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Trespass, animals and democratic engagement

Since at least the 1970s, one of the stock standard tools in the animal protection movement's arsenal has been illegal entry into factory farms and animal research facilities. This activity has been followed by the publication of images and footage captured inside those otherwise socially invisible places. This activity presents a conundrum: trespass is illegal and it's an apparent violation of private property rights. In this paper we argue that trespass onto private property can be justified as an act of civil disobedience. We look at one particular type of justification: the use of information gathered through trespass in public policy formation. We then animate this analysis both with an historical overview of the effects of sharing information about animal agriculture, and with a specific case study of trespass undertaken recently.

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The animal protection movement regularly engages in trespass in order to gather and subsequently disseminate information about the conditions under which nonhuman animals

live and die in privately owned intensive agricultural systems. This activity presents a conundrum: trespass is illegal, and it's at least *prima facie* immoral. Yet there are many good reasons activists offer for taking such risks, including improving animal welfare laws, or working towards banning certain kinds of animal exploitation. There's also a growing urgency towards settling the question of whether this kind of trespass should be tolerated or endorsed: many governments are introducing laws developed specifically with the intention of preventing such activity. In the United States for example, trespass by animal activists has been legally defined as "terrorism" (Lavoie 2012) and laws are developed and applied accordingly.

In this paper we consider one particular type of justification: the use of information gathered through trespass in public policy formation. While we acknowledge that trespass violates private property rights, we argue that because the state has absented itself from animal protection regulation, the violation of property rights can be justified as an act of civil disobedience. We consider a standard account of civil disobedience, some of its limitations and then consider whether trespass of the kind just described can be justified according to this account. We then look to animate this analysis both with an historical overview of the effects of sharing information about animal agriculture, and with a specific case study of trespass undertaken recently.

Violating private property rights

For animal protection theorists, especially those interested in the law, the classification of nonhuman animals as private property items has the focus of extensive discussion and analysis (*see* Francione 1995; Tannenbaum 1995; Francione 1996; Favre 2000; Wise 2000). However, theorists haven't dedicated the same amount of attention to exploring how private property relations affect the way animals live, nor the resulting ability of the human community to observe animals first-hand. The modern institution of private property affects animals in two ways: first, animals are property items to be bought and sold. Second, they typically live their lives on privately owned land and within privately owned buildings. The result is that animals are inaccessible to all except for those people who own the buildings; or own the property the animals live on; or individuals who are explicitly granted access. The only other way to see factory farmed animals is to break the law by entering private property without the owner's permission, or to rely on images generated by those who do so.

Incursions onto private property, such as land and buildings, are acts of trespass. And trespass is indisputably an act with legal and moral implications—not least because people have a legitimate interest in owning private property. Farm and other business owners who pay the going rate for a block of land are entitled to use it in a law-abiding way. Their rightful ownership of that land is not disputed here, even if the use of that land may be a topic of moral disagreement that animal activists seek to highlight. There is likewise no suggestion that animal activists typically wish to contest the land or building ownership rights of those onto whose property they trespass, or that land and buildings may be the rightful subjects of

ownership. Violating the interest that property owners have in using that land to the exclusion of others therefore requires exceptional circumstances that activists need to demonstrate.

In considering what is required to outweigh a private property right, it is worth noting that any widely accepted theory of rights will acknowledge that rights must be balanced both against other rights, and against the public good (for example see Griffin 2008, p. 68; Raz 1988, pp. 279-80). On the basis of this kind of consideration, people with rights to private property are already restricted by the state in how they make use of their property generally. Local zoning and heritage laws govern their use, restricting the kind of buildings and activities which take place on it, and of course the law must be obeyed on privately owned land.

Lawful justifications for trespass include: license by the occupier (someone with legal access granting you entry); entry under law (for example by police officers or representatives of an authorised animal protection agency); *jus tertii* (third party entitlement to the property), and necessity (Elliott and Quinn 2007). ‘Necessity’ legally justifies an act of trespass by a private, unauthorised citizen with no entitlement to legitimately owned land where no other options exist, either to protect the public good or private security. The threat to public good or private security must be very high; necessity requires protection from death or serious bodily harm. Further, as neither the police nor an authorised animal protection agency can enter onto property without probable cause, we can see that justifications for both private and state trespass essentially fall into the same categories: the protection of public or private goods.

Yet the necessity standard for trespass by private individuals as opposed to the state is significantly higher than the justifications required by state agents for entering onto someone’s land. Necessity is interpreted by the courts very narrowly. So while personal interest and (for our purposes more significantly) public good justifications are available, illegal trespass by activists also needs to be justified as an instance of breaking the law. And given the non-violent nature of trespass and the moral motivations for the illegal activity, we can look to justify this kind of trespass as an act of civil disobedience.

Breaking the law and civil disobedience

In a liberal democracy we have a *prima facie* obligation to obey the law. We have this obligation not only because particular laws themselves are just, but also because the rule of law itself is morally significant. On this topic Peter Singer (1993, p. 302) contends that our obligation to obey the law is particularly strong where it is the product of a democratic process, because it represents a majority view. Laws protecting private property are neither unjust nor unrepresentative of the majority view. Yet it is sometimes reasonable to break a just, democratic law. Our legal framework itself allows for the occasional suspension of otherwise just laws; for example speeding in order to transport a person to hospital in an emergency. More substantially, acts of civil disobedience highlight the distinction between legality and morality and suggest that legality does not always have priority. Thus the important question is not whether it is permissible to break the law but rather under what conditions it could be morally permissible to do so. It is also important to note that

identifying conditions under which it's permissible to break the law does not make an argument for anarchy. As Hettinger (2001) points out, both the claim that the law has no moral weight of its own, and that it has complete moral force, are untenable.

The received view of civil disobedience put forth by Rawls (1999, p. 320) in *A Theory of Justice* is an act which is conscientious, public and non-violent, and done with a view to changing the law or government policy. Rawls situates his view of civil disobedience within his broader theory of justice (1999, p. 321) and restricts justifications for disobedient action to those that invoke widely accepted principles of justice. He argues:

Civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally. In justifying civil disobedience one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest.

Singer (1973, pp. 126-127) highlights a key concern with Rawls's conception of civil disobedience and its implications for civil disobedience on behalf of nonhuman animals. If justifications are limited to those which invoke Rawls's principle of justice, the actions of animal advocates probably will not be justified. In *A Theory of Justice* (1999) Rawls appears to exclude nonhuman animals from inclusion in the justice principle (1999, p. 448). According to Singer this means that Rawls specifically precludes the possibility of civil disobedience on behalf of nonhuman animals. The picture may be a little more complex than Singer allows for. In *Political Liberalism* (1993) Rawls retreats from his earlier, strong exclusion of nonhuman animals from the justice principle and he also acknowledges the challenge his framework poses to other groups such as so-called 'marginal cases' and future generations (1993, p. 21). Yet despite this acknowledgment it is most likely that Singer is correct in that the type of justice principle Rawls had in mind was human-centric rather than inclusive of all sentient life.

Furthermore, on Rawls's view, disobedients must appeal to the majority's shared sense of justice. And despite some common threads, it is clear that the sense of justice held by animal activists is not a shared by the majority (cf. Greenawalt 1987, p. 177). Rawls (1996) later revised this restriction in line with the revised approach he takes in *Political Liberalism*, by adding a provision for motivations—and possibly a different moral outlook—to be publicly justified, if the concept of political justice on which these are based can be explained to fellow citizens 'in terms of a reasonable balance of political values', noting that not all reasonable balances are the same (1996, p. 243). This would allow civil disobedience to be used as a method for reforming currently accepted principles of justice, too.

Bedau (1961, p. 661) offers a similar account to that of Rawls. However Bedau argues that the requirement for conscientious actions must permit even those actions that the majority finds immoral, provided it is conscientious.

A question also arises as to whether an act of disobedience must be directly related to the laws that disobedients seek to reform. There is a *prima facie* reason to believe that it must.

Yet as Bedau points out, while this may represent a typical instance of civil disobedience, it cannot be central to its definition as it rules out indirect acts of disobedience—some laws are resistant to direct disobedience. No ordinary citizen is able to directly resist, for example, a government decision to launch a nuclear missile or to execute a prisoner (Bedau 1961, p. 657). Rawls, also, explicitly rules out the necessity for such a connection (1999, p. 320). Nevertheless, Bedau maintains that there must be some meaningful connection between the law broken and the law which is opposed.

This issue prompts the question: against whom is the disobedient act directed? While typically it is directed against the government, which is responsible for the objectionable laws, in practice it may necessarily involve violating the *prima facie* rights of private citizens. A sit-in at a privately owned diner in objection to racial segregation laws might fall into that category. However, as Morreall notes, the person whose rights are being superseded by a more important cause may not even be a guilty party. He offers as an example a person with exclusive rights to use of the only well, in a town where water is scarce. The well owner's legitimate property rights may be superseded by the rights of the owner's neighbours to that water, which they need in order to survive (Morreall 1976, p. 138).

A further concern is the requirement that acts of civil disobedience be civil. Imagery obtained from trespass onto factory farms is often used as a shock tactic, designed deliberately to appeal to emotion rather than reason, and to make people feel uncomfortable about their behaviour—either by eating meat or in failing to oppose a *status quo* that allows for animal suffering within intensive agricultural production units. On these grounds trespass may fail to meet the expectation that disobedience be civil, and non-coercive in nature (cf. Singer 1993, p. 302) if the information obtained from the illegal activity is not used appropriately and effectively.

Finally, the stipulation made by both Rawls and Bedau that acts of civil disobedience be public acts also casts serious doubt on the legitimacy of trespass. Rawls's definition requires that such acts be neither covert nor secret. Bedau, likewise, asks that fair and advance notice be given to relevant state and non-state actors (Bedau 1961, p. 655). For Rawls this criterion is situated both within a comprehensive theory of mutual obligation and is also relevant to his later conception of public reason. If an act of civil disobedience is to be justified to other members of civil society it is hard to see how this justification can be authentic when the act entails an act of intentional duplicity. Furthermore, any degree of deception is likely to violate, rather than support, most reasonable conception of justice. For this reason typical acts of civil disobedience are markedly public activities; disobedients draw public attention to their activities from the outset.

However the effectiveness of any act of trespass is likely to be undermined if the state and/or the owners of private property are aware of the intended intrusion in advance of it taking place. Unlike other acts of civil disobedience, covert activity is essential if images of injustice behind closed doors are to be captured and disseminated. Otherwise property owners can prepare the situation in a way that casts a more favourable light, which defeats the very

purpose of the act. This point has been highlighted by both Brian Smart (1991, pp. 206-7) and Kimberley Brownlee (2009).

Both Smart and Brownlee argue that provided the disobedience is addressed to the public or the government, this is compatible with secrecy. They further suggest that the publicity requirement can be met with suitable announcements about the reasons for a disobedient action after the fact. There is no reason to doubt the authenticity of an explanation delivered in this way. Articulating the reasons for the covert nature of the activity as part of this explanation will also reduce the perception that the intention of the disobedient act was deception, rather than in the interests of a conscientiously and politically supportable view.

Yet despite the honest intentions of disobedients who justify themselves in this way, there is no avoiding an element of secrecy on the part of activists who engage in trespass with a view to acquiring information about injustice that is hidden on private property. And secrecy is not compatible with an open and public appeal to common conceptions of justice. A useful comparison here might be with how we justify lying. Honesty is also a mainstay of most reasonable conceptions of justice, yet we acknowledge that dishonesty is sometimes necessary to meet other, overriding obligations. One way in which we may consider how to justify a lie is again to make an appeal to the public. Sissela Bok famously suggested a publicity test, which asks: "...which lies, if any, would survive the appeal for justification to reasonable persons" (1999, p. 93). A test of this kind can easily be understood as part of the public appeal which must be made by disobedients who commit acts of trespass. To the extent that disobedients will be seeking to highlight that the injustice they have exposed was previously hidden, drawing attention to the necessarily covert nature of their activity will be inevitable.

A publicity requirement is essential to any understanding of civil disobedience. Breaking the law with a view to changing it for private reasons and without honest engagement with the public violates the spirit of civility and undermines the moral justification for illegal activity. But in the same way that the law may be suspended in the interests of changing it, principles of honesty may be suspended temporarily in the interests of engaging authentically with the public. If we accept the reasoning that covert acts of disobedience may be addressed to the public with explanations after they have been conducted, we are not obliged to consider trespass and covert disobedience as a different category of politically motivated, nonviolent illegal activity undertaken with a view to effecting public policy change. This too, is a theoretically more elegant way to consider trespass.

The role of the state

When we consider the legitimate target of acts of civil disobedience, it calls into question the role of the state in animal protection. While many would argue that it should be left to the state to intervene in relation to activities that occur on private property, as police routinely do in obtaining warrants to enter private property, with respect to animal protection the state has

rendered itself largely impotent. First, the state has generally sanctioned many disputed activities insofar as they are not illegal. For example, keeping hens in battery cages is not illegal and so the state will not intervene, even in cases where the battery cage is causing animals to suffer. Second, the state often fails to uphold those minimal legal protections that do currently exist. In Australia, non-government organisations such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA) both monitor animal welfare and recommend prosecution. The state has deliberately absented itself from this policy domain. If policy change is to occur it is unlikely to be initiated by policymakers, but will rather be a reaction to public opinion based on information obtained by non-state actors. The state for its part acknowledges its deficiencies in relation to animal protection regulation. By way of example: on 6 September, 2012 the ABC's *Lateline* aired a story that purported to show sheep exported live from Australia being slaughtered in the Middle East in ways that contravene processes established by the Australian government. The footage was captured by Animals Australia. When questioned about Animal Australia's evidence, a representative from the Australian Federal Department of Agriculture said 'having these independent reports from third parties such as Animal Australia is one of the ways in which we make sure that the system is actually working' (*Lateline* 2012a).

The public's right to know

In discussing the political dimension of civil disobedience, Singer (1993, pp. 303-304) argues that civil disobedience can restore the democratic process. It does this when it is used to educate and inform citizens. In these cases, he argues, the justification for disobedience doesn't need to be stronger than the obligation to obey the democratically decided laws, because it is a part of that very democratic process:

Civil disobedience is not difficult to justify. The justification does not have to be strong enough to override the obligation to obey a democratic decision, since disobedience is an attempt to restore, rather than frustrate the process of democratic decision making. Disobedience of this kind could be justified by, for instance, the aim of making the public aware of the loss of irreplaceable wilderness caused by the construction of a dam, or of how animals are treated in the laboratories and factory farms that few people see.

He does note, however, that this justification only works in cases where there is already significant agreement between the disobedients and the majority view. To justify illegal actions in the name of activities that are clearly not accepted by the public is more difficult, and can be done only in limited circumstances. It is for this reason that we frame the justification for trespass not in terms of animal welfare interests, but with reference to the informational needs of human citizens in a liberal democracy.

Animal advocates around the world commit trespass for a host of reasons including a desire to remove animals from a site; disrupt production; intimidate staff; destroy property; learn for themselves what's happening inside an animal production unit; and gather information that can be used to educate the community and generate policy change. These reasons are not mutually exclusive and there will often be multiple motivations but it is this final reason for

trespass that we have identified as a suitable and necessary justification, with reference to established civil disobedience principles. It is that motivation for civil disobedience which looks to building a better informed democratic citizenry, which includes exposing the treatment of animals.

Thus the interests of animals are not the primary or sole justification for trespass, and therefore the argument could be applied to comparable situations, for example trespass for the purpose of gaining information on sweatshop conditions in India. In this case, an additional justification could be grounded in any human rights violations that might be found. But that argument won't be invalidated by a surfeit of legitimate motivations, and to justify trespass we only need one. And while this argument may be tested by those who would trespass with a view to informing the public about the inner workings of an abortion clinic, for example, it is important to bear in mind that disobedient acts must meet the criterion that they be civil, and must in any event be balanced against the full range of human and civil rights of those with whom they interact.

The public's 'right to know' is generally facilitated by the state through legislation or through a free media. But in this instance there are problems with both of these mechanisms. Firstly, there is minimal legislation in this area as the 'problem' is largely unseen and unknown, while journalists face the same legal barriers as activists and have different motivations.

It is necessary to draw a link between obtaining information and forming public policy, and the first stage of public policy making in a liberal democracy is problem definition (Laswell 1951; Cobb and Elder 1972; Kingdon 1984; Althaus, Bridgeman and Davis 2007). The function of problem definition is to 'explain, describe, recommend and above all persuade' (Rochefort and Cobb 1994, p. 14). We must also acknowledge that public policy problems are not givens or facts, but are politically subject to interpretation and social definition (Cobb and Elder 1972; Bacchi 1999). It is a process of affective image making and attributing cause, blame and responsibility, within a political contest where actors struggle to control the agenda (Stone 1988; Rochefort and Cobb 1993).

While animal activists will attempt to use the information obtained through trespass to influence the public and political agenda, private property owners are equally entitled to not only respond to claims but also to use their political advantage in preserving the *status quo* or in advancing their aims by encouraging policy makers not to act. This is an accepted part of the democratic process and often the easiest policy response (Kingdon 1984). As previously discussed, the rule of law is a fundamental tenet of liberal democracy, but so is the more nebulous concept of civil society. Voluntary associations, including activist groups, are important actors in civil society thinking, action, engagement and deliberation. They complement institutionalised forms of representative democracy in contributing to an informed citizenry (Tocqueville 1835/1840; Putnam 1993). Other non-state actors and the media also benefit from the information and use it for both advocacy and discussion in the public sphere. An informed citizenry is necessary for legitimate and effective democratic decision-making, yet in this area of policy, as we've noted, the potential sources of information are much more limited as nonhuman animals on private property are outside of

the public sphere and inherently inaccessible, even to those with an active interest in animal issues.

We mentioned earlier that private property rights are already balanced against public and personal goods. Liberal democracy itself is a compromise between the liberal emphasis on individual rights and scepticism of state power and the democratic ideals of collectivism and empowering the masses. Furthermore this is only a basic form of policymaking in a representative democracy. More participatory, deliberative or direct forms of democracy require even more citizen involvement and therefore even more information about issues to be decided. In determining an appropriate balance between these rights, reference to the public interest or common good can be made. Investigative journalism, whistleblowing and websites such as WikiLeaks are based on similar principles. They seek to uphold the public's right to know against competing and compelling arguments for secrecy or privacy. Yet this issue is not about a competing public interest, such as secrecy for the sake of national security, it is a public interest against private interests. For similar reasons, any public interest in or preference for *not* knowing about the extent of the animal suffering which is systematically hidden from them must be balanced against the democratic rights of those with an interest in learning new information about a rapidly changing environment. It is (and ought to be) possible to switch off *Lateline*; it is not possible to see the inside of a factory farm in operation unless someone films it.

Knowledge is power

We turn now to the application of this theory to animal protection, and provide some background and examples of why information is particularly important in the case of policies concerning nonhuman animals. We begin this section with an anecdote.

On 30 May 2011, the Australian Broadcasting Corporation's (ABC) *Four Corners* current affairs program screened a documentary about Australian cattle exported live to Indonesian slaughterhouses. The public and political reaction was swift and dramatic. Governments on both sides of the political spectrum had supported the live animal trade for decades, but within days of the broadcast and subsequent public outrage Australia's Prime Minister announced a suspension of live cattle exports from Australia to Indonesia. It was a remarkable case for two reasons: first because it demonstrated clearly that exposing animal cruelty is in the public interest; the community is willing to acquire knowledge, even if the information is painful or upsetting. Second, the tactics used by Animals Australia in the live export case are legitimate and effective tools that can influence the policy agenda, and providing people with information that's normally hidden can rapidly affect policy change.

The case was also unusual in that the shocking images—obtained by private citizens, acting on behalf of a not-for-profit group, Animals Australia—were obtained legally and with the consent of the owners, where generally owners have an economic interest to hide their activities from the public gaze, and this secrecy is afforded protection by the state in the form of private property rights.

The *Four Corners* episode brought to light animal suffering which is usually invisible. We ask now what effect this invisibility has on human citizens, and their ability to make informed decisions about laws which affect those animals.

One of the central themes of the contemporary animal protection movement is the idea that animals suffer, in part, because the community just doesn't know how much animals are harmed inside institutions such as factory farms. For example, Australian animal protection agency Voiceless tells visitors to its website that 'Industrialised farming practices are largely invisible to Australian consumers and the implications have been appalling for the welfare of animals' (Voiceless 2012). Of the animals we intentionally breed, 98 per cent are for food (Lovvorn and Perry 2009, p. 151), and most of them are raised in factory farms. Yet throughout the economically developed world, the largest proportion of the community resides in urban centres which are human-only or predominantly-human only spaces (O'Sullivan 2011). Conversely, it is a widely held view that if more people were aware of animal suffering they would voice their opposition and call on the state to respond with stricter laws or prohibitions. This is reflected in the popular animal rights mantra 'if slaughterhouses had glass walls, everyone would be vegetarian'.

We also have evidence for this. We know, for example, that animals who are more visible to the public, such as animals used in entertainment including rabbits held in petting zoos, receive stronger statutory protection than those who live and die in the absence of any humans other than those who profit directly from their exploitation—such as rabbits kept in pharmaceutical testing laboratories (O'Sullivan 2011).

In the past fifty years both academics and activists have gone a long way to publicising the treatment of animals behind closed doors. But despite the early successes of authors like Peter Singer, Ruth Harrison and Christine Townend—each highly influential in revealing extensive information about factory farming practices to a previously ignorant public, and each successful in this impressive goal without the need for illegal trespass—their success is becoming difficult, if not impossible to replicate. In researching *Animal Liberation* (1975) Peter Singer relied on farm industry magazines and trade journals, in order to avoid accusations of bias (Singer 1995). However, while condemning violence, Singer does recognise the effectiveness of trespass. For example, he has praised the Animal Liberation Front for obtaining evidence of animal abuse that would otherwise have remained hidden (Singer 1995). The effect of Singer's *Animal Liberation* on public policy is difficult to assess, but its broader impact in the Western world and beyond is indisputable.

Ruth Harrison is widely regarded as the first person to have drawn the non-farming community's attention to the intensification and mechanisation of animal agriculture that followed the Second World War. Her obituary in *The Guardian* opened with 'Ruth Harrison, who has died aged 80, was the first person to open the doors of the factory farm to the public. Her *Animal Machines*, published in 1964, revealed the indignities and suffering inflicted on farm animals by industrialised agriculture' (2000). Harrison described a host of intensive agricultural practices including the raising of broiler chickens, poultry packing stations, battery birds, veal calves and the intensive production of beef, rabbits and pigs. The

publication of *Animal Machines* made the front page of every major newspaper in the United Kingdom and was serialised in *The Observer* (Sayer 2010). As a result of interest in the book, the British Minister for Agriculture established a committee to investigate intensive agriculture, chaired by Professor Roger Brambell. Significantly, this committee's 'Five Freedoms of Animal Welfare' became the benchmark for contemporary animal welfare standards across the western world, and are enshrined in New Zealand and British animal welfare legislation (Cochrane 2009, p. 660; Sankoff 2009, pp. 29-30). Harrison does not explicitly outline her knowledge acquisition methods, however it seems in the 1960s and 1970s farmers were evidently willing to talk to curious observers about their animals and grant easy access to their farms, this is no longer the case.

Inspired by Peter Singer, Christine Townend was instrumental in founding the contemporary, progressive animal protection movement in Australia. She established the first Animal Liberation organisation in New South Wales in 1976 and was thereby able to more widely distribute the information she had previously published. Townend employed a range of tactics in gathering information for *A Voice for the Animals* (1981). During the 1970s and 1980s the progressive animal protection movement in Australia was established and activists used a host of methods to educate themselves about animal agricultural practices, including purchasing spent battery hens and reading industry publications (Townend 1981). Yet industry marketers became more guarded in their publications, no doubt aware that animal liberationists were using the information to expose practices of cruelty. Townend was also able to gain 'legal' entry into factory farms in the early years of the animal protection movement by claiming to be a journalist.

We also have recent evidence that illegal activity has been followed by changes to public policy. In 1997 the tethering of pigs to sow stalls was banned in the Australian state of New South Wales. This was shortly after animal activists conducted a sit-in at a piggery, during which they tethered themselves to the stalls (*Animal Liberation* 2010; *Voiceless* 2005). In 2012 Animal Liberation supplied the ABC with footage from a pig abattoir which was then aired on the program *Lateline*. The investigation prompted a government review resulting in the introduction of mandatory animal welfare officers to be employed by abattoirs, as well as mandatory welfare training for those who conduct slaughter (*Lateline* 2012b).

Yet in both instances the link between the disobedient activity and the resultant policy change should be treated with caution. Activists group like Animal Liberation have an interest in claiming responsibility for the change; an understanding of the political context in which policy is changed is essential. In the case of sow tethering, for example, the practice was almost completely out of use at the time of the ban. This means that it was politically possible to ban the practice, with only two farms were still using this method of restraint; the potential role of economics in the decision making cannot be disregarded.

But an argument can also be made that various improvements in confinement practices may generally be a result of disobedient activity, even where motivating images of agricultural practice are available legally from industry sources. Australian pork growers are voluntarily phasing out sow stalls. They are doing this because they believe that they don't have

community support (Smith 2012). Searching through the available images of intensively farmed pigs, there are certainly some taken legally by farm owners. But the vast majority are from activists groups and without this additional source of illegally obtained information, it is arguable that the legal photos would never have been distributed. In the absence of the discussion prompted by the illegal images, there would be no incentive to do so.

Over the past decades, animal advocates have grown in numbers, strength, political clout, and wealth. The animal agricultural sector has predictably responded by becoming more cautious and less willing to share information or permit access. People for the Ethical Treatment of Animals (PETA) claims to have more than three million members (PETA n.d.). At the same time, instruments such as the *Animal Enterprise Terrorism Act*, enacted in the US in 2006, prohibits anyone from intentionally damaging or causing ‘the loss of any real or personal property used by an animal enterprise’. Animal advocates say that the law has a ‘chilling effect’ (Lavoie 2012). Other commentators have noted that the Act undermines the very principle of *mens rea* by failing to take account of the actor’s intention in engaging in the contested activity (Fields and Emshwiller 2011). Writing in defence of US laws that criminalise animal rights activity that may result an economic loss on the part of those engaged in the animal use industries, Denis R. Case argues that:

Early in the animal rights movement, many acts of animal rights extremists were thought of as ‘stunts’ or ‘pranks’. Legislators began to respond to animal rights activists in the 1960s, but did not start serious proposals to protect the animal industry until the 1990s. In that time, animal rights extremists were able to inflict serious economic damage on those in animal industries (Case 2002, p. 206).

In the same article he repeatedly conflates animal activism with terrorism and observes that ‘On September 11 2001, every American was forced to deal with terrorism...Congress’ proposed resolutions, and the adopted bills, indirectly drew animal rights extremists into America’s fight against terrorism’ (Case 2002, p. 211). That link has since become less indirect because under current US law capturing images of animal enterprises is defined an act of terrorism. The political contestation has never been so intense and the need to establish what it is animal activists are doing when they show the community illegally obtained images of animals in factory farms more pressing..

Is trespass in the name of animal rights an act of civil disobedience?

With this background in mind, we can now look to a case study which illustrates the applicability of the civil disobedience criteria to an instance of trespass undertaken by animal activists, where we believe the criteria have been met.

In 2011, Animal Liberation New South Wales (Animal Liberation) was awarded \$13,000 by the charity Voiceless to work with The Public Interest Law Clearing House of New South Wales (PILCH) to carry out an investigation into the Australian intensive duck industry (Voiceless 2011). On June 19, 2012, Animal Liberation achieved a media splash when the ABC’s 7.30 program ran a story on local intensive duck meat production. The broadcast

included a range of footage, some of which was described as ‘covert’ and which was clearly filmed illegally by Animal Liberation supporters or members, who had committed trespass into an intensive duck meat shed. The story was framed around the footage obtained via trespass, with the story titled ‘Disturbing footage prompts calls for duck farming changes’ (7.30 2012). While being interviewed for the program, a spokesperson for Animal Liberation told the reporter that they have ‘other footage from other sheds throughout Australia’.

Using the duck footage as a case study, it seems reasonable to conclude that obtaining and disseminating the footage was conscientiously motivated. There is no reason to believe that Animal Liberation profited from the footage in any way, or that the organisation was motivated by anything other than a desire to alert the community to intensive rearing of ducks, in the hope that they will be able to reform the industry.

Animal Liberation chose a popular and well-respected current affairs program to air the footage. This suggests that they had a sincere desire to see their video widely distributed. So we conclude they meet the requirement that acts of civil disobedience be public—in the qualified *post hoc* way we described earlier. Animal Liberation also issued a press release to coincide with the report, and on June 19, 2012, they published ‘six minutes of raw footage’ shot while trespassing on the March 14, 2012 (AnimalLibNSW 2012). They also posted messages on their website asking people to watch and then share the footage via Facebook and Twitter. Much of the footage uploaded to YouTube was used by 7.30.

All acts of civil disobedience must also be undertaken with a view to changing the law. Furthermore, this intention underpins the conscientious motivation in question. A personal vendetta against the farm owner, for example, would undermine any legitimate claim to a civil disobedience defence. There is no evidence to suggest that Animal Liberation’s agenda was anything other than policy driven. In 2011, Animal Liberation lodged a claim with the Australian Consumer and Competition Commission (the ACCC). The claim asserted that Pepe’s Ducks used the terms ‘open range ducks’ and ‘grown nature’s way’ on their packaging, together with images of a duck located adjacent to a pond, in the outdoors (Animal Liberation 2012b) when in fact their birds are reared in sheds with no access to open water. The footage obtained via trespass was filmed inside a shed owned by a Pepe’s Ducks sub-contractor. On 7.30 a spokesperson for Pepe’s Ducks stated that they are ‘working with the ACCC’ we think suggesting their packaging may be deceptive and subject to change. If the ACCC had advised Pepe’s Ducks to revise their packaging on the basis of the footage obtained during the trespass, this would be evidence for the use of illegally obtained information in the process of reforming untruthful advertising—a legitimate public policy concern. However we are restricted to speculation on this matter, as it’s unclear whether the footage taken inside the shed was offered to ACCC as evidence. It is also plausible, however, that Animal Liberation has a sincere belief that distributing the footage publicly might help sway the ACCC to respond favourably to their application. From a democratic perspective, it could also be argued that the community should have some type of overview of the ACCC, instead of affording the Commission *carte blanche* to make decisions in the community’s name.

However, even if we are uncertain as to whether disseminating the footage publicly was part of Animal Liberation's 'truth in labelling' policy reform agenda and its associated dealings with the ACCC, it might be argued that publicising the footage permitted other animal advocates to mount a public policy reform case. If this is the case, the disobedient act may be justified by virtue of its role in a larger campaign to change the law. On 22nd June, three days after the report went to air, Dana Campbell, Chief Executive Officer of Voiceless, published an opinion piece in the *Sydney Morning Herald* in which she explored the public policy implications from the perspective of truth in advertising, and also raised the issue of the *Australian Model Code of Practice for the Welfare for Animals: Domestic Poultry*, which regulates the duck meat trade. Campbell writes with a clear reform agenda in mind:

While these conditions would shock a conscientious consumer, such cruelty is ingrained in the industry through the government Code of Practice that guides its management.

The code governing the farming of ducks allows for up to five fully grown birds or 50 ducklings to be crowded into every square metre.

What's more, the code fails to mention ducks' need for surface water. As a growing industry, this oversight needs to be addressed immediately to specifically consider the behavioural and welfare needs of duck (Campbell 2012).

With the Animal Liberation footage, and willing commentators such as Voiceless, it is reasonable to conclude that Australians might now begin to engage in a public conversation about the conditions under which ducks are raised for meat, and whether those conditions reflect consumer perceptions as they are now more informed about the way duck meat is marketed. The same public conversation may also extend to considering whether the Code of Practice reflects community values in relation to animal welfare generally and duck welfare in particular.

Before concluding the analysis, it is necessary to answer one further question: could the public conversation have commenced in the absence of the footage obtained via trespass? That is, could the same aims have been achieved without the need for illegal activity, disobedient activity, or a compromise to otherwise suitable private property arrangements? It is clear from the way the 7.30 framed and promoted the story that trespass was critically important to their interest in reporting on duck meat production. Yet even if it were possible to persuade a media outlet such as the ABC to run the story without covert footage, we might ask whether the story would have afforded the viewing public a reliable insight into the intensive rearing of ducks. We think the answer has to be 'no'. The story centred around Australia's largest duck production company Pepe's Ducks, which raises nine million ducks for slaughter each year. To produce that volume Pepe's Ducks uses 21 contracted farms. The farm in which the covert footage was taken had been contracted by Pepe's Ducks for 20 years. As part of the story 7.30 aired footage taken in another Pepe's Ducks farm, with a spokesperson for the farm in frame, and quite happy to have himself, the farm, and the ducks

filmed. While the Animal Liberation footage, and the footage shot by the ABC, were both taken in Pepe's Ducks operations, the images could not have been more different. The ABC obtained footage showed animals in the sun, with space to move. The Animal Liberation obtained footage showed birds trapped under wire grates in fully-enclosed sheds. Arguably both types of footage are needed to provide the community with a comprehensive picture of the Australian intensive duck production industry.

Conclusion

We have argued that widespread public knowledge about the effects of legislation is paramount if citizens are expected to participate meaningfully in a liberal democracy. We have established that trespass and information dissemination are undertaken for morally motivated, publicly directed, non-self-interested reasons, and with a view to public policy reform. When animal activists enter private property for the purpose of collecting information to disseminate publicly, this action can be justified as an instance of civil disobedience where they do so on the understanding that informed citizens will be in a better position to make the legislative changes required to uphold their animal protection values. Where an act of trespass meets the criteria for civil disobedience it is civil, public and non-violent and for the purpose of gathering and disseminating information as part of the democratic process; an otherwise illegitimate act is thereby legitimised. Further, we note, where other agents further spread the information obtained through trespass for the same purpose, this too is justified on the same grounds.

The Rawlsian account of civil disobedience initially restricted the justifications to which disobedients may legitimately appeal, and appeared to exclude invisible nonhuman suffering as a justification for violating private property rights. Here we have been able to show that the public's right to information relevant to the democratic law-making process to which they are expected to contribute by virtue of their status as citizens provides the strong political and publicly-minded moral justification that Rawls was aiming for. The Australian case study is unique in showing how this works in practice, from the covert activity that preceded the trespass to the consequent pressure on law makers that followed the information being placed in the hands of voters.

We note that this is not an absolute licence for all incursions onto all private property, but rather some incursions on private property that is used for specific purposes. We noted that while the indirect target of civil disobedient acts is always the government, in the domain of animal protection the state has absented itself from this policy domain. It must therefore either take responsibility to enter private property and be more pro-active in making policy or accept that non-state actors will attempt to perform that role, as they have already done with the state's consent in the area of monitoring. Paradoxically, the rule of law remains essential, as activists are seeking to use information to convince the public and legislators to change the law and then enforce it.

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