

COMMENT

GREYHOUNDS: RACING TO THEIR DEATHS

Addie Patricia Asay*

I. INTRODUCTION

The following poem, written by Lynn Kargol, reflects how the greyhound-racing industry might look from the perspective of the greyhound. It is this viewpoint that often is ignored when discussing the greyhound-racing industry.

FREE AT LAST

*Racing days are over
Thought the pain would go away
But soon I learned a different fate
Was headed straight my way
He reached his hands into my cage
And pushed me out once more
I glanced at all my weary friends
As he led me out the door*

* © 2003, Addie Asay. All rights reserved. Executive Editor, *Stetson Law Review*. B.A., Saint Joseph's University, 2000, *magna cum laude*; J.D., Stetson University College of Law, expected 2003.

This Comment is dedicated to my parents, Nancy and Donald Asay, for teaching me and my sister, Meghan, compassion for living creatures and for showing by example the importance of public service. Additionally, I am grateful to them for inviting Katie, a rescued greyhound, to become a part of our family. I am indebted to Professor Kristen D.A. Carpenter, whose suggestions, guidance, and support assisted me in writing this Comment. I would like to thank deeply the *Law Review* advisors, associates, staff, and editors, particularly Ms. Mary Jane Arbutine, for their help in preparing this Comment for publication. Finally, I would like to thank all of my family and friends, especially Jonathan Flynn, who always give their unconditional support; without them, this would not have been possible.

*It hurts to walk; it hurts to stand
Been through all I could endure
But all my pains are nothing that
Somebody's love could not cure
I'm pushed against a concrete wall
And know I've failed the test
He said I wasn't fast enough
And reached into his vest
I close my eyes and cower
As I shake, my senses dull
Then I feel the barrel of a gun
Against my skull
Isn't there a better way
[T]o entertain a crowd?
But my thoughts are interrupted
By a noise so hard and loud
I'm just another failure
Racing to my final day
And sometimes all the winners
Will lose a race someday
They call it an "exciting sport"
They say that it's humane
But a sport that always ends in death
To me, is not a game¹*

Dogs have enjoyed a place of privilege and affection in the hearts and minds of most Americans. The greyhound breed specifically has enjoyed a rich and noble history, which often has been intertwined with the life of aristocracy.² Nonetheless, the breed has been forced into a dangerous and cruel activity that is fueled by the suffering and death of thousands of nonhuman animals.³ The number of states that still allow this type of "entertainment" is dwindling,⁴ and many groups, as well as individuals, are fighting to bring an end to the industry.⁵ This

1. GREY2K USA Educ. Fund, *Poems* <<http://www.grey2kusaedu.org/poems.html>> (accessed Jan. 15, 2002). This poem is copyrighted and is used with the permission of the organization for the purpose of this Comment. GREY2K USA Education Fund was created to ensure the welfare of greyhounds through education. *Id.*

2. *Infra* nn. 6–17 and accompanying text.

3. *Infra* nn. 23–63, 69–124 and accompanying text.

4. *Infra* n. 233 and accompanying text.

5. *Infra* nn. 234–237 and accompanying text.

Comment focuses on the abuse and mistreatment inflicted on greyhounds and posits that anti-cruelty statutes are ineffective protection for greyhounds because they are interpreted within a framework that considers nonhuman animals property and that excludes nonhuman animals from moral consideration. Because of this, the most, and likely only, effective way to protect the greyhounds is to abolish greyhound racing.

Following this introduction, Part II considers the history of the greyhound and the path that led to greyhound racing. Part III discusses the abuse inflicted on greyhounds, and animals used in their training, that has been prosecuted under anti-cruelty statutes. Part IV considers the institutionalized abuse and mistreatment of greyhounds not punished under anti-cruelty statutes. Part V attempts to discover why anti-cruelty statutes have not protected greyhounds adequately. Part VI counters the argument that, because the racing industry is in economic decline, the market should be left to deal with the problem, while Part VII asserts that the most effective way to protect greyhounds is to abolish greyhound racing through a voter-initiative-and-education campaign, which would focus on the abuses experienced by the greyhounds and the costs — moral, physical, and economic — to society because of greyhound racing.

II. THE GREYHOUND'S HISTORY

The modern greyhound has emerged from a history intertwined with that of aristocracy. In murals and paintings, greyhound-type dogs⁶ have been found and traced back more than four thousand years.⁷ “In ancient Egypt, greyhound-type dogs

6. The greyhound hails from the family of dogs characterized by “long legs, a long narrow head, a deep chest, and the ability to hunt by sight (hence the term sighthound, or gazehound) rather than by scent as most dogs do.” Cynthia A. Branigan, *Adopting the Racing Greyhound* 6 (Macmillian Publ. Co. 1992).

7. AGC, *The History of the Greyhound* <<http://www.agcouncil.com/history.htm>> (accessed Sept. 3, 2001). “The American Greyhound Council (AGC), [is] a not-for-profit corporation, [which] was founded in April, 1987.” *Id.* at <<http://www.agcouncil.com/agc.htm>>. The organization is a joint project of the National Greyhound Association (NGA) and the American Greyhound Track Operators Association (AGTOA), whose expressed mission “is to ensure the health, welfare[,] and safety of racing Greyhounds from the farm through retirement.” *Id.* The AGC provides for projects that include an “inspection program to ensure that Greyhound farms operate in compliance with established veterinary standards for proper animal care, housing, exercise, nutrition, sanitation, transport[,] and management.” *Id.* The AGC also participates in adoption, industry education, and research concerning greyhound health. *Id.*

were mummified and buried along with their owners.”⁸ Additionally, many vaults were decorated with images of such dogs; for example, when the tomb of King Tutankhamun, who died around 1336 B.C.E., was opened, “fan-shaped ostrich feathers embossed with running sighthounds — which were strikingly similar to the greyhounds of today — were found adorning the walls.”⁹ It is believed that the Pharaohs enjoyed these dogs as both pets and hunters.¹⁰

Appreciation of these animals was not limited to the ancient Egyptians. Because of their appreciation of the dogs’ speed and physical prowess, ancient Arabs “allowed the dog[s] to share their [masters’] tents and [ride] atop their camels, privileges” that are believed to have been exclusive to the breed.¹¹ The importance of the breed in ancient times also is represented by the fact that it is the only canine mentioned in the Bible.¹²

The greyhound did not stay in the ancient desert region, but traveled into other royal circles. Historians believe that, although the greyhound originated in the desert regions of Egypt, it then spread to Arabia, Persia, Russia, and Greece.¹³ Alexander the Great is yet another ruler who is thought to have owned and bred greyhounds.¹⁴ The greyhound then continued traveling through imperial Rome, leading to its introduction to the British Isles.¹⁵ The greyhound’s royal connection continued to thrive with its move into Britain, culminating in the enactment of the Forest Laws in 1014 by King Canute of England, “which decreed that

8. Michael Maguire, *The Origin of the Greyhound* <<http://www.greyhound1.homestead.com/Page2~ie4.html>> (accessed Oct. 14, 2001). Michael Maguire is a writer and greyhound-racing fan. *Id.* at <<http://www.greyhound1.homestead.com/Aboutme.html>>. He has written eight novels, including a greyhound-racing thriller. *Id.* He also writes “for *Greyhound Monthly* (UK), *Greyhound Star* (UK), *Sporting Press* (Ireland), and *Greyhound Review* (US).” *Id.* Some experts believe that the Egyptian god Anubis, who was half man and half beast, was in fact half greyhound. Branigan, *supra* n. 6, at 8.

9. Maguire, *supra* n. 8, at <<http://www.greyhound1.homestead.com/page2~ie4.html>>.

10. AGC, *supra* n. 7, at <<http://www.agcouncil.com/history.htm>>.

11. *Id.*

12. *Proverbs* 30:29–31 (King James); *Proverbs* 30:29–31 (Webster’s). Other versions of the Bible differ in their translation and do not include “greyhound.” See *Proverbs* 30:29–31 (New Am. Stand.) (mentioning a strutting rooster and a male goat); *Proverbs* 30:29–31 (New Intl.) (using the terms strutting cock and he-goat); *Proverbs* 30:29–31 (Rev. Stand. Version) (discussing a strutting rooster and a he-goat).

13. Maguire, *supra* n. 8, at <<http://www.greyhound1.homestead.com/Page2~ie4.html>>.

14. *Id.*

15. *Id.*

only noblemen could own and hunt with [g]reyhounds.”¹⁶ Although over time the law that kept greyhounds out of peasant’s hands ceased to exist, the British royalty’s connection with the greyhound has continued.¹⁷

The greyhound next moved to the New World, where it was used by farmers to assist in their attempts to control the jackrabbit population.¹⁸ The greyhound’s natural speed and sight instincts led the dogs to become the center of neighborhood coursing competitions.¹⁹ It was this type of homegrown entertainment that evolved into the present-day greyhound-racing industry. Saint Petersburg, Florida is home to the first commercial greyhound racetrack, which opened in 1925.²⁰

III. INDUSTRY ABUSE PUNISHED UNDER ANTI-CRUELTY STATUTES

Those who breed, train, house, and care for racing greyhounds have not been entirely free from prosecution under animal anti-cruelty statutes. There have been many incidents in which people have been arrested, tried, and punished for the abuses inflicted upon the greyhounds and the bait animals used in their training.²¹ Nonetheless, anti-cruelty statutes seem to be applied against only the most horrible and cruel forms of abuses.²²

16. AGC, *supra* n. 7, at <<http://www.agcouncil.com/history.htm>>; Maguire, *supra* n. 8, at <<http://www.greyhound1.homestead.com/Page2~ie4.html>>. Another interesting law, created around the same time as the Forest Laws by King Howel of Wales, punished with death anyone found to have killed a greyhound. Maguire, *supra* n. 8, at <<http://www.greyhound1.homestead.com/Page2~ie4.html>>. It is believed that these types of rules emerged from the fact that, during the Middle Ages, the greyhound breed was saved by clergymen who bred them for noblemen. Branigan, *supra* n. 6, at 11.

17. AGC, *supra* n. 7, at <<http://www.agcouncil.com/history.htm>>. Queen Victoria and Prince Albert kept several greyhounds as pets. In more recent history, both Princess Margaret and Diana, Princess of Wales, have been involved in charity meets with greyhounds, and His Royal Highness Edward, Earl of Wessex, has owned racing greyhounds. Maguire, *supra* n. 8, at <<http://www.greyhound1.homestead.com/Page2~ie4.html>>.

18. AGC, *supra* n. 7, at <<http://www.agcouncil.com/history.htm>>.

19. *Id.* Coursing, which may have begun in ancient Greece, is when greyhounds are released into a field and encouraged to run and catch a rabbit that previously had been put into the field. Branigan, *supra* n. 6, at 12, 14.

20. Joan Eidinger, *Nowhere to Run: Dog Racing in Decline*, 20 *Animals’ Agenda* 5 (Sept. 1, 2000).

21. *Infra* nn. 33–46, 48–54, 57–62 and accompanying text.

22. *Infra* nn. 33–46, 48–54, 57–62 and accompanying text.

A. The Use of Live Lures and Coursing

As many as 100,000 small animals, mostly domestic rabbits and wild jackrabbits, are maimed and killed in a variety of ways every year by persons involved in the greyhound-racing industry.²³ Many are used as live lures and are hung from a horizontal pole, which goes around the track; often the bait animals' legs are "broken so their cries will excite the dogs."²⁴ "The [greyhounds] are encouraged to chase," catch, and kill the lure "so they will chase the inanimate lures used during the actual races."²⁵ These bait animals, whether alive or dead, normally are used throughout the day, and when their jobs are done, trainers frequently allow greyhounds to tear them up.²⁶ These small bait animals also are used in "coursing," which involves placing the rabbits within fenced enclosures in which the greyhound chases, terrorizes, and eventually kills the lure.²⁷ These bait animals are used and killed in such cruel and painful

23. Humane Socy. of the U.S., *Greyhound Racing Facts* <http://www.hsus.org/programs/companion/pet_cruelty/greyhound_racing.html> (last updated May 1999). This number was calculated during investigations by the Humane Society of the United States (HSUS) "into the illegal importation of rabbits as well as the use of animals in training events." *Id.* HSUS investigates abuses in the industry, "educate[s] the public about the inherent cruelty of this industry," and works to ban greyhound racing. *Id.* "Founded in 1954, the HSUS envisions a world in which people satisfy the physical and emotional needs of *domestic animals*; protect *wild animals* and their environments; and change their relationships with all animals, evolving from exploitation and harm to respect and compassion." *Id.* at <<http://www.hsus.org/ace/12552>> (emphasis added).

24. People for the Ethical Treatment of Animals, *Greyhound Racing: Death in the Fast Lane* <<http://www.peta-online.org/mc/facts/fsent2.html>> (accessed Aug. 31, 2001). Guinea pigs are especially popular for their loud screams. *Id.* "To get the 'right' sound, greyhound trainers can break the rabbit's front legs before turning them loose to the dogs. Or they simply release the rabbits: [t]he squeals come seconds later as the dogs tear the animals apart." David K. Rogers, *Jackrabbit Business Illegal but Booming*, St. Pete. Times 1A (May 27, 1991).

25. People for the Ethical Treatment of Animals, *supra* n. 24, at <<http://www.peta-online.org/mc/facts/fsent2.html>>. People for the Ethical Treatment of Animals (PETA) is a nonprofit organization that "promotes an understanding of the right of all animals to be treated with respect." People for the Ethical Treatment of Animals, *PETA's History* <<http://www.peta.org/about/hist.html>> (accessed Aug. 23, 2002). PETA's numerous campaigns focus on helping animals who suffer and die in laboratories, on factory farms, in the fur industry, in circuses, and in other forms of entertainment. *Id.* These campaigns take the form of investigations, educational campaigns, outreach programs, and care-and-rescue efforts. *Id.*

26. People for the Ethical Treatment of Animals, *supra* n. 24, at <<http://www.peta-online.org/mc/facts/fsent2.html>>.

27. Humane Socy. of the U.S., *supra* n. 23, at <http://www.hsus.org/programs/companion/pet_cruelty/greyhound_racing.html>.

ways because many “experts” within the racing field believe that greyhounds need to develop a “taste for blood” and that this type of exercise enhances the dogs’ racing ability.²⁸

In a number of states, the use of live lures has been prohibited by statute.²⁹ In 1986, the Florida Legislature enacted *The Animal Fighting Act*.³⁰ This Act outlaws baiting or using live animals in the training of racing greyhounds.³¹ But, the practice did not end because of the enactment of the law; instead, the practice has been perpetuated by an illicit interstate trade, which reportedly fetches twenty dollars per jackrabbit.³² The few people who actually are found bringing jackrabbits into the state for racing purposes are prosecuted;³³ however, officials at the Florida Division of Pari-Mutuel Wagering have estimated that three hundred bait animals may be brought into the state each week.³⁴

B. Neglect and Lack of Medical Care

Florida Statutes Section 828.12, the cruelty-to-animals statute, also has been applied against persons within the greyhound-racing community for neglect and failure to provide medical care. This Section states, “A person who . . . deprives [any animal] of necessary sustenance or shelter . . . is guilty of a

28. Branigan, *supra* n. 6, at 46–48; Humane Socy. of the U.S., *supra* n. 23, at <http://www.hsus.org/programs/companion/pet_cruelty/greyhound_racing.html>.

29. Humane Socy. of the U.S., *supra* n. 23, at <http://www.hsus.org/programs/companion/pet_cruelty/greyhound_racing.html>. “The use of live lures is not permitted in at least 14 states.” *Id.* But, HSUS asserts, it is difficult to enforce these laws. *Id.* Many dogs in states that outlaw live-lure training are sent to train “in Texas and Kansas, where anti-cruelty codes are weaker.” People for the Ethical Treatment of Animals, *supra* n. 24, at <<http://www.peta-online.org/mc/facts/fsent2.html>>.

30. Fla. Stat. § 828.122 (2002).

31. *Id.* “Baiting” means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among animals. In addition, ‘baiting’ means the use of live animals in the training of racing greyhounds.” *Id.* § 828.122(2)(a). “Any person who commits any of the following acts is guilty of a felony of the third degree . . . (a) Baiting, or using any animal for the purpose of fighting or baiting any other animal.” *Id.* § 828.122(3).

32. Rogers, *supra* n. 24.

33. *Id.* A man headed to a training farm in Orlando was arrested for hauling “a pickup truck full of jackrabbits, stuffed into small [cages].” *Id.* Many rabbits had killed themselves by jumping around in their small cages; the remaining animals were “destroyed by lethal injection.” *Id.* Twelve people were arrested for “baiting a greyhound with a live” lure. Rick Butler, *Trainers Defend Jack Rabbit Use for Baiting Dogs*, St. Pete. Times 10C (Oct. 10, 1988).

34. Rogers, *supra* n. 24.

misdeemeanor of the first degree.”³⁵ In November 1991, an anonymous tip led police to a farm in Summerfield, Florida, where they found one hundred and ninety-four starving greyhounds forced to lie in and eat their own waste.³⁶ Investigators said the dogs were nothing “more than skin covering bones.”³⁷ The family that owned the training farm stated that the dogs’ owners had not sent money for food and that they had already “disposed of more than ten dogs.”³⁸

But such neglect does not occur only on breeding or training farms in places hidden from view. On January 21, 1996, a greyhound, He’s My Denny, was injured seriously when an assistant at a racetrack let a number of dogs out for a run, and they attacked Denny.³⁹ Denny’s trainer, David Jonathon Gibby, decided not to allow a vet to treat the “multiple puncture wounds and abrasions to [his] neck,” the “swelling and gas under his skin,” and the bruising that occurred to “the knuckles of his feet and lower limbs.”⁴⁰ It was not until January 25 that Denny was given medical attention, and then only because the director of the Greyhound Pets of America “heard the dog whimpering in a kennel.”⁴¹ Gibby later took Denny out of the clinic for fear that the owner would find out about Denny’s injuries.⁴² Sadly, because of the lack of medical attention, Denny developed gangrenous wounds from which he later died.⁴³ Gibby was arrested and tried under Florida’s cruelty-to-animals statute.⁴⁴ The jury found him

35. Fla. Stat. § 828.12. The full text of Section 828.12(1) is as follows:

A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree.

Id. § 828.12(1).

36. Sharon McBreen, *194 Starving Greyhounds Found Jammed into Cages; 3 People Charged after Tips Leads Marion Deputies to a Farm South of Ocala*, Orlando Sentinel Trib. A1 (Nov. 21, 1991).

37. *Id.*

38. *Id.*

39. Pat LaMee, *Trainer Guilty in Death of Dog; It Took Jurors 36 Minutes to Decide the Holly Hill Man Was Guilty of Causing the Pain, Suffering and Death of a 2-Year-Old Racing Greyhound Known as He’s My Denny*, Orlando Sentinel D1 (June 21, 1996).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* Gibby’s attorney focused his argument on the fact that Denny was simply “a piece of property” and was basically “no different from a car.” *Id.*

“guilty of causing the pain, suffering, and death of” Denny,⁴⁵ and he subsequently was sentenced “to six months in jail and five years’ probation.”⁴⁶

Greyhounds at the track also have suffered cruelly due to dehydration. In August 2000, at the Palm Beach Kennel Club, four greyhounds died when they were left outside for hours in ninety-degree heat with no water.⁴⁷ The trainer stated that the deaths occurred as a result of a miscommunication between him and an assistant.⁴⁸ Animal-abandonment charges were dropped, and he “was placed on 18 months’ probation and ordered to perform community service at an animal shelter or thrift shop.”⁴⁹

C. Abandonment and Starvation

Persons inside the greyhound-racing industry also have been prosecuted under Florida’s anti-cruelty statutes when they have abandoned their greyhounds. Florida Statutes define “abandon” as follows: “to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.”⁵⁰ In September 1999, Bruno Steinmann, a greyhound owner, left his dogs in the care of another owner at the Seminole Greyhound Park.⁵¹ After a month, an inspector “found many of the dogs to be dehydrated, malnourished[,] and suffering from anemia because of fleas and ticks.”⁵² The Assistant State Attorney stated that “[a]t least 15 dogs were in bad medical condition” and one ultimately died.⁵³ Both owners were charged with “70 counts of animal abandonment, a misdemeanor.”⁵⁴ They were found guilty and sentenced to seven months of jail time and

45. *Id.* Gibby requested a new trial based on his assertion that explicit photos of Denny’s wounds swayed jurors. Purvette A. Bryant, *Judge: No New Animal Cruelty Trial; A Man Convicted in a Greyhound’s Death Requested a New Trial Because He Said Jurors Were Swayed by Photos*, Orlando Sentinel C1 (July 25, 1996). The court denied this request. *Id.* Gibby also appealed the conviction to the Fifth District Court of Appeal, which subsequently upheld the conviction. *Court Upholds Conviction of Man in Death of Dog*, Orlando Sentinel C3 (Oct. 15, 1997).

46. Pat LaMee, *Man Sentenced to Jail in Death of Greyhound*, Orlando Sentinel D1 (Oct. 26, 1996).

47. *In Court*, Palm Beach Post (Fla.) 2B (Feb. 15, 2001).

48. *Id.*

49. *Id.*

50. Fla. Stat. § 828.13(1)(a).

51. *Dog Trainers Get 7 Months*, Orlando Sentinel D2 (Aug. 28, 2001).

52. *Id.*

53. *Id.*

54. *Id.*

fined \$7,000.⁵⁵ Unlike the previous case, in which only one dog died, in August 1989, more than eighty greyhounds were found severely malnourished at a kennel in Suwannee.⁵⁶ All greyhounds had to be euthanized.⁵⁷

D. Overcrowding and Abuses in Transportation

The racing industry also has had to deal with owners who decide to transport their greyhounds in an unsafe fashion. Many greyhounds do not train at the same farm at which they were bred; instead, many greyhounds must travel great distances. Some trips result in deadly consequences for the greyhounds. In one instance, a greyhound owner used a truck and small trailer to transport more than sixty dogs for a trip from Oregon to Florida, a trip of more than three thousand miles that would take about fifty-eight hours.⁵⁸ “The truck held 31 dogs in 12 crates, the trailer held [another] 30 dogs in ten compartments,” each approximately 35 inches wide.⁵⁹ The dogs were “double- and triple-crated, were never taken out to relieve themselves or [to] exercise[,] and had no water for the last 20 hours of the trip.”⁶⁰ Even though the temperature near Orlando was ninety-five degrees, the trailer was not air-conditioned.⁶¹ It is not surprising that, when the dogs arrived in the Orlando area, one dog was already dead and another five were so ill that death occurred within minutes of arrival.⁶² The Oregon Racing Commission revoked the owner’s racing license and fined him \$3,000 for what it termed “negligence.”⁶³

55. *Id.*

56. Brian Landman, *Group Decries Man’s Inhumanity to Dog*, St. Pete. Times 2C (July 17, 1993).

57. *Id.*

58. Greyhound Network News, *Cover Stories Summer 2000* <http://www.greyhoundnetworknews.org/backissues/00/summer00_cover_b.html> (accessed Oct. 14, 2001). Greyhound Network News (GNN) is a volunteer-run, Arizona corporation. *Id.* at <<http://www.greyhoundnetworknews.org/main.html>>. The organization publishes a quarterly newsletter that contains news about greyhounds. *Id.*

59. *Id.* at <http://www.greyhoundnetworknews.org/backissues/00/Summer00_cover_b.html>.

60. *Id.* (quoting from the report of Bryan Wall, an investigator for the Florida Division of Pari-Mutuel Wagering).

61. *Id.*

62. *Id.*

63. *Id.*

*IV. INSTITUTIONALIZED ABUSE AND MISTREATMENT
NOT PUNISHED UNDER ANTI-CRUELTY STATUTES*

A. Out-of-State Lure Training

As noted previously, Florida has made live-lure training and baiting illegal.⁶⁴ Still, Florida lacks enforceable laws that forbid owners and trainers from taking their dogs to other states that allow either live-lure training or that do not strictly enforce existing anti-cruelty statutes.⁶⁵ These live-lure-trained dogs are then allowed to return and to compete in Florida races.⁶⁶ Thus, although the law may be enforced against persons importing bait animals to Florida for training purposes, it fails to ensure the safety of bait animals that are used in these processes in other states.⁶⁷ Instead, states such as Texas and Kansas, which are perceived as having weaker anti-cruelty statutes than other states or as enforcing their laws less strictly, have become fertile greyhound-training grounds.⁶⁸

B. Culling the Litter

Culling the litter is a common practice that has gone unhindered by anti-cruelty statutes.⁶⁹ Owners, breeders, and trainers kill many greyhounds as puppies because they seem unlikely to win many, if any, races.⁷⁰ Based on figures from *The*

64. Fla. Stat. § 828.122(a).

65. Rogers, *supra* n. 24. Some Florida owners send their dogs to train in Oklahoma because that State has no laws that protect the jackrabbits. *Id.*; *supra* nn. 29–34 and accompanying text. The Florida Pari-Mutuel Waging Law states as follows: “It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.” Fla. Stat. § 550.2415(6)(c) (2002). However, this statute does not explain how the statute is enforced. It does not even require a pledge from the owner or trainer that no live-lure animals were used in the greyhound training.

66. Rogers, *supra* n. 24.

67. *Id.*

68. People for the Ethical Treatment of Animals, *supra* n. 24, at <<http://www.peta-online.org/mc/facts/fsent2.html>>.

69. See GREY2K USA, *Greyhound Racing: The Facts* <<http://www.grey2kusa.org/facts.html>> (last updated Sept. 15, 2000) (citing to industry breeding reports published in *The Greyhound Review*).

70. *Id.* at <<http://www.grey2kusa.org/faq.htm>> (last updated May 5, 2001). GREY2K USA is a national advocacy organization dedicated to ending greyhound racing. *Id.* It is a grassroots effort to educate the public about the cruelty of greyhound racing and to lobby state legislatures to outlaw greyhound racing in each state. *Id.*

Greyhound Review, between 1989 and 1998, “65,601 litters were registered by the National Greyhound Association.”⁷¹ The low to average litter size is 6.5 pups, so multiplying that by the number of litters “results in a minimum total of 426,407 greyhounds born [over] this ten-year period.”⁷² Greyhound litters are “registered at three months of age and [then greyhounds are] individually registered at 18 months.”⁷³ In that ten-year period, “only 342,022 [greyhounds] were individually registered” out of the low estimate of 426,407 greyhounds born.⁷⁴ This results in an almost twenty-percent discrepancy between greyhounds born and those individually registered.⁷⁵ Sadly, adoptions from farms at such a young age are rare; therefore, almost 85,000 greyhound puppies between three and eighteen months of age are assumed to have been killed during this period.⁷⁶

C. Lack of Space, Exercise, and Healthy Food

The life led by racing greyhounds is a fairly enclosed one inasmuch as they are normally confined to crates, as small as “2 1/2 feet wide, 3 feet high[,] and 3 1/2 feet deep,”⁷⁷ “for up to 22 hours [a] day.”⁷⁸ Throughout the day, the dogs often are muzzled, which can lead to the formation of sores around their mouths.⁷⁹ The greyhound’s shelter also can become a danger. Their crates are sometimes wooden,⁸⁰ while their bedding usually is nothing more than shredded newspapers or thin pieces of carpet.⁸¹ This

71. *Id.* at <<http://www.grey2kusa.org/facts.html>>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. Branigan, *supra* n. 6, at 39.

78. GREY2K USA, *This is NO WAY to Treat a Dog* <http://www.grey2kusa.org/reality_noway.htm> (accessed Aug. 31, 2001); Greyhound Protection League, *Know the Facts About Dog Racing* <<http://www.greyhounds.org/gpl/contents/exploit.html>> (accessed Jan. 21, 2002). The Greyhound Protection League was founded in 1991 as the first organization to speak out about the cruelties inherent in the racing industry. Greyhound Protection League, *Who We Are* <<http://www.greyhounds.org/gpl/contents/entry.html>> (accessed Sept. 12, 2001). It works through education and media exposure to affect the public’s perception of the “sport.” *Id.*

79. GREY2K USA, *supra* n. 78; Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>.

80. Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>.

81. Judith Gaines, *Down to the Wire the World of Greyhound Racing, A Fixture in*

combination can lead to an increased fire hazard and has been cited by fire authorities as causing “flames to spread rapidly.”⁸² At one Massachusetts track, four fires occurred in a thirteen-year period and resulted in the deaths of more than ninety greyhounds.⁸³ These fires claimed many lives because the track never installed fire sprinklers.⁸⁴ Florida also has experienced fires at tracks with deadly results.⁸⁵ In addition, kennels often are not properly temperature controlled.⁸⁶ At the Jacksonville Kennel Club, twenty greyhounds were killed when the air-conditioning unit broke down.⁸⁷

The greyhounds’ situation may not improve even when they are let out of their crates. On average, greyhounds “are let out[side] four times a day.”⁸⁸ Often, the dogs are let out for exercise in overcrowded pens.⁸⁹ Being cooped up for large portions of the day understandably leads a dog not only to feel excitement, but also high levels of stress when exposed to other dogs experiencing similar emotions.⁹⁰ This stress may, and many times does, lead to fighting among the dogs, which in turn can cause injuries, pain, and even death.⁹¹

Another issue receiving attention lately is the type of food greyhounds are being fed. A food commonly given to greyhounds is raw unsterilized 4-D meat, which comes from dead, dying, diseased, or disabled animals.⁹² This meat still may contain

Massachusetts for 65 Years, Awaits a Life or Death Decision in Tuesday’s Ballot Referendum, Boston Globe Mag. (Nov. 5, 2000); GREY2K USA, *supra* n. 78.

82. Azell Murphy Cavaan, *141 Dogs Saved from Lynn Fire — 14 Greyhounds Missing from Kennel*, Boston Herald 9 (June 20, 1999).

83. Sara Neufeld, *Kennel Fire Kills 4 Greyhounds; 6 Still Missing*, Boston Globe B2 (June 20, 1999). These fires took place at the Thorton Kennel in Lynn, Massachusetts. *Id.*

84. *Id.*

85. At the Palm Beach Kennel Club, a fire claimed the life of one dog, and another fifty-one were rescued by quick-thinking paramedics. Larry Barszewski & Sarah Lundy, *One Greyhound Dies, 51 Saved in Kennel Fire*, Sun Sentinel (Ft. Lauderdale, Fla.) 3B (May 30, 1998); Tim Pallesen, *Paramedics’ Skills Save 51 Greyhounds’ Lives in Kennel Fire*, Palm Beach Post (Fla.) 1B (May 30, 1998). Welders were repairing the air conditioning, and a spark ignited in a duct clogged with dog hair and dust. *Id.*

86. *20 Greyhounds Die from Heat*, Tampa Trib. 3 (May 11, 1995).

87. *Id.*

88. Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>.

89. GREY2K USA, *supra* n. 78.

90. *Id.*

91. *Id.* For an illustration of what can happen when the dogs are let out, review *supra* text section III(B).

92. Greyhound Protection League, *4-D Meat: A Deadly Meal, You Wouldn’t Feed It to a*

pathogens that were responsible for injuring the animal or, just as likely, high doses of drugs that were pumped into the animal in hope of saving it for human consumption.⁹³ Additionally, because the meat is raw, the health hazards to the dogs are numerous.⁹⁴ The greyhounds sometimes are unable to race because of illnesses brought on by the food.⁹⁵ One common illness, consisting of vomiting and diarrhea, commonly is referred to in the industry as “blow out.”⁹⁶ Some trainers justify feeding the greyhounds raw meat because they believe that it improves the greyhounds’ racing performance.⁹⁷ Trainers may be more swayed by the fact that the meat is cheap and readily available.⁹⁸

D. Danger on the Track

After considering greyhound’s living conditions, it may seem that getting out on the track would be a welcome release. Instead, the track itself can inflict further suffering. One problem is directly connected to the lack of exercise the greyhounds receive.⁹⁹ Because racing is the only real exercise the dogs experience, they regularly suffer from a lack of muscle tone.¹⁰⁰ This decrease in muscle tone can lead to injuries on the track.¹⁰¹ Sometimes these injuries are serious enough to require that the dog be euthanized.¹⁰² Other times, death comes when a greyhound gets

Dog . . . But It’s Good Enough for Racing Greyhounds <<http://www.greyhounds.org/gpl/contents/meat.html>> (accessed Jan. 21, 2001). The Author does not intend to imply that all owners and trainers feed 4-D meat to their dogs. Certainly some owners must serve a higher-quality food. *Id.*

93. *Id.* The meat “can also carry anthrax, botulism, lockjaw, tuberculosis, salmonella, and other diseases.” *Id.*

94. *Id.*

95. *Id.*

96. Greyhound Protection League, *supra* n. 92; Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>. Other health hazards range from “gastro-enteritis, an inflammation of the stomach and intestines, to food poisoning and death.” Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>.

97. GREY2K USA, *supra* n. 70.

98. Greyhound Protection League, *supra* n. 92. On average, “[a] racing greyhound requires one to two pounds of meat per day.” *Id.* The 4-D meat costs about forty-five cents per pound; therefore, “less than a dollar a day” is required to feed a dog. *Id.*

99. Greyhound Protection League, *supra* n. 78, at <<http://www.greyhounds.org/gpl/contents/exploit.html>>.

100. *Id.*

101. *Id.*

102. *Id.*

confused, runs back into the pack, and is trampled.¹⁰³ Within individual races, some dogs simply are smaller than others, and this size difference can increase the chances of death by trampling.¹⁰⁴

It is not only the other dogs that can cause injury on the track. The rail and lure also have been known to cause serious injury and even death. Death and injuries can occur when a dog catches, or runs into, the lure.¹⁰⁵ Other times, greyhounds have been electrocuted when they have climbed onto the rail, which has a function similar to that of a subway's hot rail.¹⁰⁶

E. The Unnecessary Destruction of Dogs after Racing

The destruction of greyhounds after their racing careers, usually between the ages of three and five, may be the most offensive treatment that has gone unpunished under anti-cruelty statutes. Although the number of greyhounds destroyed each year varies, depending on who is quoting the numbers, it seems safe to use the average of twenty thousand killed annually.¹⁰⁷ This figure

103. *Id.*

104. On July 1, 2000, at Raynham/Taunton Greyhound Park in Massachusetts, a dog named Midget was trampled and died instantly when she got caught between several other dogs. Greyhound Network News, *State-by-State Updates Fall 2000* <http://www.greyhoundnetworknews.org/backissues/00/fall00_state.html> (accessed Feb. 2, 2002) (citing Jason Crosby of *The Sunday Enterprise*).

105. An unidentified greyhound lost its life at the Naples Fort Myers Greyhound Track when the lure suddenly stopped during the race. Charlie Whitehead, *Greyhound Destroyed after Breaking Leg during Race*, Bonita Daily News (Fla.) (Feb. 13, 2001). "All eight dogs caught the lure"; the one injured had to be euthanized. *Id.* On February 23, 2000, Tune Me In died on the Bonita Springs, Florida, track after she collided "with another dog and [then] sprinted headlong into the lure." *Id.*

106. Greyhound Network News, *State-by-State Updates Summer 2000* <http://www.greyhoundnetworknews.org/backissues/00/summer00_state.html>. A greyhound named Randad was electrocuted on the track rail when he climbed onto the lure rail. *Id.* According to witnesses, after being electrocuted, the dog shrieked for several seconds before he was struck by the mechanical lure that had continued around the track. *Id.* (citing Benjamin Niolet, *Greyhound Death Spurs BRC Change*, Birmingham News (Ala.) (June 29, 2000) (available at <<http://www.bhamnews.com/archives>>; search greyhound death spurs)).

107. Different organizations arrive at different estimates of how many greyhounds are killed every year. The AGC stated that in 1996 approximately 9,500 ex-racing greyhounds were euthanized. AGC, *Greyhound Racing Information* <<http://www.agcouncil.com/racing.htm>> (accessed Sept. 3, 2001). This number obviously does not count the greyhounds that were not put down so humanely or the puppies that never went to the track. GREY2K USA estimated that "20,000 greyhounds were killed in 1999" including those that were killed while still puppies. GREY2K USA, *supra* n. 69. HSUS estimates that between 20,000 and 25,000 greyhounds are killed yearly. Humane Socy. of the U.S.,

represents a decrease over past years because of the greyhound-adoption movement, which began in the late 1980s.¹⁰⁸ Before rescue groups got involved, “almost all greyhounds used for racing [ultimately] were killed.”¹⁰⁹ Amazingly, in the last nine years, it is estimated that one million dogs have been killed prematurely.¹¹⁰

It is odd to consider that perhaps the “luckiest” greyhounds are those humanely euthanized by professionals.¹¹¹ The number of “lucky” ones has gone so high that some shelters have had to purchase additional or new incinerators just to keep up with the influx of greyhounds.¹¹² Other shelters have found it easier simply to drop the dead greyhounds off at the local landfill.¹¹³ Other owners and trainers do not “humanely euthanize” their greyhounds. Greyhounds have been shot, bludgeoned, sold to race in third-world countries, electrocuted, abandoned, and even starved.¹¹⁴ Perhaps the most horrible example of mass killing is the May 2002 discovery of the remains of 3,000 greyhounds in Alabama.¹¹⁵ Robert Rhodes, formerly a security guard at the

Facts About Greyhound Racing <http://www.hsus.org/whatnew/sadog_facts061600.html> (accessed Jan. 25, 2002).

108. GREY2K USA, *supra* n. 69. There are numerous organizations whose sole mission is to encourage the adoption of ex-racers. Refer to *infra* text section VI(D) for a discussion of the adoption option.

109. GREY2K USA, *supra* n. 69.

110. *Id.*

111. *Id.*

112. The volume of greyhounds received at the Escambia County Shelter in Northwest Florida was causing the facility to run a new, \$40,000 incinerator almost day and night. It reportedly euthanized twenty-three greyhounds in a single day, but “average[d] 25 [greyhounds] a week during the . . . racing season.” United Press Intl. (Sept. 9, 1987) (available in LEXIS, ALLNWS).

113. Approximately “10 to 15 racing greyhounds from the Pensacola [Florida] Greyhound Track” are disposed of each week by a local animal shelter. Black trash bags filled with the dead dogs are picked up at local veterinary offices and dumped in the county landfill. Troy Moon, *Many Slow Greyhounds Meet Quick Deaths*, Seattle Times D5 (Jan. 5, 1997).

114. GREY2K USA, *supra* n. 69; Humane Socy. of the U.S., *supra* n. 107. These types of deaths continue to occur even though there are laws that exist that seemingly would protect against it. Florida law provides that “a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.” Fla. Stat. § 550.2415(6)(b). Interestingly, the legislature does not provide any funds or persons to enforce this statute.

115. Associated Press, *Bones of up to 3,000 Greyhounds Found*, Phila. Inquirer A29 (May 23, 2002). Another example of mass killing occurred in 1992 when the bodies of 124 greyhounds were found shot and abandoned in a lemon grove in Arizona. Nanette Woitas,

Pensacola Greyhound Park, stated that, for the past forty years, tracks had brought him unwanted greyhounds and that “he sometimes received \$10 for” each dog he shot.¹¹⁶ Mr. Rhodes stated, “I wouldn’t condone or use torture at any time. It was quick; they didn’t feel a thing.”¹¹⁷ But, autopsies found that most of the greyhounds were not shot cleanly through the head, and therefore, they had suffered before dying.¹¹⁸

In the past few years, an equally disturbing new trend has emerged. That trend is for owners to donate or sell former racing greyhounds for medical experimentation. In a five-year period, Iowa State University received almost six hundred ex-racing greyhounds,¹¹⁹ and, in another three-year period, “[m]ore than 2600 greyhounds were donated . . . to Colorado State University.”¹²⁰ In this scenario, the owners lose no money because they do not have to pay to euthanize the dogs, and the owners actually may stand to make a small profit or characterize it as a charitable donation.¹²¹ Again looking at economics, as the cost of

Beyond the Finish Line, Tampa Trib. (May 14, 1995).

116. Associated Press, *supra* n. 115.

117. *Id.*

118. *Id.*

119. GREY2K USA, *Abuse List 3* <http://www.grey2kusa.org/abuse_list3.htm> (accessed Jan. 25, 2001) (citing Iowa State University Canine Acquisition Records). Five hundred and ninety-five “racing greyhounds were donated to Iowa State University between February 1994 and April 1999.” *Id.* Members of the National Greyhound Association donated 502 of the dogs. *Id.* The practice of selling greyhounds to research facilities has been the focus of public attention. The reader should refer to the above Web site, *supra*, and its links to review numerous articles that focus on this issue.

120. *Id.* (citing Dan Luzadder, Rocky Mt. News (Colo.) (June 7, 1998)). Colorado breeders and owners from January 1995 to March 1998 donated “more than 2600 greyhounds . . . for medical research to Colorado State University.” *Id.* “Approximately one third of the dogs were used in terminal teaching labs where they were killed after use; the remainder were ‘excess’ and were euthanized within 24 hours of arrival at the facility.” *Id.* The vast majority “of the donated greyhounds were three years old or younger.” *Id.*

121. GREY2K USA, *supra* n. 78. Persons other than owners also have been able to profit from the sale of greyhounds. Andy Hall, *Pair Charged with Selling Racing Dogs for Medical Experiments; The Two Are Accused of Sending Greyhounds to Their Deaths, Instead of Placing Them in Homes*, Wis. St. J. A1 (Jan. 1, 2002). In one case, two people were charged with multiple felony counts because they led the dog owners to believe that the dogs had been adopted, while instead the dogs had been sold to a cardiac-research facility. *Id.* The AGC, at its annual meeting in March 2000, unanimously approved a “resolution discouraging the use of [g]reyhounds for biomedical research.” AGC, *AGC Position on Greyhounds and Research* <<http://www.agcouncil.com/research.htm>> (accessed Sept. 3, 2001). The AGC adopted the policy of “strongly discourag[ing] the use of [g]reyhound for biomedical research purposes” and “urge[d] all [g]reyhound owners to refrain from authorizing the use of their animals for such purposes when adoption and

euthanization has risen, the incidents of owners shooting greyhounds have gone up.¹²² The hard reality is that kennels do not and cannot put money into dogs that are no longer moneymakers.¹²³ It is simply cheaper to bring in new stock.¹²⁴

V. ANTI-CRUELTY STATUTES PROVIDE INEFFECTIVE PROTECTION FOR THE GREYHOUNDS

Although Florida's anti-cruelty statutes have been used to prosecute some persons who have inflicted harms on greyhounds, a plethora of institutionalized treatment seems to fall outside the grasp of these anti-cruelty statutes.¹²⁵ The critical question is why current anti-cruelty statutes fail to protect greyhounds.

Many current statutes seem as if they might successfully protect the greyhounds. For instance, Florida Statutes Section 828.12 states that

a person who unnecessarily . . . deprives [an animal] of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done . . . in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree.¹²⁶

Another statute that may be helpful is Florida Statutes Section 828.13, which provides:

Whoever [i]mpounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and wholesome food and water, keeps any animals in any enclosure without wholesome exercise and change of air . . . is guilty of a misdemeanor of the first degree.¹²⁷

Additionally, "[a] person who intentionally commits an act to

other . . . alternatives, are available." *Id.* Additionally, some track operators would "be encouraged to adopt contract clauses . . . that prohibit former racers from their tracks from being turned over to research programs." *Id.*

122. Humane Socy. of the U.S., *supra* n. 23; *supra* text section IV(E) (discussing the discovery of greyhounds shot to death). The cost of euthanization ranges, but may be as low as twelve dollars. Moon, *supra* n. 113.

123. GREY2K USA, *supra* n. 70.

124. *Id.*

125. See *supra* section III (discussing types of abuse inflicted on greyhounds prosecuted under anti-cruelty statutes).

126. Fla. Stat. § 828.12(1).

127. *Id.* § 828.13(2).

any animal which results in . . . excessive or repeated infliction of unnecessary pain or suffering . . . is guilty of a felony of the third degree.”¹²⁸

The answer to the question of why these statutes do not adequately protect the greyhounds is found in the way in which courts interpret the statutes. The interpretation of terms like “unnecessary,” “cruel,” and “inhumane” defines the behaviors that are deemed unlawful. The question then becomes what influences courts’ interpretation of these statutes and terms. The combination of three interrelated concepts — nonhuman animals as property, current statutes embodying a form of legal welfarism, and the absence of nonhuman animals from society’s moral framework — seems best able to explain the reasons why anti-cruelty statutes cannot be applied effectively to the institutionalized abuse and mistreatment of greyhounds.

A. Nonhuman Animals as Property and Legal Welfarism

The law regards nonhuman animals as property.¹²⁹ Humans may do with animals what they wish — convey, sell, consume, and kill.¹³⁰ Nonhuman animals are owned in the same way that personal property is owned.¹³¹ This legal status results in nonhuman animals being regarded as incapable of having interests supported by rights.¹³² It is within this framework of nonhuman animals as property that anti-cruelty statutes emerged.¹³³

Florida enacted its first anti-cruelty statute in 1889 and was the forty-third state to do so.¹³⁴ Under the common law, nonhuman animals possessed “no inherent right to protection from cruelty or abuse” inflicted by humans.¹³⁵ In 1968, the Florida Supreme Court stated that, “in a more civilized society, it is now generally recognized that legislation which has for its purpose the

128. *Id.* § 828.12(2).

129. Gary L. Francione, *Animals, Property, and the Law* 24 (Temple U. Press 1995).

130. *Id.*

131. *Id.*

132. Gary L. Francione, *Animals, Property and Legal Welfarism: “Unnecessary” Suffering and the “Humane” Treatment of Animals*, 46 Rutgers L. Rev. 721, 723, 766 (1994).

133. *Id.*

134. Craig I. Scheiner, *Crimes against Nonhuman Animals and Florida’s Courts 1889–2001*, 75 Fla. B.J. 52, 56 n. 1 (Nov. 2001).

135. *C.E. Am., Inc. v. Antinori*, 210 S.2d 443, 444 (Fla. 1968).

protection of animals from harassment and ill-treatment is a valid exercise of the police power.”¹³⁶ This tension between the property rights of humans and the state’s interest in ensuring “humane” treatment of nonhuman animals causes an inconsistent application of anti-cruelty statutes.¹³⁷ The very status of nonhuman animals as property leads to the creation of anti-cruelty statutes that embody the notion of legal welfarism.¹³⁸

Professor Gary L. Francione has stated that “[l]egal welfarism requires that we ‘balance’ the interests of humans and animals in order to decide what constitutes ‘humane’ treatment and ‘unnecessary’ suffering.”¹³⁹ The problem is that attempts to balance often become empty exercises inasmuch as “a relatively trivial human interest is balanced against an animal’s most fundamental interests in not experiencing pain or death, and the human interest nevertheless prevails.”¹⁴⁰ According to Francione, legal welfarism comprises “four basic and interrelated components”: (1) it “characterizes animals as the property of human beings”; (2) it “interprets the property status of animals to justify the treatment of animals exclusively as means to human ends”; (3) it “provides that animal use is ‘necessary’ whenever that use is part of a generally accepted social institution”; and (4) it “does not proscribe ‘cruelty’ as that term is understood in ordinary discourse”; instead, “legal welfarism interprets ‘cruelty’ as that which “fails to facilitate, and may even frustrate, that animal exploitation.”¹⁴¹ Within this framework, “humane” treatment and “unnecessary” suffering are determined by analyzing what will facilitate most productively particular forms of nonhuman animal exploitation.¹⁴² If a treatment inflicts suffering, but the suffering facilitates humans’ use of the nonhuman animals and generates social wealth, then the treatment results in “necessary” suffering.¹⁴³ It is when the treatment provides no social benefit to humans and it also results in gratuitous suffering that the law may proscribe such

136. *Id.*

137. Francione, *supra* n. 129, at 24–25.

138. *Id.* at 24–26.

139. Francione, *supra* n. 132, at 723.

140. *Id.*

141. *Id.* at 739.

142. *Id.* at 740.

143. *Id.*

conduct.¹⁴⁴

The theory of legal welfarism helps to explain why anti-cruelty statutes ineffectively protect greyhounds. Society in general, and Florida in particular, has deemed greyhound racing to be of some legitimate value to human beings.¹⁴⁵ Therefore, greyhounds' premature death and pain, which occur as part of the industry, is viewed as acceptable, so "the balancing supposedly required by anti-cruelty statutes has been predetermined implicitly[,] and the animal loses."¹⁴⁶ The activities are automatically deemed to be "humane" and "necessary" because they successfully exploit the nonhuman animal for human benefit.¹⁴⁷ The only prohibited activities are ones in which the greyhounds' death or suffering do not benefit human society.¹⁴⁸

This theory seems to explain why some activities are prosecuted, and others are not. The anti-cruelty laws do weed out and punish, however slightly, those who horribly abuse the greyhounds with no human benefit.¹⁴⁹ But, at the same time, these laws do not affect the treatment that supports the exploitation of the greyhounds: cheap food, small cages, little exercise, and premature death. So long as humans remain the only holders of rights with nonhuman animals regarded as property, we will be unable to achieve any acceptable level of protection, because "the level of animal protection will be limited to that which most efficiently facilitates the exploitation of

144. *Id.* at 739–740.

145. That society deems greyhound racing to be of some legitimate value is evidenced by the preferential treatment accorded to the greyhound-racing industry. See *infra* text section VI(B) for further discussion. The Florida Legislature has made a finding that the "wagering on greyhound [dog racing] provides substantial revenues to the state." Fla. Stat. § 550.0555(1).

146. Francione, *supra* n. 132, at 766.

147. *Id.*

148. *Id.* In terms of the racing greyhounds, this distinction might be understood by considering the legal difference between feeding greyhounds 4-D meat and not feeding them anything at all. While the 4-D meat statistically will injure or kill a number of dogs, its use is not prohibited. *Supra* nn. 92–98 and accompanying text. Perhaps this is because, by feeding 4-D meat to the dogs, the owner is maximizing the value by saving money on the dogs' care. On the other hand, not feeding greyhounds is prohibited by law. *Supra* n. 35 and accompanying text. This different result may be understood if one considers that the owner who fails to feed the greyhound is no longer participating in the wealth maximization of the greyhound. Instead, the owner's treatment is viewed as wasteful and gratuitous because the value of the animal is being destroyed.

149. Francione, *supra* n. 132, at 739. See *supra* text section III for discussion of abuses that have been prosecuted.

animals.”¹⁵⁰ Thus, the legal treatment of “animals under the law, is determined not by reference to any moral ideal, but by the property status of the animal and by what conduct is perceived to maximize the value of animal property.”¹⁵¹

B. Nonhuman Animals’ Absence from Moral Consideration

Current anti-cruelty statutes also can be viewed as a result of nonhuman animals’ historical absence from consideration within society’s moral framework. American laws emerge largely from a Western Judeo-Christian background that has been embedded within the idea of man’s complete dominion over nonhuman animals.¹⁵² In the creation story, God gives to humankind dominion over fish, fowl, and every living thing.¹⁵³ This theme of human domination is carried on throughout the Old Testament¹⁵⁴ and into the New Testament,¹⁵⁵ with Christianity emerging with its own distinctive idea of the sanctity of human life.¹⁵⁶ This subjugation of nonhumans has not been limited strictly to religious philosophy; instead, the idea can be found in the writings of almost every great philosopher.¹⁵⁷ Rene Descartes, considered to be “the father of modern philosophy[,]” believed “that everything that consisted of matter was governed by mechanistic principles,” but humans were not strictly matter because they have a soul and consciousness.¹⁵⁸ Nonhuman animals, on the other hand, were likened to clocks, and Descartes believed it was acceptable to perform dissections on live

150. *Id.* at 738–739.

151. *Id.* at 740.

152. For a thorough discussion of Western Judeo-Christian thought on the status of animals, see Peter Singer, *Animal Liberation* 185–212 (2d ed., Avon Books 1990).

153. *Genesis* 1:26 (Amplified); *Genesis* 1:26 (King James); *Genesis* 1:26 (New Am. Stand.); *Genesis* 1:26 (New Intl.).

154. God said to Noah that “every moving thing that liveth shall be meat for you[.]” *Genesis* 9:1–3 (King James).

155. Jesus extracts demons from a man and sends them into a herd of swine that runs off a cliff and drowns. *Luke* 8:27–34; *Mark* 5:13; *Matthew* 8:28–34.

156. The reader should refer to Singer, *supra* n. 152, at 185–212 for an excellent discussion of humanity’s relationship with animals specifically played out in the Bible and later as interpreted by many of the great Christian philosophers.

157. Singer, *supra* n. 152, at 200–202. The Author is aware that some philosophers — for example, David Hume, Jean-Jacques Rousseau, and Jeremy Bentham — have placed animals within the moral framework in some way; nevertheless, their ideas have not in any real sense become the philosophical norm.

158. Singer, *supra* n. 152, at 200.

nonhuman animals.¹⁵⁹ Immanuel Kant, much like Descartes, believed that nonhuman animals were not self-conscious and stated that “[s]o far as animals are concerned, we have no direct duties. Animals are not self-conscious, and are there merely as a means to an end. That end is man.”¹⁶⁰ With the emergence of the theory of evolution, the moral status of nonhuman animals *might* have improved given the new knowledge that human and nonhuman animals share so many similarities.¹⁶¹ But, T.H. Huxley may have summed up the feelings of the time best by saying, “[O]ur reverence for the nobility of mankind will not be lessened by the knowledge that man is, in substance and in structure, one with the brutes.”¹⁶²

This brief walk through 2000 years of thought concerning the status of nonhuman animals is not meant to be an exhaustive discussion of philosophical theories; instead, it is simply intended to highlight some ways in which nonhuman animals have been placed outside the moral decision-making process. Under traditional moral theories, if nonhuman animals are considered at all, their interests are considered only to the extent that “they do not clash with human interests.”¹⁶³ When a clash occurs, the nonhuman’s interests are disregarded.¹⁶⁴ Moral theories, therefore, embody a prejudice or attitude in favor of the interests of one’s own species and against those members of other species.¹⁶⁵

The theory that nonhuman animals are outside the sphere of moral consideration is evident in anti-cruelty statutes. These statutes do not seriously consider the interests of the nonhuman animal.¹⁶⁶ Judge Richard A. Posner articulates nonhuman animals’ position within society and the law by stating that “[a]nimals count, but only insofar as they enhance wealth.”¹⁶⁷ Posner and others believe that the principle of wealth maximization constitutes the bedrock of moral justification for all

159. *Id.* at 200–201 (discussing how “Descartes himself dissected living animals . . . to advance his knowledge”).

160. *Id.* at 203 (quoting Immanuel Kant, *Lecture on Ethics* 239–240 (L. Infield trans., Harper Torchbooks 1963)).

161. *Id.* at 205–206.

162. *Id.* at 211 (quoting T.H. Huxley, *Man’s Place in Nature* (U. Mich. Press 1959)).

163. *Id.* at 212.

164. *Id.*

165. *Id.*

166. Francione, *supra* n. 132, at 723, 749–769.

167. Richard A. Posner, *The Economics of Justice* 76 (Harv. U. Press 1981).

law.¹⁶⁸ Importantly, wealth is considered only in human terms, and the interests of nonhuman animals become morally and legally irrelevant. The situation of nonhuman animals may be better understood by considering an opposite moral theory and the effect such a theory might have on anti-cruelty statutes.

This opposite theory would be one requiring equal consideration of the interests of all animals, human and nonhuman.¹⁶⁹ Under this theory, society would have to “determine which of [its] practices affecting [nonhuman] animals are justifi[ed] and which are not.”¹⁷⁰ Pain and suffering would be considered bad in themselves, and society would seek to prevent or minimize them irrespective of race, sex, or species.¹⁷¹ Applying this theory to greyhound racing, the interests of the greyhounds (avoiding pain and premature death) would outweigh the interests of humans (primarily entertainment). Deciding that the interests of greyhounds were to be protected, it seems likely that either the current anti-cruelty statutes would be interpreted as protecting against the institutionalized practices already discussed (effectively decimating the industry), or that new laws specifically outlawing greyhound racing would be enacted.

Having considered the theory of equal consideration, it seems unlikely that the interests of nonhuman animals will be equalized with the interests of human animals. Not only is this theory the opposite of the moral framework so embedded within our collective consciousness, but its impact on activities with long-standing and widespread approval would be substantial.¹⁷²

The view that nonhuman animals are property, and the fact that nonhuman animals have been left out of moral consideration, leads to the enactment of ineffective anti-cruelty statutes. The treatment of nonhuman animals is judged according to whether the activity is adding to the efficient use of the nonhuman animal by humans and not by reference to any moral

168. *Id.* at 74.

169. This theory is promulgated and explored in depth by Peter Singer, *supra* n. 152.

170. *Id.* at 231.

171. *Id.* at 8–9.

172. Here the Author primarily is considering the impact such a theory would have on the meat-production industry, as well as on activities that use nonhuman animals as a form of entertainment such as hunting, fishing, circuses, rodeos, etc. If nonhuman animals were given equal consideration in all aspects, the rationale for such activities would certainly fail because frequently the human rationalizations or considerations would be entertainment and convenience, while the nonhuman animals' considerations might be the continuation of life or avoidance of pain.

ideal. These ideas are ingrained not only into the legal system, but also into society's collective consciousness. Greyhound racing is nothing more than an industry in which the amount of money a dog generates determines the dog's expendability. It is for these reasons that anti-cruelty statutes are ineffective and that further regulation would do little to ease the greyhounds' suffering.

VI. THE MARKET SHOULD NOT BE LEFT TO DEAL WITH THE DYING INDUSTRY

A. The Industry Is in Decline

All agree that the greyhound-racing industry is in an economic decline. According to figures in *International Gaming and Wagering Business Magazine*, "the industry currently holds less than a 1% share of the entire \$53.4 billion annual U.S. gambling market."¹⁷³ Specifically, Florida "has seen its revenue from dog racing drop 71% from \$100 million in 1990 to \$28.7 million in 1998."¹⁷⁴ This economic slide has caused fourteen dog tracks across the country to either close or end live racing.¹⁷⁵

The most obvious reason that the market should not be left to deal with the dying industry is because greyhounds will almost certainly undergo more suffering as the industry falls on harder times. To keep the profit margins up, the first, and perhaps only, place that greyhound owners and trainers can cut costs is in the treatment of the greyhounds. If the goal of ending greyhound racing is based on the assumption that the current treatment and the institution itself is cruel to greyhounds, then no good can come from forcing thousands of greyhounds to suffer while the industry dies a slow, painful death.

B. The State as an Intervening Force

Even though one still could argue that the market could take care of the greyhound-racing industry through economic decline, the state's involvement must be considered as an intervening factor. The state, through the passage of industry-specific rules, could sustain the industry indefinitely. Florida has consistently and formally announced its belief that "wagering on greyhound

173. GREY2K USA, *supra* n. 69 (citing *International Gaming and Wagering Business Mag.*, Aug. 2000).

174. *Id.*

175. *Id.*

[racing] provides substantial revenues to the state.”¹⁷⁶ Based on that belief, the State has sought to uphold the industry in the face of economic pressure. For example, in 2000, the Florida Legislature approved a \$20 million tax break for the pari-mutuel industry.¹⁷⁷ After the passage of the bill, Senate President Toni Jennings of Orlando stated that the bill “was just about a few dogs, a few horses[,] and a few drinks.”¹⁷⁸ Additionally, Senator Jim King of Jacksonville stated, “[W]e are at a crossroads with pari-mutuels. We’re either going to have to do things to help their existence or we’re just going to have to accept the fact that it’s a slow decline to oblivion.”¹⁷⁹ The Legislature again contemplated a fourteen-million-dollar tax break for the greyhound industry during the 2001 legislative session.¹⁸⁰

But, the Florida Legislature does not only dole out wholesale tax relief to the industry. Instead, the Legislature also has created many special provisions to put more money back in the hands of the owners and operators of greyhound tracks. Florida Statutes Section 550.1645 explains that the State is to possess all unclaimed interest in pari-mutuel pools that has been in the custody of the licensee for one year.¹⁸¹ Under Section 550.1646, a permitholder is “entitled to a credit in each state fiscal year in an amount equal to 25 percent of the actual amount remitted [to the state] in the prior state fiscal year.”¹⁸² But, if one is a greyhound permitholder, one falls under Section 550.1647.¹⁸³ Under this Section, the permitholder would “be entitled to a credit . . . in an amount equal to the actual amount remitted in the prior state fiscal year[,] which may be applied against any taxes imposed

176. Fla. Stat. § 550.0555(1).

177. Fla. H. 0725, 2000 Leg., Reg. Sess. (Mar. 7, 2000). This bill was introduced on the premise that dog tracks pay a higher percentage of taxes than the horse tracks and jai alai frontons. It passed the House 99-12 on May 2, and then died in Senate Committee on Regulated Industries. Fla. Legis., Online Sunshine <<http://www.leg.state.fl.us/house/Session/index.cfm>>; *jump to 0725* (accessed Aug. 31, 2001). On May 5, the bill was connected to Senate Bill 770, a \$40 million proposal to cut the per-drink tax at bars and restaurants. *Id.* Senate Bill 770 was enacted into law without the governor’s signature.

178. John Kennedy, *Testy but Fruitful; Bickering Ends in Time to Pass Big-Ticket Bills*, Orlando Sentinel A1 (May 6, 2000).

179. Jim Saunders, *Gambling Sites May Get Final Tax Break: Plan Would Benefit Dogs, Horses, Jai Alai*, Fla. Times-Union A1 (Sept. 28, 2000).

180. Jim Saunders, *Governor Abandons Cut in Taxes for Gambling Industry*, Fla. Times-Union A1 (Jan. 26, 2001).

181. Fla. Stat. § 550.1645.

182. *Id.* § 550.1646.

183. *Id.* § 550.1647.

pursuant to this chapter.”¹⁸⁴

In the recent past, the Florida Legislature has proposed other special provisions in its attempt to bail out the ailing industry. In 2000, the House proposed Bill 0317 that would have “exempted feed for racing greyhounds” from sales tax.¹⁸⁵ In 2001, the Senate proposed Bill 0104.¹⁸⁶ This bill would have extended the time period that cardrooms at pari-mutuel facilities could operate and would have decreased the amount of tax payable to the state from ten percent to two percent.¹⁸⁷

C. Influence of Industry Lobby as an Intervening Factor

One factor in the Legislature’s willingness to propose such “helpful” legislation may be the lobbying efforts of the greyhound-racing industry and other pari-mutuel organizations. The pari-mutuel industry is influential politically, “giving hundreds of thousands of dollars to” state political parties and individuals every election.¹⁸⁸ In 1998 alone, candidates and parties reported receiving more than \$1.1 million from pari-mutuels, while Republicans reported receiving soft money amounting to \$400,000 from the industry.¹⁸⁹

The industry’s lobbying strength may be best understood by examining the recent creation of a new organization. In 2000, a number of greyhound tracks formed a political action committee (PAC), Floridians for a Level Playing Field.¹⁹⁰ Its mission was to place a constitutional amendment on the 2002 ballot to legalize

184. *Id.*

185. Fla. H. 0317, 2000 Leg., Reg. Sess. (Mar. 7, 2000). The bill “[d]ied in the Committee on General Government Appropriations” on May 5, 2000. Fla. Legis., *supra* n. 177, at <<http://www.leg.state.fl.us/house/Session/index.cfm>>; *jump to* 0317.

186. Fla. Sen. 0104, 2001 Leg., Reg. Sess. (Mar. 6, 2001). The bill “[d]ied in [the] Committee on Finance and Taxation” on May 4, 2001. Fla. Legis., *supra* n. 177, at <<http://www.flsenate.gov/Session/index.cfm>>; *jump to* 0104.

187. *Id.*

188. Saunders, *supra* n. 179.

189. Martin Dyckman, *Gambling Breaks Point to Campaign*, St. Pete. Times 3D (May 14, 2000).

190. Kathy Bushouse & Damon Adams, *Gambling’s Contributions Roll the Political Dice*, Sun-Sentinel 1A (Ft. Lauderdale, Fla.) (Oct. 1, 2000). The PAC is made up of South Florida dog-track owners: Hollywood and Flager. *Id.* “Tracks in Broward, Escambia[,] and Miami-Dade counties have donated to . . . Floridians for a Level Playing Field.” Alisa Ulferts, *Butterworth Challenges Wording of Slot Machine Ballot Question*, St. Pete. Times 5B (May 19, 2001). Some money used to start Floridians for a Level Playing Field was received initially as part of the 2000 tax break issued by the Legislature. Dyckman, *supra* n. 189.

slot machines at pari-mutuel facilities.¹⁹¹ The PAC actively raised funds and hired research firms in Washington, D.C. and San Diego to determine the public's interest in expanding gambling.¹⁹² The PAC's strength is evidenced by the fact that, as of October 2, 2001, it already had raised \$871,000¹⁹³ and had spent much of it gathering support for the measure and paying signature solicitors.¹⁹⁴ On April 15, 2001, a sufficient number of signatures was certified by the state election division causing the Florida Attorney General and the Florida Supreme Court to review the ballot language.¹⁹⁵ Although the validity of the ballot-initiative language was in question¹⁹⁶ and ultimately was rejected by the Florida Supreme Court and ordered removed from the ballot,¹⁹⁷ the power and influence of the racing industry is evidenced by the expensive campaign that has been undertaken.

191. Jeff Shields, *Duel Starts in Gambling Initiative: Ballot Drive Pushes Slot Machines at Pari-Mutuels*, Sun-Sentinel (Ft. Lauderdale, Fla.) 1B (July 24, 2001).

192. Bushouse & Adams, *supra* n. 190.

193. Lucy Morgan, *Justices Hear Debate over Slot Machines Issue*, St. Pete. Times 5B (Oct. 2, 2001).

194. Ulferts, *supra* n. 190.

195. Greyhound Network News, *Cover Stories Summer 2001* <http://www.greyhoundnetworknews.org/backissues/01/summer01_cover_a.html> (accessed Aug. 31, 2001).

196. Then-Attorney General Robert A. Butterworth has questioned whether the ballot language misleads voters, meets legal requirements, and "meets the state's single-subject rule." Ulferts, *supra* n. 190. In his advisory opinion to the Florida Supreme Court, Butterworth explained that voters may believe that they will be guaranteed a referendum on this issue, although the language of the amendment does not necessarily support that conclusion. *Id.* Additionally, Butterworth found that the language mixed two subjects by requiring taxes from slot machines to be spent on senior citizens or education. *Id.* A "coalition of greyhound advocates and animal protection groups led by GREY2K USA" formed to challenge the slot initiative in front of the Florida Supreme Court. Greyhound Network News, *supra* n. 195. Members of the coalition included the "Animal Protection Institute, The Ark Trust, Friends of Animals, Greyhound Protection League, Last Chance for Animals, Michigan Retired Greyhounds as Pets, National Coalition Against Gambling Expansion, National Greyhound Adoption Program, and the World Society for the Protection of Animals." *Id.* The HSUS also formed a coalition against the initiative and was joined by The Fund for Animals and No Casinos in Florida. *Id.* Oral arguments took place October 1, 2001 concerning "whether the ballot question [met] legal standards for clarity and purpose." Shields, *supra* n. 191.

197. *Advisory Op. to Atty. Gen. re Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities*, 813 S.2d 98, 102-103 (Fla. 2002). The justices, in a 4-3 vote, found that the proposal failed to meet the single-subject requirement. *Id.* at 102. Floridians for a Level Playing Field promises that it will take additional steps to reach its goal. Brent Kallestad, *Court Rejects Slot Machine Plan Measure Must Be Taken off Ballot*, Tallahassee Democrat B1 (Mar. 15, 2002).

D. "Clean Up" Campaigns

Another reason the market cannot be left to deal with the greyhound issue is because of a significant increase in attempts to "clean up" the industry and its reputation. These attempts have been made not only by the industry itself, but also by the Legislature. One example of this type of endeavor is the greyhound adoption projects. Adoption programs rescue a significant number of greyhounds every year from premature death.¹⁹⁸ However, all-volunteer groups place most greyhounds; these groups also bear the cost of rehabilitative veterinary work for the rescued dogs.¹⁹⁹ Although the industry enjoys trumpeting its contributions to these programs,²⁰⁰ there is one pivotal prerequisite to receiving industry funding. The racing industry will give funds only to adoption organizations that pledge to say nothing negative about the racing industry.²⁰¹ Requiring this

198. The actual number of dogs rescued each year differs depending on who is providing the information, but the AGC asserts that about 18,000 greyhounds a year are either retired as pets, therapy dogs, "or returned to breeding farms." AGC, *supra* n. 107, at <<http://www.agcouncil.com/racing.htm>>. The AGC also asserts that since 1990, "more than 134,000 [greyhounds have been adopted as pets." AGC, *Greyhounds Adopted as Pets* <<http://www.agcouncil.com/adopt.htm>> (accessed Sept. 3, 2001). The Author applauds the adoption community for its dedication to informing the public about the joys of adopting a racing greyhound.

199. GREY2K USA, *supra* n. 69. The costs to the volunteer groups and the adopters can be high both in money and time. For example, Buck, an adopted greyhound, had many problems when he arrived at his foster home. GREY2K USA, *Dogs Who Tell the Story* <<http://www.grey2kusa.org/story.htm>> (accessed Aug. 31, 2001). A horrible skin infection caused Buck to be covered with pus-filled blisters. *Id.* If they ruptured, they became open sores. *Id.* "The pads of his feet also had similar sores" that caused him to experience bloody paws for the first month. *Id.* His adopter explained that, with antibiotics and love, Buck's coat is finally clear. *Id.* Other than physical maladies, many greyhounds have emotional scars that may be even more difficult to heal. Buck, like many other greyhounds, had a fear of men. *Id.* It took one month in this loving home before Buck would stay in the same room with the man of the home. *Id.* Eight months later Buck still backs away from the man at times. *Id.* Buck's story is similar to that of many greyhounds who are lucky enough to be adopted by loving families. The Author's point in retelling this narrative is to show that adoption, while a wonderful activity, has limited viability based on the time and effort often required by the adopters.

200. The AGC has established the Greyhound Adoption Fund, which from 1991–1997 "granted nearly \$300,000 to [g]reyhound adoption groups around the country." It also funds the Greyhound Pets of America Hotline, which can route the caller to the nearest adoption program. AGC, *Main Page* <<http://www.agcouncil.com/main.htm>> (accessed Sept. 3, 2001).

201. AGC, *AGC Placement Program Grant Guidelines 4/2000* <<http://www.greyhoundpets.org/agcgrants.htm>> (accessed Sept. 3, 2001). The guidelines state that adoption programs "[m]ust not make false or negative statements about the racing

pledge obviously has prevented many adoption organizations from receiving the industry's funding. The financial resources, volunteer time, and homes willing to accept a greyhound are finite. Additionally, the adoption programs cannot save all the ex-racing greyhounds, nor does it seriously attempt to save the greyhounds bred and never raced.

The Florida Legislature also has gotten involved with the greyhound adoption programs. Florida's pari-mutuel law, Florida Statutes Section 550.1647, addresses the tax credit greyhound permit-holders receive in terms of unclaimed ticket money.²⁰² The statute requires that greyhound permitholders pay "not less than [ten] percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of greyhounds."²⁰³ Additionally, during the 2001 legislative session, Senate Bill 1692 was introduced as "Relating to Greyhound Adoptions."²⁰⁴ This bill was intended to improve adoption programs and would have specifically required that individuals from a bona fide organization that promotes adoptions of greyhounds operate an adoption booth on weekends.²⁰⁵ Also, information concerning adoption and the identity of dogs available for adoption was to be included in the racing program.²⁰⁶ Additionally, the bill would have authorized a charity day, "Greyhound Adopt-A-Pet Day," to be held at the track with the proceeds funding adoption programs.²⁰⁷ Efforts like these do much to help the industry's reputation and may, in fact, enable more greyhounds to be adopted as pets. Nonetheless, the fact remains that thousands of greyhounds are forced to endure cruel conditions and to die prematurely. The fact that some are saved does little to change this harsh reality.

The Florida Legislature made another attempt to "protect" the greyhounds during the 2001 session. The Senate introduced Bill 1044, titled the "Racing Greyhound Protection Act."²⁰⁸ This

industry (applicant should provide statement on this issue with application, along with any evidence of position)." *Id.*

202. Fla. Stat. § 550.1647.

203. *Id.*

204. Fla. Sen. 1692, 2001 Leg., Reg. Sess. (Mar. 16, 2001). This bill died in return messages on May 4, 2001. Fla. Legis., *supra* n. 177, at <<http://www.flsenate.gov/Session/index.cfm>>; *jump to 1692*.

205. *Id.*

206. *Id.*

207. *Id.*

208. Fla. Sen. 1044, 2001 Leg., Reg. Sess. (Mar. 7, 2001). This bill died in committee on

bill, if passed, would have “provid[ed] standards to ensure the welfare of racing greyhounds.”²⁰⁹ The bill would have required the owners or kennel operators to (1) “[p]roperly [feed, water, exercise, and examine] [the greyhounds] . . . in accordance with National Greyhound Association Standards”; (2) keep the greyhound free from worms and other parasites; (3) inoculate properly; (4) transport the greyhound safely; (5) keep the greyhound free from drugs; (6) return the greyhound to its owner or place “for adoption as a pet upon completion of its racing career.”²¹⁰ The bill also would have required the permitholders, among other things, to provide adequate crates and air conditioning “and a working alarm system to indicate [any] rise in temperatures.”²¹¹

Although the Legislature clearly articulated its intent to ensure the greyhounds’ welfare,²¹² it is unlikely that this bill would have accomplished that goal. Activities that are sought to be protected against are much like those already seemingly addressed in anti-cruelty statutes. It seems unlikely that simply repeating similar terms would have resulted in better treatment for the greyhounds. What made the bill’s success, in terms of effectively protecting greyhounds, even less likely was the fact that the bill did not provide any funding or any staffing to implement the new rules.

VII. VOTER INITIATIVE: MOST EFFECTIVE WAY TO ABOLISH GREYHOUND RACING

Because anti-cruelty statutes are based on the concept of nonhuman animals as property and embody a moral framework that does not include nonhuman animals, it is unlikely that such statutes ever will be applied against the institutionalized abuse and mistreatment of greyhounds. The likelihood that either underlying foundation will change significantly is also improbable.²¹³ Therefore, the most productive plan may be to

Regulated Industries on May 4, 2001. Fla. Legis., *supra* n. 177, at <<http://www.flsenate.gov/Session/index.cfm>>; *jump to* 1044.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.* “It is the intent of the Legislature that animals that participate in races in this state . . . are bred and trained in this state for racing be treated humanely, both on and off racetracks, throughout the lives of the animals.” Fla. Stat. § 550.2415(6)(a).

213. The Author is aware that some people are attempting to reconstruct the moral and

attack the social legitimacy of the sport through a grassroots education campaign. This campaign could focus not only on the negative treatment that the greyhounds are forced to endure, but perhaps more importantly on the self-interest of humans. Activists could argue that greyhound racing should no longer enjoy society's seal of approval as a legitimate value to society because of the negative impact on society morally, physically, and economically.

The emergence of anti-cruelty statutes may owe much to the belief that inhumane treatment of nonhuman animals leads to inhumane treatment of humans.²¹⁴ "For most Americans, kindness to animals, or at least an aversion to the intentional infliction of animal suffering, is one of the core values that defines a civilized society."²¹⁵ Mahatma Gandhi said, "The greatness of a nation and its moral progress can be judged by the way its animals are treated."²¹⁶ Historically, popular culture has recognized the idea that cruelty to nonhuman animals can be associated with antisocial, violent, or criminal behavior.²¹⁷ For example, John Locke believed that people's — especially children's — minds would be hardened by the custom of tormenting and killing beasts and that this hardening would result in a lack of compassion toward people.²¹⁸ Locke also believed that, by excluding butchers as jurors from capital cases, society evidenced that it "regarded the killing of animals as leading to an undesirable attitude toward humans."²¹⁹ Historically, society has been concerned with this "coarsening of

legal place that nonhuman animals hold within our society, but fears that these attempts are unlikely to result in quick changes to their status. Still, the efforts of many individuals and organizations (too many to name) must be applauded and encouraged. For more information on these types of endeavors, attend the Annual Animal Rights Conference that this Author had the wonderful opportunity to attend. For further information, see *Animal Rights 2002* <<http://www.animalrights2002.org/>> (accessed June 10, 2002).

214. Randall Lockwood, *Animal Cruelty and Violence against Humans: Making the Connection*, 5 *Animal L.* 81, 81 (1999).

215. *Id.*

216. Mahatma Gandhi, Speech, *The Moral Basis of Vegetarianism* (delivered at the Second Meeting Organized by the London Vegetarian Society (Nov. 20, 1931)). A link to this speech can be found at International Vegetarian Union, *History of Vegetarianism* <<http://www.ivu.org/history/gandhi/>> (last updated Apr. 18, 2001).

217. Lockwood, *supra* n. 214, at 81–83.

218. Francione, *supra* n. 132, at 736 (citing John Locke, *Some Thoughts Concerning Education*, in *The Works of John Locke* 112 (John W. Yolton & Jean S. Yolton eds., rev. 10th ed. 1963)).

219. *Id.*

the human spirit” that occurs as a result of the infliction of cruelty on animals and of society’s indifference to the cruelty.²²⁰

Abolishing cockfighting, bullfighting and similar activities might illuminate the effect such activities are perceived as having on humans. As early as the mid-1800s, courts characterized animal-fighting sports “[a]s being barbarous and cruel, leading to disorder and danger, and tending to deaden the feelings of humanity, both in those who participate in it, and those who witness it.”²²¹ One issue with animal fighting is the extravagant waste of life that occurs.²²² The same frightening results emerge from the greyhound-racing industry.²²³ Although the greyhounds do not normally die on the track itself, their deaths do fuel the industry.²²⁴ The industry cannot make a profit without cutting corners on the dogs’ treatment, culling the litters, and subjecting many to premature deaths.²²⁵ Thus, it seems inconsistent for society to view this sport any differently than animal-fighting activities.²²⁶

No longer are there only popular cultural beliefs upon which to depend for support. The link between nonhuman animal abuse and interpersonal violence has been given serious consideration within vast academic fields.²²⁷ One could point to recent studies of serial and mass murderers, arsonists, and serial rapists that frequently show a childhood pattern of animal abuse.²²⁸ Studies have found that persons who abuse nonhuman animals often have a propensity to abuse humans, be they children, loved ones,

220. Erin N. Jackson, Student Author, *Dead Dog Running: The Cruelty of Greyhound Racing and the Bases For Its Abolition in Massachusetts*, 7 *Animal L.* 175, 216 (2001).

221. *Commonwealth v. Tilton*, 49 *Mass.* 232, 234–235 (1844).

222. Jackson, *supra* n. 220, at 218.

223. For an extensive discussion concerning the similarities between animal fighting and greyhound racing, see Jackson, *supra* n. 220.

224. *Id.* at 218–219; *supra* nn. 99–106 and accompanying text.

225. Jackson, *supra* n. 220, at 218–219.

226. *Id.*

227. See generally *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998).

228. Alan R. Felthous & Stephen R. Kellert, *Childhood Cruelty to Animals and Later Aggression against People: A Review*, in *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* 69 (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998); Stephen R. Kellert & Alan R. Felthous, *Childhood Cruelty toward Animals among Criminals and Noncriminals*, *supra* n. 228, at 194; Randall Lockwood & Ann Church, *Deadly Serious — An FBI Perspective on Animal Cruelty*, *supra* n. 228, at 241.

or strangers.²²⁹ “Research and common sense [show] that an important tool in creating a [less] violent . . . society, is the encouragement of early development of empathy and compassion.”²³⁰ “How individuals and societies treat animals is a powerful measure of how well, or how poorly, [societies] have succeeded in this development.”²³¹

An activist might not want only to point to the costs society pays in terms of morality and physical safety, but also to encourage the public to reexamine the economic impact the greyhound-racing industry has on the state. The industry employs a powerful lobby and finds the money to support many candidates and political parties, but at the same time argues for and receives preferential treatment on the tax front.²³² By showing the public the ways in which the industry is more of a drain than an economic stimulus, the economic legitimacy of the industry may be undermined.

Happily arguing for the abolishment of greyhound racing is not a unique argument. In the past nine years, seven other states have banned live or simulcast racing.²³³ Although some within the legal community have stated that eliminating greyhound racing is not likely to occur anytime soon,²³⁴ it certainly is closer than ever if the work of GREY2K is any indication. GREY2K (Greyhound Racing Ends Year 2000), a grassroots organization, was established in Massachusetts to support a voter initiative to abolish greyhound racing in that state.²³⁵ Even though the result of the 2000 election was a failure by less than three percent, the

229. Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence against Humans*, 6 *Animal L.* 1, 2 (2000).

230. Lockwood, *supra* n. 214, at 87.

231. *Id.*

232. See *supra* sections VI(B)–(C) for further discussion.

233. Those seven states are as follows: Maine (1993), Virginia (1995), Vermont (1995), Idaho (1996), Washington (1996), Nevada (1997), and North Carolina (1998). “Greyhound racing never existed in Maine, Virginia, or Washington.” Eidinger, *supra* n. 20. Nonetheless, each legislature took proactive steps to ensure that greyhound racing would never expand into its state.

234. Scheiner, *supra* n. 134.

235. The group organized after a third legislative attempt to ban greyhound racing failed. Eidinger, *supra* n. 20. Members of the organization began at racetracks holding up signs and handing out pamphlets. Gaines, *supra* n. 81. The group went on to raise much of its money through donations and by selling heart-shaped key chains urging buyers to “have a heart for greyhounds.” *Id.* Through their hard work and dedication, the organization raised at least \$450,000 and gathered 150,000 signatures to put the measure on the ballot. *Id.*

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strides made by the organization were nothing short of amazing.²³⁶ The organization has reorganized itself into GREY2K USA and now is working toward eliminating greyhound racing throughout the country.²³⁷

VIII. CONCLUSION

Much of the treatment that racing greyhounds are forced to endure should be considered “cruel,” “unnecessary,” and “inhumane.” But recognizing this fact is unlikely to come in the form of application of anti-cruelty laws. The fact that nonhuman animals are considered property and do not enjoy consideration under traditional moral theories makes it unlikely that any such laws will ever effectively protect nonhuman animals against such institutionalized abuse and mistreatment, except in cases of horrible violence. Therefore, the most effective way to protect the greyhounds is to work to eliminate greyhound racing on the grassroots level. The industry is necessarily fueled by the overbreeding and premature deaths of thousands of greyhounds a year. But, the industry not only harms greyhounds, it also harms humanity. Society is injured when it allows and participates in such cruelty. Additionally, greyhound racing no longer deserves to be considered a legitimate value to society on the economic front. Taxpayers should not be forced to subsidize an industry fueled by violence and cruelty to other living nonhumans. The solution for greyhounds is neither further regulation of dog racing nor adoption of retired dogs, but rather elimination of the greyhound-racing industry.

236. Scott Van Voorhis, *Close Win Alarms Tracks — Will Work to Sway Public Perception*, Boston Herald (Nov. 9, 2000).

237. *Greyhound Advocates Launch 1st Nationwide Political Effort to End Dog Racing; Coalition Includes Former Question #3 Organizers, National Animal Protection Advocates, Anti-Gambling Leaders*, PR Newswire (May 23, 2001) (available in LEXIS, NEWSFILE, WIRE STORIES).