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Animal Activism and the Ethics of Terrorism

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Abstract

Terrorism is a subject deeply connected to the issue of animal welfare. This has not always been the case. Whereas it is definitely true that some criminal activity has been justified in the name of animal welfare, misdemeanors and even felonies are of a very different order than terrorism. The charge of terrorism can strip a person off their most fundamental rights, even without trial. Animal terrorism has not witnessed quite such a situation, although a number of animal activists who have committed direct action have been convicted for a range of crimes, and some have had the terrorism enhancement applied to them. For these activists, this has resulted in a terrorist listing and the possibility of serving (part of) their sentence in a special prison called a Communication Management Unit. The extreme reality of the situation raises a lot of questions about what exactly terrorism entails, why this type of activity is labeled terrorism, and if the pursuit of animal activists as terrorist is morally justified. It also pushes us to ask whether, in light of the extreme suffering endured by animals for the sake of profit, there are forms of terrorism that are ethically permissible. This paper, first, looks at the meaning of particular types of action and their role in animal activism. These include direct action, civil disobedience, and violence. Secondly, it offers a discussion of terrorism by looking at its most recent iterations as well as an alternative definition. Thirdly, it reviews past and current legislation pertaining to animal activism and terrorism, including the Animal Enterprise Protection Act. This section will also take note of a number of prosecutions of animal activists under these laws, including the SHAC7 case. Finally, it offers a discussion of the ethics of animal terrorism, in which I argue for the ethical permissibility of animal terrorism, and the necessary conditions that need to obtain in order for this to hold.

I. Introduction

Terrorism is a subject deeply connected to the issue of animal welfare.¹ This has not always been the case. Whereas it is definitely true that some criminal activity has been justified in the name of animal welfare, misdemeanors and even felonies are of a very different order than terrorism. The charge of terrorism can strip a person off their most fundamental rights, even without trial. Animal terrorism has not witnessed quite such a situation, although a number of animal activists who have committed direct

¹ Throughout, I mean “animal welfare” to refer to the actual well being of animals, not the animal welfare tradition that seeks to improve the treatment of animals while continuing to exploit them.

action have been convicted for a range of crimes, and some have had the terrorism enhancement applied to them.² For these activists, this has resulted in a terrorist listing and the possibility of serving (part of) their sentence in a special prison called a Communication Management Unit. The extreme reality of the situation raises a lot of questions about what exactly terrorism entails, why this type of activity is labeled terrorism, and if the pursuit of animal activists as terrorist is morally justified. It also pushes us to ask whether, in light of the extreme suffering endured by animals for the sake of profit, there are forms of terrorism that are ethically permissible.

This paper, first, looks at the meaning of particular types of action and their role in animal activism. These include direct action, civil disobedience, and violence. Secondly, it offers a discussion of terrorism by looking at its most recent iterations as well as an alternative definition. Thirdly, it reviews past and current legislation pertaining to animal activism and terrorism, including the Animal Enterprise Protection Act. This section will also take note of a number of prosecutions of animal activists under these laws, including the SHAC7 case. Finally, it offers a discussion of the ethics of animal terrorism, in which I argue for the ethical permissibility of animal terrorism, and the necessary conditions that need to obtain in order for this to hold.

II. Terms of the Debate: Direct Action, Civil Disobedience, Extremism, and Violence

The same actions that by some are labeled as terrorist activities, others think of in terms of direct action. Whereas it is true that all terrorist activity is direct action, it is not the case that all direct action is terrorism. Early twentieth century author and anarchist Voltairine de Cleyre writes that direct action has colloquially taken on the meaning of “forcible attacks on life and property.” But this is a very specific understanding of direct action. She explains:

Every person who ever had a plan to do anything, and went and did it, or who laid his plan before others, and won their co-operation to do it with him, without going to external authorities to please do the thing for them, was a direct actionist. All co-operative experiments are essentially direct action.³

So even though we have come to understand direct action as a violent act to further a political end, a definition coincidentally nearly synonymous to what we think of as

² “Animal activist” includes all forms of activism for the sake of animals, so as to circumvent implications inherent in the use of, e.g. animal rights activist, which would exclude animal liberationists who are not adherents to rights theories. “Animal terrorism” refers to all of the activity that is captured by the Animal Enterprise Terrorism Act and/or to which the terrorism enhancement can be applied and that is committed toward the end of animal welfare.

³ (De Cleyre).

terrorism, these actions are only a subset of direct action. Direct action can be both legal as well as illegal, and it can tread the murky grays in between.⁴ When just direct action falls outside of the scope of legality—that is to say, if in order to be just one must break the law—then direct action qualifies as civil disobedience.

Animal right lawyer Shannon Keith, in her documentary on the Animal Liberation Front (ALF), *Behind the Mask*, notes that “we have only seen change happen in our society when laws have been broken ... The animal liberation movement is a compassionate movement. It’s made up of people who really care and who are very willing to put their lives and freedom on the line to save animals ... This movement isn’t helping the people within it; it’s helping the animals.”⁵ Therefore, it is not a rejection of the model of civil disobedience that drives activists to act anonymously, but a commitment to justice and the welfare of the oppressed. This fits the model for civil disobedience.

Finally, it is important to have a clear definition of the term ‘violence.’ This term is implied by the use of the term terrorism, and it is often evoked in describing the types of direct action animal activists are involved with. Throughout this discussion, I will maintain the World Health Organization’s definition of violence, because it offers an especially socially oriented, inclusive definition:

Violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.⁶

Note here the essential requirement of the fact that for an act to qualify as ‘violent,’ it must have a high likelihood of causing “injury, death, psychological harm, maldevelopment, or deprivation.” The word violence is used often and without discrimination by those who wish to argue for harsher penalties and the relentless pursuit of animal activists who commit direct action as terrorists – regardless of its actual applicability.

⁴ An example of the latter is the Sea Shephard’s operation of disabling whaling ships. Whereas some of their activity falls outside of the scope of national laws, they abide by the United Nations’ World Charter for Nature, which states that if nations fail to address anthropocentric extinction of animals, it is up to the individual to take action (“World Charter”).

⁵ (Keith, 0:03:08, 0:24:15, 1:01:28).

⁶ (“Violence”).

III. Terrorism

It is no easy task to define terrorism. It can easily be too loosely defined, such that it becomes too inclusive, allowing for actions we would not normally count as terrorism to still be included in the category. It seems that in contemporary dialogue terrorism refers to something like a public violent act aimed at maximum damage, bloodshed, and/or loss of life. Events like the terrorist attack of September 11, 2001 and the more recent Boston marathon bombings fit this definition quite well, as do events like the Madrid train bombing of 2004, and many other similarly executed and motivated tragedies.

The Patriot Act definition of terrorism (hereafter PA-definition),⁷ sought to expand what types of actions could qualify as terrorist activity, thereby allowing for broader and easier investigations into certain individuals and groups. The act also details domestic terrorism separate from international terrorism, emphasizing the fact that terrorism is often no longer confined by nation-state borders. The Patriot Act defines terrorism as “the unlawful use of force and violence against people or property to intimidate or coerce Government or civilian population in furtherance of a political or social objective.”⁸

Given the PA-definition of terrorism, it is difficult to talk about ways in which animal activism does or does not constitute terrorism, because, as noted above, the definition is in fact so broad that a wide range of activities would qualify as such under the law—a fact exacerbated by the Animal Enterprise Terrorism Act. Therefore, it may at this time be useful to offer up a definition of terrorism that is more in line with what people generally understand as such. The point here is not to push for a new, international standard of terrorism, but merely to create a more intuitive basis by which other claims of terrorism can be judged and contextualized. A fitting general definition of terrorism would be something like: *Violent action involving large scale bloodshed or loss of life aimed at civilian populations, in order to instill terror and toward the promotion or actualization of some extreme political end.* This definition is merely used here to establish an alternative, more intuitive understanding of terrorism to the end of enabling a more apposite discussion on animal terrorism, and the applicability of the label.

It is clearly the case that animal welfare driven direct action can potentially fall within this alternative definition of terrorism. When activists use arson and improvised

⁷ i.e. “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001” (“USA PATRIOT ACT”).

⁸(United States Congress Senate Committee 1).

explosive devices (IEDs), campaigns run the risk of escalation. Furthermore, in at least one reported case, an ALF associated individual planted IEDs on the scene, allegedly timed to detonate at the arrival of first responders.⁹ This type of action would certainly qualify as terrorism even under our more general definition. This, of course, does not entail that all animal activism is terrorist activity. In fact, most animal welfare related activity, including animal liberation, generally falls outside of this scope. Yet, due to a push in legislation, even non-violent animal activism can qualify as terrorism.

IV. Animal Terrorism—A Brief History

In 1992, the Animal Enterprise Protection Act (AEPA) was finally passed. It “created a new crime of ‘animal enterprise terrorism’ in response to the growing frequency and severity of crimes by groups like the ALF.”¹⁰ And as one of the biggest animal activism trials in the history of the crime was taking place, a push for expansion was already under way. After successfully prosecuting animal liberationist Peter Young under the AEPA in 2005, prosecutors were now working to reinterpret the law such that a loss of profit would constitute “physical disruption to the functioning of an animal enterprise,”¹¹ in order to convict the SHAC7 under the terrorism legislation.

SHAC, or Stop Huntingdon Animal Cruelty, was an aboveground organization that ran a website reporting on and supporting all activism and direct action toward the end of closing Huntingdon Life Sciences, a research facility that is contracted by other corporations to perform animal testing. The campaign was hugely successful, with numerous companies severing ties with HLS, and their stock falling “from \$30 per share in 1997, before the campaign began, to 25 cents per share in 2000.”¹² The SHAC7 were the six defendants and the organization SHAC itself. All defendants “were involved in some capacity in the campaign to close Huntingdon Life Sciences,” and “were charged with conspiracy to violate the Animal Enterprise Protection Act.”¹³ On March 2, 2006, the jury found all defendants guilty, and “nine months

⁹ (United States Congress Senate Committee 48).

¹⁰ (Potter, *Green is the New Red* 104).

¹¹ (Potter, *Green is the New Red* 104).

¹² (Potter, *Green is the New Red* 96).

¹³ (“SHAC7, the Case”).

later ... the appellate court upheld the convictions on all charges,”¹⁴ including the terrorism enhancement where it was applied.¹⁵

The convictions were a blow to aboveground activists who were now being pursued in lieu of the often unreachable underground. Moreover, it shattered a long tradition of rulings favoring the First Amendment, and therefore constitutes a significant hit to supposedly Constitutionally protected liberties and fundamental human rights. Yet, the difficulty of applying the AEPA to these activists on its own terms instigated the push by interest groups to expand the legislation.

On November 13, 2006, about eight months after the conviction of the SHAC7, supporters of the Animal Enterprise Terrorism Act (AETA) used rush tactics to push the legislation through U.S. Congress.¹⁶ This act constituted the “inclusion of economic damage to enterprises and threats of death and serious bodily injury to associated persons” to the criminal and penal code of the United States. The AETA replaced the Animal Enterprise Protection Act, making explicit the interpretation of the latter used to convict the SHAC7.

Whereas much of the text is in common between the AETA and the AEPA, the changes that do exist have a broad influence. The AETA reads as follows:

- (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—
 - (A) for the purpose of damaging or interfering with the operations of an animal enterprise; and
 - (B) 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;

¹⁴ (Potter, *Green is the New Red* 113, 230).

¹⁵ Because there exists no prosecutable crime of terrorism, the terrorism enhancement is a possible addition to a conviction that allows for a sentence increase of up to twenty years and placement in CMUs, secretive prisons that limits interactions both with family and friends as well as with other inmates. In order for a crime to qualify, the government must prove two things: “First, prosecutors must show the crime ‘involved or was intended to promote a federal crime of terrorism,’” and “[s]econd, prosecutors must show that the crime was ‘calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct’” (Potter, 183).

¹⁶ (Potter, *Green is the New Red* 164).

- (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.¹⁷

There are a number of factors that are both noteworthy and troublesome here. For one, there is the fact that the legislation applies not only to animal enterprises, but also “any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise.” This is meant to curb the secondary and tertiary targeting that occurred during the SHAC campaign, where they pressed corporations in business with HSL to cut ties, resulting in huge economic damages to the latter. Considering the expansive nature of the law, and the fact that that animal enterprise is defined as to include “any business that ‘uses or sells animals or animal products,’”¹⁸ this covers a wide range of, even Constitutionally protected, activity.

When a person’s actions trigger the AETA, it means that they are now a terrorist under U.S. law, which has far reaching consequences. Under the Patriot Act, this means that individuals suspected of AETA-activity are subjected to the extended surveillance and other consequences usually beholden to violent criminals. The combination of the Patriot Act and the AETA also entails the possible release of confidential information including educational records and tax information to authorities, as well as the possible seizure of assets.¹⁹

Furthermore, those who are convicted under the AETA (or under conspiracy to violate the AETA) can serve (part of) of their sentence in a Communication Management Unit (CMU).²⁰ These federal prison units function as highly isolatory systems, in which communication with family, friends, and the media is controlled extensively by minimizing overall communication, and directly monitoring the communications that do occur. Limitations on a prisoner’s mobility and communications are frequently even more severe than those placed on inmates in the

¹⁷ (“Animal Enterprise Terrorism Act”).

¹⁸ (qtd. in Potter, “Analysis of the Animal Enterprise Terrorism Act (AETA)”).

¹⁹ (“How the USA PATRIOT Act redefines ‘Domestic Terrorism’”).

²⁰ (Goodman).

ADX-Florence Supermax prison.²¹ They function as a “prison-within-a-prison,” and “house prisoners the government has decided are terrorists.”²² But there are no official standards by which assignment to one of these units is judged. Yet, “[p]risoners who are transferred to these units are generally not among the most violent” nor do they have “significant disciplinary records nor any communications-related infractions.”²³

It seems that what these prisoners do have in common is that their message is particularly political in nature and contrary to the status quo, or their religious views are subject to social and political abasement. The Center for Constitutional Rights notes that whereas they only make up six percent of the general federal prison population, the CMUs population consists of around seventy percent Muslims.²⁴ Other than the high Muslim population, the CMUs also houses prisoners who were sent there in order to keep them from practicing their right to free speech. These include prisoners who have tried to address poor treatment and rights violations in prison, as well as environmental and animal rights activists.²⁵

This is the reality created by animal terrorism legislation. The ambiguity of the term ‘terrorism’ and the intersection of corporate, legislative, and law enforcement interests, has created a situation in which a broad range of activities are legally considered terrorism. Combined with the AETA, we now face a situation in which a very broad range of animal welfare related activities, including investigative journalism and other activities previously protected under First Amendment rights, as well as some activities that were previously considered very light offenses, are now legally considered to be terrorist activities. As a result, people who have as their primary goal the insurance of the welfare of animals are being labeled, treated, and tried the same way as people bombing civilian populations.

In February of 2009, well over two years since the passage of the law, the AETA was used for the first time. That month, “the FBI’s Joint Terrorism Task Force arrested four California animal rights activists” in a two day period.²⁶ “According to the

²¹ (Potter, *Green is the New Red* 208-209).

²² (Potter, *Green is the New Red* 208).

²³ (Goodman and “CMUs”).

²⁴ (“CMUs”).

²⁵ (“CMUs”).

In June of 2009, Democracy Now! interviewed Andrew Stepanian, one of the SHAC7 who spend five-and-a-half months of his thirty-one month sentence in the CMU in Illinois (Goodman).

²⁶ (Potter, *Green is the New Red* 232).

indictment, the defendants allegedly chanted loudly at home demonstrations ... and used the Internet to research public information about animal experimenters. They also allegedly wore bandannas at protests ... and wrote slogans on the public sidewalk using children's sidewalk chalk." The prosecution argued that these actions combined "amounted to a campaign that instilled fear in those protested."²⁷ Even though the U.S. District Court threw the case out, "[t]he judge made clear that prosecutors have the opportunity to re-indict if they can be more specific about the charges and explain how speech is terrorism."²⁸

V. Ethical Justification of Terrorism

So animal enterprise terrorism *is* terrorism, because the terms and actions have been so defined. But the real question is *why* is it terrorism, and are these reasons just cause for the attribution of that label. That is to say, we need to establish what attributes of terrorism are both necessary and sufficient for an event to be a terrorist event, and does animal enterprise terrorism meet that requirement?

The reality of the situation is, as we have seen, that there is no universal, stable definition of 'terrorism.' There exist definitions including and not including violence as a requirement for terrorist activity. There are definitions that are more specific and discriminating, and there are definitions so broad that "civil disobedience fits the criteria."²⁹ It may be argued that the broad way in which the term is currently applied causes it to lose its meaning. Yet, in political dialogue, the word stands as self-definitional – as though somehow tautologically clear: terrorism is those acts that are terrorist acts; terrorists are those people who commit terrorist acts. But the status of the word as broad, vague, and undefined, means that the power is in the hands of those who use it.³⁰ Claim terrorism and magically there is public and administrative support, limitless resources, and a legal *carte blanche* to pursue and neutralize. It is through semantic and legal trickery that we are now facing a situation in which people who work well within the bounds of justice, and of Constitutionally protected freedom of speech and assembly, are being pursued in the same fashion as violent criminals intent on maximum bloodshed in order to promote their political ends.

There exist, of course, a spectrum of activities related to animal activism, from signing petitions to setting incendiary devices. There are obvious problems with the latter—mainly the lack of control and increased likelihood of harm. Yet, as the tired

²⁷ (Potter, *Green is the New Red* 232).

²⁸ (Potter, *Green is the New Red* 233).

²⁹ (Potter, *Green is the New Red* 37).

³⁰ (Potter, *Green is the New Red* 38).

simile goes, just because there are terrorists who are Muslim, this does not mean all Muslims are terrorists. Similarly, as there are animal rights activists who commit serious crimes, this ought not to reflect on the whole. In the end, the awkward truth is that animal enterprise terrorism is terrorism only because it is called terrorism. Applying the alternative definition quickly demonstrates that most animal activism does not constitute terrorism in the common mind. But if we accept that the types of actions under consideration here are in fact terrorism under the law, then we must ask if there are situations in which this terrorism is ethically permissible.

The grounding argument of the prosecutors and the proponents of the AETA are in fact arguments from profit, and they do little to conceal this. At times, there are underlying values that influence this position, mainly an ethic that places humans fundamentally over animals and the earth.³¹ Assuming that this is not our position, and that we do consider animals ethically (to whatever degree), then we quickly end up in a position where factory farming for food and fur becomes ethically indefensible.³² Then all we need is to agree that the role of politics is to enable a just society, where ‘just’ establishes a requirement of morality. Combining the ethical stakes of animals with the requirement of justice, we arrive at the counter argument to the AETA proponents, mainly that ethics ought to come prior to profit, and thus if we seek justice we need to account for animals as proper to their interests.

Following the tradition of civil disobedience, we can see the allowance for breaking the law when that law is unjust (here we see that the AETA proponents are mistakenly equating the law to justice, and least in their rhetoric). So there can be justice in breaking the law, and in fact sometimes it may be morally required to do so. Civil disobedience has established this tradition – and I have no interest in reestablishing it here anew. Let it suffice to say that in hind sight we deem the Civil Rights movement in America just and on the moral high ground, and we similarly see the civil disobedience practiced in South Africa in opposition to the apartheid regime, and during WWII against the Nazis, as morally laudable. Whereas these actions were illegal and people committing them faced prison and even execution,³³ we consider Martin Luther King Jr., Nelson Mandela, and members of the WWII underground railroad as moral exemplars, and we celebrate these people as the very best of humanity. The people who stood against them, stood on the wrong side of history.

³¹ Often this is an argument from religion, which I would argue is misconstrued, but I won't do so here.

³² In the long version of this paper I spend considerable time arguing for this position, but for length consideration I am allowing in to stand here.

³³ It is interesting to note here the fact that many proposed drafts of animal terrorism legislation have included death penalty provisions (Potter, “Animal Enterprise Protection Act”).

All of these movement employed civil disobedience to further their cause, often arguably as their only true recourse. In the context of the animal welfare issue there exists a call to make the changes through the appropriate, legal channels. But certainly if these channels were effective, and were able to curb the profits and alter social values concerning animal welfare, then either this call too would be silenced, or the efficacy of the system would be curbed by interest groups.

Mandela saw the latter in South Africa. He writes: “I saw that there was a wide difference between what I had been taught in the lecture room and what I learned in the courtroom. I went from having an idealistic view of the law as a sword of justice to a perception of the law as a tool used by the ruling class to shape society in a way favorable to itself.”³⁴ We have seen a similar situation actualize, in which the lawful channels are unable to breach the status quo.

Black people were once removed from the “democratic” systems that influenced their lives, unable to vote through legal and/or socio-cultural restraints. As they were affected by the law but were not equally accounted for by the law according to their interests, they had to act outside of the law in order to push for justice. When we look to the situation animals are in today, it is clear that they are severely affected by legislation, yet they do not have their interests accounted for. As they do not have a political voice of their own, this must be represented by people who are morally required to act on behalf of them and in their best interest.³⁵

When we politically and morally account for animals and the environment, we move toward an ethic that values life for the sake of life. This then requires us to protect all life, and so whereas civil disobedience is ethically defensible, it must not seek to harm life. Two important things follow from this. In the first place, it becomes clear that there are forms of civil disobedience directed at the welfare of animals that are just and ethical. This in turn means that the indiscriminate legal crackdown on animal activists is unjust, ought to end, and restitution ought to be made. Secondly, it also entails a requirement on the part of activists. The fact that no one has ever accidentally been hurt in an ALF “attack,” speaks to the care taken in avoiding bodily harm.³⁶ The ALF explicitly calls for non-harm in their guidelines, which requires direct actionists “To take all necessary precautions against harming any animal, human and non-human.”³⁷ Yet, arson is not excluded as a tool in animal activism,

³⁴ (Mandela).

³⁵ This is also the case for children and their place in the political process.

³⁶ There have been reported cases (whether factual or not) of attempts at harm, but these are not exemplary of the ALF’s approach.

³⁷ (“The ALF Credo and Guidelines”).

even though fire is notoriously difficult to control. Its utility harms the movement, even while other means of property destruction better capture the nonviolent demand of civil disobedience, and the requirement of non-harm. Thus, whereas the commitment required to commit direct action of any kind is highly admirable, direct action ought to remain nonviolent. This is clearly not to exclude all form of direct action, but only those actions that are truly violent (i.e. cause harm to a living thing) or have the high possibility of escalating into causing harm. This includes attacks on people lives or threats to that effect, as well as arson and the use of IEDs.

In consolidating this information, what would be the requirements, both positive and negative, of an animal activism campaign? Considering the above, the following could serve as the basis of an animal activism manifesto:

- It is ethical to perform direct action in the form of animal activism, including animal liberation, through legal activism and public campaigns, as well as illegal activism insofar as the laws that are broken are unjust.
- Acceptable methods include but are not limited to: petitions, protests, online activism, animal liberation, and property destruction when that property directly works toward the injustice of animal exploitation (for example the destruction of cages and breeding records).
- Methods include secondary and tertiary targeting.
- The above is provided that any action centers around the principle of non-harm and respect all life, i.e. all action must be nonviolent.

None of this is to suggest that actions carried out in accordance with the above are necessarily legal. However, they are in accordance with an ethic that centers around life and the interests of all morally relevant entities. When these conditions are met, the actions are ethical, even if they are legally considered terrorism.

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