respective targets is also quite divergent. The pharmaceutical and bio-medical industries have been major targets of animal rights activism due to their testing on animals (Munro 1999), while reproductive health clinics have been the main target of anti-abortion activists' direct action (Doan 2007). The pharmaceutical industry is one of the wealthiest and most politically powerful industries in the United States, and has been the largest contributor of political donations for all but one of the last thirteen years (Center for Responsive Politics 2011b). It is estimated that the pharmaceutical industry had \$200 billion on prescription drug sales in the United States in 2004 alone (Angell 2004), while Planned Parenthood, the largest reproductive health services provider in the United States and a main target of the anti-abortion movement had, at its height, an annual income of just over one billion dollars in 2007 (Americans United for Life 2011)¹¹.

The Pro-Choice movement has also been institutionalized and integrated into political life so that the anti-abortion movement doesn't just have to contend with abortion and reproductive service providers, but also with well organized and politically connected pro-choice groups. Still, when comparing the two we see that political donations by the pharmaceutical industry dwarfs those of pro-choice groups. Lobbying spending by the pharmaceutical industry between 1998 and 2006 was \$1.1 billion, while lobbying spending by pro-choice groups during this time was \$8.2 million (Center for

¹¹ Americans United for Life claim Planned Parenthood is by far the largest abortion provider in the country. Even though Planned Parenthood provides many other services, the fact that their revenue is still dwarfed by prescription drug sales alone shows the differential between these two targets of social movement activity.

Responsive Politics 2011g; Center for Responsive Politics 2012)¹². This difference in economic power translates into a difference in political access, which translates into an atmosphere more amenable to the creation of laws aimed at limiting social movement activity that affects business practices. Although opponents of both movements have been successful in getting legislation passed that limits movement activism in significant ways (AEPA/AETA targeting animal rights activists, and the FACE Act targeting anti-abortion activists), it is legislation targeting the animal rights movement that codifies that activism as ‘terrorism’ into law (In the next chapter, I explain in further detail the role of political donations in the creation and passage of industry friendly legislation).

There are definitive differences between the animal rights and anti-abortion movements. These include political and public support for each movement, the economic and political power of the targets of their activism, and the ideologies and placement on the political spectrum of the two movements. But if the discussion is about what is and isn’t terrorism, these differences shouldn’t matter. The federal government’s definition of terrorism makes no distinction between ideologies, placement on the political spectrum or popular support, but only on the use of violence to further political and social goals. If violence with the aim of creating political and social change is the basis for considering a social movement a terrorist movement, it should be more likely that the radical anti-abortion movement, with their use of interpersonal violence, would be a better candidate for a terrorist label.

¹² This isn’t taking into account other animal using industries that benefit from legislation limiting animal rights activism as well. But it was representatives from the pharmaceutical and bio-medical testing industries that testified before Congress during hearings examining animal rights activism.

Social Construction of Animal Rights and Anti-Abortion Activism

The animal rights and anti-abortion movements have been defined in very different ways, as Senator Inhofe (R-OK) stated in a Senate committee hearing, “It is these tactics, particularly the wide-spread use of arson, which makes ELF and ALF the No. 1 domestic terror concern over the likes of white supremacists, militias, and anti-abortion groups” (Senate Committee on Environment and Public Works 2007: 2). Inhofe purposefully constructs the threat of anti-abortion activism differently than that of radical animal rights, denying the obvious similarities between the two movements. If the use of violence is a determining factor in labeling a movement as a terrorist movement, as federal law enforcement officials claimed during Congressional hearings on the animal rights movement, then it should be as or more likely that the extreme wing of the anti-abortion movement would be labeled a terrorist movement due to their use property damage combined with interpersonal violence. If it is the property damage committed, along with a fear of interpersonal violence, that makes animal rights activists ‘terrorists’, then we should see a similar labeling of anti-abortion social movement activity labeled as terrorism. Yet that is not what I found. Federal law enforcement and elected representatives referred to anti-abortion activists as ‘extremists’, while animal rights activists were referred to as ‘extremists’ and ‘terrorists’.

The Federal Bureau of Investigation commonly refers to animal rights activism as terrorism. The FBI’s publication *Terrorism 2002-2005* (N.d.) states:

With the exception of a white supremacist’s firebombing of a synagogue in Oklahoma City, Oklahoma, all of the domestic terrorist incidents were committed by special interest extremists active in the animal rights and environmental movements. The acts committed by these extremists typically targeted materials and facilities rather than persons.

According to the National Abortion Federation (2010) there were 8 arsons at reproductive health clinics across the United States during the years covered in this report. The FBI report included multiple arsons by animal rights and environmental activists, including the burning of a barn at a mink fur farm in Pennsylvania and at an animal science facility at Brigham Young University (Federal Bureau of Investigation N.d.) This is an example of the way similar acts by two different movements get labeled differently. The arsons committed in the name of animal rights get included in an FBI report on domestic terrorism, while arsons committed by anti-abortion activists are not.

Federal law enforcement officers and elected officials commonly referred to the animal rights movement as a serious domestic terrorist threat during Congressional hearings. John Lewis of the FBI, testifying before the Senate Committee on Environment and Public Works (2007), stated “The FBI has developed a strong response to domestic terrorism threats. Together with our partners, we are working to detect, disrupt, and dismantle the animal rights and environmental extremist movements that are involved in this criminal activity” (12). Senator Inhofe stated “SHAC calls these tactics direct actions, and its level of violence and propensity for harm has led the FBI to include SHAC, along with the Animal Liberation Front and the Earth Liberation Front, as the most serious domestic terrorist threat today” (Senate Committee on Environment and Public Works 2008: 2). Scott McGregor, a United States Attorney in California, stated during a Senate Judiciary Committee hearing, “Animal terrorism and ecoterrorism pose a serious threat to the safety and security of our fellow citizens. Combating this threat is a priority for the Department of Justice” (Senate Committee on Judiciary 2005: 6). This was a purposeful construction of animal rights activism as terrorism by federal officials,

which translated into creation and passage of the AETA in 2006. There was never a similar attempt to construct or to create legislation labeling the anti-abortion movement as a terrorist movement.

The use of this kind of language has real impacts in the ways that activists are labeled and treated by law enforcement. In 2009 Dr. George Tiller, an abortion provider in Wichita, Kansas, was killed in the foyer of his church by an anti-abortion activist. An FBI press release announcing an investigation into the killing never mentions the word terrorism, but instead talks about bringing federal charges under the FACE Act:

The Justice Department today announced that the Civil Rights Division and the U.S. Attorney's Office for the District of Kansas have launched a federal investigation into federal crimes in connection with the murder of Dr. George Tiller. The federal probe will consist of a thorough review of the evidence and an assessment of any potential violations of the Freedom of Access to Clinic Entrances Act (FACE Act) or other federal statutes" (Federal Bureau of Investigation 2009a).

Lest one think that the murder of Tiller was an isolated event, his obituary lays out the ways he was targeted by anti-abortion activists for well over a decade:

Dr. Tiller, 67, was a focal point for those around the country who opposed abortion. They blockaded his clinic; campaigned to have him prosecuted; boycotted his suppliers; tailed him with hidden cameras; branded him "Tiller the baby killer"; hit him with lawsuits, legislation and regulatory complaints; and protested relentlessly, even at his church. Some sent flowers pleading for him to quit. Some sent death threats. One bombed his clinic. Another tried to kill him in 1993, firing five shots, wounding both arms (The New York Times 2009).

This is the most extreme form of political violence (Bob and Nepstad 2007), yet the word terrorism is never mentioned in the indictment of Scott Roeder, who killed Tiller (*Kansas v. Scott P. Roeder* 2009).

Another example of the differing terminology the FBI uses when describing similar acts is that the word terrorism is never used in a press release about the capture of

Francis Grady, an anti-abortion activist accused of bombing a Planned Parenthood in Wisconsin on April 2, 2012 (Federal Bureau of Investigation 2012). We can compare this to the language used to describe animal rights activist Daniel Andreas San Diego. San Diego was added to the FBI's Most Wanted Terrorist list in April of 2009 for allegedly bombing a bio-medical research facility in the San Francisco area, where no one was injured. The opening paragraph of the press release states, "An animal rights extremist wanted for allegedly bombing two San Francisco-area office buildings in 2003 has been added to our Most Wanted Terrorists list—the first domestic terrorist to be included with international terrorists such as Usama Bin Laden" (Federal Bureau of Investigation 2009b). Disparate language is used to describe similar acts. Calling the bombing in the name of animal rights terrorism, but not the bombing in the name of anti-abortion, not only marginalizes the animal rights movement, but makes San Diego's alleged bombing much more serious in terms of law enforcement. Again, a stark comparison to the language the FBI used in the Tiller case.

Another comparison showing the disparate ways animal rights and anti-abortion activism are constructed are the cases of Peter Young and Eric Rudolph. Peter Young was arrested for releasing mink from fur farms in several Midwestern states in 1998. After being indicted he fled and was finally re-arrested in 2005 (Hull 2005). Eric Rudolph was found guilty of several bombings in multiple states in the South from 1996 to 1998, causing two deaths and seriously injuring dozens of others. A bombing at a reproductive health clinic in Birmingham, Alabama resulted in the death of a security guard and the serious injury of a clinic worker. Like Young, he also went on the lam, finally being arrested in 2003 (Gettelman and Halbfinger 2003). Young eventually pled

guilty to two counts of ‘Animal Enterprise Terrorism’ for violating the Animal Enterprise Protection Act, while Rudolph pled guilty to the bombings, but was not charged or sentenced as a terrorist. Rudolph received life in prison without the possibility of parole, and Young was sentenced to two years in federal prison (Dewan 2005). These cases are an illustration of how the word terrorism, which carries with it so many connotations, was used to tag the release of mink but not the murder of abortion clinic workers.

It’s important to note that the labeling of animal rights and environmental activists as terrorists without doing the same to anti-abortion activists has not gone unchallenged. Representative Bernie Thompson (D-MS) submitted a written statement to a Senate hearing on ALF and ELF, where he wrote “Democratic Members of the House Committee on Homeland Security are very concerned that this oversight demonstrates DHS administrators are not adequately considering right-wing domestic terrorist groups that are focused on attacking America in order to further their political beliefs” (Senate Committee on Environment and Public Works 2007: 145).

Anti-abortion activism has been labeled and called terrorism by the movement’s political opponents, including the occasional elected official (Swarr 1995; Baird-Windle and Bader 2001), but this labeling has not worked its way into the policies of federal law enforcement in any significant way, or into legislation labeling this activism as terrorism. Because ‘animal rights terrorism’ has been codified into law through the AEPA and the AETA in a way ‘anti-abortion terrorism’ hasn’t, it makes for easier terrorism prosecutions in that there is a ready made statute with which to charge animal rights activists. (In chapter V, I will explore the effect that being labeled a terrorist has on the court and prison experience for animal rights activists.)

Both the animal rights and anti-abortion movements have engaged in similar direct actions targeting property as part of their movement repertoires, with a major distinction being the use of interpersonal violence by a portion of the anti-abortion movement. The radical animal rights movement has likely caused more economic damage as compared to the anti-abortion movement¹³. But if we take into account the loss of life and serious physical injury, the anti-abortion movement has been significantly more violent than the animal rights movement, but it's the animal rights movement that is regularly referred to as a terrorist movement. The language used by the FBI in describing the two movements is indicative of the way in which terrorism is socially and politically constructed.

Views of Activists and Lawyers

The activists and lawyers I interviewed were quite aware of the disparate labeling and treatment of the animal rights movement as a terrorist movement, especially in reference to rightwing and anti-abortion violence. This was a comparison that was repeatedly mentioned to me. The activists and lawyers didn't use the terminology of social construction, but through their statements they demonstrated an understanding that 'terrorism' has been socially and politically constructed in such a way as to purposefully marginalize the animal rights movement. Michael Weber, program director for the Farm Animal Rights Movement, stated: "In the anti-abortion movement, where there have been a lot more assaults in that movement, and there have been murders in that movement. Yet I almost never hear the word terrorism applied to those movements." He added: "I don't think you could fairly argue that animal rights activists have ever done any act of

¹³ A single action, the arson of a ski lodge in Vail, Colorado, caused and estimated \$12 million in damage (The Associated Press 2006). This action was claimed by ELF and ALF as an attempt to protect endangered lynx habitat.

terrorism ever in this country. And if you were going to argue that they have, then you'd have to argue that the anti-abortion movement have done a lot more acts of terror." Peter Young stated "We're at war against terrorists, it doesn't matter that, you know, that terrorism is a bogeyman we've created that really doesn't exist in any way, in any meaningful way in this country, so you sort of have to create a terrorist at this point."

Rachel Meerepol, staff attorney for the Center on Constitutional rights noted the political construction of these terrorism laws: "My sense of this whole somewhat recent use of terrorism and terrorism enhancements is to create heightened penalties for any crime that is based on ideology as opposed to looking at the actual damage done. That seems to me to be a pretty new paradigm." Activists and lawyers expressed an understanding of the way that terrorism was being purposefully constructed in such a way as to target, marginalize and discredit the animal rights movement, as well as how that construction had changed over time.

There was an increase in the use of the term eco-terrorism starting in 1998, which accelerated after in 2001 (Wagner 2008). This coincided with the rise of terrorism as an organizing priority by federal law enforcement, especially after 9/11 (Leone 2003). My interviewees were aware that 9/11 had a significant impact on the national discussion of terrorism, as several recognized the way terrorism had been constructed as a result of 9/11. Bob Bloom, a defense lawyer who has worked on many political cases, stated with a bit of hyperbole "Ever since September 11th of 2001, looking at somebody the wrong way is a terrorist act. Picketing is a terrorist act. Speaking out is a terrorist act...It's all terrorism." 'David', a civil liberties and defense attorney, expressed a similar sentiment about the label of terrorism, "Post 9/11 the term is bandied about really sloppily by

people...Anybody, you know, gets to pin the word terrorism on anybody they don't like.”

There was a well established understanding that 9/11 significantly changed the importance and understanding of the term terrorism, and the way it has been used by powerful interests to marginalize their political opponents. There was also an acknowledgement of the institutional pressures involving terrorism cases as a result of 9/11. Darius Fullmer, one of the persons convicted as part of the SHAC 7, said about a Department of Homeland Security report outlining terrorist threats, “That document served a particular purpose and that's to direct the budget of the Department of Homeland Security, and that's like a \$50 billion budget...If you spend \$50 billion saying, we got to find these terrorists you're going to find yourself some terrorists whether they exist or not.”

It's also important to note that the expansion of the use of the term terrorism was at least somewhat contentious. In Senate hearings on animal rights activism, just under three quarters of the panelists used the word terrorism, but that left several panelists who did not. Dr. David Skorton, president of the University of Iowa at the time of a 2004 lab break that caused approximately half a million dollars in damage, never used the word terrorism to describe the incident (Senate Committee on Environment and Public Works 2007). Peter Young, when discussing his sentencing for ‘animal enterprise terrorism,’ stated that the prosecutor wasn't completely comfortable with charging and convicting Young as a terrorist: “He wasn't quite as zealous as some of the prosecutors I've seen in other animal rights or environmental cases, where they'll just come right out and say without shame, our defendant is a terrorist. He said that what I was guilty of was a certain kind of terrorism, and it's not as bad as other kinds of terrorism.”

Because the terrorist label was understood to be a social construction, activists and lawyers would attempt to redefine terrorism in interesting ways as well. Bob Bloom, a long time defense lawyer who worked on the AETA 4 case, argued that terrorism is what the legal system is based on: “Terrorism has a long history. Um, what the FBI does everyday is terrorism. Basically, what the criminal justice system does...what they do is instill fear in the population, that something bad is going to happen to them if they don’t follow orders and do as they’re told.” Dr. Jerry Vlasak, an animal rights activist and spokesperson for the Animal Liberation Front, argued that it was animal researchers who were the real terrorists: “There is plenty of violence being used on the other side of the equation. These animals are being terrorized, murdered and killed by the millions every day” (Senate Committee on Environment and Public Works 2008: 25). Activists were engaged in efforts to try to redefine terrorism, knowing that it is a contentious term that is open to political and social construction. Activists, defense attorneys and civil liberties lawyers had a good sense of the ways in which terrorism had been defined and redefined over time to serve specific interests. They also recognized that animal rights activists had been targeted by powerful industries who were able to codify ‘animal rights terrorism’ into law.

Conclusion

That terrorism is a social and political construction is well established in the sociological literature (Turk 2004). This means that how terrorism is defined and applied is not a given, but is a result of interaction between groups with conflicting interests. An illustration of this is the disparate ways in which the animal rights and anti-abortion movements have been treated by federal law enforcement and elected officials. For two

movements that share much in the way of social movement strategies and tactics, they have been labeled very differently by federal officials. That the animal rights movement is regularly referred to as a terrorist movement, while the anti-abortion movement isn't, is an indication of the ways in which the term terrorism is constructed. This disparate treatment is contradicted by the fact that interpersonal violence, including assassination, is a tactic of the anti-abortion movement, but is not part of the animal rights movement repertoire. This was a distinction that was not lost on animal rights activists and their defense lawyers. This essentially political construction of terrorism has had real effects on activists caught in the legal system, which I explore in more depth in chapter V.

CHAPTER III

INTEREST GROUP POLITICS, THE AETA AND THE CRIMINALIZATION OF ANIMAL RIGHTS ACTIVISM

The animal rights movement, like social movements before it, attempts to redefine social relationships and the power inherent in them. Successful movements attempting to expand rights to any group has always been met with a backlash, and the animal rights movement is no different in this respect. Social movements play out in both the political and social arenas, as movement and counter-movement try to convince policy makers and the public at large of the rightness of their cause (Tarrow 1998). In many ways the radical animal rights movement has rewritten the rules of this relationship. Groups like the Animal Liberation Front (ALF) eschew lobbying and other forms of public and political pressure for direct action, and in doing so refuse to engage in some of these more traditional forms of social movement activity.

The ALF is not a social movement organization in the way we traditionally think about such groups. ALF is more a philosophy than an organization, as they state in their credo, “Any group of people who are vegetarians or vegans and who carry out actions according to ALF guidelines have the right to regard themselves as part of the ALF” (Animal Liberation Front 2011). There are no headquarters, no membership lists, no annual conferences or get-togethers. There are mainstream organizations that share an animal liberation philosophy with ALF, organizations such as People for the Ethical Treatment of Animals, the Humane Society of the United States, and In Defense of Animals, but they differ in tactics and strategies. These groups do engage in more traditional social movement activity such as lobbying, education, and direct appeals to the

public, but in the realm of influencing public policy they do not have the resources that animal-using industries do. This creates an imbalance of conventional political power between movement and counter-movement, as one side (the industry backed counter-movement) has an overwhelming amount of resources as compared to the movement itself.

The story of the Animal Enterprise Terrorism Act (AETA), passed in 2006, is the story of politics at work, and it has something to tell us about the way that political systems operate in our day and age in the United States. It is a story of two diametrically opposed groups. On one side are powerful industries and their political allies who see the use of animals as research subjects, food, clothing sources, and entertainment as vital to their interests, and on the other side is a relatively small, but vocal, social movement that aims to end the use and exploitation of non-human animals for the benefit of humans. Part of the counter-movement's offensive against animal rights activists was to re-label animal rights activism as terrorism which had the effect of politically and socially marginalizing them. This resulted in the labeling of the ALF, along with the Earth Liberation Front, as the number one domestic terrorist threats in the US (Jarboe 2002). From the late 1980's through to the passage of the AETA, animal using industries and their political allies have been able to get legislation passed at both the state and federal levels specifically protecting animal using enterprises against direct action and economic sabotage by animal rights activists.

In this chapter I explore the process by which the Animal Enterprise Terrorism Act, as the latest example of animal enterprise terrorism laws, came to be. I explore how similar laws were first developed and passed at the state level, including the role of the

American Legislative Exchange Council (ALEC) and the corporate interests that fund it. Also, I examine Congressional committee and sub-committee hearings that were held in relation to the AETA and on animal rights activism, with an emphasis on who had a voice and how differing opinions and attitudes were received within the hearing rooms. Finally, I examine the trend of the federalization of criminal law, and how this trend has opened avenues for interest groups such as the pharmaceutical and bio-medical industries to have their political opponent's activities criminalized at the federal level, and what this potentially means, not just for animal rights activism, but social movement activity in general.

ALEC and State Level Legislation

The federal system in the United States creates multiple layers of rule making bodies. With states having autonomy to create laws within their borders, a system of experimentation and sharing is established between individual states and between the states and the federal government, or as Volden (2006), paraphrasing Louis Brandeis, states "Among the potential benefits of American federalism is the ability of states to serve as policy laboratories, adopting novel policies to address their needs, abandoning unsuccessful attempts and learning from the successes of similar states" (294). It was within this framework that states began passing laws in the late 1980s and 90s aimed at protecting animal-using enterprises. By 2006, thirty-three states had laws directed specifically at various forms of animal rights activism (Lovitz, 2010). These laws centered around interference with animal using enterprises, and ranged from making it illegal to release zoo animals to increasing penalties for interference in any way with an

animal enterprise by trespassing, theft, damage to property, actions that cause a loss of profits, and other similar acts if done in the name of animal rights (Lovitz 2010).

Who Is ALEC?

The American Legislative Exchange Council (ALEC) is a non-profit political organization that boasts of a bi-partisan membership with state representatives from all fifty states (ALEC 2011b). Founded in 1973 by Paul Weyrich, a conservative activist, it has grown from a small organization to a major force at the state level in legislative processes. It claims to be the largest “nonpartisan, individual membership association of state legislators” (ALEC 2011a), with nearly two thousand members from state legislatures, but in fact almost 85% of their membership are Republicans (ALEC Watch 2002). It can make a claim to bipartisanship, but is in practice a laboratory for pro-corporate, conservative policies that align with its overwhelming Republican membership. ALEC’s political agenda tends to align most closely with business interests, as they state in their *Private Sector Membership* (2011a) brochure, touting the benefits of corporate membership:

ALEC’s goal is to ensure that each of its legislative members is fully armed with the information, research, and ideas they need to be an ally of the free-market system. One of ALEC’s greatest strengths is the public-private partnership. ALEC provides the private sector with an unparalleled opportunity to have its voice heard, and its perspective appreciated, by the legislative members. ALEC members benefit from this partnership of business leaders, policy experts, and legislators through networking, conferences, Task Force meetings, and Issue Briefings (1).

ALEC creates model legislation that can be taken whole cloth or modified to meet individual states’ needs. These bills can then be introduced in state legislatures across the country. As ALEC states in their bylaws, their aim is to:

Assist legislators in the states by sharing research information and staff support facilities; establish a clearinghouse for bills at the state level, and provide for a bill exchange program; disseminate model legislation and promote the introduction of companion bills in Congress and state legislatures; formulate legislative action programs” (ALEC Watch, 2002, p. 33).

ALEC consists of two distinct groups, state legislators on one side and corporate and industry representatives on the other. The process by which ALEC approves model legislation and legislative priorities gives equal weight to each group, as a majority of each has to approve proposed resolutions, giving each group effective veto power over proposed resolutions (ALEC Watch 2002). But the importance of the private sector side extends beyond having a voice during negotiations over proposals, as “virtually all of ALEC’s revenues come from corporations and their affiliate foundations, trade and professional associations, and a relative handful of ultraconservative foundations” (ALEC Watch 2002: 20). These corporate and industry contributors are a veritable who’s who of large, vested interests across a vast array of industries. These interests include such diverse concerns as Coors, General Motors, Bank of America, Corrections Corporation of America, American Petroleum Institute, State Farm, Caterpillar, Microsoft, AT&T, GlaxoSmithKline, RJ Reynolds, and Boeing to name just a very few of their many contributors (ALEC Watch 2002).

This combination of conservative legislators and corporate interests results in model legislation that can best be described as anti-regulation and pro-business. Proposed legislation has had a direct effect on the varied corporate interests that are the financial backers of ALEC. As an example, the tobacco industry throughout the 80’s and 90’s was one of the most reliable underwriters of ALEC, and ALEC created legislation, policy papers and studies that gave cover to the tobacco industry and pushed a public

policy agenda that aligned with the interests of the tobacco industry. These included limiting or eliminating taxation on tobacco products and creating legislation that would limit the tobacco industry's financial and legal liability in court. The Corrections Corporation of America has also used ALEC to push for state level legislation that would create more state funded, privately run prisons, as well as legislation that would limit opportunities for parole, thereby keeping beds in their private prisons filled (ALEC Watch 2002). Bob Edgar of Common Cause, a non-profit group that tracks political donations and spending, summarizes this process as, "Dozens of corporations are investing millions of dollars a year to write business-friendly legislation that is being made into law in statehouses coast to coast, with no regard for the public interest" (Nichols 2011). Using a non-profit political organization in the form of ALEC, corporations are able to create legislation that directly benefits them. And through ALEC, relationships are developed between business interests and state legislators who will return to their home states and introduce this model legislation.

ALEC and Animal Enterprise Terrorism Legislation

It was within this framework that ALEC's Homeland Security Working Group published *Animal and Ecological Terrorism in America* in 2003. Model legislation called the *Animal and Ecological Terrorism Act* was included in the report and had become available the previous year. Model bills like the *Animal and Ecological Terrorism Act* are pushed by corporate interests with a financial stake in their passage, and moved along the legislative process by sympathetic state legislators. ALEC's Homeland Security Working Group, in keeping with its mission of giving corporate

interests and public officials equal power over the development of legislative priorities, has two chairs, one elected official and one from the corporate world.

In order to sit on a task force, corporations and industry pay for the privilege, giving these vested economic interests an opportunity to buy their way onto a decision making body that has real power to push legislation at the state level. For example, it costs anywhere from \$2,500 to \$10,000 to sit on one of ALEC's nine task forces (ALEC 2011a). The private enterprise chair of the Homeland Security Working Group at the time of the 2003 report was Kurt L. Malmgren, a representative of the industry group Pharmaceutical Research and Manufacturers of America (PhRMA) (ALEC 2003). The pharmaceutical industry has direct concerns here as the use of non-human animals as research subjects has been one of the most contentious issues for animal rights activists, and they have made biomedical researchers and pharmacy industry executives primary targets of their direct action. Actions aimed at entities involved in animal research or their affiliates accounted for 42.5% of actions claimed by the underground animal rights movement between the years 2000 and 2006 (Young 2010). PhRMA is just one of the pharmaceutical and biotech entities who are major contributors to ALEC, a list that also includes the Bayer Corporation, Eli Lilly and Company, GlaxoSmithKline, Merck and Company, and Pfizer. Other animal-using industries and corporations that would benefit from legislation targeting animal rights activists also prominently fund ALEC, including McDonalds and the National Pork Producers Association (ALEC Watch 2002).

Animal and Ecological Terrorism in America makes an explicit connection between radical animal rights/environmental activism and the threat of international terrorism. The introduction of the report they states, "recent investigations have shown

that these radical organizations operate in a similar fashion to other terrorist groups like al-Qaeda” (ALEC 2003: 4). As we will see later in this chapter, the conflating of international terrorism and animal rights activism is a common rhetorical device used by opponents of the animal rights movement. The report also makes connections between radical underground activists and aboveground non-profit animal rights organizations, “PETA has access to ALF Support Groups, claiming to have over 10,000 members, which aid in legal defense of ALF activists charged with crimes,” (ALEC 2003: 8), creating a sense that both mainstream and radical activists are all part of a terrorist network. The report briefly explains the history of both ALF and ELF, and the ways in which both continue to pose threats to corporate profits and the people who work in animal-using and natural resource extraction industries. The report goes on to argue that states have been ineffective in prosecuting animal rights activism, largely because they have treated the cases as forms of vandalism, property destruction and trespass. This approach, according to the report, limits states’ abilities to treat the animal rights movement as a criminal venture, thereby making no distinction “between the common thug who vandalizes a public park and an organized eco-terrorist” (ALEC 2003: 12).

Minnesota became the first state to adopt a law specifically targeting animal rights activism in 1988 (Hodges 2011b). By the time of the report in 2003, many states had passed similar legislation, as had the federal government in the form of the Animal Enterprise Protection Act (AEPA). Despite the presence of these laws targeting animal rights activism at both the state and federal level, ALEC continued to push for broader legislation to be used against animal rights activists. They acknowledge the failure of the AEPA, stating “the act allowed for increased penalties on an overly narrow range of acts,

those dealing with specific obstructions of animal enterprises” (ALEC 2003: 15), in effect limiting the government’s ability to go after networks and organizations. The report acknowledges the problems in treating activists like terrorists, “the federal definition of terrorism requires the death of or harm to people, an element not characteristic of eco-terrorists” (ALEC 2003: 15). The report also stated that the USA PATRIOT Act, despite its extensive expansion of federal police powers, was insufficient in addressing radical animal rights activism: “AETA (the model legislation) allows for the definition of eco-terror as domestic terror, without reference to the USA PATRIOT Act. In other words, the penalties and identification of those who commit eco-terror crimes are clarified without the overbearing tools provided under the USA PATRIOT Act” (ALEC 2003: 15).

The report simultaneously touts the danger to property and human life posed by the radical animal rights movement while acknowledging that “eco-terrorists” are not likely to cause harm or death to another person, or be considered terrorists under current federal law. This contradiction poses a problem for those that want to marginalize and criminalize animal rights activism, thereby necessitating the need to create a whole new category of terrorism. The report, by arguing the need to go after networks and organizations, advocates treating the animal rights movement as a criminal enterprise, allowing the federal government to treat the movement much the same as it would an illicit drug cartel or the mafia. The report and the model legislation included in it advocate for a more expansive definition of terrorism and the prosecution of those that, through their activism, would be considered terrorists. It advocates for a definition of

terrorism friendly to the corporate and industry interests that have such an influence within ALEC.

This state level legislation that eventually informed the Animal Enterprise Terrorism Act can tell us much about the process by which policies travel between states and between states and Congress. Along the way such legislation became the focus of powerful interest groups that saw this legislation as a way to beat back the gains made by the animal rights movement and as a way to politically marginalize their movement opponents. The combination of powerful corporate interests, ideological allies in state and federal governments, and the infrastructure that brought the two together created an avenue for the formation and passage of favorable legislation. The introduction and passage of the AETA provides an example of the way these processes and relationships work at the federal level as well.

Interest Groups, Congressional Committees and the AETA

We live in an age of interest group politics, and a federal government that largely operates according to the needs and desires of the well organized, the well connected and the well funded (Lowi 1979). The absolute number of lobbyists and the amount of money spent on lobbying has increased steadily over the last several decades. Spending on lobbying alone has increased from \$1.44 billion in 1998 to \$3.49 billion in 2010 (Center for Responsive Politics 2011a). Political theorists have examined the role that interest groups play in the creation of public policy, dating from 1833 to the present, (see Lowi, 1979; Hall and Wayman, 1990; Tichenor and Harris, 2002; Brunell, 2005). Interest group influence in the political process is nothing new, but what is new is the sheer scope of resources spent by powerful interests in the course of getting favorable

legislation passed. Political theorists, in trying to define and explain the capitalist state, find that the interests of business and the interests of the state intersect, and even the most forgiving theorists admit that in a state with a capitalist economy business interests have primacy over other groups in the development of public policy (Miliband, 1969; Evans, 2006; Smith 2006). What we can take away from this is that well organized interest groups, largely in realm of business, have the opportunity to use the levers of government for their own ends. It's this atmosphere that sheds light on the passage of a law like the Animal Enterprise Terrorism Act.

Political Spending and Influence

According to The Center for Responsive Politics (2011b), the pharmaceutical and health products industry spent significantly more money on lobbying than any other industry from 1998-2006, when the AETA was passed. In this period the pharmaceutical and health products industry spent more than \$1.1 billion dollars on lobbying alone. The insurance industry, which spent the second most of any industry during that same time period, spent just over \$885 million, or about 80% in comparison. During this same period, pharmaceutical and health product industry political action committees (PACs) gave just over \$36 million in donations to federal candidates (Center for Responsive Politics, 2011c). The pharmaceutical and health products industry is a diverse and multi-faceted field with a wide array of public policy interests. What this shows though is the resources that can be brought to bear whenever they feel there is public policy or legislation that affects them in some way. If we begin to consider the other moneyed interests that have a stake in seeing legislation that pushes back against the animal rights movement, interests such as animal agribusiness which include dairy, livestock, poultry

and egg producers, the imbalance in resources and influence between the animal rights movement and animal using industries becomes quite evident.

Agribusiness has a significant stake in the use of animals for profit. Collectively, the livestock, dairy, poultry and egg industries spent more than \$56 million dollars on lobbying between 1998 and 2006 (Center for Responsive Politics, 2011d), while industry PACs gave more than \$14.5 million in contributions to federal candidates during that same time (Center for Responsive Politics, 2011e). Political spending by animal rights and welfare groups pales in comparison. Including all the political spending recorded by The Center for Responsive Politics by animal rights and welfare groups between 1998 and 2006 it totals to just under \$9.54 million, or about 5% of what the pharmaceutical and health products industry spent on lobbying alone in 2006 (Center for Responsive Politics 2011f and 2011g). (For a breakdown of lobbying and PAC spending see Appendix C).

Although money is an important component of the political process, it is not as simple as campaign contributions lead to favorable votes on legislation. There seems to be conflicting findings in the importance of money in politics, Kimball et al. (2011) found that “When it comes to the policy agenda, we find that the bias in the interest group system means that the issues pushed by lobbyists generally do not correspond to the broad policy priorities of the public.” They found that the lobbying agenda plays a larger role in the agenda setting stage. Similarly, Hall and Wayman (1990) found that moneyed interests are more likely to have greater influence at the committee levels of Congress. They state that PAC contributions, while not buying floor votes, “apparently did buy the marginal time, energy, and legislative resources that committee participation requires” (Hall and Wayman 1990: 814). These moneyed interests are able to use their resources

and influence to mobilize legislators already predisposed to the group's positions. They also found that organized business interests had a more substantial role than other interests in the committee process. The power of committees and sub-committees was prominent in the passage of the AETA. Floor debate on the AETA was virtually non-existent, so it was in committee and sub-committee hearings where support and dissent could be expressed, and where the real substance of the debate occurred.

Committee and Subcommittee Hearings

There were four prominent hearings in the years prior to the passage of the AETA, only one of which dealt directly with the AETA, while others dealt with the radical animal rights and environmental movement generally or with the animal rights group Stop Huntingdon Animal Cruelty. But even within the three hearings not directly concerning the AETA, there were references made by law enforcement and industry representatives promoting wider ranging laws and jurisdiction for federal authorities in response to the radical animal rights movement.

The only hearing to deal directly with the AETA was held by the House Judiciary Committee's Subcommittee on Crime, Terrorism and Homeland Security on May 23rd, 2006. The panel that testified was made up of Michelle Basso, a researcher from a primate lab at the University of Wisconsin-Madison, Brent McIntosh, a representative from the Department of Justice's Office of Legal Policy, William Trundley, the vice-president of corporate security for GlaxoSmithKline and Will Potter, an independent journalist who has been critical of the government's response to the radical animal rights and environmental movement. The nature of the discussion tended to center around the need for an expansion of the Animal Enterprise Protection Act in the form of the AETA,

with Potter being the only panelist to express skepticism on the expansion and constitutionality of the bill. The submitted written statements were even more overwhelmingly one-sided towards the interests of industry. Of the thirteen statements submitted by non-Congresspersons, every one was associated with an animal-using entity, with a majority coming from individuals representing organizations engaged in biomedical or biotech research (See Appendix B for a list of Congressional witnesses and written statements). It is not known whether the views of animal advocates were not sought out or not accepted in the submitted statement. In the Senate committee hearings there were several animal advocacy groups who submitted statements.

Howard Coble (R-NC), chair of the subcommittee, began the hearing with a statement, and in the first substantive paragraph he conflates international terrorism with animal rights activism:

H.R. 4239 (AETA) was introduced in response to a growing threat commonly referred to as eco-terrorism. While we are still responding to the threat about international terrorism, groups of impassioned animal supporters have unfortunately employed tactics to disrupt animal research and related businesses by terrorizing their employees (House Subcommittee 2006:1).

In the shadow of the terrorist attacks of 9/11, Representative Coble is linking the fear of international terrorism with the actions of animal rights and environmental activists. As with the ALEC report, *Animal and Ecological Terrorism in America*, he shows how both industry and political representatives have adopted the rhetoric of terrorism when referring to animal rights activists. The sentence referencing “international terrorism” does nothing to address the issue at hand in the hearing other than to conflate animal rights activists with international terrorist groups such as Al Qaida. The ranking minority member, Bobby Scott (D-VA), expressed concern with the need to ensure First

Amendment protections, but not with the bill or its overall goals, as he stated in his opening remarks:

Indications are that animal rights groups that have used extreme tactics to press their point of view were taking advantage of the fact that animal enterprise laws do not cover these types of secondary relationships to wage a campaign of threats, harassment, intimidation and fear-mongering in an effort to have them sever their relationships with targeted animal enterprises. This bill was designed to cover these perceived gaps or loopholes in the current animal enterprise protection laws... While we must protect those engaged in lawful animal enterprises, we must also protect the right of those engaged in their first amendment freedoms and expressions regarding such enterprises (House Subcommittee 2006: 2-3).

Potter, who views the AETA as a severe restriction on civil liberties, was surprised by Congressman Scott's position, stating: "In my work at the ACLU he was a prominent, very well respected figure on civil liberties/civil rights issues....He's consistently, in his career, been on the side of key civil rights and civil liberties legislation." With Congressman Scott's support for the AETA it became apparent early in the hearing that there would be no resistance from committee members to the legislation.

The witnesses testified about being the target of animal rights activists, advocating for more federal authority to prosecute animal rights activists, and challenging the constitutionality and necessity of the bill. Brent McIntosh, Assistant Attorney General for the Department of Justice, advocated for an increased federal role in the prosecution of animal rights activists, stating:

Although the existing Animal Enterprise Protection Act is an important tool for prosecutors, animal rights extremists have tailored their campaigns to exploit limits and ambiguities in the statute by targeting individuals and businesses associated with the animal enterprise rather than the animal enterprise itself. Considered individually, these actions are State crimes, but local police often lack the investigative resources and nationwide perspective to put these local offenses into context as a multijurisdictional campaign of violence (House Subcommittee 2006:5).

Dr. Basso from the University of Wisconsin testified about the harassment she had received at the hands of animal rights activists including a failed home visit and protest (activists had the wrong address), receiving magazine subscriptions and books she did not order, and harassing phone calls received at home. William Trundley, Vice President of Global Security and Investigations for GlaxoSmithKline, reported on the harassment GlaxoSmithKline employees had received as part of the Stop Huntington Animal Cruelty campaign. Mr. Trundley advocated the passage of the AETA, “We believe that H.R. 4239 will enable law enforcement to deal effectively with these crimes, and we urge Congress to pass this legislation” (House Subcommittee 2006:17).

Potter was the only person involved in the hearing that questioned the necessity and the constitutionality of the bill, and was openly mocked for his concerns about the legislation and the way it might be implemented. Mr. Potter, in his opening statement, expressed concern about the effects of this type of law on social movement activity, stating:

Perhaps the greatest danger of this legislation, though, is that it will impact all animal activists, even those that never have to enter a courtroom. The reckless use of the word ‘ecoterrorism’ by corporations and the Government has already had a chilling effect, and this legislation will compound it (House Subcommittee 2006: 21).

Potter finished his opening statement calling for a better use of resources in the fight against terrorism, “Public fears of terrorism since the tragedy of September 11th should not be exploited to push a political agenda. I urge you to reject this bill and ensure that limited antiterrorism resources are used to protect national security and human life, not profits” (House Subcommittee 2006: 21).

The disparity between the treatment of the witnesses became apparent as Trundley, Basso and McIntosh were asked questions and given time to reply with minimal interruption, and when interrupted it was as a way to clarify, not challenge, their statements. Potter was continually interrupted and had his intentions and intelligence questioned. Two examples of this disparity is the questioning of Potter and McIntosh by Congressman Feeney (R-FL):

Mr. FEENEY. The point is that people are behaving illegally to make political purposes. In my view, you're just flat out wrong. They ought to be responsible for the natural and consequential damages of their disruptive behavior. There are first amendment protections that all of us believe are very important to this country, but I would advise you not to be making statements that any activity is criminalized because it's just flat out false. And maybe next time you'll want to consult—go ahead, you can answer.

Mr. POTTER. Well, Congressman, with all due respect, I'd like to point out that the definition given of economic damage means the replacement cost of lost or damaged property or records, the cost of repeating an interrupted——

Mr. FEENEY. Mr. Potter, we'll have to get you a logic course that you can understand one step to the next——

Mr. POTTER. If I can just finish. The easier is the loss of profits, and I think that's what would give any——

Mr. FEENEY. Reclaiming my time. I point out that the gentleman simply doesn't understand. You're not responsible for any of the definition you just talked about unless you have intentionally damaged or destroyed property or threatened somebody's life or bodily injury. So all of what you're referring to is not of concern if you behave legally. I want to assure you and advise you to go talk to an attorney before you come and testify before the United States Congress about what bills do when, in fact, they do not do (House Subcommittee on Crime, Terrorism and Homeland Security, 2006: 26).

This exchange was an example of the way Potter, as the only dissenting voice in the hearing, had his views dismissed and belittled by members of the committee. This was followed immediately by the exchange between Feeney and McIntosh:

Mr. FEENEY. Mr. McIntosh, I do believe that the gentleman from Virginia raises an important point, because whether or not you're trying to

protect animals, or whether or not you're trying to protect—whatever issue you have, ultimately the goal is to protect a monkey or an unborn life or whatever issue you may have, and it is a concern that, as opposed to attacking the act when the act is the spray paint or the act is the imminent threat, I mean, it is a concern of mine that we are identifying specific causes, as worthwhile as they may be, for specific crimes. And you indicated that you're more concerned about the act than the goal as well. Is it fair to say, does the Justice Department itself take a position on that? Mr. MCINTOSH. That is correct, Congressman. We are more—we are apolitical in this. We have no interest in the cause in question, we have only the interest of ensuring that the tactics used to advance that cause are lawful. It is our intention to prosecute unlawful acts without regard to the cause of—

Mr. FEENEY. One concern that I have in your testimony, you suggest that—and of course you haven't said this is criminalized by the act—but on page 3 of your testimony you said that one of the economic activities that causes—well, one of the activities that political groups use is Internet posting of home telephone numbers of law-abiding employees. I'm not aware of any Federal or State statutes that they may violate. If I post on the Internet my neighbor's address or telephone, is that a Federal crime?

Mr. MCINTOSH. Sir, that is not a Federal crime. The Federal crime is if you were to post that information in connection with a threat of violence that would put a reasonable person in fear for harm or death to himself or someone else—

Mr. FEENEY. So it's attached to the assault definition, genuine imminent concern about an attack.

Mr. MCINTOSH. That's right. This is what the courts call a true threat, where you post a person's name along with that—

Mr. FEENEY. Well, maybe in future testimony you will make it clear that you're not concerned about just mere posting of addresses and telephone numbers, it's combined with the other threat aspects that concern you.

Mr. MCINTOSH. Congressman, to the extent I didn't make that clear, I apologize (House Subcommittee 2006: 26-27).

In Feeney's exchange with Potter, he challenges the idea that Potter should even be testifying in front of Congress based on his views of the law, while he uses his examination of McIntosh to reinforce and clear up certain aspects of his testimony. A similar exchange between Chairmen Coble and Potter occurred as well:

Mr. COBLE. Mr. Potter, in your testimony you expressed concern that non-violent civil disobedience would be criminalized under this bill. Let me ask you this, sir: Do you believe that spray painting abusive graffiti on people's homes and vandalizing homes and businesses or pouring acid on cars, do

you think that is nonviolent?

Mr. POTTER. I think those are absolutely crimes, and they're absolutely not nonviolent civil disobedience.

Mr. COBLE. So you say that would be violent civil disobedience.

Mr. POTTER. I think that because I'm not an attorney——

Mr. COBLE. And I'm not trying to entrap you.

Mr. POTTER. I think they're absolutely crimes——

Mr. COBLE. Okay. I didn't understand you clearly. My red light appears, and I'm just pleased to recognize the distinguished gentleman from Virginia (House Subcommittee 2006: 24).

In this exchange Coble would not allow Potter to finish expressing himself, and did so until Coble ran out of time, leaving Potter's testimony incomplete. Potter later wrote of his experience, "Republicans and Democrats alike had already been swayed by more influential players. It was becoming clear that I was being invited to appear as a token gesture of dissent in their spectacle of democracy" (Potter 2011: 117). The airing of dissent was continually dismissed and minimized by the Representatives on the subcommittee.

There was a similar pattern of interactions during three Senate committee hearings dealing with the animal rights movement. These hearings shared witnesses, and were not convened to discuss legislation but were held as 'investigations' of the animal rights movement. In this way it makes sense to group them together here. The first hearing, *Animal Rights: Activism vs. Criminality*, took place in the Judiciary Committee on May 18th, 2004. Senator James Inhofe (R-OK) chaired two separate hearings in the Committee on Environment and Public Works, one examining the Earth Liberation Front and Animal Liberation Front on May 18th, 2005 and one examining the animal rights group Stop Huntington Animal Cruelty (SHAC) on October 26th, 2005. Of the fifteen witnesses that testified during these three hearings, only one could be described as being sympathetic to the animal rights movement. Dr. Jerry Vlasak, a prominent animal rights

activist and spokesperson for the ALF, testified before the Senate Committee on Environment and Public Works. Vlasak has stated in the past that the use of physical violence against vivisectors is morally justified, which places his ideology on the fringes of the animal rights movement. The Animal Liberation Front, contrary to Vlasak's beliefs, state on their website, "It is a nonviolent campaign, activists taking all precautions not to harm any animal (human or otherwise)" (Animal Liberation Front 2011). Inhofe asked Dr. Vlasak about a statement he had made at an animal rights conference justifying the murder of vivisectors, to which Vlasak responded:

I made that statement, and I stand by that statement. That statement is made in the context that the struggle for animal liberation is no different than struggles for liberation else- where...liberation struggles occasionally or usually, I should say, usually end up in violence (Senate Committee on Environment and Public Works 2007: 25).

Ingrid Newkirk, founder and president of PETA, and Steven Best, a well known animal rights activist and philosophy professor, were both invited to testify at the other Inhofe-led committee hearing according to Inhofe's opening statement, and both refused, leaving Vlasak as the lone voice for the animal rights movement in these hearings. Inhofe, later in the hearing, stated the reason why he invited Best and Newkirk to testify, "We wanted them to defend themselves, if there is a defense" (Senate Committee on Environment and Public Works 2008: 18). Like the House Subcommittee hearing exchanges with Potter, the exchanges between committee members and Dr. Vlasak were very confrontational, as members openly dismissed the views of animal rights activists and sympathizers. It seems from Inhofe's statement regarding Best and Newkirk, that they were not invited to express their views on the animal rights movement or on legislation affecting the movement, but rather as an inquisition on their beliefs and activities. On the other hand,

those advocating in the interests of industry and law enforcement were rarely challenged for their beliefs.

John Lewis, deputy assistant director of the counter-terrorism division of the FBI, acted as a witness at all three hearings. In each he advocated for an expansion of powers for the FBI to target the radical animal rights movement. Lewis expressed the importance the FBI places on the radical animal rights movement:

The No. 1 domestic terrorism threat is the eco-terrorism animal rights movement, if you will. As I indicated a moment ago, there is nothing else going on in this country, over the last several years, that is racking up the high number of violent crimes and terrorist actions, arsons, etc., that this particular area of domestic terrorism has caused (Senate Committee on the Environment and Public Works 2007: 18).

Lewis, as a representative of the FBI expressed the views of the FBI and of federal law enforcement. Lewis' views were reinforced by other members of federal law enforcement. Carson Carroll, Deputy Assistant Director for the Bureau of Alcohol, Tobacco, Firearms and Explosives testified during the hearing examining ELF and ALF:

We are determined to succeed in our mission of reducing violent crime, preventing terrorism, and protecting the public. There is no greater evidence of this than our continued commitment in the fight against violent acts committed by animal rights and environmental extremists (Senate Committee on the Environment and Public Works 2007: 15).

Barry Sabin, Chief of the Counter-Terrorism Section of the Criminal Division at the U.S. Department of Justice, in the hearing investigating SHAC, stated:

The criminal conduct of animal rights extremists is directed against individuals and companies in order to intentionally place these victims in reasonable fear of death or serious bodily injury. These victims often suffer mentally, physically, and monetarily when extremists threaten them, damage their property and affect their

livelihood (Senate Committee on Environment and Public Works 2008: 9).

And McGregor Scott, the US Attorney for the Eastern District of California stated: “Animal terrorism and eco-terrorism pose a serious threat to the safety and security of our fellow citizens. Combating this threat is a priority for the Department of Justice” (Senate Committee on Judiciary 2005: 6). Lewis, of the FBI, also stated during the SHAC hearing, “We are committed to working with our partners to disrupt and dismantle these movements” (Senate Committee on Environment and Public Works 2008: 8). Taken together, a picture begins to emerge about the importance that various agencies of federal law enforcement place on the radical animal rights movement.

Eleven of the fifteen witnesses in these three hearings used language similar to law enforcement officials in defining the radical animal rights movement as a terrorist movement. Including those listed above, the additional testimony ranged from relating the fear instilled by being a target of animal rights activists, to encouraging an increase in federal law enforcement activity targeting the radical animal rights movement, to advocating for investigations of mainstream animal rights advocacy groups for their connections to underground activists. Dr. David Skorton, the President of the University of Iowa at the time, related the story of a break-in at an Iowa research lab that resulted in the release of lab animals and thousands of dollars of damage, and called the crime “an act of domestic terrorism” (Senate Committee on Environment and Public Works 2007: 25). Mark Bibi, general counsel for Huntingdon Life Sciences (HLS), the company targeted by the SHAC campaign, referred to not being relisted on the New York Stock Exchange, stating “A handful of animal extremists had succeeded where Osama bin Laden had failed” (Senate Committee on Environment and Public Works 2008: 17). Skip

Boruchin of Legacy Trading Company, a market maker for HLS, said of SHAC, they “launched an all-out terrorist attack on too many other market makers, Merrill Lynch, Charles Schwab, Goldman Sachs, to name a few” (Senate Committee on Environment and Public Works 2008: 18). Jonathan Blum, Senior Vice President for Public Affairs for YUM! Brands, owner of many restaurant chains and snack food companies, said of a campaign aimed at KFC, “In my view, PETA’s campaign has been nothing short of what I would call corporate terrorism” (Senate Committee on Judiciary 2005: 11). Like others, he ties underground direct action to above ground campaigns, labeling them all a form of terrorism. David Martosko, research director for the Center for Consumer Freedom stated, “I want the committee to note and be aware that the growing movement of ALF and ELF terrorism can be legitimately considered a national security threat” (Senate Committee on Environment and Public Works 2007: 38). These were typical of the statements made by a majority of witnesses who testified in these three Senate hearings when referring to the radical animal rights movement.

Stuart Zola, the director of a primate research lab who testified on behalf of the National Association of Biomedical Research, was the only witness that didn’t use the word terrorism during his opening statement, but instead referred to activists as “animal extremists” (Senate Committee on Environment and Public Works 2007: 15). Two other witnesses did not refer to the Animal Rights Movement in their testimony.¹⁴ Dr. Vlasak was the only witness that actively challenged the designation of animal rights activists as terrorists, stating “Often, acts of animal liberation either go unreported in the media or are

¹⁴ Richard Bernard, of the New York Stock Exchange, testified about re-listing HLS after it having been removed from the Exchange (Senate Committee on the Environment and Public Works 2008). Monty McIntyre, a lawyer for a housing developer in San Diego, expressed concern only with the Earth Liberation Front (Senate Committee on the Environment and Public Works 2007).

uncritically vilified as violent or terrorist, with no attention paid to the suffering the industries and individuals gratuitously inflict upon animals,” (Senate Committee on Environment and Public Works 2008: 21), and “These animals are being terrorized, murdered and killed by the millions every day. The animal rights movement has been notoriously non-violent up to this point” (Senate Committee on Environment and Public Works 2008: 25).

The tenor of a large portion of the testimony can best be described as anti-radical animal rights, using the term terrorism and terrorist to describe direct action and those who engage in it. The language of law enforcement, elected officials, and industry representatives was similar, if not identical, throughout. These hearings weren’t used to examine the animal rights movement so much as to create an atmosphere, and an official government transcript, damning and further marginalizing the movement and movement activists.

There were also statements submitted for the record for each of the Senate and House committee and sub-committee hearings. For the three Senate hearings, submitted statements by those who did not attend the hearings in person were mostly from animal rights organizations and environmental groups. Of the statements not submitted by animal rights and environmental groups, three came from representatives of biomedical corporations and industry groups, one from the Southern Poverty Law Center, which warned of the dangers of ALF and ELF actions, and two were from elected representatives. A group statement was submitted on behalf of some of the largest environmental groups in the nation, including Greenpeace, the Sierra Club, Union of Concerned Scientists, and League of Conservation Voters, among others. Of the sixteen

total statements submitted for these three Senate committee hearings, nine came from animal rights and welfare groups, with PETA and HSUS submitting six of these statements between the two of them.

The submitted statements from the animal rights and welfare groups largely defended themselves against accusations that they were collaborating with underground groups like SHAC and ALF, and/or reaffirmed their commitment to non-violent, peaceful and legal social change. During the Senate committee hearing examining ALF and ELF, David Martosko of the Center for Consumer Freedom spent much of his testimony accusing aboveground animal rights groups like HSUS, PETA and the Physicians Committee for Responsible Medicine (PCRM) of collaboration with and funding of underground ALF and SHAC activists. PETA, HSUS and PCRM submitted statements claiming that these accusations were false, and that they do not condone or collaborate with activists who break the law. PETA also submitted information about the campaign they conducted against KFC and YUM! Brands where Jonathan Blum accused them of conducting a campaign of “corporate terrorism.” The only statement that mentioned federal legislation aimed at activists was the statement from the environmental groups:

Such legislation should condemn violence regardless of the cause, helping to ensure that the threat from other kinds of terrorist groups is not ignored, or worse, unintentionally encouraged. Furthermore, some of this narrow legislation has been written in a way that potentially covers non-violent forms of protest, which could chill freedom of political expression and dissent. (Senate Committee on Environment and Public Works 2007: 138)

None of the statements by animal rights/welfare groups mentioned legislation targeting animal rights activists in their statements, even as the movement’s political opponents and law enforcement representatives continually advocated for more legislation targeting the movement (Senate Committee on Environment and Public Works 2007; Senate

Committee on Environment and Public Works 2008; Senate Committee on Judiciary 2005) (See Appendix B for a complete list of Congressional witnesses and submitted statements). It would seem that these groups were more concerned with protecting their own reputations rather than being seen as fighting against legislation that targeted ‘terrorism’ suspects, even if their own activities could ensnare them under this law. When asked about why some large animal rights organizations didn’t take a stand against the AETA, Lauren Regan stated that they “didn’t want to be seen as at all associating with those that would engage in something that was called terrorism, so more for funding purposes than anything else.”¹⁵ In effect, the combination of increased attention by industry, federal law enforcement and Congress, along with the use of the term terrorism in a post 9/11 world, created an atmosphere where legitimate organizations couldn’t speak out against legislation that might significantly impact their work. (In Chapter V, I explain further how the vague language of the AETA can implicate above ground activists).

Throughout this entire process there was little to no opposition from elected representatives to legislation targeting animal rights activists. When concerns were raised it tended to be in an effort to make sure that civil liberties and First Amendment rights were protected or to argue that other groups that posed a danger, such as white supremacist and anti-abortion activists, were being overlooked. In these committee hearings and in the official record there was no substantive challenge to the proposed legislation or to the characterization of radical animal rights activists as terrorists, with

¹⁵ It should be noted here that there was some amount of organizing against the AETA by animal advocacy groups and activists. Farm Animal Rights Movement, along with other animal advocacy groups formed the Equal Justice Alliance in 2006 to lobby against the AETA, but were unsuccessful at blocking passage. But still, many groups were measured in their public stances on the AETA.

the exception of the testimony of Will Potter and Jerry Vlasak. There would be little opportunity to oppose this legislation in the further stages of its passage.

It was within the committee hearings that the influence of moneyed interests becomes most apparent. With the Republican Party, and by extension conservatives, having control of both houses of Congress and of the chairmanships of committees and subcommittees in 2006, a more hospitable atmosphere existed for the passage of pro-corporate legislation. The Republican Party in years previous to the passage of the AETA attempted to “make the lobbying community subservient to the Republican Party... increasing interactions and ultimately creating a close relationship between the Republican Party and organized business interests” (Witko, 2009: 228). Inhofe, Coble, and Hatch, the chairmen of the committees and subcommittee that held hearings on the AETA and animal rights activism, are all solid conservatives, with Inhofe receiving a ranking of 100 from the National Journal in 2010, and Coble receiving the American Conservative Union’s Conservative Award in 2008 (Coble 2009). Laws like the AETA serve corporate interests by attempting to limit protests, potential disruptions, and loss of profits to business operations, and in so doing align with the pro-business values of conservative politicians in Congress. And with campaign contributions from corporate interests benefitting both parties, there was little incentive to take the side of the animal rights movement by either party. The combination of the influence and resources that industry interests could bring to bear, the ideological alignment between the conservative politicians and these interests, and the absence of a substantive political opposition created an atmosphere that allowed for the easy passage of the AETA out of the committees.

Floor Vote in the House and Senate

The Animal Enterprise Terrorism Act, introduced in the Senate by Inhofe and Feinstein (D-CA), passed the Senate on September 29th, 2006 (U.S. Senate Committee on Environment and Public Works 2006). The Senate bill was referred to the floor by the unanimous consent of the Judiciary committee on September 29, 2006, and passed by unanimous consent with no debate. The only discussion was an amendment introduced by Senator Leahy (D-VT) that struck a provision from the legislation that seemed to criminalize peaceful protest, and which passed by unanimous consent as well (Congressional Record 2006). The AETA was passed as part of a basket of bills, which tend to be reserved for non-controversial legislation. The Senate bill was passed in the House of Representatives on November 13, 2006 (Office of Legislative Policy and Analysis 2011). Representative Dennis Kucinich (D-OH) spoke out against the bill, as reported by Will Potter, “‘This bill was written to have a chilling effect,’ he said, ‘on a specific type of protest.’ He also said that, ‘We have to be very careful of painting everyone with broad brush of terrorism’” (Potter 2006). While Kucinich did argue about the necessity of the bill with its sponsor, James Sensenbrenner (R-WI), this would be the extent of opposition to the bill. In the House, the bill was introduced under a procedure called Suspension of the Rules. As the Congressional Research Service describes it, it allows the House to “act on relatively non-controversial legislation...Each bill gets forty minutes of debate, then an up-or-down vote, then a push out the door” (Potter 2011: 164). Few House members were present during the debate and the vote.

Despite the attention paid to the animal rights movement in committee, the act itself had little support and it was not seen as a priority by a large majority of the House.

According to leaked documents from a group called The Animal Enterprise Protection Coalition, a group composed of animal-using industries and corporations organized to lobby for the passage of the AETA, only 6% of House members supported the legislation. Although it did not have widespread support, it also didn't have widespread resistance. No one called for a roll call vote, and therefore it passed by voice vote. It has been reported that only six members of the House of Representatives were present for the vote, but there is no congressional record to know for sure just how many people were present (Project Censored 2008). President Bush signed the Animal Enterprise Terrorism Act into law on November 27, 2006.

Animal Rights Terrorism and the Federalization of Criminal Law

In 1999 the American Bar Association released a report called *The Federalization of Criminal Law*. The report, prepared by the Task Force on the Federalization of Criminal Law, was chaired by former Attorney General Edwin Meese, and consisted of prosecutors, defense attorneys, judges and legal scholars. The report argues that in the early years of the United States, federal criminal law consisted of threats national in scope, crimes such as treason, bribery on the federal level, perjury in federal court, and revenue fraud, but has since been expanded to include many more crimes that are not national in scope (Strazzella, 1998). In seeking a conviction there are many benefits to a federal versus state prosecution. Lovitz (2010) states, "A federal animal enterprise statute allows prosecutors to bring defendants before a federal rather than a state court. Compared to a state court, the federal court system yields many more advantages for the prosecutor and disadvantages for the defendant" (100). These include a grand jury process more favorable to prosecutors, the lighter workload of federal law enforcement

officers and prosecutors, allowing more time and attention to each case, an increased likelihood of witness participation, and harsher sentencing guidelines (Lovitz, 2010). This trend opened space for interest groups to get favorable legislation introduced that would label political opponents and movement activists as criminals and/or terrorists based on their political beliefs.

It was this trend of the federalization of criminal law that produced the most vocal resistance within the Congressional hearings on the AETA and animal rights activism. Congressman Delahunt from Massachusetts, who argued that these types of crimes should be handled at the state level, stated, “You know, the former Attorney General under President Reagan, Ed Meese, expressed his concern about the federalization of crime in this country, and, to be candid with you, I think that this could very well serve as an example” (House Subcommittee 2006: 27). In an era where conservative lawmakers argue that federal reach has gone too far and that more power should be relegated to the states, they are expanding the role of federal power in prosecuting crimes that, according to some, should be handled at the state level.

In discussing the transformation that he sees in the United States from a nation guided by the rule of law towards a government guided by interest groups, the political scientist Theodore Lowi (1979) states, “Hostility to law, expressed in the principle of broad and unguided delegation of power, is the weakest timber in the shaky structure of the new public philosophy” (93). Congress, in an age of interest group politics, passes legislation that is pushed, if not actually written, by interest groups with little regard to how the law is to be implemented and enforced, as the actual implementation of legislation is delegated to any number of federal agencies. Lowi was referring to the

regulatory and redistribution policies of the Great Society era, but the argument can be extended to the federalization of criminal law.

Voices from across the political spectrum expressed concerns about the AETA and what it means in terms of an expansion of federal powers. In the *Wall Street Journal*, a newspaper known for its conservative and pro-business stance, Gary Fields and John Emshwiller (2011) decried the AETA as an expansion of federal power that effectively eliminates *Mens Rea*, or guilty mind, “a long-held protection that says a defendant must know they've done something wrong to be found guilty of it” (A10). They go on to state, “The 2006 act was cited in a joint study by the conservative Heritage Foundation and the National Association of Criminal Defense Lawyers as an example of an overly broad law, particularly the way it clashed with First Amendment free-speech protections” (Fields and Emshwiller 2011: A10). They are referring to the threat prong of the AETA that states that if someone fears for their safety, that is a violation of the AETA and therefore can be prosecuted as a terrorist act. The person supposedly violating the AETA may never have intended to instill fear in another person, and therefore does not have a ‘guilty mind,’ yet may find themselves charged under the AETA. The AETA has also been challenged as unconstitutional in Federal Court in a suit filed by the Center for Constitutional Rights (*Blum v Holder* 2011).

Extending Lowi’s argument to criminal law, the combination of the expansion of the powers of the federal government and the rise of interest group politics creates opportunities to serve specific interests in the realm of criminal law. This creates space where laws like the AETA can be implemented, targeting social movement activists as long as the targeted parties can use their resources and political connections to effectively

criminalize social movement activity. Larger questions of constitutional law have largely been ignored in passing the AETA in order to please a specific set of industries and to protect them from sustained pressure of social movement activity. The AETA, based on state level laws that were written in collaboration by animal using industries and their political allies, is constitutionality questionable, written in overly broad and vague language, and its implementation is delegated to prosecutors who are left to determine if someone can be charged as a terrorist.

Conclusion

The animal rights movement challenges some of the most fundamental, and largely unquestioned, power relationships in society, and in the process has challenged the way we view and use non-human animals to our own benefit. Activists within the movement have targeted those entities that they see as being harmful to non-human animals, sometimes at great cost to the targeted entities and to themselves. The passage of the AETA is the story of the response of corporate interests and their political allies to this movement, but in many ways it is more than that. The animal rights movement is asking critical questions about rights, morality, and the extent that we can cause suffering in non-human animals for our own gain, and in so doing they are attempting to redefine social relationships, which in turn challenges the economic interests of the agribusiness, pharmaceutical and bio-medical testing industries. The AETA may very well be a test case for future conflicts between social justice movements and powerful economic interests. It is possible that if the AETA is successfully used as a way to diminish or eliminate direct action as a form of social movement activity, it can be expected that other industries targeted with persistent social movement activity would examine ways in

which they too can marginalize and criminalize those protesting their business practices. Social movements have helped define the nation we live in, and have been one of the greatest forces in shaping social change. But social movement activity has always been met with resistance, especially from those who have vested interests in maintaining the very relationships being challenged. The animal rights movement, in attempting to redefine the relationship between human and non-human animals, has met resistance that is politically powerful and well funded. This resistance has been successful in defining these activists as terrorists, which may be the most politically charged and personally damning thing an activist or a movement in the United States could be labeled today. This story is nominally about the animal rights movement, but in a sense is about interest group politics at work: who gets heard, who gets marginalized, and what it means for citizen's creating social change.

CHAPTER IV

AN ATMOSPHERE OF REPRESSION

The history of social movement repression has shown that there are eras that are more amenable to repressive policies than others. At the same time there are movements that express certain qualities that make them more likely to face political repression for social movement activity. Goldstein (2001), in studying the history of political repression from the post-Civil War era through to the 1970's found that there were political and social conditions that contributed to an increase in repressive policies, and that certain movements faced more state repression. In this chapter I will present evidence to show that trends in Goldstein's social and political variables created an atmosphere that was conducive to the enactment and application of repressive policies, especially in the post-9/11 era. I will also use Goldstein's variables to show how the animal rights movement possessed qualities that made them more likely to face state repression.

Conditions for Repression

In this section I will examine how changing variables and conditions created an atmosphere that was conducive to the expansion of repressive policies. Goldstein (2001) found that certain social and political conditions tended to predict changes in levels of repression. These variables are 1) the shifting attitudes of policy makers, 2) an increase in social strain and tension, 3) the presence of target groups, 4) levels of dissent, and 5) opposition to repressive policies by key elites. Political shocks also have the effect of creating opportunities to implement policies that affect the relationship between state and social movements. Using two of Goldstein's variables, as well as the theory of

transformative political shocks, I will examine how 9/11 as a political shock, an increase in social strain in the form of two wars overseas, and the shifting attitudes of policy makers combined to create an atmosphere conducive to the expansion of repressive policies.

Political Shocks and Domestic Policies

The attacks of 9/11, as an example of transformative political shock, presented an opportunity to implement policies that would have faced more resistance in less turbulent times. It was the catalyst for the US to enter two wars overseas, and repressive policies were implemented domestically that changed the relationship between social movements and the state, as the state expanded its power in the name of the ‘War on Terror.’

Harvey (2002) defined a political shock as “an event occurring somewhere in the world that is both unanticipated and has unforeseeable future consequences” and 9/11 meets his definition of a Category 1 shock, “having potential for huge global impact with *unknown* implications. It comes as a complete surprise and has little or no precedent.” Political shocks provide opportunities for competing narratives and therefore competing policy prescriptions (Meyer 2009). Of the potential responses to 9/11, the Bush Administration chose as their response the ‘War on Terror’ and all that that entailed. Domestically it meant “increased domestic surveillance, restrictions on civil liberties and the right of habeas corpus” (Meyer 2009: 10), and an expanded definition of ‘domestic terrorism’ as part of its law enforcement mission (Rohlinger 2009). This approach wasn’t a given, as there were any number of ways to respond to the challenges of 9/11, as Meyer (2010) states, “it is critical to recognize, however, that 9/11 itself did not restructure American politics; political actors did” (24). The Bush Administration wanted to be

perceived as being decisive in their response, “And hardly anyone – not Democrats in Congress, not the media, not even major civil liberties advocates – wanted to be perceived as attempting to obstruct that effort” (Leone 2003: 2).

The 9/11 attacks were the most significant challenge to economic and political institutions in generations, and that significant a shock can't help but change dynamics and relationships between social movements and the state, even for movements that had nothing to do with the attacks. The fear of home grown terrorism began to redefine the way the government approached domestic law enforcement as the Bush Administration “did not know if there were terrorist sleeper cells embedded around the country” (Herman 2011: 5). The attacks on 9/11 created a real fear of terrorism and the government's response was to broaden the definition of terrorism (which included radical animal rights and environmental activists) and to place limits on citizen's constitutional rights and civil liberties.

That terrorism would come to define the Bush Administration's foreign policy, and to a lesser degree its domestic policy, became apparent soon after 9/11. Bush mentioned the terms ‘terrorist’ or ‘terrorists’ more frequently than any other in the three months following the attacks (Maney, Woehrle and Coy 2009). This was a very deliberate approach by the administration, one that used the fear of terrorism to implement desired policies based on the shock of 9/11. The attacks altered the environment in which social movements operate, and as a transformative event helped create an atmosphere open to repressive policies, not just for the perpetrators of 9/11 or those sympathetic to them, but for anyone who might be labeled a terrorist.

Social Strain and Tension

James Madison wrote to Thomas Jefferson: “Perhaps it is a universal truth that the loss of liberty at home is to be charged to the provisions against dangers, real or pretended, from abroad” (Goldstein 2001: 565). In other words, foreign threats real or imagined affect the level of freedom and rights at home. According to Goldstein the presence of overseas wars have the effect of increasing domestic social strain and tension. Within a year and half of 9/11, the US was involved in two wars overseas. This fact, according to Goldstein would increase the levels of social strain and tension domestically. In his analysis, foreign war was one of the two major factors increasing the social strain and tension (the other being economic depression), and as strain and tension increase, so does the likelihood of repression.

Our response to terrorism as a nation has been of a very singular type: It was to declare war. To declare war in Afghanistan, to declare war in Iraq, and to declare war wherever ‘terrorists’ may exist. But the declaration of war overseas also has ramifications at home. Goldstein (2001) states, “That a war or severe foreign policy crisis can facilitate domestic repression has long been noted by political observers” (565). The war footing of the Bush Administration increased the likelihood of repression and posed opportunities to push through repressive legislation that had previously been rejected. Donohue (2004) writes, “Often measures previously considered draconian become easily swept through legislatures caught up in the emotion of the most recent attack. The roving wiretap provisions, for instance, rejected during Congressional consideration of the 1996 Antiterrorism and Effective Death Penalty bill, quickly became incorporated in the USA PATRIOT bill” (315).

As Goldstein found, war and foreign policy crises create an opportunity to implement or expand repressive policies. In the years following 9/11, the ‘war on terror,’ including the prosecution of two actual wars overseas, helped create an atmosphere of social tension and strain that, according to Goldstein, would support repressive policies as the administration rallied the nation around the war effort.

Shifting Attitudes of Policy Makers

Goldstein (2001) found that the one variable that must change in order for a change in repressive policies to occur is a change in attitude by policy makers. The Bush administration chose a very specific strategy in response to the attacks of 9/11 that “has primarily been formulated within the framework of war. The administration argues that the ‘war on terror’ is not merely a metaphorical war but a real war waged on many fronts” (Hodges 2011a: 23). Within days of 9/11 a shift in priorities had occurred in the executive branch as evidenced through the speeches Bush delivered, a shift that prioritized the national response to the attacks as one of war. But would that shift in priorities by the president and his advisors translate into repressive policies?

The limiting of civil liberties became a central part of the dialogue in how to respond to 9/11, as expressed by Attorney General John Ashcroft, “To those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists - for they erode our national unity and diminish our resolve” (Leone 2003: 3). Ashcroft’s message was clear, that a discussion of whether or not to protect civil liberties at this time only aided the enemy. There is often a tension between civil liberties and national security during times of national emergency. It is also during these times that governments expand repressive policies. Brinkley (2003) states, “Every major crisis

in our history has led to abridgments of personal liberty, some of them inevitable and justified. But in most such crises, governments have also used the seriousness of their mission to seize power far in excess of what the emergency requires” (23).

Policies and laws that redefined constitutional rights in significant ways were discussed and/or implemented in the weeks and months following 9/11. These included suspension of Habeus Corpus and indefinite detention without trial, as well as an expansion of the government’s power to detain, investigate and collect data on Americans. The Bush administration also bypassed long established rules on domestic spying, including the National Security Agency’s domestic wiretapping program, which allowed the NSA to monitor communications of Americans without a warrant. This program was eventually deemed illegal (Savage and Risen 2010). But the legislation that did the most to redefine constitutional rights was the USA PATRIOT Act, which Leone (2003) describes as “arguably the most far-reaching and invasive legislation passed since the Espionage Act of 1917 and the Sedition Act of 1918” (7). The Patriot Act greatly expands the government’s ability to conduct domestic spying with little oversight through the Foreign Intelligence Surveillance Act. It also greatly expands the types of information the government can collect, such as library records, bookstore purchases and medical files, and it eliminated the requirement that the target had to be an ‘agent of a foreign power.’ It also makes a crime of divulging details of these searches (Cole 2004). The PATRIOT ACT, as well as extra-legal policies like the National Security Agency’s wiretapping program, changed the dynamics of the relationship between citizen and state in significant ways, as the state expands its power in relation to the citizenry. These are evidence of an expansion of repression, as the government used the ‘war on terror’ to

implement policies, both visible and not, that resulted in expanding governmental powers in relation to the citizenry.

Using the PATRIOT Act as a proxy for the attitudes of policy makers, it becomes apparent how little legislative opposition there was to this law that expanded the government's reach into American's lives so significantly. If we include the 2006 reauthorization of the PATRIOT Act, we can see how stable this attitude has been. Six weeks after 9/11, both houses of Congress passed the PATRIOT Act. In the Senate the vote was 98-1, with 1 person not voting (United States Senate 2012). In the House the vote was 357-66, with 9 not voting (United States House 2012). The reauthorization of the PATRIOT Act passed the House 251-174 in 2005, with the Senate voting in favor of reauthorization 89-10 in 2006 (GovTrack.us 2012). As the votes show, even with a decrease in support between the two bills, there was still not substantial enough opposition to the bill to prevent it from passing largely in tact. This allowed the Bush Administration, with its shift in focus and shift in attitude, to move forward with repressive policies as they saw fit.

Protecting the United States from terrorism became a central organizing tenet of the Bush Administration. As Bolton (2008) states in reference to 9/11, "It was one of the rare times after which U.S. foreign policy demonstrably and substantively changed its trajectory" (171). But it wasn't just foreign policy that substantively changed, it was also domestic policy and law enforcement priorities. September 11th significantly altered governmental priorities, as well as challenged the primacy of civil liberties and constitutional rights during this time of crisis, and by doing so opened space for the expansion and implementation of repressive policies.

Changing Variables and Changing Policies

A combination of shifting variables created an atmosphere that was amenable to repressive policies, and that resulted in the actual creation of such policies and programs. With the political shock that was 9/11, as well as the fear of another attack, an increase in social tension and strain through the prosecution of two wars abroad, and policy makers adjusting their priorities and policies in the face a severe crisis, major elements were present that would create an atmosphere that allowed for the relatively easy creation and implementation of repressive policies. Instances of these repressive policies are the passage and reauthorization of the US PATRIOT Act and the NSA's illegal wiretapping program. It is a combination of these changing variables that allowed an expansion of specific policies and actions targeting those seen as dangerous to the state or the status quo.

Movement Characteristics and Repression

In this section I will examine the factors that made the animal rights movement a specific target of that repression. The question for this section is: Were there characteristics about the animal rights movement that created a favorable atmosphere to implementing repressive policies aimed specifically at the animal rights movement? Using three of Goldstein's variables, level of dissent, the animal rights movement as a suitable target group, and a lack of opposition by key elites, I will examine how an environment existed whereby the animal rights movement became a suitable target of repressive policies.

The rise of the animal rights and liberation movement in the late 70's gave rise to direct action as a strategy in the animal rights movement. Direct action in the name of

animal rights is less concerned with social deliberation and legislative changes than with protecting non-human animals in the moment. This type of activism included animal releases, property destruction, harassment of researchers and vandalism. The rise of direct action presented serious problems for targeted researchers and industries, as well as law enforcement trying to capture underground activists. It meant a loss of research projects, corporate profits, and an increased fear and anxiety amongst those that use animals in their business or research. Maybe more importantly it challenged existing power relationships in society in a way that threatened to redefine a largely unquestioned social relationship: that between non-human animals and those who use them for experimentation, food, fiber and entertainment.

Level of Dissent

In discussing the importance of levels of dissent and the increase in repressive policies, Goldstein (2001) wrote, “Periods of increased repression have followed periods of increased dissent often during modern American history” (567). Often, the dissent that Goldstein referred to was activism that was aiming to fundamentally restructure social relationships, and threatened major governmental policies and/or vested economic interests (e.g., the labor movement, Communist Party, and race-based liberation movements). The direct action of the animal rights movement challenged governmental policies aimed at limiting animal rights activism, even if its aims were more limited. Activists, by attempting to save animals directly (animal liberations) or indirectly (harassing animal researchers and corporate executives), were defying laws making it a crime to engage in this type of activism. Animal rights activity challenged powerful

interests, and those powerful interests turned to the government to enact policies that would criminalize direct action these interests.

From the 1980's through the mid-2000's, direct action by the animal rights movement was responsible for millions of dollars in damages, as well as the harassment of targeted researchers and corporate employees. Policy makers and industry representatives feared that inter-personal violence, a tactic used by British animal rights activists, would soon spread to the United States. Senator Heflin (D-AL), who introduced the Animal Enterprise Protection Act (AEPA) in 1992, in referring to car-bombings in the UK wrote, warning that the United States was going to face an increasing amount of violence from animal rights activists (Kuipers 2009). The direct action being employed by animal rights activists was a serious concern for industry and policy makers.

There were two affiliations in the animal rights movement in the US that were the most significant for their proclivity towards direct action, Stop Huntingdon Animal Cruelty (SHAC) and the Animal Liberation Front (ALF). SHAC conducted one of the largest and most coordinated campaigns in the history of the animal rights movement as it attempted to shut down the animal-testing corporation Huntingdon Life Sciences (HLS). It was a multi-national campaign, claiming affiliates in various countries in Europe, South America and North America. Within the US, actions were taken against HLS, its affiliates or clients in at least 18 states in every region of the country between 2001 and 2006 (Young 2010). According to Senator James Inhofe, SHAC had caused \$200 million in damages by 2005 (Senate Committee on Environment and Public Works 2008). Inhofe also reported that, by 2005, ALF had committed 1,100 actions causing over \$110

million in damages (Senate Committee on Environment and Public Works 2007). There were also regional animal rights groups active at this time, such as The Frogs who claimed dozens of actions in Texas. There were also hundreds of actions that went unclaimed (Young 2010).

The direct actions carried out in the name of animal rights ranged from petty vandalism (gluing of locks, spray painting slogans, etching glass) to arson and attempted arson, animal liberations, and lab break-ins, one of which at the University of Iowa in 2004 caused a reported \$450,000 to \$500,000 in damage (Senate Committee on Judiciary 2005; Young 2010). These actions were a real challenge to industries heavily invested in the use of non-human animals. The activities of the animal rights movement were visible enough that three separate Senate committee hearings were convened to examine the movement's activities. The Committee on the Environment and Public Works held one hearing on SHAC, and another on ALF and its sister affiliation, the Earth Liberation Front. The Committee of the Judiciary held a hearing called *Animal Rights: Activism vs. Criminality*.

Social movements aim to redefine social relationships. The radical animal rights movement proved itself to have a far reach and the ability to inflict real damage on industries and businesses they targeted. The activism taken on behalf of the animal rights movement challenged powerful interests in society and therefore could be seen as a serious form of dissent, as well as a challenge to laws aimed at protecting animal-using enterprises. The attention paid to the movement by federal law enforcement and policy makers was an indicator of how successful they had been up to that point, and this increased the likelihood that the ARM would face repressive policies.

Strangeness and Repression

Are there traits that make the animal rights movement an attractive target for repression? Goldstein (2001) found that groups that exhibited certain traits increased the likelihood of their repression, traits like exhibiting ‘strange’ characteristics, rejecting generally held ideas or having leftist political orientation. Animal rights activists, and the movement as a whole, exhibit varying degrees all of these traits.

Goldstein (2001) found that groups on the political left were much more likely to face repression, explaining that “Conservative forces control American government and society. The ideas of the extreme right – anti-communism, free enterprise philosophy, super-patriotism – are also the ideas of the powerful elements in American society” (Goldstein 2001: 571). The animal rights movement, in many ways can be seen as being apolitical as far as partisan politics goes, but it fits within the larger history of progressive, or leftist, movements. It is a movement that attempts to expand rights and takes its inspiration from the ‘New Left’ liberation movements of the 60’s and 70’s, as the title of the foundational text of the movement, Peter Singer’s (1990) *Animal Liberation*, attests to. It is a movement that attacks corporate profits as its main target, and that critiques capitalist modes of production. The use of Marxist frameworks in describing the ‘exploitation’ of animals is not uncommon the animal rights literature (Torres 2007). The attack on capitalist modes of production and corporate profits, along with activism based around the expansion of rights, would signify them as a ‘leftist’ movement, and this leftist orientation, according to Goldstein, increases the likelihood that they will face repression.

Does the animal rights movement and its activists display other characteristics that separate them from the American mainstream and therefore tag them as different or ‘strange’? As Goldstein (2001) explains, ‘strange’ characteristics include “unusual dress, hair and personal lifestyles” (569). One such characteristic that separates radical animal rights activists from the general population is a dedication to a lifestyle that rejects the use of animals for human benefit, and a diet that excludes all animal products, including meat, fish, eggs, milk and milk products, and honey, otherwise known as veganism. Veganism, as a lifestyle, was very common in the interviews I conducted with activists, but veganism in the general public is rare. Estimating the number of vegans is fraught with problems due to definitional issues, but estimates of .5% to 1.5% of the US population seem fairly reliable (Vegetarian Times 2008; Watts 2012). Many activists related that their first activism was in the form of adopting a vegan diet. Josh Harper, a defendant in the SHAC 7 case, when discussing the beginning of his animal rights activism, stated: “And pretty much immediately after I went vegan, and started to consider the full degree to which animals are exploited in our society and worldwide, I knew a dietary change wasn’t going to be enough for me.” While Elena, an animal rights activist from the Midwest stated: “Then when I was 16, I was undergoing this kind of big life transformation, um, like figuring out how to respect myself, and respect the Earth, and everything. The short story is I went vegan as a respect kind of thing.” Cherry (2006) found that veganism is an important movement in and of itself, and that it aligns closely with animal rights movement.

That this movement exists in a country that has one of the highest per capita rates of meat consumption in the world shows how counter to the mainstream veganism runs,

yet is an intricate part of the identity of animal rights activists. Veganism, as a movement and as a cultural marker used by activists, defines itself in contradiction to the American mainstream and therefore as a movement that is removed from larger American values. Davenport (1995) found that deviance from cultural norms is a significant predictor in when states apply negative sanctions or repression. Choosing a vegan diet in and of itself may not lead to repression, but as Goldstein (2001) and Davenport (1995) argue, that certain lifestyle choices amongst social movement activists make repression of that movement more likely, then veganism as part of a larger repertoire of activism signifies them as ‘strange’ or deviant, therefore appropriate targets of repressive policies.

The animal rights movement also rejects a widely held belief that non-human animals can and should be exploited for human needs and desires. This extends beyond dietary choices, and includes a belief that animals should not be used for medical testing, in entertainment such as zoos, circuses and rodeos, or as providers of raw materials like fur, leather and wool. The animal rights movement aims to directly challenge and alter the power relationships between human and non-human animals. Activists in these movements tend to hold an absolutist ethical ideology, a “belief that moral principles are universally applicable” (Galvin and Herzog 1992: 147). Animal rights activists tend to express a moral certainty in their cause, which shuts down room for dialogue or political concession, as the ALF publication *No Compromise* proudly proclaims. This makes negotiation difficult, and therefore the search for compromise almost impossible. This in turn means that states will be more likely to use repression, as opposed to accommodation, when dealing with the movement (Moore 2000).

These traits ('strangeness,' rejection of commonly held beliefs, and leftist orientation) are factors that lead to a decision by the state to repress certain groups, as "political authorities perceive the political benefits are likely to be high...when the 'strange' and 'deviant' are persecuted, especially since such groups are unlikely to have much support among influential segments of the society" (Goldstein 2001: 569). A small movement with moral certainty living a lifestyle that rejects all animal products and the generally held idea that we can and should use non-human animals as we see fit leads to a movement that is far removed from the American mainstream and therefore susceptible to repression. These traits in and of themselves don't lead to repression, but when they exist in a generalized atmosphere of high levels of dissent and social strain, in a state where political authorities are open to creating and implementing repressive policies with little opposition, the likelihood of repression increases.

Lack of Opposition by Key Elites

The question for this section is whether or not there was significant opposition by key elites to repressive policies targeting the ARM. Opposition by key elites is one of the bulwarks against the expansion of repressive policies according to Goldstein, or conversely a lack of opposition tends to make it more likely that political authorities will repress (Goldstein 2001). By key elites Goldstein (2001) means "politically influential persons who do not make government policy, such as lower-level governmental officials, intellectuals, journalists, lawyers, businessmen, and since 1935, labor leaders" (559). Goldstein (2001) found that "A crisis atmosphere is also frequently accompanied by a banding together of key elite groups and their increased willingness, or even eagerness, to support repressive policies" (566). Congressional hearings examining the ARM give us a

unique opportunity to consider the attitudes of those Goldstein considers key elites, especially lower level government officials and business leaders. The minimal coverage of the AETA or the trials of animal rights activists gives us some indication of the lack of importance these repressive policies and actions had amongst another key elite, the media.

Those who testified during three Senate hearings and a House Subcommittee hearing overwhelmingly favored an expansion of laws and policies aimed at the animal rights movement, and did not shy away from using the term ‘terrorist’ or ‘terrorism’ to describe the animal rights movement and its activists. The language and the larger message were consistent, giving the impression that amongst these panelists and the groups they represented there was a lack of opposition to an expansion and implementation of repressive policies.

Even if a hearing wasn’t convened to deal with the AETA directly, panelists would often advocate for the passage of the AETA, or at a minimum didn’t advocate against it. The only panelists in these four hearings that advocated against the law were Will Potter, Jerry Vlasak, and Bradley Campbell. Will Potter, an independent journalist who has reported on the government’s response to the radical environmental and animal rights movement, testified in the House Subcommittee hearing titled “Animal Enterprise Terrorism Act.” During his opening statement he argued that the AETA will likely have repressive effects and why it should be rejected, “Perhaps the greatest danger of this legislation, though, is that it will impact all animal activists, even those that never have to enter a courtroom” (House Subcommittee 2006:20-21). Jerry Vlasak, a physician and spokesman for ALF, in his only reference to the legislation said at the end of his opening

statement, “Regarding the proposed legislation that I heard Mr. Sabin and others mention, I remind you of the quote by John F. Kennedy, ‘Those who make peaceful revolution impossible will make violent revolution inevitable’” (Senate Committee on Environment and Public Works 2008: 23). Bradley Campbell of the New Jersey Department of Environmental Protection argued that existing statutes were adequate in dealing with radical animal rights and environmental activists, “many of the tools that are used for other terrorists threats, outside the realm of eco-terrorism, have been enormously effective in tracking, monitoring, and responding to ELF and SHAC and ALF in their presence in New Jersey” (Senate Committee on Environment and Public Works 2007: 24).

In these hearings most panelists tended to either request an expansion of laws aimed at animal rights activists or be neutral by not expressing an opinion either way. Brent McIntosh of the Department of Justice stated, “The bill under consideration today would fill gaps in the current law, and the Department supports it,” (House Subcommittee 2006: 6). William Trundle of GlaxoSmithKline stated, “We believe that H.R. 4239 (AETA) will enable law enforcement to deal effectively with these crimes, and we urge Congress to pass this legislation (House Subcommittee 2006: 17). John E. Lewis of the FBI, who testified at all three of the Senate Hearings, stated, “Despite our best efforts, additional tools are needed to effectively impact animal rights extremism and ecoterrorism” (Senate Committee on Judiciary 2005: 4). William Green of the Chiron Corporation, an animal testing corporation, said, “at a minimum, this year we need to have the Animal Terrorism Act amended to make it effective against the kind of low-level terrorism and global Internet coordination that is now intimidating companies

throughout the United States, and for that matter Western Europe” (Senate Committee on Judiciary 2005:11). Mark Bibi of Huntingdon Life Sciences stated, “I urge the Congress to adopt more effective laws that can be used to control this type of third party targeting, and I am gratified to have heard this afternoon that that type of legislation is in fact being introduced” (Senate Committee on Environment and Public Works 2008: 17). The only two academics that testified, Michelle Basso, of the University of Wisconsin, and David Skorton, the President of the University of Iowa, did not advocate for or against the AETA or other laws targeting animal rights activists (House Subcommittee 2006; Senate Committee on Environment and Public Works 2007).

These hearings were a major forum to discuss the expansion of laws aimed at the animal rights movement, and because floor debate on the AETA was minimal at best, these hearings were the place where support or opposition could be expressed to policy makers by key elites. Overwhelmingly, panelists either vocally supported or were neutral towards the AETA. According to Goldstein, it doesn’t take vocal support to pass and implement repressive policies, but only a lack of opposition. These hearings showed how significant a lack of opposition there was to the AETA and the expansion of repressive laws and policies by key elites.

Another of Goldstein’s key elite, the media, was largely silent on the expansion of animal enterprise terrorism laws. I searched for the term “animal enterprise terrorism” in the *LexisNexis* database, including US newspapers in the thirteen months (11/01/05-11/30/06) prior to the AETA being signed into law by President Bush. Of those results I looked at pieces that took a stance on laws and policies targeting animal rights activists, including editorials, op-eds, and letters to the editor. There were no editorials about the

AETA during this time, two op-eds (one pro-AETA, one anti-AETA), and seven letters to the editor (six anti-AETA and one pro-AETA). A lack of public discussion and media coverage led Project Censored (2008) to declare the coverage of animal enterprise terrorism laws as one of the most censored stories of that year. This speaks to either the obscurity of the AETA or that it wasn't seen as a priority for most editorial boards. Either option is testament to a lack of resistance to the expansion of previous laws targeting the ARM by the media. Again, according Goldstein, it doesn't take vocal support for an expansion of repressive policies, but only a lack of resistance.

Conclusion

In the post 9/11 era the conditions were ripe for the creation and implementation of repressive policies. A national environment that lent itself to social movement repression, combined with the distinctive traits of the animal rights movement, meant that an atmosphere existed that was conducive to the implementation of further repressive policies aimed at the ARM. A political shock in the form of the terrorist attacks of 9/11 realigned the priorities of the Bush Administration. It was in the form of war that the administration decided to respond. This meant the prosecution of two wars overseas, as well as the prosecution of war wherever the administration believed terrorists exist. As political observers have noted, war overseas is likely to lead to loss of liberty, or repression, at home. But it wasn't just the administration that shifted their attitude, it was largely the entire political realm. As the administration increased domestic surveillance through the PATRIOT Act and the NSA's wiretapping program, there was little organized and effective resistance.

That the animal rights movement would come under increased scrutiny in this era should be no surprise, as the movement's activities had been framed as terrorism, even prior to 9/11. Starting in 2001 there was a sharp increase in the use of the term eco-terrorism to describe radical environmental social movement activity (Wagner 2008), but there is a close association between radical animal rights and environmental activities in the eyes of federal law enforcement and elected officials. The animal rights movement exhibits certain traits that lead to an increased likelihood that they will face repression. Deviance in the form of the rejection of the use of non-human animals for human need or desire makes the animal rights movement removed from the American mainstream. Also, their aims and rhetoric closely align with the history of leftist movements in US, and according to Goldstein (2001), it is leftist movements that are much more likely to face political repression for their beliefs and activities. There was also a lack of opposition by key elites to the expansion of repressive policies. This included larger policies like the PATRIOT Act, but also policies targeting the animal rights movement more specifically. This included an expansion and extension of previous animal enterprise terrorism laws in the form of the Animal Enterprise Terrorism Act. Of Goldstein's key elites, there was no group that actively opposed the passage of the AETA, which meant that its passage became much more likely. The AETA did in fact pass in 2006, significantly expanding the number of entities protected from animal rights activism and increasing the penalties for animal rights activists who participate in direct action.

CHAPTER V

FINE LINE BETWEEN BURGLARY AND TERRORISM: REPRESSION OF THE ANIMAL RIGHTS MOVEMENT

Repression of social movements by the state and by counter-movements is a well-established phenomenon. Where it was once thought that only authoritarian states repressed social movements, nearly a half-century of research has shown that social movement repression exists regardless of regime type and is a major factor in the development and trajectory of social movements around the world (Davenport 2007). There is a breadth of research that examines a number of different facets of repression. The literature examines different types of repression, from the policing of public protest (Della Porta 1996; Earl, Soule and McCarthy 2003) to the assassination of movement leaders (Bob and Nepstad 2007). There are studies that examine various forms of repression (Della Porta 1996; Earl Soule and McCarthy 2005; Churchill and Vanderwall 1988), factors that lead to a given level of repression (Davenport 1995, 1996; Gupta Singh and Sprague 1993, Henderson 1991), activist responses when facing repression (Opp and Roehl 1990; Bob and Nepstad 2007), and the role of various state apparatuses and their use of repressive tactics (Balbus 1973; Churchill and Vanderwall 1988). It also explores repression in a number of different regions and nation-states, including the Occupied West Bank (Khawaja 1993), Latin America and Sub-Saharan Africa (Carey 2006), Peru and Sri Lanka (Moore 2000), South Korea (Chang 2009) and West Germany (Opp and Roehl 1990). Despite its prevalence across time and space, repression is still an understudied aspect of social movement activity. As Davenport (2007) states, “Given the duration of this practice, the vast numbers of its victims, the range of legal, political, and

religious restrictions condemning such activity...it is surprising that so little systematic attention has been given to the topic of state repression” (1).

Defining exactly what repression is poses many problems, as it can take on many forms and look quite different in varying social and political situations. Defining repression runs the risk of being so broad as to not explain anything, or so narrow that it misses many instances of real repression. The work that has tackled repression in the United States the most thoroughly is Robert Justin Goldstein’s *Political Repression in Modern America from 1870-1976*, first published in 1978. In the introduction he defines repression as consisting of “government action which grossly discriminates against persons or organizations viewed as presenting a fundamental challenge to existing power relationships or key governmental policies, because of their perceived political beliefs” (Goldstein 1978: xxviii). Others have used this same definition in their own work (Davenport 2007), or used similar definitions (Earl 2003). It’s a monumental, if not impossible, task to come up with an all-encompassing definition of repression, but Goldstein’s definition gives a good starting point to explore what repression actually is, and other scholars have found it reliable enough to use in their own work.

Even as useful as Goldstein’s definition is, it fails to capture all of the intricacies and nuances of a term that encompasses such a broad swath of actions. Even Goldstein (2001) understood the murkiness of the terms within his definition (‘grossly discriminates’ and ‘perceived political beliefs,’ for example). In an attempt to clarify what is meant by repression he created a list of eleven specific examples of repression. He also identified five independent variables that help predict changes in levels of repression at any given time. When thinking about what qualifies as repression and how

that repression presents itself, Goldstein's variables and his list of instances of repression provide a framework for placing various types of repressive activities in context.

The question for this chapter is whether or not we can consider the AETA and similar laws, as well as other forms of government action aimed at the animal rights movement, to be a form of state repression. It will be important to place these activities in the larger context of the history of repression of social movements in the United States. It's Goldstein's work that is the most systematic, as he examines the long history of state repression of social movements in the US, from the post-Civil War era where the state and private interests crushed a nascent labor movement, all the way through the repression of the 'New Left' of the 1960's and 70's, and I will use his framework for much of this chapter.

In this chapter I will present evidence to show that, in the passage and implementation of the AETA and its predecessor the AEPA, there are examples of social movement repression. Movement repression through the use of legislative hearings also qualifies as a form of repression. I will use personal interviews, court documents, news reports and transcripts of Congressional hearings to show how the state singled out the animal rights movement and animal rights activists at the behest of private interests such as the pharmaceutical and bio-medical industries and engaged in movement repression.

The Question of Repression

In this section I will explain how governmental actions aimed at the animal rights movement qualify as repression. Five of Goldstein's instances of repression apply to the government's response to the animal rights movement. I will use these instances to put animal enterprise terrorism laws into context, and show how activists in the movement

faced various forms of repression based on their political beliefs. The instances of repression I will be using are:

- All laws which directly infringe upon freedom of speech, without being tightly drawn so as to include only clear and present danger violations.
- Laws imposing additional penalties on already existing criminal conduct which tend to have a chilling effect on free speech through their vagueness.
- Laws banning “action” which clearly is symbolic exercise of freedom of speech.
- Violations of due process procedures, such as illegal searches and seizures, biased judges and juries, etc., in cases involving political dissidents
- Legislative investigations which tend to harass and hold up to public obloquy persons and organizations for their political views without any clearly legitimate legislative purpose (Goldstein 2001: xxxi-xxxii).

I will be using data from personal interviews, Congressional hearings, court proceedings and news reports to examine governmental actions that targeted animal rights activists, and how these actions qualify as forms of repression.

Vague Language, ‘Clear and Present Danger’ and Free Speech

Goldstein included two instances of repression revolving around free speech activities. The first is “All laws which directly infringe upon freedom of speech, without being tightly drawn so as to include only clear and present danger violations,” and the second being “Laws banning ‘action’ which clearly is symbolic exercise of free speech” (Goldstein 2001: xxxi). In this section I examine the language of the AETA, and why it violates Goldstein’s ‘clear and present danger’ standard, as well as charging actions that are symbolic exercises of free speech. The statute has a number of vague, ambiguous, and undefined terms, and it’s this language that violates Goldstein’s ‘clear and present danger’ standard. Activists and lawyers were concerned that the AETA could classify

many types of activity as interfering with an animal enterprise, including First Amendment protected activity.

The Animal Enterprise Terrorism Act (2006) is a two page statute that defines animal enterprise terrorism as “damaging or interfering with the operations of an animal enterprise” that causes the damage or loss of property of an animal enterprise or an entity having a relationship with an animal enterprise, or places a person in fear of death or bodily injury using “threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation,” or conspires to do any of these things. This statute defines ‘animal enterprise terrorism’ in broad, vague and ill-defined language (for the full statute see Appendix D). In a constitutional challenge filed by the Center for Constitutional Rights (CCR) that has yet to be decided, the complaint states:

The AETA fails to define key terms, but its plain language criminalizes core political advocacy and speech that are protected by the First Amendment. For example, it punishes otherwise lawful and innocuous speech or advocacy that causes a business that uses or sells animal products to lose profit, even where that lost profit comes from a decrease in sales in reaction to public advocacy. Thus, AETA effectively criminalizes the very purpose of the First Amendment – changing people’s minds (Blum Vs. Holder 2011: 2).

Over-breadth and vagueness were two of the defining factors of the AETA that form the basis of many of the criticisms by civil liberties and defense lawyers.

Despite the *Rules of Construction* at the end of the statute that state that the AETA does not interfere with First Amendment protected activity, that in and of itself does not preclude it from affecting free speech activity. As Lauren Regan said, “Courts have stated time and time again that such window dressings mean nothing if the law could still be construed as in effect to take away their rights.” It was the vagueness of the statute that would eventually pose problems in its

implementation, as I will show later in this chapter in the case of the AETA 4, a group of animal rights activists in California charged as terrorists.

There are a number of terms within the statute whose meanings are ambiguous or ill defined. These include ‘animal enterprise,’ ‘damaging or interfering,’ and ‘reasonable fear.’ ‘David’, a civil liberties lawyer I interviewed that has been involved in animal rights activists defense cases, stated “Part of the problem with the AETA is that it is grotesquely overbroad, there are so many different kinds of behavior that could be prosecuted under it.” Bob Bloom, a long time civil liberties and defense attorney who has worked on cases dating back to the Black Panthers and was a lawyer for one of the AETA 4 defendants, expressed a similar sentiment, “Congress was cautioned that the language of this statute is overbroad, and it could well lead to the indictment of people who were innocent of any crime, who are just exercising our First Amendment rights.” The statute also has contradictory and ambiguous messages, as on the one hand it states that First Amendment activity is protected, but on the other hand, that if ‘interfering’ with an animal enterprise causes a loss of profits or increased costs for businesses it qualifies as ‘animal enterprise terrorism.’ It is this kind of ambiguity that leads to an increased likelihood that the law will have repressive effects, as activists, lawyers and prosecutors are left unsure of what actually qualifies as ‘animal enterprise terrorism.’

The term ‘animal enterprise’ is broadly defined as “a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing” (Animal Enterprise Terrorism Act 2006: 2). As examples the statute lists “zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event, or any fair or similar

event intended to advance agricultural arts and sciences” (Animal Enterprise Terrorism Act 2006: 2). But this statute doesn’t exclude other animal enterprises such as grocery stores, factory farms, butcher shops, slaughterhouses, and restaurants. These are businesses that sell animal products for profit, which would include them as an animal enterprise under Definition (1)(A) of the statute. These definitions encompass a large swath of business and research activity in the United States. To complicate matters the AETA also expands the number and type of entities protected by the act. When a “person or entity having a connection to, relationship with, or transactions with an animal enterprise” (Animal Enterprise Terrorism Act 2006: 1) is included, the list of entities that fall under the protection of the statute becomes nearly indefinable (this could include banks, investment companies, paper supply companies, janitorial services, gas and oil companies, and on and on). Under the AETA’s broad definition of animal enterprise and tertiary relationships, it means that any social movement activity targeting any of these numerous entities or enterprises can be labeled animal enterprise terrorism if that activity interferes with or damages the business or entity.

The ambiguity of whom the statute aims to protect from social movement activity is only compounded by the ambiguity of other terms in the statute. The AETA defines the offense of ‘animal enterprise terrorism’ to be the “damaging or interfering with the operations of an animal enterprise” (Animal Enterprise Terrorism Act 2006: 1). It defines economic damages to include lost or damaged property or records, the costs of repeating an experiment, loss of profits, or an increase in costs caused by threats, vandalism, trespass, harassment, or intimidation, while the term ‘interfere’ is never defined. The loss of profits was especially problematic for many of my interviewees.

Odette Wilkins, organizer of the Equal Justice Alliance, a coalition of groups dedicated to overturning the AETA, saw the AETA in stark terms, “It was very clear to my reading of the documents that it was protecting corporate profits at the expense of the First Amendment.” Regarding the role of targeting corporate profits as a form of activism, Will Potter stated, “The bill criminalizes any activity against an animal enterprise or any company tangential to an animal enterprise that causes economic damage defined as including the loss of profits. That’s not terrorism, that’s effective activism” (House Subcommittee 2006: 20). Potter then ties this type of activism to the long history of social movement activity and economic boycotts that targeted business profits as a social movement strategy, including the United Farm Workers grape boycott, the Civil Rights Movement’s lunch counter sit-ins, and the anti-apartheid disinvestment movement.

The fear that demonstrations in the form of boycotts and picketing of businesses could result in terrorism charges was also a recurring theme in my interviews. Odette Wilkins stated “I could see very easily people were going to feel intimidated that demonstrating and going out and protesting, which is everyone’s First Amendment right to do so, for fear of being even arrested as a suspect under the Animal Enterprise Terrorism Act.” Lauren Regan expressed a similar sentiment in referring to mainstream activists protesting circuses in Eugene, “After this was passed we had a few phone calls, people who were school teachers and housewives called asking if they would be on a terrorist list, could they be prosecuted for terrorism for protesting the circus.” This is not to overlook the real and serious damage done to animal enterprises by animal rights activists, but by using ill defined terms the number of activities that could potentially be charged as terrorism expands to include time tested and successful tactics used by other

social movements throughout American history, and potentially activities that are protected by the First Amendment.

The statute, although nominally targeting animal rights activists, does not state that activism has to be on the part of the animal rights movement. The history of the statute and its implementation, as well as the viewpoints expressed during Congressional hearings, makes it apparent that the statute is targeting animal rights activists, but that cannot be stated explicitly as that would make it a viewpoint or content-based restriction. Such a restriction is most likely unconstitutional and is fundamentally antithetical to the role of the First Amendment. As the *Harvard Law Review* (1989) argued, “Viewpoint-based regulations, by favoring one side of such a debate, may determine the actual outcome of public deliberation” (11-12), and this has a distorting effect on the marketplace of ideas, of which free speech is the main currency. The statute actually states in its Rules of Construction that viewpoint cannot be taken into consideration when applying the statute (Animal Enterprise Terrorism Act 2006).

That activists other than animal rights activists could be ensnared by this statute is one scenario in CCR’s constitutional challenge to the AETA. As the complaint states: “Labor picketers, who seek to affect the bottom line of an employer engaged in unfair labor practices (that happens to sell animal products) are subject to prosecution under the act if their peaceful, lawful picket ‘causes the loss of any...personal property,’ including profits” (Blum vs. Holder 2011: 2). By leaving implementation of the law to the discretion of prosecutors another tool is available for the repression of many types of activism, even if that activism only indirectly affects an animal enterprise or a related entity.

Another way to violate the AETA is to intentionally place “a person in reasonable fear of the death of, or serious bodily injury to that person” (Animal Enterprise Terrorism Act 2006: 1). Reasonable fear and intent are not defined, and therefore pose problems in determining criminal conduct. For example, from whose point of view will these determinations be made? Emma Bradford, an attorney for one of the AETA 4 defendants, summarized why this posed a problem in that case: “Who are we looking at in the AETA? Are we looking at the people who are indicted, are we looking at their intent? Or are we looking at the alleged victims, are we looking at their reaction?” Kali Grech, another defense attorney on the AETA 4 case, expanded on this idea, noting: “It depends on how true threat is determined, whether it be the intent of the speaker, or a reasonable person’s objective intent. Does the speaker have to intend to cause fear or harm? Or does a reasonable person have to think [the activist] is meaning, is intending to cause fear or harm? So, you know, that really makes a big difference.” If an activist doesn’t intend to instill fear in a person, but the target of this activism states that they did feel fearful, how would one distinguish whether a crime of terrorism has been committed? This ambiguity only increases the likely repressive effects of the law.

The law has traditionally held that a person charged with a crime must be aware that a crime was being committed, also known as Mens Rea. In the Wall Street Journal Gary Fields and John Emshwiller (2011) wrote that by using a reasonable fear standard, the AETA effectively eliminates Mens Rea, or guilty mind, stating that it is “a long-held protection that says a defendant must know they've done something wrong to be found guilty of it” (A10). They go on to state, “The 2006 act was cited in a joint study by the conservative Heritage Foundation and the National Association of Criminal Defense

Lawyers as an example of an overly broad law, particularly the way it clashed with First Amendment free-speech protections” (Fields and Emshwiller 2011: A10). That reasonable fear is not clearly defined increases the repressive potential of the AETA, as do other ill-defined terms in the statute.

That the AETA fails to clearly define and/or delineate ‘animal enterprise,’ ‘damaging or interfering,’ and ‘reasonable fear’ means that when one reads the statute one does not come away with a sense of what is actually illegal and what is not. Without having clear demarcations in these definitions, we are left with a statute that protects a large number of businesses in the US from being ‘interfered’ with by social movement activity, while potentially limiting activism in the name of animal rights. This ambiguity has the potential to affect defense lawyers, prosecutors, and activists. Emma Bradford stated about the AETA 4 case: “The first thing that struck me as I read was how difficult it was going to be for both sides to try...From the beginning this was going to be a very difficult case to pin down in terms of what is a crime, what is not, what is free speech, what is not.” It’s not implausible that this was an intentional aspect of the statute. As Lauren Regan stated: “The language of the law was really vague and over broad...and I think that was also a premeditated purpose in drafting the language the way they did. They wanted activists to be concerned about whether or not their activities, whether lawful or not, would be placing them on a terrorist list.” If repression of the animal rights movement was the unstated goal of animal enterprise terrorism laws, this ambiguity might serve that purpose better than clarity, as the ambiguities written into the statute increase the likelihood that the law will have repressive effects on animal rights activists.

Speech Activities as Terrorism: The Cases of the SHAC 7 and AETA 4

In this section I will examine the cases of the SHAC 7 and the AETA 4. I will show how animal enterprise terrorism laws were used to criminalize speech activity. It was the fear that free speech activities would be charged as terrorism that formed the backbone of the fear of the repressive effects of the AETA and similar animal enterprise terrorism laws. These cases are clear examples of how vaguely written statutes ensnare activists who are practicing first amendment protected activities.

The case of the SHAC 7 included six activists and a corporation, Stop Huntingdon Animal Cruelty. The SHAC campaign was one that began in England in the 1980s targeting the animal testing corporation Huntingdon Life Sciences (HLS) (Upton 2011). In the late 90s HLS relocated to New Jersey. British activists contacted American animal rights activists and suggested opening a campaign in the US targeting HLS as well. The SHAC activists convicted as part of the SHAC campaign included three people who ran the website that published communiqués from activists that had taken action against HLS, as well as published contact information and addresses for corporate employees from HLS and entities that did business with HLS. It also published suggestions for activism. SHAC organized much like ALF, in that it was a decentralized campaign. There was no one organizing strategies and tactics. The other three convicted as part of the SHAC 7 were vocal activists who encouraged activity on the part of the SHAC campaign and did other support work, but were not themselves part of SHAC. I interviewed two activists from this latter group. The activists were not convicted of engaging in any direct action against HLS or its affiliates, but were charged with various

counts of conspiracy and of violating the Animal Enterprise Protection Act for interfering with HLS.

The SHAC case was the first on a national scale to show how animal enterprise terrorism laws could ensnare above ground activists guilty of ‘interfering’ with animal enterprises. The SHAC 7 were charged under the AETA’s predecessor, the AEPA, which consisted of the same vague language as the AETA. The case was based on a website run by three of the SHAC activists that acted as a clearinghouse of information, as well as a central location that reported on direct action against HLS and its affiliates. In an article in the *Toronto Sun* about the SHAC 7 case, Thomas Walcom (2006) reported:

Curiously, for a case with such serious implications, none of those convicted in Trenton is alleged to have carried out any of the substantive crimes laid out in the indictment - from property damage to intimidation. Prosecutors didn't provide evidence they knew the perpetrators or had ever communicated directly with them. Rather, the six were convicted of running an Internet site that allowed others access to information that could be used in crimes...At the Trenton trial, witnesses testified that SHAC-USA neither organized nor controlled the anti-Huntingdon demonstrations. Rather it acted as an information clearing house (A06).

None of the members of the SHAC 7 were charged with committing the property damage or harassment that was part of the SHAC campaign, but were instead convicted of violating the AEPA, conspiracy to violate the AEPA, and other conspiracy charges. These convictions were based solely on the sharing of information, speech activities and other forms of above ground activism. Real violations of the law did occur as part of the SHAC campaign, such as vandalism, stalking, and property destruction, but none of the SHAC defendants were charged with or convicted of committing these substantive acts.

The government went after those they could actually identify, which were those practicing speech activity.

Josh Harper, one of the SHAC defendants, reported that the evidence used against him in the trial were two speeches he had given where he advocated black faxing (faxing a black sheet of paper repeatedly in order to drain the toner in a targeted companies fax machine), a tactic used extensively in the SHAC campaign. He was eventually sentenced to three years in federal prison, followed by three years of probation, for violating the AEPA and conspiracy to utilize an interstate telecommunications device for the purpose of harassment. Darius Fullmer, who was not an official member of SHAC but did support work in his role with the Animal Defense League of New Jersey, was convicted of conspiracy to violate the AEPA. The guilty verdict surprised him. He stated about the evidence used against him: “It was just a truly overwhelming amount of stuff they had put together...And going through it there was really no, nothing that stood out as a smoking gun per se...There was a lot of stuff that could definitely make us look bad but there wasn’t anything that came anywhere close to, at least didn’t in my perception, of being illegal.” He was sentenced to a year and a day for his involvement with SHAC. The SHAC defendants were also ordered to pay one million dollars in restitution to HLS.

With the SHAC campaign being national in scope, I asked Harper why he thought he was one of the six persons charged, to which he replied, “I was definitely a recognizable name and face within the animal rights movement. I think the strategic reason that I was charged in the SHAC 7 case was that it was something that other animal rights activists would notice.” Fullmer expressed a similar sentiment when asked why the six activists, out of many that were active in the campaign nationally, were charged:

Well they were certainly gunning primarily for the three people who organized SHAC USA. So the landscape is you have SHAC USA, who work exclusively on the campaign and organize on a national level. There are three people who volunteer full time for them, essentially run the campaign nationally. Then you have local groups like mine and in other parts of the country who work on the campaign. So they were primarily concerned, this is my assumption based on the prosecution's actions, it seemed like the main goal was to shut down SHAC USA, but they also wanted to pull in some people from different regions in order to sort of put the fear of god in those regions that were more active. If you look at the other three people, we had myself from New Jersey, Andy (Stepanian) from New York City and Long Island, and then Josh from the Pacific Northwest, which were three of the most active areas.

The prosecution seemed to be aiming for vocal and visible activists that would also serve the larger purpose of quelling future activism in those places where activism was most prominent. The activists were not charged with the harassment, intimidation, and property damage that was an integral part of the campaign. Fullmer and Harper were charged with conspiracy to violate the ACPA for vocally supporting the campaign.

The AETA 4 indictment was similar to that of the SHAC 7, but in significant ways was even more ambiguous about alleged crimes committed. The AETA 4 consisted of four activists in California who were part of a campaign targeting animal researchers in the University of California system. This campaign, much like the SHAC campaign, was decentralized and used home demonstrations, harassment, property destruction and vandalism against researchers. The AETA 4 indictment did little more than mirror the language of the statute, and cited no actual violations of the law. It alleges, in effect, that the defendants did something somewhere at some time that may have violated the law (US v. Buddenberg 2009). It was this lack of specificity that resulted in the case being dismissed, with the possibility that the government could re-indict if a finding of an

actual violation of the law were included. In his dismissal of the case, Judge Ronald Whyte acknowledged the ambiguity of the indictment, writing:

Other than identifying a ten-month time frame and a geographic boundary spanning fifteen counties, Count Two simply recites the statutory language. It alleges no facts identifying what each defendant is alleged to have done, to whom, where or when. Indeed, the language of the charge is quite generic: defendants engaged in a course of conduct involving some combination of threats, vandalism, property damage, trespass, harassment and intimidation to intentionally place or attempt to place an unidentified person in fear of death or serious bodily injury to himself, family, spouse or intimate partner, for the purpose of interfering with an unidentified animal enterprise. Any defendant – constitutionally presumed to be innocent – would be hard-pressed to discern from Count Two what it is that he or she has done that is alleged to have violated the law (*US v. Buddenberg* 2010: 4).

Just by alleging wrongdoing at some unspecified time and place the prosecutor ensnared four activists in the court system for more than a year and a half, ending their activism as part of that campaign.

The AETA 4 were charged with the prong of the AETA that deals with threats of bodily injury. The case provides a look at how the application of the AETA. Home demonstrations as a tactic were widely used in this campaign. Documents presented by the prosecution specify acts such as chanting and the use of child's chalk on sidewalks outside the homes of researchers as evidence of 'animal enterprise terrorism'. Tom Nolan, a defense attorney on the case, believed the question of the indictment was whether or not the chants used during home demonstrations were a true threat, and how a true threat would be determined. The vague language of the statute posed problems for the defense team. Emma Bradford, another defense attorney, in discussing her client's motivation, said: "Did she have to know that what she was doing would make them afraid, or would she be held to a reasonable person's standard?" The AETA does not

define or distinguish how true threats should be determined, which means that prosecutors have leeway in the application of the statute.

This campaign against animal researchers in the University of California system was widespread, with protests occurring throughout the state, conducted by dozens of activists. Joseph Buddenberg, one of the AETA 4, was a vocal and active member of the Bay Area animal rights scene. He was well known to the police departments of the City of Berkeley and the University of California, noting: “During that campaign I guess we got, I was arrested about five, six times. I was cited for illegally flyering maybe two or three times. Never held up in court. Uh, Berkeley Police Department surveillance, things of that nature.” He also stated in an interview with Dylan Powell (2010), “I believe the most clear intention of the case is the same as the SHAC case. Arrest a few public activists and hope to scare away everyone active in the campaigns and the larger fight for animal freedom.” The indictment of Buddenberg and his co-defendants seemed to mirror that of the SHAC 7 case, where the prosecution charged activists not on substantive violations of criminal statutes, but because they were visible and recognizable. In the view of Josh Harper, a member of the SHAC 7, the charging of the AETA 4 was even more egregious than the SHAC 7 case. He compared the two cases:

However like minor there was, there was at least that connection between me and illegal activity. I said I was aware it had occurred and that I was happy that it had happened. Whereas with the AETA 4 case, here were kids that were passing out leaflets, doing a loud home demonstration, writing on the ground with chalk, and there’s no connection between them and the underground direct action... There were parallels and really, the AETA 4 were facing worse than what me and my co-defendants were.

The case against the AETA 4 was dismissed based on the lack of specificity in the indictment, but its repressive effects were real. The statute, employing ambiguous

language and ill-defined terms, ensnared activists with no connection to actual violations of the law, based on their visibility as part of a larger campaign.

That free speech activities would be charged as criminal activity is not new or unique to the animal rights movement. During the Progressive Era of the early 20th Century, IWW activists faced restrictions on speech. As Goldstein (2001) states: “Wobblies attempting to speak on the streets in order to organize workers would be faced with local ordinances suddenly passed to bar street speaking.” The Nixon Administration conducted prosecutions of prominent anti-war leaders that continually fell apart, but served another purpose: “They succeeded in tying up huge amounts of time, money, and energy that the anti-war and radical movements could have used to expand rather than expend on protracted and costly defense struggles” (Goldstein 2001: 487). There are similar instances of anarchists, communists, socialists, black power, and Native American activists facing legal sanctions based on speech activity (Goldstein 2001; Churchill and Vander Wall 1988). Bringing criminal complaints against those who are most vocal and most visible is a time tested form of repression in the United States, and in this light the prosecution of the SHAC 7 and the indictment of the AETA 4 should not be at all surprising. Laws criminalizing specific forms of activism based on the activist’s political views presents a special case in how state repression is being employed in order to protect specific, powerful industries.

Additional Penalties on Existing Crimes

The AETA and other animal enterprise terrorism laws add additional penalties on already existing criminal codes, and do so if those crimes are nominally committed in the name of animal rights. Another of Goldstein’s (2001) instances of repression that states:

“Laws imposing additional penalties on already existing criminal conduct which tend to have a chilling effect on free speech through their vagueness” (xxx). In this section I will be discussing how imposing additional penalties on already existing criminal statutes has a repressive effect on animal rights activists.

Property destruction, harassment, intimidation and stalking are already crimes at the state level. What the AETA does is now make them federal offenses of domestic terrorism when done in the name of animal rights. In Chapter III, I outlined the benefits for the prosecution when they charge someone at the federal versus state level, which include a grand jury process more favorable to prosecutors, the lighter workload of federal officials, an increased likelihood of witness participation, and harsher sentencing guidelines (Lovitz 2010). Being convicted under animal enterprise terrorism laws means being convicted as a domestic terrorist, which results in additional and significant consequences throughout the legal process. Carrying the domestic terrorist label while in prison affected the scrutiny, punishment and privileges of those convicted for animal enterprise terrorism. Josh Harper reported about his time in a medium security federal prison in Oregon:

You have all of these small town prison guards and other staff members... being told by their superiors that I'm a domestic terrorist...All the staff members believed I was there for bombing things. Um, one of them had spread a rumor that I had blown up a bunch of police cars in Portland...But whenever I would protest this, I am in here for next to nothing, um, the only thing they really saw, the only thing they really cared about was that domestic terrorist label.

He also reported about the additional scrutiny that came along with a domestic terror conviction:

I was more tightly monitored. I went through a greater number of cell shakedowns than other prisoners, my mail was held for longer, both

incoming and outgoing. Every phone call I had was flagged I was told at one point...It was being listened to in real time. So yeah, domestic terrorist label definitely had an effect on my comfort level and the amount of punishment I received in prison.”

Peter Young, who pleaded guilty to violating the AEPA for releasing mink from fur farms, reported similar experiences in prison:

The jails definitely had me on a special security status where I was treated much differently than the other prisoners. I got sent to a medium security prison, and was in prison for misdemeanors. The animal enterprise terrorism charges, those were misdemeanors at the time...My mail was held for days at a time, sometimes a week or more. There was just a lot, there were certain jobs I wasn't allowed to have, like working with tools was prohibited. There was a lot of ways it affected the conditions of my incarceration.

Young went on to state the problematic nature of additional penalties and consequences based on animal rights activist's political beliefs: “If I stole the mink and sold them on the black market for money, that's just burglary. So it's a strange thing that the only variable between burglary and terrorism is that the second one is not motivated by selfish gain.” Harper spent three years in federal prison for advocating black faxing, while Young spent two years in prison for releasing mink out of cages. If it wasn't for the repressive effects of animal enterprise terrorism laws, it's difficult to imagine Harper would have gone to federal prison for advocating black faxing, or that Young would have spent time in federal prison for releasing mink.

Biased Judges and Juries

Domestic terrorism charges also had the effect of creating biased judges and juries, another instance of repression according to Goldstein (2001): “Violations of due process, such as illegal searches and seizures, biased judges and juries, etc., in cases involving political dissidents” (xxxii). In the case of the SHAC 7, an anonymous jury

was requested by the prosecution and granted by the judge (*US v. Stop Huntingdon Animal Cruelty* 2005). By being granted anonymity, the message was that the defendants were so dangerous that members of the jury would be endangered if the defendants knew their identities. Josh Harper reported about this process:

I mean pretty much to the point where she (the judge) granted an anonymous jury I knew I was going to be convicted. From that point out everything was just sort of a formality before they could put me in prison...I didn't really have any illusions that an anonymous jury, I mean a group of people who are told that their lives are at risk if I become aware of their identities. I mean you're not going to get a fair trial.

Darius Fullmer, in discussing the trial stated:

It was, like, looking back we never stood a chance at trial. She [the judge] had made up her mind pretty quickly and um, in terms of every time our counsels made an objection, and we did a count, and I think it was like 300 to 2 how many times our objections were...overruled as opposed to sustained. In terms of what information the prosecution could enter [it] was just limitless, in terms of what information we could enter we were severely hamstrung by what the judge wouldn't allow in.

The use of anonymous juries is usually limited to cases where (1) the defendants have engaged in dangerous conduct (especially in connection to organized crime), (2) whether the defendants have tampered with juries in the past, and (3) when the jury, because of trial publicity, would fear the defendants (Hazelwood and Brigham 1998). In the case of the SHAC 7, none of them had been charged with substantive crimes. Underground activists who took part in the SHAC campaign were known to commit acts of harassment, intimidation and stalking, which could be a justification to impanel an anonymous jury, but actual physical harm against persons had never occurred as part of the SHAC USA campaign. This would seem to diminish the need for an anonymous jury. But the question here is whether or not there was a biased jury for the SHAC 7 case.

There is empirical evidence that anonymous juries are more likely to find defendants guilty. Hazelwood and Brigham (1998), in one of the few empirical studies on the outcomes of anonymous juries, found that anonymous juries were more likely find defendants guilty. They found that varying the strength of evidence did vary the differences in outcomes between anonymous and non-anonymous juries, but that across all cases anonymous juries were more likely to find the defendants guilty. There is much debate in the literature about the constitutionality of anonymous juries and whether anonymity biases jurors against defendants. The empirical evidence that we do have supports the idea that anonymous jurors would be biased against the defendants in the SHAC 7 case, which would be an example of social movement repression. By impaneling an anonymous jury, there is an increased likelihood of introducing bias into the SHAC 7 case.

An anonymous jury also posed another problem for the defense, as Harper (states: “What we could ask them was so tightly controlled, I mean any one of those jurors could have worked at a lab, a contract research organization, or a pharmaceutical company that contracted with Huntingdon Life Sciences... We didn’t know if their close family members did.” Harper in this quote is referring to the process by which the defense and the prosecution can eliminate potential jurors based on factors that might bias their judgment. Anonymous jurors, because the defense team isn’t allowed to know who they are, or is at least limited in what they can know about them, may be in a position where their livelihood is tied directly to Huntingdon Life Sciences and therefore are potentially biased against the defendants. Harper went on to state about bias being potentially introduced into the case: “The campaign had been so heavily covered in New Jersey

media, and often times so unfairly covered in the media out there. Really we couldn't have picked a worse state to be tried in." Again, posing the problem of jurors who might be prejudiced by media coverage of the campaign.

The prosecution was allowed to potentially bias the jury in other ways as well. Personal characteristics were used in attempting to create a sense of deviance amongst the defendants in the SHAC 7 trial. Josh Harper stated about one of his co-defendants:

They played two phone calls between myself and Kevin Kjonaas, where the only illegal activity that was discussed was smoking pot, um, which had nothing to do with our case. But the phone calls are quite prejudicial...My co-defendant Kevin is gay, and in these phone calls we're talking about this guy he was dating. Kevin and I were close, we were drinking buddies so when we would have those phone calls, it was locker room talk...And really that's the reason that those conversations were played.

In Harper's view, these phone calls had nothing to do with their case, but were used to attack Kjonaas for his homosexuality. This personal characteristic was used to potentially prejudice the jury against Kjonaas, who was the member of the SHAC 7 that received the longest prison sentence of six years.

The use of a person's homosexuality, imagined or real, has a history as a form of state repression of social movements. In examining the FBI's counter-intelligence program (COINTELPRO) between 1968 and 1971, which used repressive techniques against movements of the New Left, Cunningham and Browning (2004) found that the FBI used deviance narratives to justify repression targeting movement activists. When targeting the largely white and middle class anti-war and counterculture movements, "field agents targeted individuals based on their...perceived sexual orientation" and associated "'perversity' with radical political behavior" (Cunningham and Browning 2004: 360). Dave Dellinger, a leader of the National Mobilization Committee to End the

War in Vietnam, was targeted for his perceived homosexuality, as the FBI attempted to drive a wedge between him and other activists, at one point including him on an FBI produced leaflet that “depicted a ‘Pick the Fag Contest’” (Cunningham and Browning 2004: 363). Huey Newton, who at one point urged the Black Panther Party to join forces with the Gay Rights Movement, was targeted for this point of view. The FBI hoped to split the Black Panther leadership and “To capitalize on Huey P. Newton’s favorable stand toward homosexuals” (Churchill and Vander Wall 1990: 150). A deviance narrative was used extensively by the government against radical movements of the 60’s and 70’s, and reappeared as a way to define at least one SHAC 7 member as deviant and therefore an appropriate target of repression.

Joseph Buddenberg, when facing a judge in his initial court date, reported “The magistrate screamed at me and said it was one of the most chilling complaints he had ever seen. And um, he said this is not a joke, this is not something to be laughed at, this is serious criminal activity.” Upon the prosecutor’s request, he was denied bail and held in a halfway house for a month after his arraignment. This “serious criminal activity” seems to have had an affect on the conditions he faced after his arraignment, where he was placed in a halfway house, followed by six months of house arrest. Buddenberg faced these sanctions and severe restrictions even without a conviction. This was a consequence of an indictment that alleged no substantive violations of the law, yet had a domestic terror label attached to it. That same indictment, without a domestic terror label attached, would most likely have been received much differently.

Legislative Hearings and the Discrediting of the Movement

The final instance of repression that I will use is “Legislative investigations which tend to harass and hold up to public obloquy persons and organizations for their political views without any clearly legitimate legislative purpose” (Goldstein 2001: xxxii). The use of Congressional hearings was covered in depth in chapter III, so I will briefly summarize the way these hearings were used to single out the animal rights movement as a target of repression. There were four congressional hearings in the two years prior to the passage of the AETA, only one of which dealt with the AETA as a legislative matter. Two of the additional hearings occurred in the Committee of Environment and Public Works, and one in the Judiciary Committee. The title of these three hearings were, *Eco-Terrorism Specifically Examining Earth Liberation Front and Animal Liberation Front*; *Eco-Terrorism Specifically Examining Stop Huntington Animal Cruelty “SHAC”*; and *Animal Rights: Activism vs. Criminality*. These hearings were investigations with no apparent legislative purpose, and presented a platform for politicians, members of law enforcement and industry representatives to denounce the animal rights movement, activists and organizations. Those who testified overwhelmingly represented law enforcement and the pharmaceutical and bio-medical industries. Written statements submitted to the hearings also favored industry interests (See Appendix B for a complete list of witnesses and submitted statements).

These three hearings, despite their supposed role of ‘investigating,’ became a way to discredit the radical animal rights movement. Only one witness, Dr. Jerry Vlasak, challenged the anti-animal rights rhetoric that defined these three hearings (Senate Committee on the Environment and Public Works 2007). Senator Inhofe (R-OK), who

convened two of the hearings, stated about two well-known aboveground animal rights activists he had invited to testify, “We wanted them to defend themselves, if there is a defense” (Senate Committee on the Environment and Public Works 2008: 18)¹⁶. It is apparent from this statement that Inhofe wasn’t interested in having a conversation about the animal rights movement, but instead wanted to hold these activists, and the movements they represent, up to ‘public obloquy,’ and attempt to discredit them and their movements. Similarly, representatives of federal law enforcement talked not just of investigating and prosecuting criminal acts, but destroying the movement. John Lewis of the FBI testified at all three of these hearings, and at one stated “We are committed to working with our partners to disrupt and dismantle these movements” (Senate Committee on the Environment and Public Works 2008: 8). A significant majority of those who testified used language similar to that of the representatives of federal law enforcement. David Martosko of the Center for Consumer Freedom, a restaurant industry lobbying group, spent much of his time tying the radical underground activists to aboveground animal rights groups, connecting illegal actions to mainstream activists, and thereby incriminating the animal rights movement as a whole (for a more detailed exploration of witness testimony see Chapter III). The hearings were used to single out the animal rights movement, both underground and aboveground, and to create an official government record that discredits the movement in the eyes of the federal government and the public at large, and served no obvious legislative purpose. It was a combination of these factors that qualify it as a form of repression according to Goldstein’s instances of repression.

¹⁶ The two activists were Ingrid Newkirk, president of People for the Ethical Treatment of Animals, and Steven Best, a philosophy professor and animal rights advocate.

Multiple Instances of Repression

Using Goldstein's framework and instances of repression, it is apparent that there were multiple instances of political repression used against the animal rights movement. The radical animal rights movement, in the eyes of federal law enforcement, was an appropriate target of repression, and the federal government dedicated time, energy and other resources actively repressing animal rights activism. It did this by passing laws that had a chilling effect on activism through their vagueness, by adding penalties to already existing criminal conduct based upon the political beliefs of the activists, employing biased judges and juries to gain convictions or limit activism in other ways, and impaneling Congressional hearings to try to discredit animal rights activism. In the next section I will examine how this repression affected animal rights activists and their activism.

Animal Enterprise Terrorism Laws and Their Effects on Activism

We have seen the many ways in which governmental action repressed animal rights movement activity, but the ultimate measure of repression is how effective it is in limiting or eliminating social movement activity and dissent. Through interviews with activists and lawyers it is apparent that animal enterprise terrorism laws were effective in doing just that, though activist's responses to this repression was varied. I will examine how convictions, indictments and harassment were used to repress animal rights social movement activity.

The most obvious form of repression comes in the cases where activists were sentenced to prison and probation for speech activities, such as the cases of Darius Fullmer, Josh Harper, and Joseph Buddenberg. The penalties experienced by Peter

Young for his activism also had a repressive effect on activism. This repression places both physical and legal limitations on potential activism by animal rights activists. Through the use of incarceration and post incarceration control of activists the state limits or eliminates space for dissent. In the case of the AETA 4 it becomes apparent that the legal system can be used to limit activism without the need of a conviction, while harassment by law enforcement and other government officials, as well as fear of legal sanctions, also have repressive effects. In the case of prison, an activist's physical existence is controlled by the state, thereby eliminating many outlets for activism. All six persons charged in the SHAC 7 case were convicted of all charges and sentenced to various amounts of prison time, from a year and a day in the case of Darius Fullmer to six years for Kevin Kjonaas (Hurdle 2006). Peter Young was also imprisoned, while Joseph Buddenberg was placed on house arrest, placing him under control of the state prior to ever being convicted of a crime. As we saw with the SHAC 7 defendants, speech activities garnered domestic terrorism convictions and sent the activists to prison. The increased scrutiny these and other activists faced in prison further limited their activism.

State control of aspects of activist's lives extends after prison in the form of probation. Probation affected the activists in numerous ways, from the types of activism they felt safe engaging in to the everyday decisions they made about jobs and living situations. Peter Young, who spent seven years on the run after being indicted, stated: "I was kind of muzzled when I was a fugitive because I was a wanted man. I couldn't put myself out there. But as soon as I got out, I right away began to accept that I was also somewhat muzzled even out of prison because I was on probation." Young stated that he had a lenient probation officer who allowed him to travel for speaking engagements,

which meant he was still able to engage in animal rights activism while on probation, albeit in limited and state sanctioned ways. Josh Harper had a different experience, as he was refused travel passes and was only allowed to travel in the western district of Washington. Harper reported that his activism is somewhat limited: “When you’re on probation it’s a lot easier to take you back into custody...I’ve been at demonstrations before where I’ve been arrested for standing on a sidewalk...Having been in those situations before, I mean, nowadays that’s not a night in county jail for me, that could be six months in prison, that could be eighteen months in prison. I just try to be a bit more cautious about where I go.” Probation meant more freedom than prison, but it also meant that the state still had control over important aspects of these activist’s lives.

But it’s not just probation that affects life after prison. Darius Fullmer noted how the felony conviction affected him after prison: “That limits what I can do in my life. Um, financially I’m limited, and also in terms of, like, job prospects and so forth...the felony record can certainly make your career prospects and financing going back to school very difficult.” Young also spoke about how he was targeted by federal law enforcement after leaving prison, “The way it really affects me is things like the FBI raiding my house twice in the last year...It’s finding out that you have, this girl I was dating was actually working for the FBI...They used to steal the trash from out in front of my house.” The state injected itself into the lives of activists in a variety of ways, with the result being that these activists were constantly reminded that they were being closely observed and monitored.

In the case of Joseph Buddenberg, the state didn’t even need a conviction to limit his activism. That case was dismissed without prejudice, meaning that the prosecutor

could re-indict if ample evidence was presented that a violation of the law had occurred. This meant increased scrutiny and the fear of domestic terrorist charges if members of the AETA 4 were connected to illegal activity. I asked Joseph Buddenberg if he was still engaging in animal rights activism, and he stated, “I don’t have much of a role. Kind of stepping away from it, out of survival and self-preservation.” He went on to state, “It’s kind of had a big chilling effect on me...I’ve been totally out of touch with my community and kind of just staying away from it.” Just an indictment, with no evidence of criminal activity, was enough to limit the activism of Buddenberg and therefore had a repressive effect on his animal rights activism.

The AETA also states that fines can be levied in addition to incarceration. This resulted in a million dollar restitution order against the SHAC 7 for their interference of the operations of Huntingdon Life Sciences (HLS). Josh Harper reported that a payment schedule hadn’t been issued at the time of our interview, but that one would eventually be issued and that he and the other SHAC defendants would then have send monthly payments to HLS. This restitution was a way in which the state is able to limit the material resources these activists could dedicate to their activism, and forces them to financially support a corporation that they find morally reprehensible.

One didn’t even need to be caught up in the legal system to feel the repressive effects of animal enterprise terrorism laws. ‘Elena’, an animal rights activist from the Midwest who was never charged for her activism, found herself along with three others added to the terrorist watch list in 2002 after attending a home demonstration as part of the SHAC campaign¹⁷. Her name was added to the list not due to any illegal activity but

¹⁷ This terrorist watch list was implemented after 9/11, and by 2009 there were over one million names on the list. For more information see: <http://www.aclu.org/technology-and-liberty/watch-lists>

because she was engaged in a home demonstration targeting HLS and its affiliates. This resulted in difficulties whenever she had interactions with government officials. There were four activists in a car that was pulled over after a home demonstration. 'Elena' reported one effect of being added to the terrorist watch list: "Every time we get pulled over for a regular traffic violation, they called for backup." She had come to expect difficulties when traveling internationally as well:

They would wait when I came off the plane with a list of names and check everyone's names off the list and when they came to my name they would take me into a special room and ask me questions about who my friends are, who, like what I do. And I was like 'I pass out vegan booklets.' 'Why vegan booklets?' It was totally absurd because, like, there was no reason for any of this to happen...I think it took like three or four years, my name came off the list.

She summed up the things she faced because of her activism:

I had already been interrogated, and had been taken aside to special rooms, had my stuff gone through, had my car confiscated, and people looking at my house. There were detectives that came into my house at one point because this friend of mine had ran away and she was involved in SHAC stuff and they came to my house to look for her but she wasn't there. But, um, there was an excuse to look through the house.

One of the most significant effects of repression is the disruption of activist's lives. This includes personal relationships, careers, and everyday choices that are disrupted or altered because of fear of state sanctions. Josh Harper stated that he chose to live alone because of the fear that a roommate might do something as simple as possess a knife or other weapon: "Now that I'm a felon I have to worry about a lot of things that average people don't think about. I have to live alone rather than having roommates, and the reason for that is anything that could be construed as a weapon, um, can send me back to prison. Even if I don't own it, even if I've never seen it before." Because of this, he stated: "I have to work 40 hours a week, which I wouldn't choose to do if it weren't for

probation.” This meant that his living costs were significantly higher than they would have been otherwise and that he had to devote more time to wage labor, time that he might otherwise spend on his activism, which in turn has a repressive effect. Darius Fullmer spoke about the disruption to his private life caused by going to prison: “What do you do about your job? What do you do about your apartment? What about your car, you have bills you have to pay.” He spoke of the strains on personal relationships, stating: “I was in a relationship that ended during my time in prison.” Joseph Buddenberg spent a month in a halfway house followed by six months on house arrest after his indictment. He stated about his house arrest: “From March to September 2009 I was on house arrest for a good six months, unable to leave my house or do much of anything...About two to three months into it I was given a 5pm curfew and was allowed to seek work and look for jobs. So that was it. Yeah, it was a very stressful road.” His marriage ended during this ordeal, and he stated about the relationships with his co-defendants: “It definitely fractured our relationship. We’re scared to contact each other because you know, we’re kind of in this legal void where we don’t know what’s going to happen next...Any contact with your co-defendants furthers the conspiracy.” Repression aims to increase the costs for participating in activism (Keith 2012). These costs can be monetary as well as physical, such as being imprisoned. But these costs can also include major disruptions to activist’s personal lives and personal relationships. The effects on activist’s personal lives are a little discussed aspect of repression. Any of these events in and of themselves may not amount to much, but collectively these stories show a systematic pattern of disruption to the lives of animal rights activists.

Facing government sanctions, whether charged with a crime or not, has a repressive effect on animal rights activism. In the case of prison, one's physical self comes under control of the state. While being on probation is less restrictive one still faces increased scrutiny and control by the state, as well as an increased number of acts that can bring about state sanctions as compared to those not on probation. And one can face state sanctions even without being charged with a crime.

But what about those activists who don't find themselves entangled in the legal system? Do animal enterprise terrorism laws alter their activism as well? Was Will Potter correct when he stated: "Perhaps the greatest danger of this legislation, though, is that it will impact all animal activists, even those that never have to enter a courtroom" (House Subcommittee 2006: 21)? This is a harder question to answer, but there is at least anecdotal evidence that animal rights activists have altered their activism in response to this state repression, sometimes in surprising ways.

There was widespread awareness of the AETA among animal rights activists that I interviewed¹⁸. This can be attributed to the media exposure of the SHAC 7 and AETA 4 cases, as well as a concerted effort by the movement to educate activists about the law. Josh Harper stated: "I don't think many animal rights activists are around right now who haven't heard of the AETA. If you go to a conference nowadays, there's going to be a panel on it. If you read movement websites, or movement publications, even very mainstream publications like Veg News, you're going to see mention of the law." Michael Weber, program director for the group Farm Animal Rights Movement (FARM) which organizes one of the major annual animal rights conferences in the US, reported

¹⁸ This wasn't universal, as several activists I interviewed had either not heard of the AETA, or didn't have a good understanding of what the AETA is.

about their conferences: “We have one plenary panel every year about activist repression, and we have break away panels for people that want to get more, get the nitty gritty details about it.” Activists seemed to be less aware of the AEPA prior to the passage of the AETA and the SHAC 7 case, as several activists reported not being aware of the law, or if they were aware they didn’t concern themselves with it. The exposure of the SHAC 7 and AETA 4 cases within the movement increased awareness within animal rights circles of the AETA.

The responses to animal enterprise terrorism laws by activists varied. Lauren Regan, as reported earlier, stated that above ground activists were concerned about protesting, and that this concern altered at least some of those activist’s decisions on whether or not to demonstrate at a circus in Eugene, Oregon. Michael Weber of FARM, in speaking about their work on fighting the AETA and other animal enterprise terrorism laws, stated: “They’re unlikely to ever directly affect the activism that we are doing on a daily basis. I can’t imagine that you know, giving out free vegan food is going to become terrorism anytime soon...But we think, we know it’s very important to support the entire movement’s efforts, and to have as unified a movement as possible.” ‘Daniel’, a regional organizer for a major animal rights organization, was unsure whether animal enterprise terrorism laws affected events he organized, stating: “It’s hard to know for sure what all the complex things that bring people to a demo or prevent them from coming to a demo...I don’t know if I’ve really thought about it in that sense of trying to make some comment about whether the AETA, whether all of our demos seem to have downsized since then.” He went on to state: “Anecdotally, I can say that definitely the AETA has had a chilling effect. I mean, statistically I can’t really answer that.” ‘Maggie’, an

animal rights activist involved in a number of groups as well as organizing her own events in a major city in the western part of the US, reported when asked if she adjusted her activism because of the AETA, stating: “I haven’t too much, because I’m more of a mainstream activist...I do a lot of support work for other activists, but I’m pretty mainstream.” But she is aware of the possible ramifications, adding: “I’m more focused in on other people who do stuff I wouldn’t necessarily do, but am more conscious of what could happen to them, what the recourse could be for some people.” There is a sense that if one is a mainstream above ground activist that one will not be subjected to these laws, and therefore altered their activism little. An awareness of the law permeates the whole movement, even if it doesn’t directly alter activism. This was summed up by Michael Weber, where he stated: “FARM has done civil disobedience of like blocking trucks from getting into slaughterhouses and stuff like that. And it’s very unlikely that that would get prosecuted under the AETA, but it fits within the definition.”

What we can measure is the number of incidents attributed to animal rights activists over the years. Peter Young (2010) has catalogued actions claimed by ALF and other animal rights groups over that past 30 years. This isn’t an official count, but it does give us a sense of the overall activity of the animal rights movement and how that activity has changed. A decreasing trend in animal rights incidents occurred from the early 1990’s to 2008, with a high of 177 incidences in 1996 and a low of 20 in 2006. There hasn’t been a year since 2002 where the number of incidents has exceeded any year prior to 2002. It is also important to note that the FBI declared the Animal Liberation Front and the Earth Liberation Front the number one domestic terrorist threats in the US in 2002. In 2002, in the shadow of 9/11, Congress amended the AEPA by increasing the

penalties for ‘animal enterprise terrorism’. It is impossible to say with certainty why animal rights activism decreased over this time period. It was most likely a confluence of factors the increased attention paid by federal law enforcement to the animal rights movement and ever harsher penalties associated with animal rights activism.

Activism in the Face of Repression

Although animal rights activism has diminished over the last decade it has not disappeared, as activists continue to innovate and push for social change. Michael Weber reported about activist’s responses to animal enterprise terrorism laws: “There’s a debate as to whether the better approach is to push the laws as close as you possibly can because that shows the powers that be that you’re not backing down. Or the better approach is to come up with completely new tactics that they don’t even have laws regarding yet.” This seemed to be a common theme as other activists and lawyers responded with resistance even while acknowledging that repressive laws like the AETA affect activism. Will Potter, after having talked to activists around the country, reported: “I have heard a lot of fear, but at the same time it really has been inspiring to me to be able to do speaking events and to talk to various types of activists around the country who are pursuing their work regardless of any issues they may have, because they care very deeply about it, and they know it has to be done.” ‘Daniel’, the regional organizer for an animal rights organization, expressed a similar sentiment, noting: “I think there is a strong pushback among activists. And there is a clear dialogue also about not letting these industries prevent us from doing what we need to do.”

It is also apparent that even those activists who have faced the harshest sanctions for their activism continue to be find ways to be active in the animal rights movement.

Josh Harper reported that he was careful about situations that he put himself in given the likelihood that he would return to prison if he were arrested. But he also found outlets for his activism that are less risky. He began to collect old movement publications, scan them and put them online with commentary as a history of the movement and as a way to educate younger activists. He continues to attend demonstrations as well as. Peter Young is still active and has travelled extensively for speaking engagements. He is also involved with local animal rights groups in Salt Lake City, about which he stated: “I was involved on a local level once I got off probation...Really I’m doing a lot of what I did at 19.” Darius Fullmer reported: “I’ve done a lot of work with Vegan Outreach, educating people about the benefits of a vegan diet...Also spent six months this past year volunteering with Sea Shepherd Conservation Society. I worked on one of their campaigns in Antarctica, to protect whales there.” In the case of these activists, their activism was extremely limited during the times they spent in prison and on probation, but each found other outlets for their activism. Although their activism may have been altered, it was far from eliminated, even for those who faced the most severe repression.

An awareness of the AETA permeated the animal rights movement, as many animal rights activist expressed an awareness of the Act, if not a complete understanding of it. There is anecdotal evidence, as well as some quantitative evidence, that radical animal rights activism has decreased over the last decade, and began to decline years prior to the passage of the AETA and the SHAC 7 convictions. It is more likely that a combination of factors resulted in a decrease of activism. These may include increased scrutiny by law enforcement, a more generalized atmosphere of repression of dissent

after 9/11, and the passage of animal enterprise terrorism laws with an ever-increasing level of penalties.

Conclusion

Animal enterprise terrorism laws, according to Goldstein's (2001) instances of repression, qualify as political repression of the animal rights movement on a number of levels. The first and most significant is that laws like the AETA, through vague and overbroad language, have the effect of potentially or actually criminalizing speech activity, which runs counter to the First Amendment of the Constitution. Activists, like those involved in the SHAC 7 and AETA 4 cases, were prosecuted or charged based on what is widely considered speech activity, which is Goldstein's first instance of repression. These activists were put under state control, severely limiting and/or eliminating the amount and type of activism they could engage in. These laws, by labeling animal rights activists as terrorists, also add additional penalties on already existing criminal statutes, and have the effect of biasing judges and juries against activists charged as 'terrorists.' There were also other forms of repression, including the use of legislative hearings that had no legislative purposes (they weren't considering actual legislation). Repression happened at multiple levels, including the use of the court systems to limit activism, harassment, and the creation of fear and uncertainty in activists. It is apparent that state repression of the animal rights movement did occur and was based on the political beliefs of the movement's participants. These laws violated at least five of Goldstein's instances of repression, and had a direct and immediate effect on animal rights activists. But it is also apparent that even as state repression had some effect on animal rights activism, it didn't succeed in eliminating it, as activists innovate and

continue with their activism despite the possibility of facing state sanctions for their activism.

CHAPTER VI

CONCLUSION: WHEN ACTIVISM BECOMES TERRORISM

The animal rights and welfare movements have made great strides in redefining the relationship between human and non-human over the course of their existence. Dozens upon dozens of laws have been passed at both the state and federal level extending various forms of protection to non-human animals, from criminalizing dog and cock fighting, to setting a base level of care for animals in research labs, to protecting endangered species. A level of concern has been extended to non-human animals, especially as they are treated at the hands of humans. But the animal rights movement, arising in the 1970s, challenged not just the treatment and welfare of non-human animals but whether humans had a right to use non-human animals for their own ends at all. In the process, the animal rights movement began employing new tactics and strategies as part of their movement repertoire. A strategy of direct action came to define the more radical wing of the animal rights movements, as they expanded their movement repertoire to include property destruction, vandalism and harassment of researchers and corporate employees. In the process the radical animal rights movement caused tens of millions of dollars worth of damage. They also became the focus of a well organized and politically powerful industry backed counter-movement, led by the pharmaceutical and bio-medical industries who have a large vested interest in the use of non-human animals for research.

Social Construction of Animal Rights Activism as Terrorism

As a result of the counter-movement's efforts, the term terrorism or eco-terrorism has come to be commonly used to describe radical animal rights activism, not just by the counter-movement but by federal law enforcement, elected officials and the media as

well. The rise of the use of terrorism to describe animal rights and environmental direct action was a concerted effort by opponents of these movements. Even though it is well accepted by political observers that the term terrorism is ill-defined (Hoffman 2004; Turk 2004), a terrorist label has the power to marginalize movements and viewpoints in a way that few other terms do (Hoffman 1998), especially in a post-9/11 world. This combination of ambiguity about what terrorism is and isn't, combined with the power of such a pejorative label, created opportunities for the social construction of terrorism to serve very specific interests. Conservative activist Ron Arnold coined the term eco-terrorism in 1983, and over the last 29 years the term has become widely used to describe forms of environmental and animal rights activism, especially direct action. Its currently ubiquitous usage masks the fact that what is often called eco-terrorism was once referred to only as vandalism (Kuipers 2009). This construction and extension of terrorism to describe what was once called vandalism was a purposeful campaign, and tells us something about the dynamics between movement, counter-movement and the state.

The way we understand terrorism is a process of social construction (Turk 2004), and is therefore not a given. Rather it develops out of personal and social interaction. The social construction of terrorism can be seen especially in the disparate treatment and labeling of the radical animal rights and anti-abortion movements. Both use direct action as a movement strategy, using similar tactics such as blockades, arson, property destruction, vandalism and harassment. A major distinction between the two movements is the use of assassination by the radical elements of the anti-abortion movement. Since 1992, there have been eight murders of abortion clinic workers and doctors attributed to anti-abortion activists. There has not been a single case of murder, or even assault,

attributed to animal rights activists in the United States, yet it is the animal rights movement that is repeatedly labeled a terrorist movement by federal law enforcement, pharmaceutical industry representatives, and elected officials. Rather than terrorism being determined by the use of violence against either property or persons for the purposes of trying to coerce a population to bring about social and political change (to paraphrase the FBI's definition of terrorism), it would seem that factors external to the definition are also taken into consideration. As we saw in the cases of Daniel Andrea San Diego and Scott Roeder, actions such as arson are more likely to be referred to as terrorism if committed by animal rights activists, while the murder of Dr. George Tiller by Scott Roeder was not referred to as terrorism, even though it was clearly politically motivated. The extreme wing of the anti-abortion movement has shown itself much more prone to and accepting of interpersonal violence, but it is the radical animal rights movement that is saddled with the label of a terrorist movement.

There are other differences that exist between the anti-abortion and animal rights movements. These include the animal rights movement being more politically marginalized and lacking the same levels of popular support as compared to the anti-abortion movement; the power of each movement's political opponents; and that the animal rights movement is largely identified as a leftist movement, while the anti-abortion movement is based in evangelical Christian and Catholic ideologies aligning them with the right wing or conservative side of the political spectrum¹⁹.

¹⁹ Goldstein found that leftist movements were much more likely to face repression because they were more likely to challenge core aspects of American political and economic life.

Counter-Movement and Interest Group Politics

A major difference between the two movements is the political power of the targets of their social movement activity. The animal rights movement has made the pharmaceutical industry a primary target of their activism. This is a wealthy and politically powerful industry, with a vested interest in the use of non-human animals as research subjects. Industry interests were able to get legislation aimed at limiting animal rights activism introduced at the state level through the American Legislative Exchange Council (ALEC). Model legislation was developed within ALEC and was then introduced in state houses around the country. Similar laws were also introduced at the federal level. One of these, the Animal Enterprise Protection Act (AEPA), was passed in 1992 and created the crime of ‘animal enterprise terrorism’. The AEPA made it a crime of terrorism to interfere with the operation of an enterprise that uses non-human animals for profit and/or research. The law was amended twice, in 1998 and 2002, each time increasing the penalties for those convicted of violating the AEPA. In 2006, the law became the Animal Enterprise Terrorism Act (AETA), again increasing the penalties associated with the violation of the AETA. It also expanded the definition of the type of entity protected by the act to include enterprises that use non-human animals for profit and/or research and any enterprises that have a business relationship with an animal-using entity.

The diversity of business enterprises that use non-human animals for profit and/or research encompasses a large swath of American business activity. This includes grocery stores, restaurants, creameries, retail clothing stores that sell wool or fur, slaughterhouses, feedlots, animal testing corporations, companies that test household products on animals,

and many others. When we take into account entities that have relationships with these businesses, the number of enterprises potentially protected under the AETA becomes vast, and can include banks, caterers, accounting firms, janitorial services, office suppliers, and dozens of other types of businesses. One way to violate the AETA is to cause a loss of profits. This act makes it a crime of terrorism to participate in an action that causes a loss in profits for any of these innumerable entities. Nominally this is an act that targets animal rights activists, but the law cannot state that explicitly as it would make the law viewpoint based, which is likely unconstitutional. The increase in the number of enterprises protected by the AETA increases what can be considered ‘animal enterprise terrorism’. The loss of profits was especially problematic for many of my interviewees as it ran counter to the long history of social movement activity in the US that have used economic disruption as a movement strategy. Many movements that had a profound effect on American society employed economic disruption as a movement strategy, including the industrial labor movement, the farm workers union grape boycott, and the lunch counter sit-ins of the Civil Rights movement. The success of the animal rights counter-movement in getting legislation passed that relabeled accepted social movement practices as ‘terrorism’ concerned activists, civil liberties and defense lawyers, and tells us something about interest group politics in the United States.

The power of industry groups with narrowly defined interests was evident in the hearings on the AETA and animal rights movement in the years leading up to the passage of the AETA. There was just one hearing on the AETA in the House of Representatives, and no hearings in the Senate. In the Senate, there were three hearings examining or investigating animal rights activism, but these seemed to have no legislative purposes

(they weren't discussing specific legislation, even though the AETA was occasionally mentioned). This can be seen as an instance of repression utilizing Goldstein's study of political repression in the United States from the post-Civil War era through the 1970s. He found that legislative hearings that had no legislative purpose were often employed as a way of singling out and repressing specific social movement activity. The pharmaceutical and biomedical industries were heavily represented in these House and Senate hearings, especially when compared to animal rights activists who were the supposed focus of the hearings.

That the pharmaceutical industry was so well represented makes sense considering that the industry was consistently the largest contributor of political donations, as well as being the largest spender on lobbying services, between the years 1998 and 2006, when the AETA passed. The political science literature has conflicting findings concerning the role of money in politics, especially considering whether or not campaign donations equal favorable floor votes. What seems more consistent is not that money buys votes, but that political donations lead to favorable treatment, especially at the committee level. Considering that the floor votes on the AETA in both the House and Senate were largely formalities, it was in committee hearings that any meaningful debate would have taken place. A glance at the list of panelists involved in these hearings shows that industry interests were favorably represented, as a large majority of panelists represented industry interests or were animal researchers themselves (see Appendix B for a list of hearing panelists and submitted statements). The disparate treatment of the panelists by committee members was also apparent. Panelists sympathetic to the viewpoints of animal rights activists such as Dr. Jerry Vlasak and Will Potter were

regularly demeaned and cut off during the course of the hearings, while industry representatives and federal law enforcement officials were given adequate time to express themselves and were treated with respect.

The pharmaceutical industry has a multitude of interests. In the years previous to the passage of the AETA they lobbied for a number of statutes and reforms. The case of animal enterprise terrorism laws show that if the pharmaceutical industry finds a public policy in its interest it is well positioned to gain a favorable reception in Congress. The industry was well aware that it was being targeted by animal rights activists, as elected officials, federal law enforcement and industry representatives all mentioned the millions of dollars of damage inflicted by the animal rights movement. It was clear that the industry wanted federal legislation further criminalizing animal rights activism targeting animal-using enterprises, and this was a view shared with federal law enforcement and elected officials. That business interests have primacy in the legislative process is well established. Political theorists from various ideological viewpoints and perspectives agree that business interests in a capitalist state have greater access to and influence on the political process than other groups in society. This is just one small example, but is informative about the way interest group politics actually work inside the House and Senate chambers. (See Appendix C for a breakdown of political spending).

The Question of Repression

Conditions for Repression

Ultimately, the question for this dissertation is what form did political repression of the animal rights movement take? Goldstein (2001) studied the long history of political repression in the United States and developed a comprehensive framework for

what conditions resulted in a greater likelihood of repression, as well as developing eleven distinctive instances that constituted political repression. Where it was once thought that only authoritarian regimes engaged in social movement repression, we now know that political repression is a practice that all types of governments engage in, from authoritarian regimes to pluralistic democracies (Davenport 2007).

There were social and political conditions that laid the groundwork for the passage of repressive policies, especially following 9/11. September 11th was a transformative political shock, in that it was, at least officially, unforeseeable and had the potential to significantly alter political and social relationships. The Bush Administration responded to this shock through a public policy of war, both metaphorical and literal. With a year and a half of 9/11, the US was involved in two wars in southwest Asia, as well as covert wars around the globe and domestically. Political observers, going back to the nation's founding and even further, have noted that war abroad is likely to lead to a loss of liberty at home, in other words, an increase in repressive policies domestically. After the political shock of 9/11, there was an increase in repressive policies and discussion of implementing repressive policies. This included the passage of the USA PATRIOT Act, passed just days after the attacks, which was reauthorized in 2006. Leone (2003) argues that the USA PATRIOT Act is "the most far-reaching and invasive legislation passed since the Espionage Act of 1917 and the Sedition Act of 1918" (7). There was also discussion of suspending Habeus Corpus, leading to indefinite detention without trial. There were also covert programs, only some of which we know about. One of those, the National Security Agency's wiretapping program, was eventually ruled illegal (Savage and Risen 2010). Goldstein (2001) found that the one thing that had to

change in order to implement or expand repressive policies was that the attitudes of policy makers had to change. It was apparent that the amenable attitudes of policy makers towards an expansion of repressive policies was relatively stable, as the reauthorization of the USA PATRIOT Act passed with ease five years after its initial passage.

There were also characteristics of the animal rights movement that made them targets of political repression. There were few, if any, movements that had caused as much economic damage over the course of the last 30 years as the animal rights movement. Goldstein found that an increasing level of dissent was one factor that might lead to an increase in political repression. The radical animal rights movement, with its use of direct action, began to cause real problems for animal-using industries beginning in the late 70s, and it ramped up its activism through the 80s, 90s and 00s. The decentralized organizing model used by the Animal Liberation Front and Stop Huntingdon Animal Cruelty, along with the use of underground direct action, posed problems for federal law enforcement in catching those who actually committed crimes. This level and type of dissent made the animal rights movement a target of repressive policies.

Goldstein also found that movements that could be presented as ‘strange’ were also more likely to face repression. The rejection of the use of animal products by many of the animal rights activists I interviewed tagged them as outside the mainstream. Veganism, a diet defined by the rejection of all animal products, was common amongst my interviewees. Cherry (2006) found a close relation between veganism as a cultural movement and a belief in animal rights. The presence of veganism in the larger

population is difficult to discern, but it is somewhere around 1% of the population. The common presence of veganism amongst animal rights activists doesn't in and of itself make repression more likely, but that the animal rights movement is far removed from much of the public in their views on the use of animals tags them as an appropriate target for repression. There is also a moral certainty that exists in the animal rights movement that leaves little room for compromise. The radical animal rights movement rejects the commonly held belief that humans should be able to use non-human animals for our own ends. The rejection of commonly held beliefs is another condition for repression according to Goldstein, as is having a leftist political orientation. The animal rights movement aims to extend rights and does so by attacking corporate profits as one of its tactics. This combined with the common use of the language of liberation and exploitation would seem to mark them as a leftist political movement.

Goldstein also found that a lack of opposition by key elites to the expansion of repressive policies was a condition that enabled the creation and extension of such policies. By key elites he meant business leaders, low-level government employees, the media, academics and labor representatives. It's not that the key elites had to back an expansion of repressive policies, but only had to *not* come out in opposition to them. The Congressional hearings leading up to the passage of the AETA would have been one of the platforms for key elites to express their opposition, yet the industry leaders, government officials, and academics that testified tended to either voice support for an expansion of animal enterprise terrorism laws, or didn't express an opinion. There was no organized opposition to the expansion of these laws, not even by civil liberties organizations, largely because they were tied up with other civil liberties issues in the

post 9/11 era. Issues around animal enterprise terrorism laws like the AETA were largely absent from the mainstream media as well, with only two op-eds appearing in newspapers across the country in the year prior to its passage (one for and one against the AETA, both in Wisconsin). There were no news stories and a handful of letters to the editors around the country. In effect, the media, as a key elite, was not in opposition to the expansion of repressive laws targeting the animal rights movement.

Instances of Repression

States apply sanctions in the form of social movement repression with the goal being to eliminate or limit the challenges that social movements present. The goal of animal enterprise terrorism laws is to limit challenges by the animal rights movement. Goldstein developed eleven instances of repression based on his study of the history of political repression in the modern United States. Of the eleven instances, at least five are applicable to the development and implementation of animal enterprise terrorism laws.

The first is that laws like the AETA are vaguely worded and don't include 'clear and present danger' language, and therefore have the potential to affect constitutionally protected speech activities. The AETA fails to define with clarity terms such as interfere, economic damages, reasonable fear, and animal enterprise. By failing to define these terms the potentially repressive effects of the law are compounded, as judges, prosecutors, activists and defense lawyers are left unsure of what qualifies as actual violations of the AETA. The range of business enterprises was discussed earlier, and in some sense could encompass a majority of business activity in the US. That interfere and damage are left undefined means it might encompass any activity that has historically been considered legitimate social movement activity, including boycotts, blockades and

strikes. It's this type of vague language that has been used as a form of political repression against social movements throughout modern American history, and is being employed against the animal rights movement to limit activism in the name of animal rights.

Other instances of repression that apply to animal enterprise terrorism laws include the addition of penalties to already existing crimes, biased judges and juries, and the use of legislative hearings with no clear legislative purpose. I covered the former earlier in this chapter so will concentrate here on the use of additional penalties and biased judges and juries. Animal enterprise terrorism laws add additional penalties to already existing crimes, so that if the crime committed, whether it be harassment, vandalism or other forms of property destruction, is committed in the name of animal rights can have a terrorism label added on to it. This terrorism label, with all that it entails socially and legally, will follow a person convicted of animal enterprise terrorism through the legal and correctional systems. Both Peter Young and Josh Harper reported additional scrutiny and differential treatment because the terrorist label followed them to prison. 'Elena', who was never charged with a crime but found her name added to the terrorist watch list after attending a home demonstration as part of the SHAC campaign, stated that interactions with state officials, whether it be local police or customs agents, were always more complicated because her name was on the terrorist watch list. Peter Young also pointed out the contradiction in freeing mink in the name of animal rights versus doing it for personal gain, "If I stole the mink and sold them on the black market for money, that's just burglary. So it's a strange thing that the only variable between burglary and terrorism is that the second one is not motivated by selfish gain."

Having a case charged as terrorism also had the effect of biasing judges and juries. Joseph Buddenberg of the AETA 4, whose indictment specified no actual violations of the law, was denied bail and was sent to a halfway house followed by house arrest. The judge at his indictment hearing told him that it was one of the most chilling indictments he'd ever seen. In the case of the SHAC 7, it resulted in the impaneling of an anonymous jury. Anonymous juries have largely been used in cases of the mob and drug cartels, cases where physical violence and/or murder has been used against witnesses or other interested persons. There is at least some evidence that anonymous juries are more likely to find a defendant guilty, all other things being equal. An anonymous jury also meant that the defense was limited in what they could know about the jurors, adding the possibility that jurors could have a vested interest in HLS or its affiliates, and therefore were biased against the defendants.

There are multiple examples of repression from the passage and implementation of animal enterprise terrorism laws. At a minimum, five of Goldstein's instances of repression apply to animal terrorism enterprise laws. Two include criminalizing speech activity, one is the use of additional penalties on already existing crimes, one is the use of biased judges and juries, and finally the use of legislative hearings to single out and 'investigate' animal rights activism, with no apparent legislative purpose.

Repression at Work

Through cases like the SHAC 7 and AETA 4 we see that speech activity has been charged and prosecuted as animal enterprise terrorism. In the case of the SHAC 7, at least two activists were sentenced to prison time, probation and restitution for speech activities and conspiracy convictions. The SHAC campaign, aimed at shutting down the

animal testing corporation Huntingdon Life Sciences, used a decentralized organizing strategy and underground direct action to target HLS and enterprises that did business with HLS. At least several of the SHAC activists weren't actually charged with any of the substantive crimes committed in the name of SHAC, such as property destruction, arson, harassment or stalking, but were charged and convicted of publicizing and advocating those actions. Josh Harper was convicted of conspiracy to violate the AEPA and conspiracy to use a telecommunications device for the purpose of harassment. His crime was that he advocated targeting HLS and its business partners through black faxing²⁰. Because animal enterprise terrorism laws like the AEPA and the AETA are so vaguely worded, it makes convicting someone of violating these statutes much easier. A successful prosecution becomes much simpler if a prosecutor doesn't have to prove that a defendant violated a specific statute with well-defined boundaries. In the case of the AETA 4, a conviction was never attained, but had repressive effects through an indictment on animal enterprise terrorism. The activists charged in this case were accused of standing on a sidewalk outside of a researcher's house in California, chanting and drawing on the sidewalk with chalk. The case was eventually dismissed after a year and a half of court proceedings. The judge cited a lack of specificity in his dismissal. The case was dismissed without prejudice, meaning the prosecutor could re-file the indictments if she included more detailed information on the actual crimes committed. This left the activists under a cloud of uncertainty long after the case was dismissed, thereby limiting their activism in significant ways. Animal rights activists were fully

²⁰ Black Faxing is the faxing of a black sheet of paper over and over again to a targeted business to drain their fax machine of ink.

aware of these two cases, meaning that these convictions and indictments had a ripple effect through animal rights communities.

The most effective form of repression is the imprisoning of activists. By imprisoning activists, the state takes physical control over the activists thereby eliminating opportunities for activism. We saw this in the cases of the SHAC 7, as well as the case of Peter Young, who spent two years in prison for releasing mink from fur farms in the Midwest. But this physical control over activists didn't always require a conviction. Joseph Buddenberg, a member of the AETA 4, was held in a halfway house after arraignment, and once released from the halfway house was placed on house arrest. Buddenberg, like the others, had his physical activities controlled and regulated by the state, limiting or eliminating opportunities for activism.

This state control extends to life after prison as well, through the use of probation and restitution. Activists on probation had to severely limit their range of activities. As Peter Young stated: "But as soon as I got out, I right away began to accept that I was also somewhat muzzled even out of prison because I was on probation." Josh Harper expressed a similar sentiment when he stated that being rounded up in a mass arrest at a demonstration didn't mean a night in jail for him anymore, but that it might mean a return to, and significant stay in, prison. The SHAC 7 were also ordered to pay one million dollars in restitution to HLS. Through the use of restitution and fines the state limits the resources that could be dedicated to activism.

Activism

There is little doubt that the pharmaceutical industry and the federal government set out to implement repressive policies. And they were largely successful in that

endeavor. The long term effect on animal rights activism is yet to be seen. There is some indication that direct action has diminished in recent years, but the challenges to animal using industries by activists is far from being eliminated. Those in the activist community, aware of the effects of these laws, continue to innovate. And the government hasn't increased their abilities to actually capture those that commit underground direct action against animal enterprises, but only increase the punishment for those that are caught, indicted, and/or convicted. And there are indications that animal rights activists continue to evolve their tactics and strategies, and discuss new ways of approaching their activism. Even those who spent time in prison, once out of prison, have found outlets for their activism around animal rights. Animal rights as a social movement has ingrained itself into American society, as we have seen in the increase in concern for non-human animals of all stripes, from pets to research subjects to food animals, from circus animals to wild animals. Campaigns and undercover investigations continue to result in victories for the animal rights movement and continue to receive national and international attention. The next several years should give us some indication on how effective animal enterprise terrorism laws have been in repressing animal rights activity, and by extension redefining the relationship between movement, counter-movement and the state.

APPENDIX A

METHODS

This dissertation relies on in-depth personal interviews and documentary research. The set of interviewees was a non-probability sample of individuals, including activists, defense attorneys, and civil liberties activists and attorneys. Documentary research was used to examine how elected officials, federal law enforcement and industry representatives discussed the animal rights movement during Congressional hearings and in other forums. Documentary research was also used to compare the role of campaign contributions in the political process. Documentary research was also used to examine the history and animal enterprise terrorism laws and prosecutions, as well as the history of laws limiting anti-abortion movement activity and prosecutions of anti-abortion activists. Twenty-three in-depth interviews were conducted, each approximately half an hour to an hour long.

This research began when I attended an animal rights conference in July of 2009 in Los Angeles. It was at that conference that I gained a sense of the view of animal rights activists concerning animal enterprise terrorism laws. It was at this conference that I became familiar with some of the people who are active in the animal rights movement publicizing and strategizing around animal enterprise terrorism laws, especially the Animal Enterprise Terrorism Act (AETA). Amongst the panels and presentations about everything from campaigns for the protection of elephants in zoos to eating a vegan diet, there were several sessions dedicated to the AETA. I became aware of several of my interviewees by seeing them present at this conference. I also conducted a series of searches for the term “Animal Enterprise Terrorism Act” using internet search services

like Google, as well as on scholarly sites including Lexis Nexis, Google Scholar, JSTOR, and Sociological Abstracts. It was through these searches that I became familiar with and/or followed cases being charged under the AETA. I also used internet searches to gain understandings of animal enterprise terrorism cases like the SHAC 7 and Peter Young.

Interviewees were contacted using a combination of snowball and purposive sampling. Most respondents waived confidentiality, and those who did not were assigned pseudonyms. The interviews were conducted either in person or on the phone, were recorded and the relevant interviews were transcribed. Five in person interviews were conducted in Eugene, and three cities in the large and midsize western cities. Eighteen interviews were by phone. Many of the interviewees are persons who speak in public on the issues of animal rights and animal enterprise terrorism laws. Interviewees were contacted in a variety of ways. There were several interviewees I met at the animal rights conference in 2009 and they gave me contact information directly. When I began my research I tended to contact these people via email. I also used social networking sites like Facebook to search for high profile animal rights activists, and contacted several people via this method, only one of which resulted in a successful interview. Interviews were voluntary, semi-structured and open-ended, and geared towards people's personal and professional experiences with animal enterprise terrorism laws. I would begin every interview with an informed consent form. During phone interviews I would begin the interview by asking them the questions from the consent form. For in person interviews I had the interviewees fill out the consent form prior to the interview beginning. I used

various interview guidelines, depending on the social and professional position of the interviewee.

I did not use information from all of my interviewees. As the dissertation took shape I found that several interviews did little to inform the research questions guiding this research, as there were several animal welfare activists who were unaware of the AETA and other animal enterprise protection and terrorism laws. I digitally recorded all interviews, downloaded the audio onto my password-protected computer, transcribed the interviews that were relevant to the research, and then coded the interviews. Semi-structured interviews provided a way to explore the topic in depth, leaving room for the interviewee to guide the interview in ways that they deem important. It was also a way to gain much needed opinions and informal ideas about the AETA that may not make it into official proclamations or documents.

The combination of interviews and documentary research allowed me to gauge the views of various populations in relation to animal enterprise terrorism laws. Through my interactions at the animal rights conference and the use of internet searches, I determined that there were several populations that had an interest in animal enterprise terrorism laws. This diversity of data will allow me to gather a detailed picture of the AETA, from its early inceptions through its current usage in the criminal justice system. There are varied interests in a law like the AETA. There are the economic interests of industries that use animals for research and/or profit. There are government officials who oversee the introduction and passage of such laws. There are animal rights activists and organizations both radical and mainstream that are threatened by the law. There are defense lawyers charged with representing clients charged under animal enterprise

terrorism laws. And there are civil liberties activists that are concerned with the larger implications of such a law and how it might affect the rights of protest and dissent for all social movements. I interviewed animal welfare activists who do not share an animal rights/liberation philosophy, but found that this population did little to inform my research on questions of political repression. I read transcripts of Congressional hearings held examining animal rights movement activity. Through the use of this documentation, I gained an understanding of the views of elected officials, federal law enforcement and industry representatives concerning animal enterprise terrorism and protection laws.

The use of FBI reports provided a sense of how federal law enforcement views political crimes committed by activists representing a wide range of interests. Documentary research allowed me to gain a general sense of the number and types of crimes committed by both the animal rights and anti-abortion movements. I also examined reports from and about the American Legislative Exchange Council regarding their push for animal enterprise terrorism laws at the state level. The website Opensecrets.org, run by The Center for Responsive Politics, provided comprehensive data on political spending by various industries and interest groups.

APPENDIX B

WITNESSES AND SUBMITTED STATEMENTS IN

CONGRESSIONAL HEARINGS

Animal Enterprise Terrorism Act. Hearing before the Subcommittee on Crime, Terrorism and Homeland Security, of the Committee on the Judiciary, House of Representatives. One Hundred and Ninth Congress, Second Session, HR 4239, Serial No. 109-125. May 23rd 2006.

Witnesses:

Brent McIntosh, Deputy Assistant Attorney General, Department of Justice Office of Legal Policy.

Dr. Michele Basso, University of Wisconsin, Department of Physiology, Ophthalmology and Visual Sciences.

William Trundley, Vice President of Corporate Security and Investigations, GlaxoSmithKline

Will Potter, Independent journalist and author, Administrator of the website *Green is the New Red*.

Submitted Written Statements:

Bobby Scott, Congressman from the state of Virginia

Sheila Jackson Lee, Congresswoman from the state of Texas

James Inhofe, Senator from the state of Oklahoma

Thomas Petri, Congressman from the state of Wisconsin

Frankie L. Trull, President, National Association of Biomedical Research

Bruce R. Bistrian, President of the Federation of American Societies for Experimental Biology

Mark Bibi, General Counsel for Life Sciences Research and Huntington Life Sciences

Gale Davy, Executive Director of the Wisconsin Association for Biomedical Research and Education

Keith Kaplan, Executive Director for the Fur Information Council of America

Wesley Smith, Senior Fellow at the Discovery Institute, Author

James Greenwood, President and CEO of the Biotechnology Industry Organization
California Healthcare Institute, which represents more than 270 biotech, pharmaceutical, and medical device companies and research institutions

Animal Enterprise Protection Coalition, representing 42 entities including pharmaceutical, bio-medical, agribusiness, and academic interests

William Denison, Managing Director of F2 Chemicals based in England

Dr. Amanda Carson Banks, President and CEO of the California Biomedical Research Association

Wendy Battin, wife of a lab animal supplier in England

The Foundation of Biomedical Research

Animal Rights: Activism vs. Criminality. Hearing before the Committee on the Judiciary, United States Senate. One Hundred Eighth Congress, Second Session. May 18, 2004.

Witnesses:

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

McGregor Scott, US Attorney, Eastern District of California.

William Green – Senior Vice President and General Counsel, Chiron Corp.

Jonathan Blum, Senior Vice President of Public Affairs, YUM! Brands

Stuart M. Zola, Director, Yerkes National Primate Research Lab, on behalf of National Association for Biomedical Research

Submitted Written Statements:

Jonathan Blum, Senior Vice President of Public Affairs, YUM! Brands

William Green – Senior Vice President and General Counsel, Chiron Corp.

Wayne Pacelle – CEO, Humane Society of the United States

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

Lisa Lange – VP Communications, People for the Ethical Treatment of Animals

McGregor Scott – United States Attorney, Eastern District of California.

Southern Poverty Law Center

Brian Cass – Managing Director, Huntington Life Sciences

Stuart M. Zola, Director, Yerkes National Primate Research Lab, on behalf of National Association for Biomedical Research

Patrick Leahy, Senator from the state of Vermont

Eco-Terrorism, Specifically Examining the Earth Liberation Front and the Animal Liberation Front. Hearing before the Committee on Environment and Public Works, United States Senate, One Hundred and Ninth Congress, First Session, May 18, 2005, U.S. Government Printing Office, Washington: 2007. S Hrg. 109-947

Witnesses:

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

Carson Carroll, Deputy Assistant Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

David Martosko, Director of Research, Center for Consumer Freedom

Bradley Campbell, Commissioner of New Jersey Dept of Environmental Protection

Dr. David Skorton, President of the University of Iowa

Monty McIntyre, Lawyer for Garden Communities

Submitted Written Statements:

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

Carson Carroll, Deputy Assistant Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

David Martosko, Director of Research, Center for Consumer Freedom

Bradley Campbell, Commissioner of New Jersey Dept of Environmental Protection

Dr. David Skorton, President of the University of Iowa

Monty McIntyre, Lawyer for Garden Communities

American Rivers, Friends of the Earth, Greenpeace, League of Conservation Voters, Natural

Resources Defense Council, Sierra Club, The Wilderness Society, Union of Concerned Scientists, and U.S. Public Interest Research Group, (Collective statement)

Jeffrey S. Kerr, General Counsel and Director of Corporate Affairs, The PETA Foundation

Wayne Pacelle, President and CEO, Humane Society of the United States.

Bennie G. Thompson, Ranking Member, House Committee on Homeland Security

Mindy Kursban, General Counsel and Executive Director, Physicians Committee for Responsible Medicine

Eco-Terrorism, Specifically Examining Stop Huntington Animal Cruelty (“SHAC”):
Committee on Environment and Public Works, United States Senate, One Hundred and Ninth Congress, First Session. October 26, 2005. Senate Hearing 109-1005.

Witnesses:

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

Barry M. Sabin, Chief of Counter-Terrorism Section, Criminal Division of the U.S. Department of Justice

Mark L. Bibi, General Counsel of Life Sciences Research Inc. and Huntingdon Life Sciences Inc.

Skip Boruchin, Legacy Trading Company

Richard P. Bernard, Executive Vice President and General Counsel, New York Stock Exchange

Jerry Vlasak, M.D., Press Officer, North American Animal Liberation Press Office

Submitted Statements:

Jim Jeffords, Senator from the state of Vermont

John Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigations

Barry M. Sabin, Chief of Counter-Terrorism Section, Criminal Division of the U.S. Department of Justice

Mark L. Bibi, General Counsel of Life Sciences Research Inc. and Huntingdon Life Sciences Inc.

Skip Boruchin, Legacy Trading Company

Richard P. Bernard, Executive Vice President and General Counsel, New York Stock Exchange

Jerry Vlasak, M.D., Press Officer, North American Animal Liberation Press Office

Bruce R. Bistrian, M.D., Ph.D., President, Federation of American Societies for
Experimental Biology
Doris Day Animal League
Jeffrey S. Kerr, General Counsel and Director of Corporate Affairs, People for the Ethical
Treatment of Animals
Jordana Lenon, National Association of Biomedical Research
Wayne Pacelle, President and CEO, Humane Society of the United States
Society for Animal Protective Legislation, American Society for the Prevention of
Cruelty to Animals, Animal Care and Welfare/SPCA, Animal Welfare Institute

APPENDIX C

POLITICAL DONATIONS AND SPENDING²¹

Political Spending by Animal Using Industries

Spending by Animal Using Agribusiness PACs, 1998-2006²²

Year/Industry	Dairy	Livestock	Poultry and Egg	Total
1998	\$1,279,254	\$680,859	\$405,518	\$2,365,631
2000	1,336,685	767,423	462,036	2,566,144
2002	1,525,415	721,471	639,543	2,886,429
2004	1,755,791	677,942	658,637	3,092,370
2006	2,307,786	808,853	550,832	3,667,471
Total	\$8,204,931	\$3,656,548	\$2,716,566	\$14,578,045

Spending by Pharmaceutical and Health Products PACs, 1998-2006

1998	\$4,071,221
2000	5,423,978
2002	6,832,882
2004	8,325,357
2006	11,437,897
Total	\$36,091,335

Spending on Lobbying by Animal Using Agribusiness Industries, 1998-2006

Year/Industry	Dairy	Livestock	Poultry and Eggs	Total
1998	\$2,245,000	\$965,320	\$420,000	\$3,630,320
1999	3,031,110	1,204,520	360,000	4,595,630
2000	2,738,900	1,534,227	552,000	4,825,127
2001	3,295,000	1,220,000	460,000	4,975,000
2002	4,314,700	1,402,376	900,000	6,617,076
2003	4,073,436	1,940,337	1,420,000	7,433,773
2004	4,839,800	1,996,744	1,400,000	8,236,544
2005	4,841,312	2,840,381	510,000	8,191,693
2006	3,820,045	3,450,924	703,000	7,973,969
Total	\$33,199,303	\$16,554,829	\$6,725,000	\$56,479,132

²¹ Source: Center for Responsive Politics, <http://www.opensecrets.org/>

²² Includes Dairy, Livestock, and Poultry and Egg industries

Spending on Lobbying By Pharmaceutical and Health Products Industry, 1998-2006

1998	\$69,238,254
1999	85,544,372
2000	100,640,942
2001	100,247,597
2002	120,001,798
2003	128,952,535
2004	143,833,240
2005	167,007,556
2006	187,153,619
Total	\$1,102,619,913

Political Spending by Animal Rights and Welfare Groups²³

Humane Society of the United States and People for the Ethical Treatment of Animals Combined Spending on Lobbying, 1998-2006²⁴

1998	\$840,000
1999	960,000
2000	1,140,000
2001	820,000
2002	1,080,000
2003	1,020,000
2004	1,060,000
2005	140,000
2006	90,000
Total	7,150,000

Humane Society of the United States, Independent Expenditures

2004	\$43
2006	308,345
Total	\$308,388

²³ A search of the Open Secrets website revealed few sources of political spending by such groups. Spending by Last Chance for Animals and Fund for Animals both fell below the reporting threshold. I included all information I could find for the years 1998-2006.

²⁴ Data for money spent lobbying by People for the Ethical Treatment of Animals only exists for years between 2000 and 2004.

APPENDIX D

ANIMAL ENTERPRISE TERRORISM LEGISLATION

The Animal Enterprise Protection Act of 1992

Public Law 102-346--Aug. 26, 1992

102nd Congress

An Act To protect animal enterprises.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Animal Enterprise Protection Act of 1992".

SEC. 2. ANIMAL ENTERPRISE TERRORISM.

(a) IN GENERAL.--Title 18, United States Code, is amended by inserting after section 42 the following:

"§ 43. Animal enterprise terrorism

"(a) OFFENSE.--Whoever--

"(1) travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility in interstate or foreign commerce, for the purpose of causing physical disruption to the functioning of an animal enterprise; and

"(2) intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding \$10,000 to that enterprise, or conspires to do so; shall be fined under this title or imprisoned not more than one year, or both.

"(b) AGGRAVATED OFFENSE.--

"(1) SERIOUS BODILY INJURY.-- Whoever in the course of a violation of subsection (a) causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 10 years, or both.

"(2) DEATH.--Whoever in the course of a violation of subsection (a) causes the death of an individual shall be fined under this title and imprisoned for life or for any term of years.

"(c) RESTITUTION.-- An order of restitution under section 3663 of this title with respect to a violation of this section may also include restitution--

"(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; and

"(2) the loss of food production or farm income reasonably attributable to the offense.

"(d) DEFINITIONS.-- As used in this section--

"(1) the term 'animal enterprise' means--

"(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing;

"(B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

"(C) any fair or similar event intended to advance agricultural arts and sciences;

"(2) the term 'physical disruption' does not include any lawful disruption that results from lawful public, governmental, or animal enterprise employee reaction to the disclosure of information about an animal enterprise;

"(3) the term 'economic damage' means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, or the loss of profits; and

"(4) the term 'serious bodily injury' has the meaning given that term in section 1365 of this title.

"9e) NON-PREEMPTION.--Nothing in this section preempts any State law."

(b) CLERICAL AMENDMENT.--The item relating to section 43 in table of sections at the beginning of chapter 3 of title, United States Code, is amended to read as follows:

"43. Animal enterprise terrorism."

SEC. 3. STUDY OF EFFECT OF TERRORISM ON CERTAIN ANIMAL ENTERPRISES.

(a) **STUDY.**-- The Attorney General and the Secretary of Agriculture shall jointly conduct a study on the extent and effects of domestic and international terrorism on enterprises using animals for food or fiber production, agriculture, research, or testing.

(b) **SUBMISSION OF STUDY.**-- Not later than 1 year after the date of enactment of this Act, the Attorney General and the Secretary of Agriculture shall submit a report that describes the results of the study conducted under subsection (a) together with any appropriate recommendations and legislation to the Congress.

Approved August 26, 1992.

The Animal Enterprise Protection Act of 2002

18 U.S.C.A. § 43 (2002 version)

(a) Offense.--Whoever-- (1) travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility in interstate or foreign commerce for the purpose of causing physical disruption to the functioning of an animal enterprise; and (2) intentionally damages or causes the loss of any property (including animals or records) used by the animal enterprise, or conspires to do so, shall be punished as provided for in subsection (b).

(b) Penalties.--

(1) Economic damage.--Any person who, in the course of a violation of subsection (a), causes economic damage not exceeding \$10,000 to an animal enterprise shall be fined under this title or imprisoned not more than 6 months, or both. (2) Major economic damage.--Any person who, in the course of a violation of subsection (a), causes economic damage exceeding \$10,000 to an animal enterprise shall be fined under this title or imprisoned not more than 3 years, or both.

(3) Serious bodily injury.--Any person who, in the course of a violation of subsection (a), causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 20 years, or both. (4) Death.--Any person who, in the course of a violation of subsection (a), causes the death of an individual shall be fined under this title and imprisoned for life or for any term of years.

(c) Restitution.--An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution--

(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; (2) the loss of food production or farm income reasonably attributable to the offense; and (3) for any other economic damage resulting from the offense.

(d) Definitions.--As used in this section--

(1) the term "animal enterprise" means-- (A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; (B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or (C) any fair or similar event intended to advance agricultural arts and sciences; (2) the term "physical disruption" does not include any lawful disruption that results from lawful public, governmental, or animal enterprise employee reaction to the disclosure of information about an animal enterprise; (3) the term "economic damage" means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, or the loss of profits; and (4) the term "serious bodily injury" has the meaning given that term in section 1365 of this title.

(e) Non-preemption.--Nothing in this section preempts any State law.

The Animal Enterprise Terrorism Act of 2006

To provide the Department of Justice the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terror.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Animal Enterprise Terrorism Act”.

SEC. 2. INCLUSION OF ECONOMIC DAMAGE TO ANIMAL ENTERPRISES AND THREATS OF DEATH AND SERIOUS BODILY INJURY TO ASSOCIATED PERSONS.

(a) IN GENERAL.—Section 43 of title 18, United States Code, is amended to read as follows:

“§ 43. Force, violence, and threats involving animal enterprises

(a) OFFENSE.—Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—

(1) for the purpose of damaging or interfering with the operations of an animal enterprise; and (2) in connection with such purpose—

(A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

(B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

(C) conspires or attempts to do so; shall be punished as provided for in subsection (b).

(b) PENALTIES.—The punishment for a violation of section (a) or an attempt or conspiracy to violate subsection (a) shall be—

(1) a fine under this title or imprisonment not more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and—

(A) the offense results in no economic damage or bodily injury; or

(B) the offense results in economic damage that does not exceed \$10,000; (2) a fine under this title or imprisonment for not more than 5 years, or both, if no bodily injury occurs

(A) the offense results in economic damage exceeding \$10,000 but not exceeding \$100,000; or

(B) the offense instills in another the reasonable fear of serious bodily injury or death; (3) a fine under this title or imprisonment for not more than 10 years, or both, if—

(A) the offense results in economic damage exceeding \$100,000; or

(B) the offense results in substantial bodily injury to another individual; (4) a fine under this title or imprisonment for not more than 20 years, or both, if—

(A) the offense results in serious bodily injury to another individual; or 1

(B) the offense results in economic damage exceeding \$1,000,000; and (5) imprisonment for life or for any terms of years, a fine under this title, or both, if the offense results in death of another individual.

(c) RESTITUTION.—An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution—

(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;

(2) for the loss of food production or farm income reasonably attributable to the offense; and

(3) for any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.

(d) DEFINITIONS.—As used in this section— (1) the term ‘animal enterprise’ means—

(A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;

(B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or

(C) any fair or similar event intended to advance agricultural arts and sciences; (2) the term ‘course of conduct’ means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose; (3) the term ‘economic damage’—

(A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, the loss of profits, or increased costs, including losses and increased costs resulting from threats, acts or vandalism, property damage, trespass, harassment, or intimidation taken against a person or entity on account of that person’s or entity’s connection to, relationship with, or transactions with the animal enterprise; but

(B) does not include any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise; (4) the term ‘serious bodily injury’ means—

(A) injury posing a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

and (5) the term ‘substantial bodily injury’ means—

(A) deep cuts and serious burns or abrasions; (B) short-term or nonobvious disfigurement; (C) fractured or dislocated bones, or torn members of the body; (D) significant physical pain; (E) illness; (F) short-term loss or impairment of the function of a bodily member, organ, or mental faculty; or (G) any other significant injury to the body.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed— (1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution; (2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed, or to limit any existing legal remedies for such interference; or

(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this action, or to preempt State or local laws that may provide such penalties or remedies.’’.

(b) CLERICAL AMENDMENT.—The item relating to section 43 in the table of sections at the beginning of chapter 3 of title 18, United States Code, is amended to read as follows: ‘‘43. Force, violence, and threats involving animal enterprises.’’.

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