SOLVING THE POUND ANIMAL CONTROVERSY: A PROPOSED AMENDMENT TO THE ANIMAL WELFARE ACT

INTRODUCTION

Research on living animals has a long and controversial history.[1] There are records of the use of live animals in research as far back as the third century B.C.[2] Opponents of animal research have actively questioned its morality since the seventeenth century.[3] Today, there are many humane groups and antivivisectionist[4] organizations promoting animal rights.[5]

One particular area of controversy is the seizure of animals from pounds and animal shelters for use in scientific research.[6] As a result of this practice, many of the dogs and cats used in research were pets a few days or weeks earlier.[7] There is a growing feeling among the general public that it is inappropriate to use pets in painful experimentation.[8] Many animal welfare groups are devoted to ending "pound seizure."[9]

This note will focus on the pound animal controversy. Section one presents an historical introduction to the controversy. Section two discusses the current uses of animals in biomedical research. Section three investigates the moral, scientific, economic, and

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1. Dresser, *Research on Animals: Values, Politics, and Regulatory Reform*, 58 S. CAL. L. REV. 1147, 1148 (1985).

2. A. ROWAN, OF MICE, MODELS, & MEN: A CRITICAL EVALUATION OF ANIMAL RESEARCH 42 (1984).

3. Rowan & Rollin, *Animal Research - For and Against: A Philosophical, Social, and Historical Perspective*, 27 PERSP. BIO. & MED. 1, 3 (1983).

4. The term "vivisection," from the Latin *vivus* meaning living, and *sectio* meaning cutting, literally means cutting a living being. A. ROWAN, *supra* note 2, at 23. Antivivisectionists oppose experimentation on living animals.

5. During the late nineteenth century, humane groups and antivivisection groups both were alarmed by the growth in animal experimentation. A. ROWAN, *supra* note 2, at 49. However, since 1914 the humane movement has focused on other objectives. These include anticruelty laws, leash laws, and managing shelters. *Id.* at 50; *see infra* note 14 and accompanying text.

6. Dresser, *supra* note 1, at 1159.

7. Comment, *Animal Research and Shelter Animals: An Historical Analysis of the Pound Animal Controversy*, 31 ST. LOUIS U.L.J. 551 (1987) [hereinafter *Animal Research*].

8. *Id.*

9. Dresser, *supra* note 1, at 1159. "Pound seizure" generally refers to the release of animals from pounds or shelters for use in biomedical research. *Animal Research*, *supra* note 7, at 558-59 n.65.

other justifications for prohibiting research on pound animals. Section four briefly reviews present federal legislation authorizing regulation of animals used in research. Finally, section five proposes federal legislation designed to eliminate the use of pound animals in scientific research.

I. History of the Pound Animal Controversy

The number of research laboratories in the United States steadily increased during the second half of the nineteenth century.[10] This rapid growth touched off American antivivisectionist passions.[11] During the final two decades of the nineteenth century, the movement gained momentum.[12] In 1896, Congress considered a bill that would regulate vivisection in the District of Columbia, but the proposed legislation died under pressure from groups such as the National Academy of Sciences and the American Medical Association.[13] The momentum of the antivivisection campaign ebbed in the early years of the twentieth century, and by 1914 even the American Humane Association had abandoned the cause.[14]

Between World Wars I and II, the prestige and reputation of the medical research community grew.[15] Following World War II, the United States substantially increased federal funding for medical research.[16] For instance, government funding of the National Institutes of Health rose from $700,000 in 1945 to $98 million in 1956.[17] With this rapid growth in funding came an increased demand for research animals.[18]

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10. Rowan & Rollin, *supra* note 3, at 5.

11. *Id.*

12. *See Id.* For example, the American Anti-Vivisection Society was established in Philadelphia in 1883. Other influential groups, such as the American Humane Society, the Department of Mercy of the Women's Christian Temperance Union, and the American Society for the Prevention of Cruelty to Animals, also became concerned about the issue. A. Rowan, *supra* note 2, at 49.

13. A. Rowan, *supra* note 2, at 50.

14. *Id.* One commentator suggests that while the humane movement became respectable in the twentieth century, it also became ineffective. A. Rowan, *supra* note 2, at 50 (citing Rodman, *The Liberation of Nature*, 20 Inquiry 83-145 (1977)). The humane movement, having achieved its objectives in other animal rights areas, such as state anti-cruelty statutes and reforming humane education, may have abandoned antivivisection as a compromise. *Id.*

15. Rowan & Rollin, *supra* note 3, at 6.

16. *Id.*

17. *Id.*

18. *Id.*

Founded in 1946, the National Society for Medical Research ("NSMR") began lobbying to reduce the "waste" of millions of animals euthanized every year at animal shelters.[19] The NSMR considered pound animals to be a major source of living animals to fill the growing need created by increased research.[20] The NSMR campaigned for laws that would require publicly-funded shelters, upon request, to turn over unclaimed animals to research facilities.[21] The laws that were passed became known as "pound seizure" laws.[22]

The NSMR was very successful in its early years. Minnesota passed the first state pound seizure law in 1949.[23] As other states followed, it became clear that the majority of the public supported pound seizure.[24] Cities also joined this trend and began passing ordinances requiring pound seizure.[25] By 1973, pound seizure was mandatory in Connecticut, Illinois, Iowa, Massachusetts, Minnesota, New York, Oklahoma, South Dakota, Utah, and Wisconsin.[26] Only three states prohibited pound seizure: Maine, Hawaii, and Pennsylvania.[27] The remainder of the states had no regulation on the subject, although many local ordinances addressed this issue.[28] These laws and ordinances requiring the surrender of homeless cats and dogs to research facilities threatened the humane move-

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19. A. ROWAN, *supra* note 2, at 150. While the NSMR considered euthanasia of homeless animals to be a "waste," many disagree. The central purpose of most humane societies is to provide a suffering-free sanctuary for animals. *Id.* at 53. This includes euthanasia for pets that no one is willing to adopt. Rather than being a "waste," euthanasia serves the important purpose of preventing needless animal suffering. *See infra*, text accompanying notes 157-59.

20. A. ROWAN, *supra* note 2, at 150.

21. *Id.*

22. *Id.*

23. *Id.*

24. A. ROWAN, *supra* note 2, at 150.

25. *Id.* In Baltimore, an ordinance requiring pound seizure passed by a 2 to 1 margin. In Los Angeles, voters ratified a similar ordinance, despite active opposition by the Hearst press. *Id.* at 53, 150.

26. Visscher, *Commentary on Laws Relating to the Scientific Use of Unclaimed Impounded Animals*, 163 J. AM. VET. MED. A. 78, 79 (1973).

27. *Id.*

28. A. ROWAN, *supra* note 2, at 151. Thus, pound seizure is dealt with in three ways. Lobbying forces for the medical research industry have been so successful in some areas that state and local governments have required that all unclaimed animals in pounds be turned over to research facilities. Alternatively, in a few states, forces for the animal rights movement have been so persuasive that state and local governments have banned the use of any pound animal in research. Finally, in most states, pound seizure is not regulated. In these states, the decision to sell animals to research facilities is made by each local pound or shelter.

ment's primary goal of providing a suffering-free sanctuary to unwanted animals.[29] Shocked, many animal welfare groups reconsidered their positions on animal research.[30]

The research community dominated this controversy until the mid-1970s,[31] when a renewed interest in animal rights emerged.[32] This renewed interest sparked sporadic campaigns to repeal pound seizure laws throughout the country.[33] The first focused effort was an attempt to repeal New York's pound seizure law.[34] In 1977, the New York State Assembly voted 110 to 22 to repeal.[35] That bill, however, was blocked in a Senate committee.[36] It was not until 1979 that the bill was finally pushed through both houses, and signed by the Governor.[37]

Another successful attack on pound seizure took place in Massachusetts in the early 1980s.[38] Animal rights advocates worked for years to repeal that state's pound seizure statute and to prohibit the voluntary sale of unclaimed animals to researchers or dealers.[39] A bill was finally passed in 1983, with the unenthusiastic support of some members of the biomedical research community.[40] This support was given to avoid more restrictive legislation mandating that researchers maintain detailed records for every animal used in research.[41] The more restrictive law would also have permitted the New England Antivivisection Society to inspect animal research facilities.[42] The law that was actually passed prohibited pound seizure in Massachusetts, and prevented researchers from purchasing pound animals from other states.[43]

An attempt to repeal California's pound seizure law, however,

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29. Rowan & Rollin, *supra* note 3, at 7.
30. *Id. See infra* notes 157-59 and accompanying text.
31. A. ROWAN, *supra* note 2, at 151.
32. Rowan & Rollin, *supra* note 3, at 8. *See infra* text accompanying notes 92-100.
33. A. ROWAN, *supra* note 2, at 151.
34. *Id.* The Metcalf-Hatch Act had required seizure since 1952. *Id.*
35. *Id.* at 152.
36. *Id.*
37. A. ROWAN, *supra* note 2, at 151.
38. FOX, *Massachusetts Forbids Use of Impounded Pets in Labs*, 223 SCIENCE 151 (1984).
39. *Id.*
40. *Id.*
41. *Id.*
42. FOX, *supra* note 38, at 151.
43. MASS. GEN. L. ch. 140, § 151 (Supp. 1989); 1983 Mass. Acts ch. 631, § 9, *reprinted in* Editorial Note following MASS. GEN. L. ch. 140, § 151 (Supp. 1989).

was not successful.[44] The California bill did not strike a compromise that could draw any support from the research community. A well-organized lobbying campaign by universities, foundations, and health groups substantially contributed to the bill's failure.[45]

Efforts to repeal pound seizure laws or prevent pound seizure also have been made in Minnesota, Florida, Illinois, and Los Angeles.[46] As of 1986, nine states prohibited in-state procurement of pound animals, but did not restrict the acquisition of pound animals from other states.[47] Nevertheless, animal welfare advocates are confident that pound seizure will end eventually, and believe that public sentiment now favors their campaign.[48]

II. Current Uses of Animals in Biomedical Scientific Research

A 1982 scientific journal describes an experiment where mongrel dogs were anesthetized and given third degree burns over thirty-five percent of their bodies with a hot plate.[49] In 1983, researchers placed electrodes in the brains of five cats, then stimulated them with electrical shocks to determine if they had an increased tendency to bite a rat.[50] These are specific examples of two types of biomedical scientific research. This section will focus on what constitutes biomedical research in general, and specifically on how pound animals are used in such research.

Biomedical science refers to any activity that investigates how living beings live and interact, and how they can be protected from harm.[51] Biomedical scientists use animals for a variety of purposes. These purposes can be organized into several categories.[52] The first

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44. Fox, *Animal Rights Bill Defeated in California*, 224 Science 1414 (1984).

45. *Id.*

46. A. Rowan, *supra* note 2, at 153-54.

47. Metz, *Suffer the Little Animals: When Does Scientific Research Become Oppression?* 15 Student Law. 12, 19 (1986).

48. Rowan & Rollin, *supra* note 3, at 12. Even some of those who sell dogs to research facilities believe the use of pound dogs in laboratories will end soon. *Id.* (citing D'Ver, *End of the Pound Dog*, 10 Lab Anim. 23-25 (1981)).

49. Favre, *Laboratory Animal Act: A Legislative Proposal*, 3 Pace Envtl. L. Rev. 123 (1986) (citing Wolfe, *Effect of Thermal Injury on Energy Metabolism, Substrate Kinetics, and Hormonal Concentrations*, 9 Circulatory Shock 383 (1982)).

50. Favre, *supra* note 49, at 123 (citing Watson, *An Analysis of the Mechanics Underlying Hippocampal Control of Hypothalamically-elicited Aggression in the Cat*, 269 Brain Research 327 (1983)).

51. A. Rowan, *supra* note 2, at 10.

52. B. Rollin, Animal Rights and Human Morality 91-92 (1981).

category is basic biological research.[53] Such research involves forming and testing hypotheses about fundamental scientific questions.[54] Basic biomedical research does not focus on creating practical results.[55] Instead, it focuses on the acquisition of knowledge for its own sake.[56]

A second category is applied basic biomedical research.[57] This research involves testing hypotheses regarding diseases and defects.[58] Applied basic biomedical research may not immediately result in, but is directly related to, treatments for diseases or defects.[59]

Another area of research involves the development of drugs, therapeutic chemicals, and biological agents.[60] This type of research, though aimed at practical results, is often exploratory in nature.[61]

A fourth major area of research is toxicology testing.[62] Consumer goods are tested for safety, toxicity, irritation, and degree of carcinogenicity.[63] Most of this testing is needed to assure that consumer goods satisfy federal government safety standards.[64]

Large numbers of animals are also used in education for such purposes as demonstrations, dissections, and practice surgery.[65] Pound animals are popular in education because results often do not depend on animal quality. A "genetically defined," healthy animal is not always necessary for use in student exercises.[66]

Finally, animals are used for the production of such products as insulin and blood serum.[67] This is not research per se; nevertheless, such products are often necessary to conduct successful

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53. *Id.*
54. *Id.*
55. *Id.*
56. Dresser, *supra* note 1, at 1152.
57. B. ROLLIN, *supra* note 52, at 92.
58. *Id.*
59. *Id.*
60. *Id.*
61. B. ROLLIN, *supra* note 52, at 92.
62. A. ROWAN, *supra* note 2, at 12; B. ROLLIN, *supra* note 52, at 92.
63. B. ROLLIN, *supra* note 52, at 92.
64. *Id.* at 95-96.
65. *Id.* at 92.
66. A. ROWAN, *supra* note 2, at 159. *See infra* note 82.
67. A. ROWAN, *supra* note 2, at 10-11; B. ROLLIN, *supra* note 52, at 92.

research.[68]

It is almost impossible to estimate how many animals are used for research in the United States.[69] Reports filed under the reporting requirements of the Animal Welfare Act[70] are incomplete because several species of laboratory animals are excluded.[71] Andrew Rowan, a leading veterinary and animal rights authority,[72] estimates that forty percent of all research animals in the United States are used in basic and applied basic biological research programs.[73] Basic and applied research includes the burning and electrical shocking of dogs and cats discussed above.[74]

The number of animals used annually by science in the United States ranges from 20 to 150 million.[75] Although the vast majority

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68. A. ROWAN, *supra* note 2, at 10-11; B. ROLLIN, *supra* note 52, at 92.

69. Dresser, *supra* note 1, at 1152.

70. *See infra* text accompanying notes 175-77.

71. Dresser, *supra* note 1, at 1152 n.30. The United States Department of Agriculture's definition of "animal" specifically excludes birds, mice, rats, horses, and other farm animals. 9 C.F.R. § 1.1(n) (1989). According to Rowan's estimates (*see infra* note 76), this definition may exclude over ninety percent of all animals used in research.

72. Andrew Rowan is an associate professor of environmental studies at Tufts University's School of Veterinary Medicine and director of its Center for Animals and Public Policy.

73. A. ROWAN, *supra* note 2, at 71. Rowan provides the following table:

LABORATORY ANIMAL USE

	Percentage	Number (in millions)
Teaching programs	8	5.7
Research programs [basic & applied]	40	28.5
Toxicology programs	20	14.3
Drug development programs	26	18.5
Other programs	6	4.3

Rowan combines basic and applied basic research into the single category of "research." *Id.* at 13.

74. *See supra* text accompanying notes 49-50.

75. Dresser, *supra* note 1, at 1152 (citing U.S. DEP'T OF HEALTH AND HUMAN SERVICES, NIH PUB. NO. 80-2091, NATIONAL SURVEY OF LABORATORY ANIMAL FACILITIES AND RESOURCES 21 (1980) (estimates 20 million); Fox, *Lab Animal Welfare Issue Gathers Momentum*, 223 SCIENCE 468 (1984) (estimates 40-150 million)). Andrew Rowan estimates that the figure is over 71 million. A. ROWAN, *supra* note 2, at 71.

of these research animals are mice and rats,[76] approximately 350,000 are dogs and cats.[77] There is little current data on the source of these animals.[78] In the late 1960s, approximately 105,000 animals were from pounds, 150,000 came from dealers, and 30,000 were purpose-bred.[79] In 1980, an Institute for Laboratory Animal Resources survey found that 138,000 dogs came from shelters, dealers, and other sources, while only 45,000 were purpose-bred.[80]

Dogs are used for many different purposes in medical research.[81] They are used for toxicology testing, pharmacology studies, cardiovascular research, and behavioral studies.[82] Many veterinary and medical students perform practice surgery on dogs.[83] Cats are used mainly in brain and behavioral research.[84]

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76. A. ROWAN, *supra* note 2, at 70-71. The following table appears:

ESTIMATED LABORATORY ANIMAL USE

Mice	45 million	63.10%
Rats	15 million	21.00
Hamsters	1 million	1.40
Guinea pigs	1 million	1.40
Rabbits	750,000	1.10
Dogs	250,000	0.40
Cats	100,000	0.10
Primates	25,000	0.04
Ungulates	200,000	0.30
Birds	5 million	7.00
Frogs	3 million	4.20
Total	71.325 million	100.00%

SOURCE: Compiled from available data, excluding [Institute for Laboratory Animal Resources] Survey. *Id.* at 71.

77. *Id.*

78. *Id.* at 155.

79. *Id.* (citing Potkay & Bacher, *The Research Dog: Random Source or Colony Reared?*, in RESEARCH ANIMALS IN MEDICINE 1061-65 (L. Harmison ed. 1973)). Potkay and Bacher do not indicate where the dealers' dogs originated. *Id.* Purpose-bred animals are bred by research laboratories exclusively for use as research subjects. *Id.*

80. A. ROWAN, *supra* note 2, at 155. Almost all commentary regarding pound seizure focuses on dogs. Cats are rarely mentioned in the pound seizure controversy. The author finds this peculiar, since perhaps more cats than dogs are euthanized in the United States each year. *Id.* at 156. Arguably, this would put shelter cats at as great a risk as dogs.

81. *Id.* at 156.

82. *Id.* There is evidence that dogs, especially random-source dogs, are frequently used merely because of their availability, not because of their suitability for particular types of research. Zinn, *The Research Dog*, 153 J. AM. VET. MED. A. 1883, 1884 (1968). *See also infra* note 142.

83. *Id.*

84. *Animal Research*, *supra* note 7, at 557 (citing THE HUMANE SOCIETY OF THE UNITED

It is impossible to know exactly how many research animals are exposed to significant levels of pain.[85] By extrapolating statistics from other countries, Rowan estimates that between one-third and one-half of laboratory animals in the United States experience discomfort and pain beyond the stresses associated with caging and handling.[86]

In sum, the scope of biomedical research is overwhelming. There are many types of animal research, and there is little documentation of how many animals are used in each area. There is even less documentation of the ratios of purpose-bred to random-source dogs and cats used in research. The large number of these animals, and their potential for pain and suffering, demands that the rationale behind pound seizure be examined.

III. The Pound Seizure Debate: Moral, Scientific, Economic and Other Reasons for Prohibiting Biomedical Research on Pound Animals

Proponents of pound seizure claim that opponents are "simply pet lovers," implying that the only rationale behind a prohibition on pound seizure is sentimentality.[87] This section examines whether there are sufficient justifications based on moral, scientific, economic or other grounds to prohibit the use of former pets in biomedical research.

A. Moral Considerations

The morality of using living animals for biomedical research has been challenged since the seventeenth century.[88] Rene Descartes argued that animals were machines, incapable of feelings or thought.[89] His philosophy provided a convenient justification for the then-popular practice of conducting physiological experiments on living animals without anesthesia.[90] Antivivisectionists challenged Descartes' view then, and have continued to challenge it for

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States, Protect our Pets from Research 1, 3 (1982)). A few cats are used in bacteriology and ophthalmology. *Id.*

85. Dresser, *supra* note 1, at 1154.

86. A. Rowan, *supra* note 2, at 72.

87. *See* Visscher, *supra* note 26, at 78. *See also* Dennis, *America's Littlewood Crisis: The Sentimental Threat to Animal Research* 60 Surgery 827 (1966).

88. *See* Rowan & Rollin, *supra* note 3, at 3.

89. *Id.* at 2-3.

90. *Id.* at 3.

300 years.[91]

Vivisection has been opposed on a variety of moral and philosophical grounds. The present interest in the moral status of animals grew in the context of two intellectual developments.[92] The first was Darwin's theory of evolution.[93] This theory undermined previous religious doctrines that created a distinct division between humans and animals.[94] New knowledge from other fields indicates that the evolutionary connection between humans and animals is even closer than earlier suspected.[95] Researchers have found that the consciousness of animals resembles that of humans in many ways.[96] In light of these discoveries, some ethicists began to question the higher moral standing that western civilization traditionally attributed to humans.[97]

The second intellectual development that influenced the present interest in the moral status of animals took place in the field of medical ethics.[98] Ethicists and others began examining the reasons why moral standing has been bestowed on some entities, but not others.[99] This development, along with Darwin's theory of evolution, has led ethicists to question the presumption of human supremacy.[100]

Animals have traditionally been excluded from the scope of moral concern for several reasons.[101] One of the most pervasive rationales is the claim that animals do not possess an immortal soul.[102] This centuries-old belief remains official Catholic church dogma, and has dominated popular thought for ages.[103] Whether animals possess an immortal soul is not known. The more relevant

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91. *Id.*

92. Dresser, *supra* note 1, at 1171.

93. *Id.*

94. *Id.*

95. *Id.* Ethnology, comparative psychology, and sociobiology are three areas where recent discoveries have suggested that humans and animals are more closely connected than previously realized. *Id.*

96. Dresser, *supra* note 1, at 1171 (citing D. GRIFFIN, THE QUESTION OF ANIMAL AWARENESS: EVOLUTIONARY CONTINUITY OF MENTAL EXPERIENCE (1981); Ristau, *Language, Cognition, and Awareness in Animals?*, 406 ANNALS N.Y. ACAD. SCI. 170 (1983)).

97. *Id.*

98. *Id.* at 1171-72.

99. *Id.* at 1172.

100. Dresser, *supra* note 1, at 1172.

101. *See* B. ROLLIN, *supra* note 52, at 6.

102. *Id.*

103. *Id.*

question is why animals should be excluded from moral consideration if they do not have souls.[104]

A related notion is that humans have dominion over all of nature.[105] This concept has its roots in both theology and science. God grants humans dominion over animals, while humankind considers itself to be at the top of the "evolutionary pyramid."[106] Regardless of the source of humankind's "supremacy" over nature, it does not follow that dominance entitles humans to deny other animals moral consideration.[107]

By far the most compelling argument for denying animals moral consideration is their incapacity for rationality and language.[108] This reason has, however, come under attack. Bernard E. Rollin, a leading philosopher in the field of animal rights, argues that mere differences between animal and human abilities are not sufficient justification to deny an entity moral status.[109] The differences must be morally relevant.[110] There must be a moral advantage to having rationality before its absence becomes a justification to deny an entity moral status.

Current philosophers in the animal rights movement support their positions with different theories.[111] However, all include animals within the scope of moral concern, and argue that we must treat them morally.[112] They also agree that animals are intrinsically valuable, and not merely valuable for their worth to humans.[113] These philosophers reject language and rationality as a threshold for moral consideration on the grounds that these criteria lack moral relevance.[114]

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104. *Id.*

105. B. ROLLIN, *supra* note 52, at 7.

106. *Id.* at 8.

107. *Id.*

108. *Id.* at 10. Rollin theorizes that animals are capable of rationality and are able to use concepts in a language-rational manner. *Id.* at 23, 24-27. He also notes that primates are able to learn human language through signing. *Id.* at 27.

109. B. ROLLIN, *supra* note 52, at 7.

110. *Id.* Rollin describes moral relevance in terms of differences that are not morally relevant. *Id.* For example, while humans join health clubs and animals do not, this is not a morally relevant difference. *Id.* Peter Singer argues that a being's capacity to experience suffering and enjoyment is morally relevant. P. SINGER, PRACTICAL ETHICS 50 (1979).

111. *See* Rowan & Rollin, *supra* note 3, at 9.

112. *Id.*

113. *Id.*

114. *See id.* at 10.

Animal rights pioneer Peter Singer discusses animal research in terms of a utilitarian moral theory.[115] Under this theory, the right action produces the most beneficial net consequences for those affected.[116] Using animals in biomedical research produces both positive and negative consequences.[117] Singer suggests valuing the lives of creatures based on their level of self-awareness and sentience, which he defines as the capacity to experience suffering and enjoyment.[118] It follows that if animals are to be used in research, they should be the least sentient animals used under the least painful conditions.[119] To justify research on species with a high level of self-awareness, or procedures that will inflict more suffering, there must be greater benefit from the results.[120]

Under utilitarian theory, an animal's ability to experience enjoyment and suffering must be given moral consideration.[121] When an animal becomes a pet, its contact with humans changes its capacity to enjoy and to suffer.[122] Pets experience a different quality of life than animals raised in a laboratory. For pets, humans are providers of companionship, pleasure, food, and assistance.[123] Pets form deep emotional bonds with humans.[124] As a result, pets are arguably more sentient, with different emotional expectations of humans. Therefore, former pets should be a distinct category, morally distinguished from purpose-bred animals.

Furthermore, humans and pets may be parties to a social contract.[125] The dog and cat have played unique roles in the development of humans. The pet dog is a guardian, hunter, protector, and companion of humankind.[126] In exchange, humans offer care, lead-

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115. Dresser, *supra* note 1, at 1173.

116. *Id.*

117. *Id.*

118. *Id.* at 1173-74; P. SINGER, *supra* note 110, at 50.

119. Dresser, *supra* note 1, at 1176.

120. *Id.*

121. P. SINGER, *supra* note 110, at 50; *see also* Hoff, *Immoral and Moral Uses of Animals*, 302 NEW ENG. J. MED. 115, 115-16 (1980).

122. Higher animals, such as pets, feel many emotions, including loneliness, jealousy, boredom, frustration, rage, and terror. Hoff, *supra* note 121, at 115.

123. *See* B. ROLLIN, *supra* note 52, at 154.

124. These attachments radically change the behavior of pets. Rollin describes a dog's reaction to being abandoned on a deserted country road: "I saw a car stop, throw out a German shepherd, and speed away. I will always remember watching the dog chase the car down the road until it could run no more." B. ROLLIN, *supra* note 52, at 159.

125. *See* B. ROLLIN, *supra* note 52, at 154.

126. *Id.* at 155.

ership, companionship, and food.[127] Humans have kept dogs as pets for five hundred thousand years.[128] They have changed the personality and physical shape of the dog to such an extent that many dogs are unable to survive without humans.[129] Cats were part of ancient Egyptian culture as early as 2500 B.C.[130] They have not been physically modified to the same degree as dogs, but they too have participated in a social contract with humans.[131] In exchange for their food and care, cats give companionship and have kept populations of disease-carrying rodents in check.[132]

Pets alleviate loneliness and despair in humans, thus improving human mental health.[133] A psychiatrist at the University of Pennsylvania has shown that pet-owners who have suffered heart attacks suffer fewer recurrences than those who do not have pets.[134] This benefit increases our obligation under the social contract.

There is little doubt that pets have greatly influenced our lives, as we have greatly influenced the lives of our pets. Living with humans changes an animal into a pet, and shapes that animal's perception of life. We are obliged to care for our pets because we have destroyed their ability to care for themselves. Caring for a pet includes ensuring that its death is painless, which is not possible if pets are sold to biomedical research. While it is true that some research is no more painful than euthanasia in a shelter, there are no guarantees that pets placed in research will receive this painless end.

Utilitarian theory permits research on more sentient beings only when there is a highly compelling need. Pets are more sentient than purpose-bred animals because of their emotional interaction with humans. There is no need for using pets in biomedical research that is sufficiently compelling to outweigh their senti-

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127. *Id.* at 154.

128. *Id.* at 154-55. Evidence in China indicates that tame wolves were a part of "Peking man" society. *Id.*

129. B. ROLLIN, *supra* note 52, at 155.

130. M. FOX, UNDERSTANDING YOUR CAT 18-20 (1974). The cat ultimately attained a high position in Egyptian religion. When a house cat died, Egyptian law required members of the household to shave off their eyebrows in mourning. *Id.*

131. *See* B. ROLLIN, *supra* note 52, at 156.

132. *Id.* In fact, in areas where pets have been banned, rats often run out of control. *Id.*

133. *Id.* at 155.

134. *Id.* at 156.

ence.[135] Therefore, former pets should not be used in scientific research.

B. Scientific Considerations

In addition to its questionable morality, there are scientific problems arising from the use of pets in biomedical research. There are scientific differences in the quality of random-source and purpose-bred animals. Random-source animals can yield unreliable results in research, and most scientists would not use them if given a choice. More than three-quarters of respondents to a 1981 survey indicated that purpose-bred animals are more reliable in scientific research.[136]

The reliability and significance of data obtained from animal experimentation depends upon the uniformity of the animals that are used.[137] With pound animals, it is impossible to control many elements of the experiment because the animal's genetic and microbiological background is not known.[138] Previous and unknown infections can cause a confusing pathological picture.[139] Many animal studies are misleading or useless because they ignored genetic variations or used animals that were diseased or stressed.[140]

Scientists have long been concerned about the poor quality of pound animals in biomedical research. As early as 1968, the use of pound animals in multimillion dollar research projects was criticized because little thought was given to the animal's suitability for the research.[141] Dogs, especially pound dogs, are often used simply because they are available, even when other species are inherently more satisfactory for a particular type of research.[142]

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135. *See infra* text accompanying notes 136-64.

136. A. ROWAN, *supra* note 2, at 157. The survey was reported by T. Wolfle at a 1981 meeting of the American Association for Laboratory Animal Science. *Id.*

137. Gilmartin, *The Establishment of a Dog Breeding Kennel for Pharmaceutical Research*, 11 PROC. ANIMAL CARE PANEL 222 (1961).

138. A. ROWAN, *supra* note 2, at 158.

139. Gilmartin, *supra* note 137, at 222.

140. Pritchard, *Animal Research in the New Biology*, 18 LAB ANIMAL CARE 230 (1968). Much of the pharmaceutical industry switched to purpose-bred dogs to get higher quality data. Gilmartin, *supra* note 137, at 224. In one situation, a trial drug was halted because of toxicity in dogs. Later studies on higher quality animals yielded opposite results. Investigation revealed that the apparent toxicity was actually the result of prior distemper infections. *Id.*

141. Pritchard, *supra* note 140, at 230.

142. Zinn, *supra* note 82, at 1884. Dogs, for example, are not good subjects for cardiovascular research and yet large numbers of them are used in cardiovascular studies. *Id.* at

Through the continued use of these animals, the biomedical research community unwittingly contributes to lower quality research.[143]

The same concerns have also surfaced in Europe, where the trend has been toward the exclusive use of purpose-bred animals.[144] Swedish law requires that animals used in research be purpose-bred.[145] Swedish researchers recognize the need for better quality laboratory animals.[146] Further, the use of pound animals in research creates too much of a public relations problem.[147]

In sum, scientists would prefer to work with purpose-bred animals. They create more reliable results, and eliminate part of the controversy surrounding the use of animals in research. It is actually detrimental to biomedical research to use pound animals. Based on these scientific considerations, pound animals should be banned from scientific research.

C. Economic Considerations

The primary reason pound animals continue to be used in research despite their inferior research quality is their low price.[148] In 1984, dogs obtained from a shelter or pound cost between $5 and $15.[149] A purpose-bred dog cost between $120 and $275.[150] This initial cost, however, is not the end of the inquiry. One study comparing the mortality rates of purpose-bred and random-source dogs concluded that the purpose-bred dogs were consistently better at withstanding procedures.[151] The study indicated that even if the price of the purpose-bred dog was substantially increased, the increased survival rate would more than offset the initial cost of the dog.[152]

1885.

143. *See id.* at 1883.

144. A. ROWAN, *supra* note 2, at 159.

145. *Id.*

146. *Id.*

147. *Id.*

148. A. ROWAN, *supra* note 2, at 159.

149. *Id.*

150. *Id.*

151. Fletcher, Herr, & Rogers, *Survival of Purebred Labrador Retrievers Versus Pound Dogs Undergoing Experimental Heart Valve Replacement*, 19 LAB ANIMAL CARE 506 (1969). Pound animals had a survival rate of 73% compared with 93% for purpose-bred animals. *Id.* at 507.

152. *Id.*

Using purpose-bred animals can, therefore, actually reduce total research cost. Researchers would require significantly fewer dogs if laboratory-reared dogs were used exclusively.[153] Fewer experiments would be required to obtain the same results, because mortality would be lower. While the initial cost of using purpose-bred animals may be higher, a comparison between the initial purchase prices is a meaningless exercise leading to an erroneous conclusion.[154] The truly expensive dog is the dog least suited for research, and therefore wasteful of laboratory resources and brain power.[155]

Prohibiting the use of pound animals in research may raise the initial cost of experimentation. In turn, this may provide researchers with an additional economic incentive to explore alternatives to animal research. Economics is on the side of animal welfare, because non-animal alternatives are usually cheaper than using animals.[156] Non-animal research alternatives not only reduce the cost in animal lives, but also the overall costs.

While the initial cost of using purpose-bred animals seems high, a closer look reveals that the cost of using pound animals in research may be even higher. Prohibiting pound seizure will not, therefore, substantially increase the cost of animal research. Furthermore, it will encourage the development of non-animal alternatives, which are generally less expensive than either pound or purpose-bred animals. Therefore, prohibiting pound seizure is a sound economic move.

D. Other Considerations

Apart from the moral, scientific, and economic considerations, there are other arguments for prohibiting the use of pound animals in research. First, pound seizure violates the public trust. People trust pounds and shelters to provide a painless death for unwanted animals.[157] This trust is betrayed when these animals are sent to research facilities. The vast majority of pet-owners do not realize that many pounds choose, or are required, to sell unclaimed ani-

153. Zinn, *supra* note 82, at 1886.
154. *Id.* at 1885.
155. *Id.*
156. A. ROWAN, *supra* note 2, at 272.
157. *Id.* at 53.

mals to research facilities.[158] Such knowledge could discourage people from turning in strays and homeless animals to shelters, making it more difficult to locate lost animals, and creating an animal control problem.[159] Unwanted animals would be left in the streets, experiencing hunger and probably violent death.

Furthermore, most humane organizations are funded by donations from people who want to promote animal welfare.[160] These organizations are obliged to use this money to support that end. However, the organizations cannot be effective promoters of animal welfare if they surrender live animals to research laboratories.[161]

Another consideration involves handling the animals in the laboratory. Unclaimed shelter animals may be less cooperative, more difficult to work with, and possibly more dangerous than laboratory-raised animals. Being accustomed to a relatively comfortable life, with human affection and attention, pets may find the laboratory atmosphere foreign and threatening.[162] Purpose-bred animals, having been raised in this setting, would probably be easier to handle in the laboratory.

A final argument involves the effect of cheap research animals on scientists. An unlimited supply of cheap animals may cause scientists to view animals as disposable tools, not as living beings.[163] Some animal rights groups suggest that much animal research is unnecessary and duplicative.[164] Scientists would be less likely to perform unnecessary research if each of their animal subjects cost $200 instead of $20.

E. Conclusion

In sum, there is a great deal of evidence to evaluate in balancing moral, scientific, economic, and other justifications for prohibiting the use of pound animals in research. Under utilitarian analysis, pets should only be used in research if there is a highly

158. *Animal Research*, *supra* note 7, at 556.
159. A. ROWAN, *supra* note 2, at 161.
160. *Id.*
161. *Id.*
162. *Id. See also* Hoff, *supra* note 121, at 115 (describing the range of emotions that animals are capable of expressing).
163. A. ROWAN, *supra* note 2, at 161.
164. *Id.* at 18.

compelling need because they are more sentient. There is no highly compelling scientific or economic need to use pets in research. Evidence suggests that pound animals are not scientifically suited for research, but that they are used because they are initially cheap. Further, evidence also suggests that pound animals may be more expensive than purpose-bred animals in the long run because of their higher mortality rates. Finally, pound seizure may create an animal control problem because those aware of mandatory pound seizure may be unwilling to turn over homeless animals to shelters. Although there is evidence on both sides of the issue, it is clear that opposition to pound seizure is based on more than mere "sentimentality."

IV. Current Legislation Regulating the Use of Animals in Scientific Research

The current federal legislative framework for regulation of animal testing is the Animal Welfare Act ("AWA").[165] Between 1960 and 1966, many bills were introduced in Congress to regulate animal research.[166] However, two specific events in 1965 and 1966 triggered the enactment of the Laboratory Animal Welfare Act.[167]

The first event was the disappearance of Pepper, a pet Dalmatian.[168] The dog's owner thought he recognized Pepper in a photograph of dogs being unloaded from an animal dealer's truck. The dealer refused to let the family see the dog to determine whether it was Pepper. The family made an appeal to Congressman Resnick, who tried unsuccessfully to gain access to the dog. Angered by the dealer's arrogant attitude, Resnick introduced a bill in 1965 to regulate the trade of dogs. Senators Magnuson and Clark introduced a similar bill in the Senate. The search for Pepper ended in a laboratory incinerator. He was never positively identified.[169]

Second, in 1966, a photo story in *Life* magazine showed shocking abuse of dogs by animal dealers who sold to laboratories.[170] As a result of the photo story, the Resnick bill gained support.[171] In

165. 7 U.S.C. §§ 2131-57 (1988).
166. A. Rowan, *supra* note 2, at 54-55.
167. *Id.* at 56.
168. *Id.*
169. *Id.*
170. A. Rowan, *supra* note 2, at 54-55.
171. *Id.*

August 1966, the bill was signed into law as the Laboratory Animal Welfare Act.[172] Amendments in 1970 and 1976 broadened the scope of the Act, and shortened the name to the Animal Welfare Act.[173] This Act provides the current federal legislative framework for regulation of animal testing.[174]

The AWA has three components: requirements for licensing and registration; standards for handling laboratory animals; and authority to inspect, investigate, and enforce the Act.[175] The AWA authorizes regulation of all animals and activities involved in, or substantially affecting, interstate or foreign commerce.[176] The Act has three purposes: to insure that animals to be used in exhibition, research, or as pets are provided with humane care and treatment; to assure that animals are treated humanely during transportation in commerce; and to protect pet owners from the theft of pets by preventing the sale or use of animals that have been stolen.[177]

The AWA also mandates licensing of dealers and exhibitors.[178] It prohibits research facilities or government agencies from purchasing dogs or cats from anyone other than an auction sale operator or a licensed dealer or exhibitor.[179] A research facility includes:

> any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from . . . the United States for the purpose of carrying out research, tests, or experiments . . . .[180]

Research facilities, dealers, and exhibitors must keep records indicating the previous ownership of the animals.[181]

The AWA also requires the promulgation and certification of humane standards for handling, care, treatment, and transporta-

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172. *Id.*
173. *Id.* at 56-57.
174. 7 U.S.C. §§ 2131-57 (1988).
175. *Id.*
176. *Id.* § 2131.
177. *Id.*
178. 7 U.S.C. §§ 2133, 2134.
179. *Id.* §§ 2137, 2138.
180. *Id.* § 2132(e).
181. *Id.* § 2140.

tion of animals.[182] Pursuant to the Act, the United States Department of Agriculture ("USDA") has set specifications for indoor and outdoor housing, feeding, watering, sanitation, handling, transportation, adequate veterinary care, and separation by species where necessary.[183]

Several years of legislative effort to improve the Act resulted in the 1985 Amendment to the AWA.[184] It added the requirements that animal suffering be minimized with adequate veterinary care, including the appropriate use of anesthetics or euthanasia.[185] Researchers must also consider alternatives to procedures that would cause an animal pain or distress.[186] For procedures that could result in pain to an animal, the amendment specifies five additional requirements. First, a veterinarian must be consulted to plan procedures.[187] Second, anesthetics must be used.[188] Third, there must be pre-surgical and post-surgical care in accordance with established veterinary procedures.[189] Fourth, paralytics are prohibited without anesthesia.[190] Finally, anesthetic may not be withheld unless scientifically necessary, and only for the necessary time.[191] Also, the amendment limits the use of each animal to only one major operation, unless multiple procedures are scientifically necessary.[192]

In addition, the amendment requires each research facility to establish an animal committee to assess animal care, treatment, and practices, and to represent society's concern for animal welfare.[193] The committee must be made up of at least one veterinarian and one person not affiliated with the facility in any other way.[194] These committees must inspect the facilities and file semi-

182. 7 U.S.C. § 2143.

183. 9 C.F.R. §§ 3.1-3.17 (1989) (pursuant to 7 U.S.C. § 2143(a)(2)(A)).

184. Reagan, *Federal Regulation of Testing with Laboratory Animals: Future Directions*, 3 PACE ENVTL. L. REV. 165, 169 (1986).

185. 7 U.S.C. § 2143(a)(3)(A).

186. *Id.* § 2143(a)(3)(B).

187. *Id.* § 2143(a)(3)(C).

188. *Id.*

189. 7 U.S.C. § 2143(a)(3)(C).

190. *Id.* Paralytics paralyze the animal's muscles so that it cannot move during an operation. Paralytics have no anesthetic value, and result in extreme pain when used without anesthesia.

191. *Id.*

192. *Id.* § 2143(a)(3)(D).

193. 7 U.S.C. § 2143(b)(1).

194. *Id.*

annual reports.[195]

The AWA provides authority for criminal and civil penalties, license suspension, and issuance of cease and desist orders.[196] Knowing violation of the AWA may result in imprisonment or fines of up to $2500.[197]

The AWA is the main vehicle for protection of animals in this country. While state anti-cruelty statutes could theoretically be used to protect laboratory animals, reformers have instead focused on federal law.[198] The federal forum is preferred because it offers the breadth and uniformity of a system of national regulation.[199] Accordingly, this note proposes a change at the federal level through an amendment to the Animal Welfare Act.

V. An Amendment to the Animal Welfare Act That Will Prohibit the Use of Pound Animals in Scientific Research

The Animal Welfare Act does not address the use of pound animals in research. Because of the special status of pets in our society, their moral position, and our responsibility for them,[200] they should not be permitted to become victims of research. This section proposes an amendment to the AWA that will prohibit the use of pound animals in scientific research. This section first describes the purpose of the amendment. Next, it analyzes the specific changes that will be accomplished through the amendment. Finally, it discusses the possible consequences of the amendment. The text of the proposed amendment is found in Appendix A.

A. Purpose

The purpose of the proposed amendment to the AWA is to prohibit the use of any shelter animals nationwide in scientific research. The amendment makes it unlawful for research facilities to purchase or otherwise acquire any live dog or cat that was previously detained by a municipal or public pound, animal shelter,

195. *Id.* at § 2143(b)(3)-(4).
196. *Id.* § 2149.
197. 7 U.S.C. § 2149(d).
198. Dresser, *supra* note 1, at 1160-61.
199. *Id.*
200. *See supra* text accompanying notes 87-135.

public agency, or animal control officer. This will effectively prohibit pounds and shelters from selling live dogs and cats for research purposes.[201] Prohibiting use of animals from these sources in scientific research would remove any incentive for animal dealers and auction operators to purchase live animals from shelters and pounds. The animals given over to shelters and pounds will either find new homes or be euthanized painlessly and die with dignity.

B. The Amendment

The Animal Welfare Act regulates a variety of activities relating to the transportation, sale, and handling of animals in interstate commerce. Only activities that receive federal funds, or involve animals that are in, or substantially affect, interstate commerce are covered by the Act.[202] This would include intrastate shipment of animals under the Supreme Court's broad interpretation of commerce clause power.[203]

Eliminating shelter and pound animals from scientific research requires only minor changes to the Act itself. Sections 2137 and 2138 restrict the sources from which research facilities may acquire animals. Prohibiting research facilities from acquiring animals from pounds or shelters is a reasonable extension of these sections.

The proposed amendment prohibits the use of pound animals in research in two ways. First, all state pound seizure statutes

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201. However, pounds and shelters would still be permitted to euthanize animals in a humane manner and then sell the remains for biological study. The rationale discussed earlier for prohibiting pound seizure does not support prohibiting scientific inquiry on the bodies of euthanized pets.

202. 7 U.S.C. § 2131 (1988).

203. *Cf.* Perez v. United States, 402 U.S. 146 (1971). The proposed amendment to the AWA should be constitutional under the commerce clause, as is the remainder of the Act. Sections 2137 and 2138 originally restricted the sources from which animals could be purchased through interstate commerce. The amendment merely takes these restrictions one step further by making research facilities responsible for knowing that the live animals they purchase do not come from pounds or shelters. It does not alter the constitutional reach of the original statute.

This restriction on the purchase of pound animals would probably also function to restrict intrastate purchases. If a research facility could legally purchase pound animals which originated in its own state, it might be less inclined to purchase more expensive purpose-bred animals from out of state dealers. Therefore, the intrastate purchase of pound animals would affect interstate commerce and would be prohibited under this Act. The proposed amendment to the AWA would, therefore, probably eliminate all use of pound animals in scientific research.

would be preempted by this federal pronouncement.[204] Shelters would no longer be forced to turn over animals to research facilities as currently required under some state statutes. Second, the market for pound animals would be eliminated because research facilities would no longer be allowed to purchase animals that had previously been in a shelter or pound. Record keeping requirements in section 2140 state that dealers, exhibitors, and research facilities must record the previous ownership of any animal purchased.[205] This system of record keeping could be used to enforce the pound seizure prohibition.

C. Ramifications

When the issue of pound seizure was debated at the state level, the research community's strongest argument was that eliminating pound seizure would make animal research more expensive.[206] In Massachusetts, Harvard Medical School estimated that the cost of purchasing and maintaining research dogs could increase from six hundred thousand dollars to as high as two million dollars annually.[207] In California, universities anticipated that, had the proposed pound seizure legislation passed, it might have increased the cost of using dogs and cats tenfold.[208] The researchers considered the increased cost wasteful with hundreds of thousands of animals euthanized in each state every year.

There is no doubt that prohibiting the use of pound animals in research would make research initially more expensive. Some members of the research community feel that prohibiting the use of pound animals would effectively stop research in some areas.[209] Others merely warn that the cost of research could increase tenfold.[210] One scientist stated that the cost differential could be a major factor in determining the scope of potential research and

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204. The supremacy clause of the United States Constitution mandates that federal law overrules any conflicting state law. U.S. CONST. art. VI, cl. 2. This amendment to the AWA expresses clear intent to preempt conflicting state law through the language "notwithstanding any state law to the contrary."

205. 7 U.S.C. § 2140 (1988).

206. Silas, *The Dogs Win: Mass. Curbs Medical Research*, 70 A.B.A.J. 37 (Apr. 1984); Fox, *supra* note 38, at 151; Fox, *supra* note 44, at 1414.

207. Silas, *supra* note 206, at 37.

208. Fox, *supra* note 44, at 1414.

209. A. ROWAN, *supra* note 2, at 153. *But see supra* text accompanying notes 148-56.

210. A. ROWAN, *supra* note 2, at 153.

teaching programs.[211] If these concerns prove justified, one consequence of the higher price might be a reduction in the use of animals in research. This could result in a stronger effort to find non-animal alternatives as a way to lower the cost of research.[212] Another possible result is that scientific research would become more focused, with only the most important causes receiving extensive research.

There is at least one troubling consequence, however, of prohibiting the use of shelter animals in research. There would inevitably be an increase in animals bred specifically for research. Animal rights advocates must consider whether it is more ethical to use former pets in research, or to breed more animals each year solely for use in scientific research.[213] Because most pound animals are destroyed anyway, a moral dilemma arises regarding the breeding of life merely for use in scientific experiments.[214]

The attack on pound seizure is also seen by some scientists as a stepping stone for more restrictive legislation.[215] This would not necessarily follow from a prohibition of pound seizure. While many animal rights activists would support more restrictive legislation, its political feasibility is questionable. More restrictive legislation may someday be possible with enough political support, but does not seem likely at this time.

Conclusion

Amending the AWA to prohibit the use of pound animals in research would serve several purposes. First, it would quell the uneasiness that many people feel toward the use of pets as research

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211. Visscher, *supra* note 26, at 78.

212. *See supra* text accompanying note 156. In the past, industry has developed non-animal research alternatives in response to economic pressures. For example, pressure from consumers and animal rights groups led the cosmetics industry to fund the development of non-animal alternatives to research. *See* A. Rowan, *supra* note 2, at 223. Revlon, a major cosmetics company, shocked the rest of the industry in 1980 when it gave a three-year, $750,000 grant to Rockefeller University to research alternatives to the Draize test. *Id.* The Draize test involves dripping or squirting concentrated test products into the eyes of rabbits to determine toxicity. *Id.* Most rabbits are blinded by this process. *Id.* This and other research commitments led to the development of non-animal experimental research methods. Metz, *supra* note 47, at 16. Such research needs to be encouraged and supported throughout the general scientific community. *Id.*

213. A. Rowan, *supra* note 2, at 160.

214. *Id.* at 160-61.

215. Visscher, *supra* note 26, at 78.

subjects. Despite other more practical arguments for prohibition, for many people the pound seizure controversy is mainly an emotional and moral issue. The possibility that a lost pet could end up being subjected to painful research procedures is disturbing to most pet owners. Second, it would probably improve the accuracy of scientific research, and reduce costs. Finally, it would prevent animal control problems. People would no longer fear that pound animals might be delivered to research laboratories, and would therefore deliver strays to shelters.

European countries have responded to these arguments and are moving toward a purely purpose-bred system. The United States could benefit by following their example. The Congress accordingly should enact legislation designed to prohibit the use of pound animals in biomedical research.

Karen L. Whitney

APPENDIX A

§ 2137. Purchase of dogs or cats by research facilities prohibited except from authorized operators of auction sales and licensed dealers or exhibitors.

(a) It shall be unlawful for any research facility to purchase any dog or cat from any person except an operator of an auction sale subject to section 2142 of this title or a person holding a valid license as a dealer or exhibitor issued by the Secretary pursuant to this chapter unless such person is exempted from obtaining such license under section 2133 of this title.

(b) Notwithstanding any state law to the contrary, it shall be unlawful for any research facility to acquire any live dog or cat which was previously detained by any municipal or public pound, animal shelter, public agency or animal control officer.

§ 2138. Purchase of dogs or cats by United States Government facilities prohibited except from authorized operators of auctions sales and licensed dealers or exhibitors.

(a) No department, agency, or instrumentality of the United States which uses animals for research or experimentation or exhibition shall purchase or otherwise acquire any dog or cat for such purposes from

any person except an operator of an auction sale subject to section 2142 of this title or a person holding a valid license as a dealer or exhibitor issued by the Secretary pursuant to this chapter unless such person is exempted from obtaining such license under section 2133 of this title.

(b) Notwithstanding any state law to the contrary, no department, agency, or instrumentality of the United States which uses animals for research or experimentation or exhibition shall purchase or otherwise acquire any live dog or cat for such purpose which was previously detained by any municipal or public pound, animal shelter, public agency, or animal control officer.