

The Save Movement and Farmed Animal Suffering: The Advocacy Benefits of Bearing Witness as a Template for Law

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This paper critically analyzes the practices and legal regulation of the growing global phenomenon of the Save Movement, a (human) social movement directed at bearing witness to and raising awareness of the suffering of animals brutalized in intensive farming. Save activists typically hold vigils as animals are transported from the warehouses in which they were raised to their deaths in a slaughterhouse. Through the lens of feminist relational theory and critical animal legal studies, the paper considers the benefits of the Save Movement for farmed animals as well as the capacity of the law to participate in the act of bearing witness to farmed animal suffering that the movement advocates. I argue that bearing witness is not only a productive activity for animal advocates to engage in, but also serves as a model for how the law can respond to animals. Put differently, I argue that the law should strive to bear witness to animal suffering, and that this subversive and partly socially subjectifying move for animals can occur even in the present anthropocentric legal culture where animals are legal property and clearly non-subjects.

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I. Introduction

Bearing witness to suffering as a form of social and political protest as well as personal transformation is not a new concept for social justice movements seeking to disrupt violent orthodoxies regarding power and subjectivity. Bearing witness, however, as a form of organized and collective protest to *animal* suffering is a relatively new phenomenon and growing worldwide. The Save Movement, as it is called, comprises animal activists who gather together in their communities to bear witness to animals in their actual experiences of suffering, typically in their last moments before death en route toward a slaughterhouse kill floor. The suffering involved generally stems from the violent uses of animals in normative, lawful industries, most often intensive animal agriculture, and part of the aim of the Save Movement is to raise awareness of the

horrors of this now routine and legal treatment of farmed animals.¹

As a form of social and political protest, the acts of bearing witness are not meant to be socially exhibitionist, directly connected to law reform or even always legally transgressive. Save activists are often not attempting to rescue the animals, whose suffering and lives they have come to bear witness to, from their eventual fates. They are also not trying to capture public attention through graphic images, provocative displays, or conversational exchange. The movement is also not directed at circulating petitions for eventual distribution to legislators or policymakers (although leaflets and pamphlets might be distributed, and the public verbally engaged at an individual level).² Given that Save activists do not usually seek to break the law or verbally or vividly call attention to their cause, but rather highlight *and respond in the moment to* the suffering inherent in practices and industries the law deems lawful through peaceful, primarily silent, and reflective observation and connection, we can understand the Save Movement as qualitatively different from traditional forms of animal advocacy protest.³ Critical analysis of the benefits of the movement through its central trope of bearing witness as well as legal responses to such acts can help us evaluate this emerging form of animal advocacy.

In what follows, I analyze the benefits of bearing witness to normative violence against farmed animals within animal advocacy and law. I argue that bearing witness is not only a productive activity for animal advocates to engage in, but also serves as a model for how the law can respond to animals, namely with compassion and empathy. Put differently, I argue that the law should aspire to bear witness to animal suffering, and that this partly socially subjectifying move for animals can occur even in the

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1. Ian Purdy & Anita Krajnc, "Face Us and Bear Witness! 'Come Closer, as Close as You Can...and Try to Help!': Tolstoy, Bearing Witness, and the Save Movement" in Atsuko Matsuoka & John Sorenson, eds, *Critical Animal Studies: Towards Trans-species Social Justice* (London: Rowman & Littlefield, 2018) 45 at 45; Alex Lockwood, "Bodily Encounter, Bearing Witness, and the Engaged Activism of the Global Save Movement" (2018) 7:1 *Animal Studies Journal* 104 at 107.
 2. Purdy & Krajnc, *supra* note 1 at 48; Lockwood, *supra* note 1 at 107–08.
 3. Lockwood, *supra* note 1 at 107–08.

present system where animals are legal property and clearly non-subjects.

After outlining the basic features of the Save Movement in Part I of this article, Part II reviews the nascent academic literature on bearing witness stemming from Levinasian-inspired and feminist approaches to refashioning ethical responsibility. Part III applies and extends the analytical insights in this literature about what bearing witness means and why it is of value to the context of farmed animal advocacy in the Save Movement. This Part discusses why bearing witness as typically practised in the Save Movement is a beneficial activity for animal advocates to pursue. Here I also endorse the value of bearing witness as an element in the overall repertoire of critical animal intervention strategies because of its ability to subvert the ideologies of the animal agricultural industrial complex. I assess the Save Movement's benefits for the individual animals to whom the activists are bearing witness as well as for animals in general, emphasizing the socially subjectifying nature of bearing witness in the Save Movement for the animals and the ability of activists' practices to transgress species binaries and represent farmed animals as agentic beings. In Part IV, I briefly explore how the concept of bearing witness as practised by the Save Movement can serve as a model of how legal actors can try to intervene discursively in favour of animals despite their entrenchment as property in the dominant colonial legal systems in Canada.

II. The Save Movement: An Overview

Anita Krajnc founded Toronto Pig Save in December 2010,⁴ an organization that “exists to erect glass walls at slaughterhouses, encourage plant-based vegan living, and bear witness to the pigs during vigils”.⁵ Krajnc situates the Save Movement in a “nonviolent love-based” social movement paradigm that takes its conceptual purposes and strong belief in the value of community organization from “Leo Tolstoy, Mahatma Gandhi, Martin Luther King, community organizer Saul Alinsky, United Farm Workers cofounder Cesar Chavez, environmental justice

4. Purdy & Krajnc, *supra* note 1 at 46.

5. “Toronto Pig Save” (2018), online: *Toronto Pig Save* <www.torontopigsave.org>.

campaigner Lois Gibbs, and others”.⁶ The organization started off with weekly vigils but now typically holds three vigils in the Toronto area each week to bear witness to animals en route to slaughterhouses.⁷ At these vigils, activists assemble as close as they can get to the animals while in a transport truck, sometimes trying to touch the animals inside, giving water or watermelon, issuing soothing and comforting messages, or connecting with them eye-to-eye.⁸

In its purposes and activities, Toronto Pig Save is not unique, but it is credited with being the organization that launched the Save Movement, a movement that now encompasses over 200 Save groups globally although primarily in countries of the global North.⁹ The website of the Save Movement defines bearing witness as the main purpose of the movement and further defines “bearing witness” as “...being present in the face of injustice and trying to help. Tolstoy says we all have a duty to bear witness”.¹⁰ Indeed, Krajnc, along with her co-author Ian Purdy, cite Tolstoy’s definition of bearing witness in their recent work on the Save Movement’s purpose and love-based organizational strategies to grow the movement.¹¹ They point to the following definition from Tolstoy as to what bearing witness means: “[w]hen the suffering of another creature causes you to feel pain, do not submit to the initial desire to flee from the suffering one, but on the contrary, come closer, as close as you can to him [or her] who suffers, and try to help him [or her]”.¹² In their own words

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6. Purdy & Krajnc, *supra* note 1 at 46.
 7. *Ibid*; The Save Movement “List of Save Groups” (2017), online: *The Save Movement* <thesavemovement.org/list-of-save-groups/> [The Save Movement, “List of Save Groups”].
 8. Lockwood, *supra* note 1 at 109–11.
 9. The Save Movement, “What is the Save Movement?” (2017), online: *The Save Movement* <thesavemovement.org/the-save-movement/>; The Save Movement, “List of Save Groups”, *supra* note 7; Lockwood, *supra* note 1.
 10. The Save Movement “What is Bearing Witness?” (2017), online: *The Save Movement* <thesavemovement.org/bearing-witness/>.
 11. Purdy & Krajnc, *supra* note 1 at 46.
 12. *Ibid* at 45 citing Leo Tolstoy, *A Calendar of Wisdom: Daily Thoughts to Nourish the Soul*, translated by Peter Skirin (New York: Scribner, 1997) at 214.

they define bearing witness as “a duty to be present at the darkest sites of injustice, to let others know of this injustice, and to do all one can to stop the injustice, as an individual and together with one’s community”.¹³

Purdy and Krajnc identify vigils at slaughterhouses as a “very partial form” of bearing witness because the animals continue onto slaughter; in contrast, “fuller forms of bearing witness” occur when organizers are able to secure an animal’s release through speaking with the animal’s owner (*i.e.* the slaughterhouse and its agents) or through acts of civil disobedience (such as stalling the trucks carrying the animals for several minutes).¹⁴ Alec Lockwood, who has participated in vigils with Toronto Pig Save, states that the Save Movement has the following four “core practices” that encapsulate this “very partial form” of bearing witness (hereinafter referred to simply as “bearing witness”):

1. collective witnessing of the process of animal slaughter
2. providing momentary solace and succour, including with water and fruit, to the animals
3. making visible the spaces where killing takes place and the structural means by which consumer cultures aid and abet that killing...
4. to share audio and visual recordings from the vigils via social media to broader audiences.¹⁵

Purdy and Krajnc further state that bearing witness is meant to inspire vigil attendees to become vegan and take up leadership activities in

13. Purdy & Krajnc, *supra* note 1 at 48.

14. *Ibid* at 46, 52–53 (Purdy and Krajnc write that “[b]earing witness is the main strategy used by (Toronto Pig Save) and most groups in the Save Movement... There are many purposes in bearing witness for the attendees and the community. The first is to be present for the animals in their hour of need and show them compassion, to tell their story, to try and help them, and to intervene and attempt to stop the injustice. There are fuller forms of bearing witness that involve truly freeing the animals, as Chinese activists have done in freeing dogs from slaughterhouse trucks on multiple occasions. TPS’ form of bearing witness is only partial, as the animals still go to slaughter” at 48).

15. Lockwood, *supra* note 1 at 109.

organizing and expanding the movement.¹⁶ As Sue Donaldson and Will Kymlicka have recently pointed out in their critical evaluation of the advocacy model within farmed animal sanctuaries, it is instructive to critically assess animal advocacy measures no matter how well-intentioned and well-designed in favour of animals to explore their actual impacts on animals and how humans relate to animals.¹⁷ To apply a critical lens to bearing witness to animals in the Save Movement, then, I turn next to the critical literature on the concept of bearing witness in general.

III. Bearing Witness, Response-ability, and Subjectivity

A. What is Bearing Witness and Why is it Beneficial?

Fuyuki Kurasawa states that the literature on bearing witness exhibits four points of focus: “bearing witness as an exercise in truth-telling (its historical accuracy), a juridical outcome (its legal and institutional pre-conditions), a psychic phenomenon (a subjective response to trauma) or a moral prescription (the communicative responsibility of eye-witnesses)...”.¹⁸ Kelly Oliver engages with all four in her influential treatise discussing the act of bearing witness or witnessing as concepts to aid our thinking of how we envision the purposes and goals of social movements and the development of subjectivity.¹⁹ As an alternative to the often elusive project of recognition, whereby social movements seek Hegelian recognition of various types from dominant institutional actors, Oliver

16. Purdy & Krajnc, *supra* note 1 at 48.

17. Sue Donaldson & Will Kymlicka, “Farmed Animal Sanctuaries: The Heart of the Movement?” (2015) 1:1 *Politics and Animals* 50, online (pdf): *Open Journals at Lund University* <journals.lub.lu.se/index.php/pa/article/view/15045/14797>.

18. Fuyuki Kurasawa, “A Message in a Bottle: Bearing Witness as a Mode of Transnational Practice” (2009) 26:1 *Theory, Culture & Society* 92 at 94.

19. Kelly Oliver, *Witnessing: Beyond Recognition* (Minneapolis: University of Minnesota Press, 2001) [Oliver, *Witnessing*]. See also Kelly Oliver, *Animal Lessons: How They Teach Us to Be Human* (New York: Columbia University Press, 2009) [Oliver, *Animal Lessons*].

offers us the idea of witnessing, a concept that combines the juridical notion of acting as an eyewitness to an event or incident with the concept of bearing witness.²⁰ Bearing witness in this sense of witnessing is an act that proceeds from the understanding that some experiences of trauma and suffering cannot be tangibly accessed through sight or other sensory experiences insofar as there are contextual aspects of an experience that visual observation of that experience will not necessarily convey.²¹ Such contextual aspects are the social, economic, political, and historical relations that shape the power relations structuring the subjectivity (or denial thereof) and agency (or subordination thereof) of the subject to whose experience we are bearing witness.

Oliver presents her theory of witnessing as a framework through which we may engage with visual images and representations without forgetting about what we cannot see, *i.e.* the power relations structuring the images.²² For Oliver, witnessing is an alternative and corrective to the current mode of pornographic viewing of (often racialized and imperial) violence and suffering. Pornographic viewing permits viewers to view events and incidents without critical analysis or reflection, receiving them primarily as spectacle. Such pornographic viewing fails to teach viewers about the partiality of images and perspectives, to critically read, for example, the 'frame' of the image and its particular social construction, reflecting on what the image leaves out and the relations of power surrounding and underlying the making of the image and the acts that are represented. Instead, pornographic viewing encourages us to see every image as unmediated, as truth, and as naturalized, and as existing primarily for our viewing pleasure and or other consumerist desires. Any empathy that may be stirred is merely 'empty' in that it requires no responsibility from us, no action, and also does not cultivate within us

20. Kelly Oliver, *Women as Weapons of War: Iraq, Sex, and the Media* (New York: Columbia University Press, 2007) [Oliver, *Women as Weapons of War*].

21. Kelly Oliver, "Witnessing and Testimony" (2004) 10:1 Parallax 78 at 78 [Oliver, "Witnessing and Testimony"].

22. Oliver, *Witnessing*, *supra* note 19.

or within the Other we regard visually the ability to respond to others.²³

Witnessing, as an alternative, compels attention to what may be “beyond recognition” visually even through eye-witnessing, namely “the subjectivity and agency, along with the social and political context or subject positions, of the ‘objects’ of our gaze, and our own desires and fears, both conscious and unconscious, that motivate our actions in relation to others”.²⁴ It is this aspect of witnessing (exploring subjectivity, agency, and social context while being aware that we have knowledge gaps and that our desires and fears motivate us) that Oliver denotes as “bearing witness”. Bearing witness or witnessing understood in this fashion serves a vital supplement to the juridical sense of eye-witnessing and it is a process that requires continual “critical analysis and perpetual questioning”.²⁵ Oliver is keen to stress that this deep and sustained questioning is the method by which we can account for our unconscious and repressed “motives and desires”²⁶ that we can never fully know, but nonetheless are our drivers of our “actions, attitudes and beliefs”,²⁷ and thus how we behave ethically.

Oliver argues that witnessing “in its full and double sense”²⁸ is fundamental to generating human subjectivity and undermining the effects of oppression and domination.²⁹ This is because to bear witness is not simply to recognize another as a being in pain who is suffering or has been victimized in the past and may be presently vulnerable. Going beyond recognition, bearing witness is to engage in a specific type of relation with that being, namely a relationship of address and response. A being who is capable of address and response, but also, critically, is *addressed by and responded to* by others in a meaningful and favourable way, is able to acquire subjectivity and agency. Indeed, a being in an oppressed state or subject position *requires* another to address and

23. Oliver, *Women as Weapons of War*, *supra* note 20 at 9–10.

24. *Ibid*; Oliver, *Witnessing*, *supra* note 19 at 106.

25. Oliver, *Women as Weapons of War*, *supra* note 20 at 106.

26. *Ibid* at 107.

27. *Ibid*.

28. *Ibid* at 106.

29. Oliver, “Witnessing and Testimony”, *supra* note 21 at 81.

respond to them to properly move toward agency and a position of less oppression. It is therefore through responsive relationships with others that we acquire our subjectivity.

Conversely, part of the dynamics of oppression or domination we may experience arises from exclusion or marginalization from witnessing structures of being responded to by others. This relational development of subjectivity thus morally calls upon us to enter an address and response relationship with those who are marginalized. As Oliver affirms:

[t]his brings us to an ontological level on which subjectivity is essentially relational and dependent, always formed through a primordial 'we'. From this primordial we, follows an ethics of response-ability that entails an ethical obligation to our founding possibility, which is responsiveness.³⁰

We need to facilitate responses from others and we are also responsible for those responses.

In this, Oliver follows Levinas, but as she also states, she goes further than Levinas (as well as Derrida) in connecting our concern with difference and Othering to an integration of the unconscious.³¹ For Oliver, for capable humans to act ethically, is to be mindful of how our words and actions make others feel, but we must also realize that our address or response (or lack thereof) also shapes our "motives, desires and fears unknown to us"³² as well as, of course, those subjects whose peripheral social positioning may deny their subject status.³³ In short, acknowledging the unconscious helps us consciously grasp that there are aspects of lived experiences we can never know, a knowledge that should impel us to engage in continual interrogation of the norms we abide by, the principles of justice we espouse, and our feelings and motivations for doing so.³⁴

30. *Ibid* at 85.

31. *Ibid.*

32. *Ibid.*

33. *Ibid.*

34. *Ibid* at 85–86.

B. Witnessing Impediments: Humanitarian Logics, Imperial Saving, and Shallow Sentiments

If bearing witness, as Oliver writes, is to engage in “perpetual questioning” of our own unconscious emotions and responses and how those condition our favourable or exclusionary attitudes and behaviours toward others, bearing witness is a compassionate, responsive, and, thus ultimately, a subjectifying act. In this capacity, bearing witness is valued for its role to heal, remember, and understand, as well as bring just relations into eventual being through instigating meaningful empathy.³⁵ While scholars seeking to respond to violence and injustice extol the potential of bearing witness, they are not oblivious to its shortcomings in striving for social change. In this section, I want to consider some of these criticisms and explore the extent to which they obtain in the context of bearing witness to animal suffering.

To begin with, Jennifer Rickel has pointed to the problematic humanizing and colonial qualities of attempts by audiences in the global North to ethically witness the suffering of socioeconomically distant Others in the global South given the enormous disparities in material and representational privileges between them.³⁶ Rickel states that, too often, bearing witness creates a cathartic, consumerist feel-good moment for those in the position to bear witness safely ensconced in material comforts and geopolitical stability without a corresponding change in the political, social, and material realities of the victims.³⁷ Rickel also observes that when humanitarian logics and humanism shape the encounter of bearing witness to an Other’s suffering, that the subaltern Other must conform to a certain notion of being human, performing a certain type of victimized dehumanized subjectivity, in order to have their experience validated.³⁸

35. Kurasawa, *supra* note 18 at 97.

36. Jennifer Rickel, “‘The Poor Remain’: A Posthumanist Rethinking of Literary Humanitarianism in Indra Sinha’s *Animal’s People*” (2012) 43:1 *ariel: A Review of International English Literature* 87.

37. *Ibid* at 93.

38. *Ibid* at 98.

Rickel is concerned with humanitarianism-molded witnessing between disparately-placed humans (those whose humanity is recognized and those whose humanity is called into question) in the context of ongoing postcolonial capitalist global relations. Her critique revolves around the neoliberal investments that attend to literary humanitarianism in particular (bearing witness to suffering through postcolonial diasporic literature), where the humanitarian desire to rescue the human subaltern to restore her humanity through 'giving voice' provides the discursive structure of the narration. As such, the critique does not immediately obtain in the context of bearing witness to animal suffering where the goal, arguably, is not to give voice to animals, and certainly not to restore humanity to dehumanized victims. Notwithstanding this crucial difference, the ethos of Rickel's concerns can pertain to the context of bearing witness to animals given that the gulf in privileged positions between a human bearing witness to an animal's suffering is also expansive, if not wider, than that between human and human despite enormous socioeconomic disparities that separate the global poor from the global rich. Thus, the dynamic of restoring dignity, subjectivity, and respect to animals through Save Movement practices can also be fraught with the potential for misunderstanding and distortion.³⁹ We need to weigh the benefits of bearing witness to animal suffering (to be assessed in the next section) against this potential for anthropocentric misunderstanding and distortion.

Further, the eclipsing of agency that can occur when those in privileged positions attempt to 'save' the Other must also be of paramount concern in thinking of the ethical position of animal advocacy in general

39. It is, of course, important not to fetishize the gulf in communication between humans and animals as unassailable given the resonance of such thinking in foreclosing human attempts to listen to animals and hear what they may be trying to tell us as a core practice in a caring interspecies relationships. See Josephine Donovan, "Feminism and the Treatment of Animals: From Care to Dialogue" (2006) 31:2 *Signs: Journal of Women in Culture and Society* 305.

and, given its name, the *Save* Movement in particular.⁴⁰ As Dinesh Wadiwel has discussed in relation to questioning mainstream but also pro-animal representations of fish within industrial fishing systems, the postcolonial question of “epistemic injustice” is also germane to animal advocacy.⁴¹ Here, Western human advocates are cautioned to abide by the postcolonial insight that interventions by Westerners into the affairs of non-Westerners in order to “save” them from various forms of real and imagined violence,⁴² can enact their own type of violence in terms of how issues are framed, understood, and productively resolved.⁴³ Wadiwel emphasizes that the answer is not, then, to refrain from political action or refuse to engage and work through global solidarity on issues where the victims occupy less privileged spaces, but to recognize that the subjectivities of those we see as ‘victims’ are complex and that we should consider them as active and resistant rather than simply passive and victimized. I say more in the next Part as to how the *Save* Movement meets this standard.

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40. Erica Weiss, “‘There are no Chickens in Suicide Vests’: The Decoupling of Human Rights and Animal Rights in Israel” (2016) 22:3 *Journal of the Royal Anthropological Institute* 688.
41. This question was famously raised by Gayatri Spivak in the context of questioning the binary and contested representations that framed understandings of the debate regarding British legislative reform against the practice of *sati*, or the burning of a widow along with her dead husband on his funeral pyre, that occurred in some Hindu communities in select parts of India. As the iconic example of civilizing missions invoking gender relations and the condition of women in the colonies to justify colonialism and its rampant violence, the British outlawing of *sati* was explained as ‘saving Indian women’ from patriarchal religious practices, an explanation contested by native Hindu men who sought to defend the practice by nationalistically claiming that the widows wished to die along with their husbands. See Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” in Cary Nelson & Lawrence Grossberg, eds, *Marxism and the Interpretation of Culture* (Basingstoke: Macmillan Education, 1988) 271 as discussed in Dinesh Wadiwel, “Do Fish Resist?” (2016) 22:1 *Cultural Studies Review* 196 at 205–07.
42. Rajeswari Sunder Rajan, *Real and Imagined Women: Gender, Culture, and Postcolonialism* (New York: Routledge, 1996).
43. Spivak, *supra* note 41.

Those humans who seek to bear witness to animal suffering must also worry about the triad of concerns that Michalinos Zembylas reviews in relation to bearing witness in the human-to-human context, namely sentimental, resentful, or desensitized reactions and effects.⁴⁴ Zembylas raises his concerns in the context of teaching students in classrooms how to productively witness suffering that occurred in the past in a way that moves those bearing witness toward self-transformation and political action rather than encouraging them to accept fixed narrations of past violence as atrocious yet completed and resolved events.⁴⁵ This temporal context differs from the one in which the Save Movement is located since the Save Movement involves bearing witness to current, ongoing, and routine violence of an exceptional magnitude.⁴⁶ The Save Movement's intended audience of the wider mainstream omnivore and carnist public also differs from the classroom environment Zembylas highlights. Yet, the Save Movement's goal of exposing humans otherwise not familiar with animal suffering to the brutalities of intensive farming in the hope that they will adopt a practice of bearing witness in relation to farmed animals aligns with the same Levinasian ethical dynamic that Zembylas draws from, *i.e.* that of an infinite responsibility to the Other. It is reasonable to suggest that the Save Movement also needs to guard against the "strong grip of sentimentality, resentment or desensitization" Zembylas highlights,⁴⁷ responses all of which impede openness to the call of the Other which needs a responsive response.

This awareness of the dangers of bearing witness lapsing into apolitical and self-gratifying gestures as Rickel observes, or sentimentalized,

44. Michalinos Zembylas, "Bearing Witness to the Ethics and Politics of Suffering: J.M. Coetzee's Disgrace, Inconsolable Mourning, and the Task of Educators" (2009) 28:3 *Studies in Philosophy and Education* 223.

45. *Ibid* at 224.

46. In terms of bodies killed per second, the title of Timothy Pachirat's monograph referring to the rate at which a cow is slaughtered in the United States is chilling: Timothy Pachirat, *Every Twelve Seconds: Industrialized Slaughter and the Politics of Sight* (New Haven: Yale University Press, 2011); David Szybel, "Can the Treatment of Animals Be Compared to the Holocaust?" (2006) 11:1 *Ethics & the Environment* 97.

47. Oliver, *Animal Lessons*, *supra* note 19 at 234.

resentful, and desensitized responses as Zembylas highlights, or even imperial impulses as Wadiwel warns against, however, should not lead to jettisoning the practice in relation to farmed animals. As discussed in the next Part, bearing witness has significant potential as a socially subjectifying practice for farmed animals that subverts their normative erasure and bodily appropriation in the current food system that counsels its growth despite the above pitfalls to which it can succumb.

IV. Bearing Witness to Farmed Animals: What is in it for the Animals?

Scholarship on the concept of bearing witness has developed and globally matured in the context of analyzing human atrocities and trauma in relation to the Nazi Holocaust, South African apartheid, settler-colonialism, rape and other forms of torture during wartime, and quotidian domestic violence against women.⁴⁸ This body of scholarship has further centered the visual act of seeing the violence as well as the aural act of listening to testimony and narrations of violence from the human victims and related actors.⁴⁹ Through this presumption of speaking agents who communicate in a language accessible to humans, and other often unsaid presuppositions of whose suffering matters and thus compels us to bear witness, much of the scholarship on bearing witness adopts humanist parameters that go unquestioned.⁵⁰ How, then,

48. This is not to suggest that attention to human trauma has been even across race, gender or geopolitical region. For a critique of the Eurocentric biases of attention to human trauma, see: Stef Craps, *Postcolonial Witnessing: Trauma Out of Bounds* (Basingstoke: Palgrave Macmillan, 2013); Nicola Henry, "The Impossibility of Bearing Witness: Wartime Rape and the Promise of Justice" (2010) 16:10 *Violence Against Women* 1098; Stephanie L. Martin, "Bearing Witness: Experiences of Frontline Anti-Violence Responders" (2006) 25:1/2 *Canadian Woman Studies* 11.

49. Kurasawa, *supra* note 18 at 93.

50. See *e.g. ibid*; Rickel, *supra* note 36; Jennifer Rickel, "Speaking of Human Rights: Narrative Voice and the Paradox of the Unspeaking in J.M. Coetzee's *Foe* and *Disgrace*" (2013) 43:2 *Journal of Narrative Theory* 160. Rickel's work is a clear exception, discussing the posthumanist dimensions of witnessing in relation to the literary texts she examines.

can we understand the concept of bearing witness and appreciate its subversive potential in the context of farmed animal suffering?

A. A Socially Subjectifying and Multispecies Embodied Cultivation of Response-ability

1. Emotional Entanglements: “Feeling With” and Sharing Burdens as an Ethico-Political Act

The recent work of Kathryn Gillespie reflecting on the suffering she witnessed firsthand on dairy farms and farm auction halls in the Pacific North-West US illuminates how bearing witness to farmed animal suffering is a possible pathway to subjectification through the cultivation of response-ability. Gillespie’s work illustrates the applicability of Oliver’s insights about witnessing and its generative impact for subjectivity, agency, and the undermining of oppression in the actions of the Save Movement. Following Oliver, Gillespie connects witnessing to “a Levinasian moment of coming face-to-face that requires a response”⁵¹ and observes that “witnessing...has the potential to reveal and document hierarchies of power and inequality that affect the embodied experiences of marginalized individuals and populations”.⁵² This is what distinguishes witnessing in its visual iteration from voyeurism or observation, a distinction others have also made.⁵³

Gillespie then applies the concept to farmed animals:

Witnessing the nonhuman other in spaces of farming is important because animal agriculture is an insidious and hegemonic institution, and the domestication and commodification of farmed animals are social and economic processes deeply implicated in the suffering and appropriation of animal bodies.⁵⁴

Gillespie provides a harrowing first-person account of the animals she

51. Kathryn Gillespie, “Witnessing Animal Others: Bearing Witness, Grief, and the Political Function of Emotion” (2016) 31:3 *Hypatia* 572 at 576.

52. *Ibid* at 572–73.

53. Naisargi N Dave, “Witness: Humans, Animals, and the Politics of Becoming” (2014) 29:3 *Cultural Anthropology* 433 at 440.

54. Gillespie, *supra* note 51 at 574 [citations omitted].

witnessed coming through the auction hall on sale for their flesh and reproductive capacities, describing the horrifying sights, sounds, and trauma of newborn calves with placentas still attached taken from their mothers, the frenetic bellowing of their mothers desperate to find them, and four-year-old dairy cows completely spent, almost unable to stand up, auctioned for slaughter.⁵⁵ She tells also of the social function the auction plays in the lives of humans in attendance as part of their links to the farming world. In describing the ability of human attendees to enjoy the auction despite the suffering that surrounds them, Gillespie writes that “[a]nimals’ lives and bodies in this space are thoroughly commodified, their suffering illegible to the accustomed observer, the violence against them made mundane through its regularity”.⁵⁶

Gillespie maintains that in this brutalizing context where animals’ needs and desires are vacated, mother-child bonds severed, and females appropriated en masse for their reproductive capacities, trying to *acknowledge the presence* of each individual animal and remembering each as an individual, is an act of political and ethical significance. In the same vein, “feeling-with” animals, “...of *sharing the emotional burden* of their suffering or offering some relief”, Gillespie argues, is a core element and type of witnessing.⁵⁷ Gillespie locates her concept of “feeling-with” animals within Lori Gruen’s framework of “entangled empathy”, which is a kind of empathy that is meant to cultivate our response-ability toward empathizing with animals and mobilizing in their favour.⁵⁸ Relying intensely on emotions, witnessing productively assigns value to this realm (the emotional realm) of human and farmed animal experience that has long been suppressed in Western culture to normalize eating and commodifying animals.⁵⁹ Witnessing also resists the dominant view in Western animal advocacy that providing rational argumentation

55. *Ibid* at 575.

56. *Ibid*.

57. *Ibid* at 578–79 [emphasis added].

58. Lori Gruen, *Entangled Empathy: An Alternative Ethic for Our Relationships with Animals* (New York: Lantern Books, 2015).

59. Kate Stewart & Matthew Cole, “The Conceptual Separation of Food and Animals in Childhood” (2009) 12:4 *Food, Culture & Society* 457.

rather than discussing emotional responses to animals is a better route to convince people to care about animals and transform their behaviours.⁶⁰

“Feeling-with” and sharing emotional burdens through witnessing the suffering of farmed animals also combats the pernicious dualism of reason over emotion that is a root cause of inequality and hierarchy in Western ontologies and epistemologies more generally.⁶¹ Writing in the feminist journal *Hypatia*, Gillespie further argues that witnessing the suffering of animals in this way connects with feminist projects for politicized transformation because “...witnessing necessarily entails an emotional engagement and a recognition of the political function of emotion”.⁶² Put differently, witnessing productively recuperates emotion in general, and empathy and compassion in particular, as valid political acts, that ascribe the subjectivity that animals are otherwise denied.

2. “Close Bodily Encounters”, Multispecies Subjectivity, and Agentic Representations

In reflecting on his own involvement in Toronto Pig Save and the Save Movement,⁶³ following critical animal scholars who extend empathy and compassion into the realm of physical and embodied connection with more-than-humans,⁶⁴ Alex Lockwood emphasizes the intense *embodiment* of the emotional entanglement that Gillespie discusses that he and other Save activists have experienced. For Lockwood, a proper apprehension of the empathy and compassion Save activists express

60. Karen J Warren, “Toward an Ecofeminist Ethic” (1988) 15:2 *Studies in the Humanities* 140; Josephine Donovan & Carol J Adams, *The Feminist Care Tradition in Animal Ethics* (New York: Columbia University Press, 2007).

61. *Ibid.*

62. Gillespie, *supra* note 51 at 573 (Gillespie advocates for this emotional-laden “feeling-with” farmed animals as a feminist ethnographic research method).

63. Lockwood, *supra* note 1.

64. Anat Pick, *Creaturely Poetics: Animality and Vulnerability in Literature and Film* (New York: Columbia University Press, 2011); Ralph R Acampora, *Corporeal Compassion: Animal Ethics and the Philosophy of Body* (Pittsburgh: University of Pittsburgh Press, 2006).

toward farmed animals highlights how embodied the feelings are, and the positive embodied impacts for the animals borne witness to as well as for mainstream understandings of multispecies connections.

Lockwood draws our attention to how human activists are transformed by bearing witness to living, breathing farmed animals who are moments from slaughter. He argues that when activists encounter live animal bodies on the trucks they cannot help but comprehend that these animal bodies are so constrained and confined and soon will be further violated, this time terminally, upon reaching the slaughterhouse. Lockwood attests that this experience of “close bodily encounters” is deeply moving and mobilizing for the human activists.⁶⁵ A possible benefit of this mobilizing aspect of bearing witness is not simply the power to stimulate critical praxis among humans bearing witness and thus catalyze, as more humans adopt a critical praxis, a material challenge to the current gross asymmetries of the food system, a possible outcome I say more about later. Rather, the emotionally moving and mobilizing aspects of bearing witness also have the power to *subvert bounded and animality-resistant notions of human subjectivity*. Naisargi Dave’s interviews with animal advocates in India lead her similarly to suggest that witnessing involves the phenomenon of becoming-animal where the skin of human subjectivity unmediated by other species is shed and a new multispecies identity is forged.⁶⁶ As Dave details, this is a process that is catalyzed by the lifelong responsibility activists commit to as a matter of personal growth after bearing witness to animals in pain. This type of transformative effect and the compulsion to respond it creates connects with Oliver’s call for a witnessing ethics based in “critical analysis and perpetual questioning”.⁶⁷ More to the point here though, the transformative effect of close encounters encourages an interspecies sensibility to take shape, thus countering Western dualistic ontologies of species separation and hierarchy.

The “close bodily encounters” that bearing witness in the Save Movement’s vigils can produce also hold the subjectifying promise of

65. Lockwood, *supra* note 1 at 111, 119.

66. Dave, *supra* note 53.

67. Oliver, *Women as Weapons of War*, *supra* note 20 at 103.

disrupting the passive representation of farmed animals. Like Gillespie, Lockwood elects to encapsulate the cross-species embodied connection as relational, including the animals as subjects within the encounter. Lockwood writes about how his experiences approaching the trucks, of looking in the wounded and feces-encrusted faces of the pigs so completely and violently confined, revealed to him that the pigs were his interlocutors. Not only did he feel that he observed an array of emotions that different pigs expressed,⁶⁸ but when he connected with a particular pig's gaze, he felt that the pig, acutely aware of their powerlessness to break free and avoid imminent death, is ashamed to be seen by Lockwood.⁶⁹

Lockwood has no hesitation in arguing that the pigs were active in a relational exchange of bearing witness. He highlights the disruptive effect that bearing witness to animals' suffering can have on animals' typical erasure as speaking subjects. He writes:

Bearing witness to the suffering of the pigs on the way to slaughter exposes the existing entanglements between humans and nonhumans: they are there because we desire their bodies as flesh. As an act of witnessing, attending these vigils reveals our means of perception and, importantly, the way we think about how we perceive others. To consider the animal him-or herself as a participant in the witnessing — as seeing me, or being too ashamed to be seen — is a powerful means of shifting those boundaries.⁷⁰

Far from depicting the animals (problematically) as silent victims — a fallout that a humanist and depoliticized type of witnessing can produce as we saw the critiques of Rickel and Wadiwel target above — Lockwood ascribes an agency to the pigs he encountered in communicating with him and co-creating the meaning of bearing witness to their suffering. As Lockwood attests above, this constitutive practice of the Save Movement refutes the traditional perceptions we have of farmed animals as passive, non-social, or unaware.⁷¹ Lockwood proceeds to connect his insights about the pig's gaze on him to Derrida's by now well-known reflections,

68. Lockwood, *supra* note 1 at 111.

69. *Ibid* at 119.

70. *Ibid* at 118.

71. Andrew McGregor & Donna Houston, "Cattle in the Anthropocene: Four Propositions" (2018) 43:3 *Transactions of the Institute of British Geographers* 3 at 6.

inspired by his own cat companion seeing him naked, that animals observe us, too, and that they can know that we know they are doing so.⁷² We can thus be seen by animals, but also the fact that we know animals can see us can *also* be registered or ‘seen’ by animals, a state of affairs Lockwood reminds us Derrida refers to as being “seen seen”.⁷³

Ascribing such cognitive awareness, but also communicative partnership to animals, points to how the Save Movement, despite its name, need not represent farmed animals as mute and passive victims in need of ‘saving’ by human activist heroes. Doubtless, some activists will adopt this frame in relation to the animals. But some at least will follow Lockwood’s path. It is through Lockwood’s application of Derridean insights to the relational exchange in bearing witness that we can understand the process to be a form of subjectifying address as per Oliver’s appraisal of the concept discussed earlier.⁷⁴ It is an orientation toward animals that, as Derrida notes, challenges much of “the philosophical or theoretical architecture” of Western discourse.⁷⁵

We must be careful, however, of not simply celebrating this subjectification in and of itself, but also remaining accountable to it. We might argue, for example, that if Lockwood intuited that the pig, whose gaze met his, was ashamed, then perhaps the responsive action at that point would have been to step away so that we could honour the pig’s apparent desire not to be seen. To point this out is not to claim that the practice of approaching the confined animals is necessarily a fraught one, but to stress the need for animal advocacy, however well-intentioned,

72. Jacques Derrida & David Wills, “The Animal That Therefore I Am (More to Follow)” (2002) 28:2 *Critical Inquiry* 369 at 372.

73. Lockwood, *supra* note 1 at 119; *ibid* at 382.

74. Derrida & Wills, *supra* note 72 at 383.

75. Oliver, *Animal Lessons*, *supra* note 19 at 303. The conceptualization of animals and their communities as relationally connected to larger ecosystems but also independent, autonomous sentient decision-makers existing in social relations and even political communities are uncontroversial in some non-Western cultural ontologies. See Paul Nadasdy, “First Nations, Citizenship and Animals, or Why Northern Indigenous People Might Not Want to Live in Zoopolis” (2016) 49:1 *Canadian Journal of Political Science* 1 at 7.

to take our cues from animals as best we can as to what they need and want rather than presuming our actions, motivated as they may by care, love, and non-violence, are always benign.⁷⁶ Bearing witness might be boundary-disrupting through creating multispecies embodiments but we need to ask, do animals want to be in multispecies encounters with us? After all, despite Save Movement activists' best intentions to live a vegan lifestyle, vegan activists are still part of the species that categorically oppresses farmed animals.⁷⁷ Similarly, the potential for bearing witness to generate agentic accounts of farmed animals is not to be discounted, but we must remain more than mindful that those same animals who are fleetingly represented as agents through an activist bearing witness will in a matter of mere minutes be dead. Bearing witness can be an ethical and political act as Gillespie suggests, with the further subversive effects above that Lockwood draws our attention to, but the fact that the animals die at the end of the vigil must accentuate the need for the response-ability and constant interrogation to which humans seeking to bear witness must commit.

To emphasize this need for caution should not obfuscate the considerable benefits bearing witness portends to emotionally connect with animals in an embodied way that is subjectifying for the animals. To recap the benefits Gillespie and Lockwood's accounts reveal, by coming to see the animals being transported from farm to slaughter, activists subjectify the animals at several levels. Their actions, even without providing water or fruit, may be understood as a "feeling-with" that "shares the burden" of the animals' immiserated existence and imminent death, considering them as social and sentient beings, but also addressing the pigs and responding to them as interlocutors and agents within

76. Donaldson & Kymlicka, *supra* note 17 at 55–56.

77. For why vegan lifestyles can never be completely non-violent but only aspirational in a global capitalist industrial culture where the appropriation of animal bodies is ubiquitous, see Lori Gruen & Robert C Jones, "Veganism as an Aspiration" in Ben Bramble & Bob Fischer, eds, *The Moral Complexities of Eating Meat* (New York: Oxford University Press, 2015) ch 9.

their own severely circumscribed lives.⁷⁸ The close physical proximity to farmed animals human activists may achieve may also be understood as a subversive embodied experience, which we might term a ‘being-with’, where human-animal boundaries are contested and multispecies subjectivities affirmed. These elements of bearing witness reject farmed animals’ social (and legal) erasure.

3. The Social Signaling to Carnist Humans and Humanist Perceptions of Trauma

Of course, it is still possible that Lockwood’s perceptions about the pigs he encountered and what they were feeling was wrong. Perhaps the pigs who were able to look out and see Save activists may not be able to understand the compassionate motivation shaping the human presence around them let alone the desire to bear witness.⁷⁹ This is where the act of giving water or fruit — an act that attracted legal scrutiny and generated a charge of legal mischief against Anita Krajnc⁸⁰ — acquires ethical significance. Not only can we understand the act of assuaging thirst or hunger as a form of “feeling-with”, which Gillespie endorses as a form of witnessing,⁸¹ but pigs themselves may also understand the gesture as a responsive, even caring, act of another who is addressed by their most basic needs. We can never know the pigs’ interpretation for certain, and this embrace or at least acknowledgement of uncertainty and ambiguity in interrelations across species and otherwise is part of the importance of framing witnessing as Oliver would have us do as a project of “perpetual

78. Gillespie, *supra* note 51 at 578–79.

79. Then again, they may. Pigs, for example, are said to be among the most intelligent nonhuman animals in existence. For a discussion of the advanced cognitive and social abilities of domestic pigs see Jessica E Martin, Sarah H Ison & Emma M Baxter, “The Influence of Neonatal Environment on Piglet Play Behaviour and Post-Weaning Social and Cognitive Development” (2015) 163 *Applied Animal Behaviour Science* 69 at 70.

80. *R v Krajnc*, 2017 ONCJ 281 [*Krajnc*]. I discuss the disappointing nature of this case despite Krajnc’s acquittal from an animal-centered perspective elsewhere.

81. Gillespie, *supra* note 51 at 579.

questioning”.⁸² Indeed, it is all too simple for humans to project what we want to see in animals in interpreting their behaviour and preferences. In understanding their encounters with animals and evaluating what animals are feeling in the exchange, human activists need to be cautious of the anthropocentric and imperial desire to know the Other and speak definitively about them;⁸³ a caring and compassionate stance toward animals holds many benefits but can also occlude awareness of residual anthropocentric dynamics.⁸⁴

Yet, irrespective of whether the animals can understand the motivations of humans who approach them and thereby experience the momentary subjectifying effects themselves, expressing *publicly visible compassion* for animals can still serve to *socially signal* animals’ value to other humans who encounter the silent acts of protest, vigil, grief, and compassion. This is an element of bearing witness that also helps to socially subjectify animals. Those humans who have never questioned the animal agricultural system, but who are eyewitnesses to, for example, Toronto Pig Save’s protest in person or online, are forced to encounter a view of animals normally hidden from view. The transportation of animals to slaughter is just but one small component of a food system that raises and kills billions of animals out-of-sight in windowless warehouses where the public is forbidden to go and where even the architectural organization of large-scale industrial killing controls what the slaughterhouse workers

82. Oliver, *Women as Weapons of War*, *supra* note 20 at 103.

83. Lisa Jean Moore & Mary Kosut, “Among the Colony: Ethnographic Fieldwork, Urban Bees and Intra-species Mindfulness” (2014) 15:4 *Ethnography* 516 at 519–20, 535–36.

84. Donaldson & Kymlicka, *supra* note 17.

can see.⁸⁵ Add to this the reality that post-slaughter processing converts farmed animals into “absent referents”⁸⁶ by the time their bodies and bodily emissions appear in supermarkets, specialty stops or butcher stores, and we quickly perceive that there is precious little opportunity for farmed animals to become publicly visible as live and vulnerable bodies *except* en route to slaughter.⁸⁷

Opportunities to empathize with these animals and mourn for them are equally rare. Whereas some advocates may mourn for animals routinely in witnessing their dismembered bodies in the grocery store, such acts may pass unnoticed by other shoppers or, where the “feeling-with” takes the form of visible distress, be misunderstood as arising from a personal problem. As James Stanescu writes about mourning for animals in the grocery store in front of the packages and displays of dead animals, “[t]o tear up, or to have trouble functioning, to feel that moment of utter suffocation of being in a hall of death is something rendered completely

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85. Pachirat, *supra* note 46; Karen M Morin, “Carceral Space: Prisoners and Animals” (2016) 48:5 *Antipode* 1317 at 1322–24 (Morin observes, “carceral sites”, including the spaces in which the animal-industrial complex houses billions of animals, “are ‘hidden in plain view’ in rural or remote locations, their color and architectures so innocuous and ordinary that they do not attract attention” at 1322); Morin also references Pachirat, a scholar who worked undercover at an American slaughterhouse as part of his doctoral research, who “discusses the ‘banal insidiousness’ of the slaughterhouse that hides in plain sight, its construction blending physically into the landscape” at 1322, citing Pachirat, *supra* note 46 at 23.
86. Carol J Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (New York: The Continuum International Publishing Group Inc, 1990) at 66.
87. Animals may, increasingly, become visible as happy farm animals through the marketing effects of companies. For an analysis of how two Swedish dairy companies use social media to create “happy milk” brands through personifying their cows to their consumers, see Tobias Linné, “Cows on Facebook and Instagram: Interspecies Intimacy in the Social Media Spaces of the Swedish Dairy Industry” (2016) 17:8 *Television & New Media* 719.

socially unintelligible”.⁸⁸ Where “mourning the unmournable”⁸⁹ occurs, however, in the face of live animals trapped in a truck en route to slaughter, no longer made into the absent referent, the reason for activists’ emotions is arguably more intelligible to passersby with different worldviews on animals’ value. However momentarily, registering that there are humans who socially convert animals from absent referents to socially relevant beings for whom we should grieve is not only important privately as an ethical and political act as Gillespie attests, but will cause at least some to reflect further upon the critique the Save Movement represents. As Lockwood argues, the pigs become slightly more visible when bearing witness occurs,⁹⁰ and the exchange is recorded and accessible for others near and far to watch.

Of course, there is also the chance that individuals will watch the videos of the Save activists bearing witness online and modify or even transform their eating to(ward) a vegan diet. Recall that convincing people to become vegan is a central goal of the Save Movement.⁹¹ This possible change can also be seen as a benefit to animals when it occurs en masse by reducing the demand that drives the animal agricultural

88. James Stanescu, “Species Trouble: Judith Butler, Mourning, and the Precarious Lives of Animals” (2012) 27:3 *Hypatia* 567 at 568.

89. *Ibid.*

90. Lockwood, *supra* note 1 at 120.

91. *Krajnc, supra* note 80 at para 92 per Harris J.

industrial complex.⁹² To be sure, there are limits to focusing on individual behavioural change toward plant-based living as a complete remedy to the present anthropocentric social and legal order and the ills it spreads. Donaldson and Kymlicka discuss the “significant levels of backsliding amongst vegans and vegetarians” that can occur when individuals do not have “supportive environments and institutions — the sense of being part of a like-minded community — to be able to develop and maintain an animal-friendly way of life in the face of the overwhelming power of the status quo”.⁹³ But bearing witness to farmed animals en route to slaughter, and posting those images online, can help create the (local and virtual) advocacy community that Donaldson and Kymlicka call for, which can then support those who switch to vegan choices.

Arguably, though, veganism is a dietary preference that, given the larger context of pervasive carnism in which it occurs as resistance, holds political significance even if an individual eventually succumbs to

92. It may be objected that becoming vegan actually has no positive effect for animals in general because all it may do, even where individuals become vegan en masse, is to reduce the number of future animals killed in the farmed animal system. This actually, one may argue, does not benefit any future animals but merely stops them from being bred into existence and then suffering. Gruen and Jones have replied to this and other similar arguments about the purported lack of impact of an individual dietary vegan change by arguing that multiple individual efforts “increases the probability that others will become vegan, which increases the probability that the collective action of the aggregate more quickly brings about a reduction in the number of animals produced for food and other consumer goods, decreasing animal suffering and bringing about a decrease in violence, exploitation, and domination” (Gruen & Jones, *supra* note 77 at 165–67).

93. Donaldson & Kymlicka, *supra* note 17 at 53.

social pressure and reverts from veganism.⁹⁴ Importantly, however, we can leave this query aside regarding the industry impact of individual change without more broad-based support since the Save Movement does not need to succeed in stimulating widespread veganism for bearing witness to provide the immediate benefit of social subjectification of the pigs involved. The mere act of empathizing with these animals and marking their moment onward to death as grief or otherwise carries high potential, when seen by others in their everyday lives, to disrupt normative understandings of animals as ‘food’, eminently killable, and always available for human purposes.

V. The Save Movement’s Bearing Witness as a Template for Law

The above has advanced the view that the practice of bearing witness to farmed animals is of value despite the material indifference to the animals who almost always end up on the kill floor. In other words, bearing witness is a social intervention that matters if not to the pigs themselves, then at least to their momentary subjectification, as well as the communication of this subjectification to others. While this subjectification may seem immaterial as the pigs will soon be slaughtered, it is a representational

94. Ophélie Véron, “(Extra)ordinary Activism: Veganism and the Shaping of Hemeratomias” (2016) 36:11/12 *International Journal of Sociology and Social Policy* 756. In terms of explaining the reasons that individuals revert back to meat-eating, recent research in the US suggests that when individuals were otherwise conservative in their political views in that they did not view their vegan or vegetarian diet as related to social justice concerns, their chances of reverting to meat-eating were higher. Further, the study found that individual conservatism/failure to understand veganism or vegetarianism as an animal rights or other social justice issue influenced whether one would revert to meat-eating at a rate four times greater than inadequate social support as a predictive factor. Their findings have caused the study’s authors to suggest that “[f]raming meat consumption as a moral issue can therefore help personal resolve” (Gordon Hodson & Megan Earle, “Conservatism Predicts Lapses from Vegetarian/Vegan Diets to Meat Consumption (Through Lower Social Justice Concerns and Social Support)” (2018) 120 *Appetite* 75 at 79).

signification that interrupts dominant Western interspecies binary norms about how humans should think about, feel toward, and be with animals as well as how we should imagine and experience human identity and ultimately govern ourselves as proper human subjects. In terms of advocacy, bearing witness resists, but also in important ways subverts, the ideologies sustaining the animal-industrial complex.

This final point will consider how bearing witness in the form of the Save Movement can serve as a model for legal decision-making about animals by those decision-makers who are inclined to empathize with animals' suffering. Such legal decision-makers might be moved by the plight of animals generally or in a given legal situation but find their options to redress animals' suffering severely circumscribed by the current settler legal systems in Canada that classify animals as property and greatly amplify their vulnerability to exploitation as a result. I suggest in a similar vein that activists in the Save Movement can have a beneficial effect on animals through (partially) bearing witness to animal suffering despite the impending death of the animals they encounter, it is possible for the law to attempt to bear witness to animal suffering even as the dominant legal system classifies animals as property.

Before examining the basic contours of what this type of bearing witness would look like in legal reasoning, I want to pause to consider the relationship of law as an institution to the concept of bearing witness itself. I do so because I anticipate that Oliver as well as other poststructuralist-inspired scholars wary of law's capacity to deliver justice in general for marginalized beings, including animals, would contest the suggestion that the law can bear witness to animal suffering.⁹⁵ In the context of critiquing the ability of liberal rights discourses to work in favour of animals, Oliver states:

Calculating rights or interests can turn ethics into moral rules that eliminate critical thought or soul-searching from the process. They risk replacing ethical responsibility with equations and legalisms. While laws may be necessary and may go some distance in making things right, they cannot approach the ethical responsibility engendered by our relationships with others. Indeed, these

95. Yoriko Otomo & Ed Mussawir, eds, *Law and the Question of the Animal: A Critical Jurisprudence* (Oxford: Routledge, 2013).

calculations disavow the ambiguities and uncertainties of our experience; they disavow the ways in which we do not and cannot know for sure. They make man the measurer of all things—he is the measurer and the yardstick.⁹⁶

Oliver's worry here appears to extend beyond repudiating the inherent anthropocentric and masculinist nature of liberal legal systems. She also wishes to doubt the ability of legalistic reasoning in the context of rights claims (Who has a right? What is the nature of that right? Has the right been violated? Was the violation proportional? How to balance interests?) to approach the position of "perpetual questioning" to which she analogizes bearing witness and witnessing, as discussed above.⁹⁷ Recall that in a relationship that cultivates response-ability in others and ourselves, Oliver says we must always leave open the possibility that we do not know everything, that some of our fears, beliefs, and motives are hidden from us, and escape cognitive excavation, which is why we must remain continually open to ethical questioning and the needs of others. The technicalities, universals, and absolutist pronouncements in liberal legal discourse appear to foreclose this type of openness.

I agree with Oliver that law's rationalist modalities eclipse the possibility of unknowability and that governing doctrine compels analyses that present individual actors and their rights as important and paramount rather than explicitly direct our attention to responsibilities or relationships.⁹⁸ On these metrics, we can see how the concept of witnessing and bearing witness as Oliver presents them do not match with conventional legal analysis. We can concede to Oliver the view that law is thus not capable of bearing witness in terms of the ethical connotation of this term that requires a much more immediate one-to-one relation between interlocutors. But acknowledging this disconnect between law and the ethical relation of bearing witness does not mean that legal decision-makers should remain silent when confronted with a factual

96. Oliver, *Animal Lessons*, *supra* note 19 at 36.

97. See Oliver, *Women as Weapons of War*, *supra* note 20.

98. The law, to be sure, does structure relationships even though it advances a discourse of individualistic rights. See Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011).

landscape that involves animal exploitation and suffering. Law may not be able to bear witness in the important sense that Oliver intends, but it can, in the structural confines of its own institutional terrain, adopt the ethos of bearing witness and approximate this ethical posture. In other words, law can *aspire to or approach* the concept of bearing witness.

What would it mean, then, for law to “bear witness” in this qualified way? As a basic but meaningful response, where the facts implicated animal-use industries and the issues at stake affected animals’ lives, legal decision-makers could take opportunities to recognize the inherent vulnerabilities that surround animals’ lives due to their subordinating property classification. Indeed, this is a recognition that a high-level dissenting judgment already provides. In this landmark dissent of the Alberta Court of Appeal about a lone female Asian elephant languishing in poor health in the Edmonton Valley Zoo, Chief Justice Catherine Fraser outlined academic critiques of animals’ legal status as property and affirmed animals’ vulnerability because of this non-subjecthood status.⁹⁹ The *Reece* dissent is a landmark decision for several reasons. To briefly explain why, we can take note of how the decision emphasizes animals’ sentience, sociality, and the vulnerability their property status creates for them. We can also note how Fraser CJ connected a question that she saw at issue in the case (government enforcement of anti-cruelty and animal welfare protection laws) to fundamental legal ordering principles of the common law, namely, the rule of law.¹⁰⁰ In short, Fraser CJ contextualized the issue of animal protection she believed was at stake, drawing out the broader power relations at play, as well as highlighting the characteristics and capacities of animals that normally go unmentioned in an otherwise anthropocentric legal order.

99. See the full dissenting judgment of Fraser CJ in *Reece and Zoocheck v Edmonton*, 2011 ABCA 238, leave denied (2012) [2011] SCCA No 447 (QL) [*Reece*].

100. The majority treated this issue as ancillary to the main issues to be decided. For a detailed discussion of the case see Maneesha Deckha, “Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability Under a Property Paradigm” (2013) 50:4 *Alberta Law Review* 783.

To be sure, Fraser CJ made these comments in the context of a legal decision engaging an animal welfare law — a type of statute that despite its welfarist nature specifically implicates the needs and interests of animals at a level that almost every other area of law does not.¹⁰¹ But bringing in the power-laden context applicable to animals and discussing their interests and needs need not be restricted to legal decisions directly involving only animal welfare laws. Such context can also be legitimately introduced into other legal issues where the facts and legal outcomes affect animal lives' and interspecies relations.¹⁰² For now, I wish to note that this context taking can occur in a system that continues to treat animals as property. This type of commentary would not violate norms of judicial or administrative discourse since judges and administrative decision-makers could cite the *Reece* case for the general proposition that animals are vulnerable and could take judicial and administrative notice of the fact that humans exploit animals as property. And, certainly, lawmakers in Parliament, legislative assemblies, and municipal councils, who have broader leeway in the topics they raise in their work, can make frequent appeals to address the suffering of animals even when the issues at stake seem unrelated to visibilizing this suffering.

VI. Conclusion

As nonhumans in an anthropocentric legal and social culture, animals are oppressed;¹⁰³ that is their subject position, a term Oliver defines as “one’s position in society and history as developed through various social relationships”.¹⁰⁴ By classifying them as property, the law precludes the

101. For more about legal welfarism and what is flawed about it, see Gary L Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995); Maneesha Deckha, “Welfarist and Imperial: The Contributions of Anti-Cruelty Legislation to Civilizational Discourse” (2013) 65:3 *American Quarterly* 515.

102. For an example of the contextual type of reasoning I am referring to here, see the dissenting decision of Abella J in *R v DLW*, 2016 SCC 22.

103. Deckha, *supra* note 100; Erika Cudworth, “A Sociology for Other Animals: Analysis, Advocacy, Intervention” (2016) 36:3/4 *International Journal of Sociology and Social Policy* 242.

104. Oliver, “Witnessing and Testimony”, *supra* note 21 at 81.

development of animals' subjectivity as a legal actor, which has direct effects as to whether they can emerge as social actors. But when we start to bear witness to farmed animals' suffering, even in a very partial form, and recognize animals as our interlocutors in that close bodily exchange, such witnessing contests the non-subject position of animals and the intense violence that it breeds in the animal-industrial complex. Legally, the animals remain as property, but socially they are perceived and represented as beings whose lives matter. They are made grievable.¹⁰⁵ Bearing witness, then, in the context of the Save Movement can thus qualify as a witnessing response as per various critical theoretical formulations. Further, it can be read as an ethical act that socially uncovers and signals an interruption of the commodified status of pigs as "food" or "commodities" — a move that works to question power and inequality — as well as individually affirm the intrinsic worth, agency, and mournability of the animals themselves. Despite the potential pitfalls of witnessing in the Save Movement to amount to reinforcement of privileged affective positions for the human activists without any material change for the animals involved, the act of bearing witness to farmed animals en route to slaughter that Save activists practice should be encouraged within animal activism. It has the potential to integrate farmed animals in emotional and bodily affective and material exchanges that socially subjectify farmed animals, however momentarily, in what has otherwise been a shortened, immiserated life of social and legal non-subjectivity.

The law can also try to bear witness to animals however provisionally or lacking in present significant material effect. Bearing witness to farmed animals in the Save Movement can yield subjectifying benefits for animals involved, albeit fleeting and futile in terms of preventing the animals' slaughter. Perhaps more permanently and thus more impactful for all farmed animals on a going-forward basis, the public visibility of imagining and responding to animals on a radically different social register contributes to the emergence of an alternative animal-friendly discourse

105. Chloë Taylor, "The Precarious Lives of Animals: Butler, Coetzee, and Animal Ethics" (2008) 52:1 *Philosophy Today* 60; Stanescu, *supra* note 88.

on how humans and corporations should treat animals. Similarly, despite the present colonial legal regimes in Canada that objectify animals as property, legal actors can foment an alternative legal discourse on animals that highlights the intensities in violence of what the law currently permits in animal-use industries, like farming, where these issues present themselves in legal debates, policy-making, and judicial cases. Given the nascent discourse on animal vulnerability that has emerged in current jurisprudence, the law can and should attempt to bear witness to animal vulnerability.