The Unjustified Prohibition Against Bestiality:
Why the Laws in Opposition Can Find No Support Under the Harm Principle

Michael Roberts
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This work explores the moral status of laws prohibiting bestiality and whether they are justified in practice or justifiable in theory. Part I of the paper introduces us to bestiality by first testing our moral intuitions regarding the act. Through a list of 10 examples we are asked to considered whether we find some acts morally wrong and therefore prohibitable. Next the paper explores the current state of the law. It considers possible definitions of bestiality from the Church, secular law, and legal scholars. Each definition is criticized as overly broad, vague, and in at least one case too narrow. Instead, a new definition of bestiality is proposed which better comports with our moral intuitions and eliminates some of the problems associated with the prior definitions.

Part II of the paper challenges the justification of laws prohibiting bestiality. Through the Harm Principle it explores whether such laws are justifiable by preventing Harm to Others, Harm to Self, Offense to Others, or Moral Legalism. In short, they are not. In order to make the laws justified, it would require we rewrite the statutes to comport with the preferable definition of bestiality discovered in Part I of the paper and justify those laws by elevating the status of animals in this country. But to afford animals so many rights would be inconsistent with our current commercialization of their species.

PART I – AN INTRODUCTION TO BESTIALITY

At the onset of any philosophical inquiry it is important to define the terms. In the case of bestiality, this seemingly simple task is not so simple. Over the last several centuries, religious figures, the secular state, and legal scholars have attempted to define bestiality. They were successful only in presenting a universally vague description of bestiality. Since its inception, the church has prohibited bestiality. Considered part of

sodomy, the Church sought to prohibit deviate sexual behavior. This included "unnatural" sexual acts such as masturbation, homosexuality, and bestiality.[1] The Church failed to draw meaningful distinctions between permissible and impermissible sexual acts; for as the saying goes, "the devil is in the details." Unfortunately, secular law offered no further help. The first secular state to prohibit bestiality was under the reign of Henry VIII. Sex with an animal was outlawed as the "detestable and abominable vice of buggery committed with mankind or beast."[2] Nearly five hundred years later these outdated terms like buggery, abominable, detestable, and deviate sexual acts still exist in state law today.[3]

Judges are forced to interpret these terms and typically do so broadly in order to enforce their particular morals or the perceived morals of the legislature. Sadly, legal scholars have often been rather sheepish when it came to serious jurisprudential review of bestiality. Those scholars who have devoted their energies to defining bestiality typically have been animal rights activists, but even within their community there is little consensus whether bestiality is necessarily "interspecies sexual assault," or whether it is possible that animals may enjoy certain sexual acts with people and whether that distinction should make a difference.[4]

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[1] Brundage, James A. Law, Sex, and Christian Society in Medieval Europe 207 The University of Chicago Press (1987).

[2] 25 Henry VIII (1533), c.6; Graham Parker, Is a Duck an Animal? An Exploration of Bestiality as a Crime, Criminal Justice History: An International Annual, 95, 102 (1986).

[3] See appendix, esp. South Carolina, Alabama, North Dakota, and Pennsylvania.

[4] See generally Piers Beirne, Peter Singer's "Heavy Petting" and the Politics of Animal Sexual Assault, 10 Critical Criminology 43-55 (2001).

Before proceeding any further it is essential to obtain some sense of what sorts of behavior classify as bestiality. Consider the 10 examples below and ask yourself whether the behavior meets your understanding of bestiality and whether the behavior is wrong.

1. A. is a single adult female who allows her male dog to sleep with her in her bed. There is no genital contact between the dog and A., but the dog occasionally licks A.'s face and lips.

2. Deena is a trained chimpanzee who strips for money at parties.[5]

3. B. is a small child who sleeps regularly with her dog. She sucks the dogs' nipples because she had seen the dog's puppies behave in this behavior.[6]

4. Farmer manually stimulates his bull in order to collect its semen so he can artificially inseminate his cow.

5. A. rubs honey on her genitals and allows flies and other insects to eat it off, because the tickling from the insects' legs and mouth causes A. much stimulation.

6. C. is an adolescent male under 18 who penetrates various farm animals to gain experience for future acts with people.

7. A. willingly engages in reciprocal oral sex and vaginal penetration with a male dog because she enjoys it and believes her dog enjoys it as well. The dog is not bound or forced during the acts.

8. Same as 7 but the animal is bound and forced.

9. D. is an adult male who pays A. to engage in oral and vaginal sex with a dog and D. films it.

10. D. penetrates a duck, killing the creature in the process.

Among this list of 10, there are some examples that we feel are plainly wrong while others are not. Many would split the list in half where the bottom half are worse than the top half. There may be some disagreement about our moral intuitions in

[5] See Adams, Carol J. Deena-the World's Only Stripping Chimp, 3 Animals' Voice Magazine 1, 72 (1990).

[6] See Piers Beirne, Rethinking bestiality: Towards a concept of interspecies sexual assault, 1(3) Theoretical Criminology 317, 327 (1997).

example 5, for instance, but most would likely agree about the rest. This process of testing our detached beliefs provides a good starting point for what constitutes appropriate behavior, but on its own, it is not sufficient justification to pass laws. In many hard cases people might disagree about whether the behavior is bestiality and whether it should be prohibited. To proceed, a definition that comports with our detached beliefs is necessary to allows us to distinguish between the various examples. Here is one suggestion:

> Bestiality is sexual contact between human and non-human animals for the purpose of human sexual gratification.

Applying this definition to the above list reveals that examples 1, 2, and 3, are not Bestiality.[7] Examples 1 and 2 do not qualify, because there is no sexual contact. In example 1, A. is not engaging in sexual contact when the contact does not involve the sexual organs of either participant. In example 2, Deena is not being touched or touching anybody. We can question the behavior of those people who would want to watch a chimpanzee strip, but under the suggested definition we cannot say they committed Bestiality. In example 3, B. does have the requisite sexual contact, but her act is not Bestiality because it is not for the purpose of sexual gratification.

Example 4 is the classic case of non-bestiality that does include contact between a person and the genitals of an animal. Criminologist, Piers Beirne, who defines bestiality as "interspecies sexual assault" also finds that example 4 is not bestiality because there is no sexual assault taking place.[8] Likewise the church and secular law do not prohibit it,

[7] When the word Bestiality is capitalized, it specifically refers to the suggested definition of bestiality opposed to the church definition or a statute-based definition.

[8] See Beirne (1997) at 327.

and few among us find the behavior wrong when it is a common and well accepted practice in animal husbandry and has been preservation of numerous species.

Example 5 is a bizarre case but not entirely fantasy. In fact, this sort of behavior is labeled *formicophilia* and it includes sexual acts involving ants, snails, frogs, and other small creatures.[9] Under the suggested definition, it is Bestiality when it involves sexual contact between a human and non-human animal for sexual gratification. Whether this is the type of behavior we as a society ought to prohibit remains to be seen.

Example 6 is the most common case of bestiality. It is what Beirne calls "adolescent sexual experimentation."[10] This is the type of conduct that the church and secular law sought to prohibit, and it fits well into the suggested definition.

Examples 7 through 9 find less agreement. Beirne labels example 7 as "sexual fixation."[11] In order to satisfy his definition there must be an assault on the animal. Beirne assumes the assault because of the animal's lack of capacity to consent to the sexual act, but other experts in the field disagree. For example, Peter Singer believes that not every sexual act with animals involves cruelty.[12] Similarly, biologist Midas Dekkers believes that dogs and gorillas are capable of enjoying sexual acts with people, and in some instances take the initiative.[13] The Church and secular law prohibits this act, as abominable sexual acts that are "unnatural." Under the suggested definition, Example 7 is clearly Bestiality when the requisite contact and purpose are met. Example 7 contrasts

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[9] Dekkers, Midas. Dearest Pet On Bestiality 57 (Paul Vincent trans., Verso 2000) (1992).

[10] Beirne (1997) at 328.

[11] Id.

[12] Peter Singer, Heavy Petting, Nerve.com (2001) available at http://www.nerve.com/opinions/singer/heavypetting/.

[13] See Dekkers at 64-65.

with example 8 where there is unwavering agreement that this behavior is bestiality. Example 9 divides the scholars similarly to example 7, depending on whether the dog is enjoying himself. Filmed oral sex with a dog is clearly against the church's unnatural sexual acts and the state eagerly prohibits this behavior. Under the suggested definition, it might appear at first glance not to be Bestiality when A. is not engaging in the act for the purpose of her own sexual pleasure, but rather for money. However, our definition of bestiality is not limited to A's sexual gratification, but prohibits bestiality whenever there is a purpose of sexual gratification. In this instance, the willing buyers of the pornography satisfy the purpose of sexual gratification requirement. The filming of the act suggests that there a market for it. If the same act was not filmed, then the burden would be on the participants to explain their actions, if they contend they were not deriving sexual gratification from it.

Finally, it is undisputed that example 10 is bestiality. It is cruel to the animal (Beirne), unnatural sexual acts (Church), deviate sexual behavior (State), and it involves sexual contact between a human and non-human for sexual gratification (the suggested definition). The purpose of example 10 is to stress the problem of poorly worded definitions of bestiality such as the "detestable act between man and beast." This definition had to be reinterpreted by courts to determine whether a duck is considered a beast under the common law.[14]

To review, if our intuitions regarding bestiality are correct, than our definition should prohibit examples 6-10, which it does, and exclude examples 1-4. It is superior to

[14] The question was decided in the affirmative in an unreported 1877 English case, see Parker F.N. 2 at 105; see also Murray v. State 143 N.E. 290 (In. 1957) (holding a chicken is a beast for purposes of Indiana's statute prohibiting the abominable and detestable crime against nature with a beast).

the religious definition which is broadly defined condemns many acts that the State has determined privacy protects; it is preferable over the amorphous secular definitions that are often vague and reinterpreted by the will of the judiciary; and it is more exact than the academic definitions that turn on whether the animal takes pleasure in the act, which is usually impossible to accurately determine. Having explored the scope of bestiality we next turn to the current state of the law to see if it appropriately prohibits bestiality.

The State of the Law

Over the past two hundred years, the United States fluctuated between criminalizing and legalizing bestiality for varying reasons. Puritan zeal condemned it during the Colonial Era, making the act punishable by 10 years imprisonment at hard labor. The early twentieth century saw a period of increased tolerance, effectively decriminalizing the act by the end of WWII. In fact, it was more likely that an offending person would be arrested for breach of the peace or offending public order rather than for any formal bestiality charge.[15] This trend reached its apex by 1990 when no state had a law specifically opposing bestiality.[16] The tide reversed by 2001, when twenty-four states made it a felony. The reason for this shift was an increase in religious fundamentalism, a rise in animal rights activism, and greater social control being exercised by state governments.[17] Following the landmark Supreme Court decision in

[15] Bernie (2001) at 51-52.

[16] Id. at 52.

[17] Bernie (2001) at 52.

Lawrence v. Texas,[18] states had a difficult time regulating sexual acts, so they sought to prohibit bestiality by adhering to animal rights doctrine.

In the last two years, momentum swung in favor of legislation once again. This time, the impetus was an Enumclaw, Washington farmer who bled to death after being penetrated by a horse.[19] In response to this tragedy states like Washington justified bestiality laws on a combination of three reasons. The first reason was the obvious animal anti-cruelty justification.[20] The second and third reasons were more creative. Washington passed legislation in part because it wanted to protect its citizens from engaging in acts that could severely injure themselves, and because, the state did not want to be considered the safe haven for these "immoral" activities.[21]

As the law stands now, 24 states have laws prohibiting bestiality and 15 of the states' laws are felonies.[22] These laws fall into one of four categories:

I. Deviate Sexual Acts;[23]
II. Sodomy[24] or buggery;[25]
III. Crimes against nature;[26] or
IV. Bestiality or other animal sex prohibitions.[27]

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[18] 539 U.S. 558 (2003)

[19] See Jennifer Sullivan, *Videotapes Show Bestiality, Enumclaw Police Say*, The Seattle Times, July 16, 2005, available at http://seattletimes.nwsource.com.

[20] See Pasado's Safe Haven for all Animal, 2008, available at http://www.pasadosafehaven.org/LEGISLATION/Bestiality_Law.htm.

[21] Id.

[22] See appendix.

[23] Ala.Code 1975 § 13A-6-63; ND ST 12.1-20-12 (1973).

[24] KS ST § 21-3505 (1969); Miss. Code Ann. § 97-29-59 (1930).

[25] SC Code 1976 § 16-15-120 (1962).

[26] Va. Code Ann. § 18.2-361 (1975); I.C. § 18-6605. (1972); M.G.L.A. 272 § 34 (2000); Mich. Stat. Ann. § 28.355; 21 Okl.St.Ann. § 886 (1910); RI § 11-10-1.

[27] 11 Del.C. § 777 (1993) (Bestiality); Ga. Code Ann., § 16-6-6 (1833) (Bestiality); IC 35-46-3-14 (2007) (Bestiality); I.C.A. § 717C.1 (2001) (Bestiality); V.A.M.S. 566.111 (1991) (Bestiality); 22-22-42 (2003)

The first three of these categories, deviate sexual acts, sodomy, buggery, and crimes against nature are generally older statutes parsed in language dating back to common law. Buggery, for example, or *offensa cugus nominatio crimen est* dated back the 14th century. It specifically prohibited "unnatural intercourse of a human being and a beast."[28] Originally, the term was synonymous with witches who fornicated with animals who they claimed was the devil.[29] In its earlier years, it was often punishable by death both for the person and the offending animal.[30] Sodomy and deviate sexual acts, on the other hand, were catch all categories designed to ban any kind of "unnatural form of sexual intercourse" and applied against oral, anal, or homosexual acts.[31] The model penal code prohibition against deviate sexual intercourse includes "sexual intercourse *per os* or *per anum* between human beings who are not husband and wife, and any form of sexual intercourse with an animal."[32] The problem with all of these terms is that they were vaguely defined and overly broad. After the Supreme Court decided Lawrence v. Texas, many states' supreme courts either repealed or declared unconstitutional these statutes.[33]

(Bestiality); U.C.A. 1953 § 76-9-301.8 (1993) (Bestiality); C.A. § 286.5 (1975) (Sexually assaulting an animal); NE ST § 28-1010 (1977) (Indecency with an animal); NY McKinney's Penal Law § 130.20 (1965) (Sexual Misconduct); WA § 16.52.205 (2006) (Animal cruelty).

[28] Adams, Carol J and Donovan, Josephine Animals and Women 68 Duke University Press (1995).

[29] Parker at 99.

[30] Evans at 147. If the sentence was not capital punishment, then the offender would be required to compensate the owner of the animal and then be banished from the land. The offending animal would be kept out of sight to ensure it would not tempt others. Id. at 152.

[31] Parker at 101.

[32] Model Penal Code §213.0 (2001) Definitions.

[33] See e.g. 17 M.R.S.A. § 1001 (1975) repealed 2006.

Statutes explicitly prohibiting "bestiality" are more recent. These statutes avoided the Lawrence problem, and many still survive today.[34] Among these statutes, Utah's law against bestiality is closest to the suggested definition. The Utah law states, "a person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor."[35] The statute goes on to define the terms "animal" and "sexual activity." The statute is different from our definition of Bestiality only in one respect. While the Utah statute limits the intent of sexual gratification to the human participant, our definition does not. Recall Example 9 above which illustrated the problem of such a narrow definition. Absent another statute specifically condemning the creation, sale, and distribution of bestial pornography, Utah's law would be too narrow to prohibit the acts. Notwithstanding this minor criticism, Utah's statute is much better defined than many of its companion states that rely on undefined archaic language. Poorly defined statutes are usually ripe for judicial review, however, in the case of bestiality the court has shown little initiative and offered little contribution.

Judicial opinions regarding bestiality are sparse. One might therefore conclude that acts of bestiality are relatively infrequent. This could not be further from the truth. According to world renowned biologist and sexologist, Arthur Kinsey, as much as 50% of adolescent males living in rural communities in the 1940s engaged in acts of bestiality.[36] Rather than frequency of occurrence, the more likely reason for sparse case law is that prosecutors have been more inclined to bring charges under public indecency,

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[34] See F.N. 18.

[35] U.C.A. 1953 § 76-9-301.8 (1993)

[36] Dekkers at 133. Even if Kinsey's statistic is exaggerated, it still suggests a prevalent existence of the act.

breach of the peace, indecent exposure, or cruelty to animals rather than under a formal bestiality statute.[37] Notwithstanding this obstacle, three state opinions emerge as the leading guidance for this area of law.

A 1957 Indiana state supreme court case was the inspiration for example 10 where a person penetrated a duck, killing it in the process. Murray v. State[38] considered the question whether a chicken was a beast under the state statute prohibiting the "abominable and detestable crime against nature with a beast."[39] Murray, the defendant, was charged with committing the "detestable crime" with a chicken and was prosecuted under the state's crimes against nature statue. Murray argued that a chicken was not a "beast." Absent any controlling precedent the court was free to interpret the statute as it saw fit. Rather then relying on legislative history, the court considered the 2nd edition of Webster's Dictionary and found three entries for "beast:"

> 1. Any living creature, an animal.
> 2. Any four-footed animal, as distinguished from birds, reptiles, fishes, and insects.
> 3. An animal distinct from man.[40]

Clearly Murray's act with a chicken would not have resulted in violation under the second definition, but the court inferred the legislature must have had the third definition in mind and affirmed the conviction.[41] Broadly interpreting the legislature's intent in

[37] Beirne (1997) at 323.

[38] 143 N.E. 290 (In. 1957).

[39] Burns' Ann.St §10-4221.

[40] 143 N.E. at 292.

[41] Id. at 293.

order to convict "immoral" acts was common for state courts. The most famous example of this occurred in Bonynge v. Minnesota.[42]

Bonynge involved a defendant who filmed four women engaging in sexual acts with a dog. On appeal both parties stipulated that the women depicted in the films were adults, and the defendant admitted that he masturbated the dog prior to filming in order for the women to perform.[43] Minnesota's crimes against nature statute § 609.294 stated that an individual who "carnally knows an animal is guilty of bestiality."[44] Appellant challenged the meaning of the term "carnal knowledge," claiming it was limited to acts occurring between a male and female person and did not include acts between persons and animals. The court interpreted the meaning of carnal knowledge in light of the legislature's intent to prohibit crimes against nature. The court reasoned that "[c]ertainly this bestial type of depraved conduct is proscribed by the legislature and by all standards of common decency."[45] In short, Bonynge's appeal was lost before it started, so long as the court was willing to read its own morality into legislative intent.

Among the convictions and affirmations, one appellate case holds differently. People v. Carrier[46] is unique in this area of law because the appellate court reversed a bestiality conviction, finding that one of the necessary elements had not been proven. Carrier involved a dispute over the control and possession of an automobile. When the rightful owner tried to reclaim his car from the person whom he had loaned it, he was

[42] 450 N.W.2d. 331 (Minn. App. 1989).

[43] Id. at 337. Bonynge was appealing his conviction under the theory of insufficient evidence for one count bestiality for his act with the dog and four counts aiding and abetting bestiality.

[44] Id.

[45] Id. at 338.

[46] 254 N.W.2d 35 (Mich. App. 1977)

attacked, bound, and robbed.[47] Over a period of a few hours the male victim was sexually assaulted, threatened at gunpoint and forced to engage in sexual acts with the defendant's German shepherd.[48] The defendant was charged with a number of crimes including aiding and abetting in the commission of a crime against nature. The appellate court was faced with the task of interpreting the state's crime against nature statute. Finding that the statute prohibited sodomy and bestiality the court found that bestiality is "sexual connection between a man or a woman and an animal.[49] The trial court erred in its jury instruction, failing to instruct the jury as to penetration, "an essential element of the completed offense."[50] Consequently, the appellate court was left with no choice but to reverse and remand.[51] Carrier stresses the importance of clear statutory language. Relying on a common definition of bestiality would avoid the problems seen in these three cases.

In contrast to America which typically has relied on vaguely worded statutes broadly interpreted by the judiciary to condemn the convicted for periods up 20 years,[52] the international community has used specifically worded statues carrying much smaller penalties and in many instances no prohibitions at all. For example, Great Britain makes it a crime to "sexually penetrate or to be sexually penetrated by an animal."[53] The statute imposes a two-year maximum penalty. Germany, Sweden, and Denmark have entirely

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[47] Id. at 36.

[48] Id. at 37.

[49] Id. at 38.

[50] Id.

[51] Id. at 38-39.

[52] See appendix for Rhode Island and Massachusetts statutes.

[53] Andrea Beetz, Bestiality/Zoophilia: A scarcely investigated phenomenon between crime, paraphilia, and love, 4 J. of Forensic Psychol. Prac., no. 2, 1, 7 (2004) (citing Home Office Great Britain, 145 (2000)).

given up criminalizing bestiality. Instead these nations rely on regulation through ancillary statutes such as animal cruelty (if indeed the animal actually suffers), trespassing, damage to property, or offensive sexual acts in public.[54]

With little agreement both nationally and internationally, the question remains whether there is a sufficient justification to prohibit bestiality. We now turn to that question.

PART II – Possible Justifications for Laws Prohibiting Bestiality

Criminal prohibitions are restrictions on liberty that must be justified. Through a prohibition, citizens of a state no longer have the freedom to engage in certain behavior. At one extreme, complete freedom would result in anarchy where murders, rapes, and other harms go unpunished. At the other extreme lies authoritarianism where simple freedoms are subject to control and revocation at the whim of some leader or group of leaders. We are constantly in search of the correct balance between liberty and order. One method to guide our decision making is to balance the harm imposed by the prohibition against the harm absent the prohibition. Exactly what kind of harm we should seek to prohibit and who is the correct subject for our protection lies at the center of this puzzle.

Preventing harm to others is the most widely excepted justification of legal prohibitions. Preventing *offense* to others is a less popular alternative. A third possible justification is to prevent harm to the actor. Finally, some jurisprudential scholars argue that it can be legitimate to pass laws to regulate morals. For reasons to be explained, I

[54] See Id. 5-7.

contend that only the first possibility, the Harm Principle can be adequately defended, and laws prohibiting bestiality fail to find support under this justification. The other justifications are inadequate because, either they do not apply to bestiality or they are flawed in theory.

Preventing Harm to Others

Preventing harm to others is a sufficient justification for imposing criminal prohibitions, but it cannot be appropriately applied to bestiality when, animals are not "others." It would be morally inconsistent for society to afford animals protection against bestiality because of the harm it causes them but allow animals to be used food, clothing, science, and entertainment.

> Joel Feinberg defines the Harm Principle in the following way:
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> It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is probably no other means that is equally effective at no greater cost to other values.[55]

This liberal principle has found wide-spread support ever since it was made famous by John Stuart Mill. Mill believed "[t]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their numbers is self-protection." He argues, "The only purpose for which power can rightfully be exercised over any member of a civilized society against his will is to prevent harm to others."[56] Imbedded in these definitions are two

[55] Feinberg, Joel Harm to Others 26 Oxford University Press (1984).

[56] Mill John Stuart On Liberty 80 Yale University Press (2003).

important prerequisites for government interference. First, there must be some harm, and second, that harm must be to a person other than the actor. If these conditions are met, then the state would be justified in preventing the harm so long as the harm to the other outweighs the harm to the individual from restricting his liberty.

Measuring harm requires a balancing. The harm of the prohibition (the loss of liberty to those who may want to engage in certain prohibited acts) is balanced against the harm to the other person absent the prohibition (the loss of liberty to the victim). In order to justify a criminal prohibition, it is not sufficient for the scale to tip slightly in favor of the law, because weighing on the side of liberty are the "collateral costs" associated with criminalizing an act. These costs include a strain on court facilities, time and money spent by police to enforce the law, added prison population, and possibility of an increase in organized crime.[57] The result is that the balance favors liberty, therefore, restrictions must have enough benefits to outweigh these costs. There are a few categories of laws where the state's interest in protection do outweigh the liberty interest of the prohibited. These include harms against persons – homicide, rape, assault, and battery – harms against others' property – burglary, larceny, and fraud – and harm to the public or society – counterfeiting, smuggling, and tax evasion.[58] In these instances, the laws preventing these activities are justified, because in the absence of such laws, the harms to the victims far outweigh the sum of the harm to the individual from restricting his liberty and the collateral costs of enforcing the law.

[57] Feinberg (1984) at 10.

[58] Id. at 10-11.

In order for the harm principle to justify prohibitions against bestiality, the law must function to protect others. In this context, the others would have to be the animals, because the human participant is the actor and not the other. It is not completely without reason to suggest that animals could be the other, after all, animals can in certain contexts be considered victims. In fact, the etymology of the word "victim" dates back to the sacrificial slayings of animals, and currently is often meant to include any suffering of any kind from any source.[59] Nevertheless, it is not clear whether victimhood is sufficient to consider an animal as an other. Even if we assume for the purposes of the argument that animals can be others, there are still two problems with justifying laws prohibiting bestiality. The first problem is empirical and the second problem is theoretical.

One problem with justifying state restrictions on bestiality through the harm principle is that the majority of states are *not* justifying restrictions on bestiality through the harm principle. As the appendix shows there are currently twenty-four states criminalizing bestiality. Recall from Part I that each of these states restricts bestiality in one of four ways: deviant sexual acts, sodomy or buggery, crimes against nature, or bestiality (by name) or other animal rights protections. Of these four, only the latter two have any possibility of satisfying the harm principle. The former two we will consider later with regard to legal moralism.

Statutes prohibiting crimes against nature seem to suggest that the state's interest in the law is to preserve nature. Unfortunately, the name is misleading because the intent of the statute is to protect moral decency not nature. Crimes against nature are always described in the statute as "detestable" and "abominable," words synonymous with

[59] Id. at 117.

buggery and sodomy. These are moral judgments dating back to the Bible rather than animal rights considerations. Therefore, these laws are not protecting others under the Harm Principle.

The final category is divided between statutes labeled "bestiality" and those labeled animal cruelty. The "bestiality" statutes are simply more precise applications of the moral statutes. They make no reference to protecting animals for the sake of the animals, therefore, it follows they do not seek to protect others. This leaves only four states with any reference to animal welfare in their statute. Three of these state statutes, California, Nebraska, and New York are completely devoid of any readily identifiable rationale, and can be distinguished from the "bestiality" statutes by name only. The remaining state, Washington, shows promise because it prohibits animal cruelty *per se*, when the statute goes on to define cruelty through a range of animal protections that includes protection against bestiality. Specifically, the statute makes it a felony to knowingly engage in, aid, permit, or photograph sexual conduct with an animal.[60]

While other states do have animal cruelty statutes, Washington is the only state that includes bestiality is such a statute. Therefore, justifying restrictions against bestiality based on the Harm Principle, at least in practice, has failed for all but one of the state laws.

It is not enough to point out that states have traditionally based their laws on considerations other than animal rights. It must be proven that animal rights considerations (including the Washington statute) also fail the Harm Principle. A few scholars explicitly argue for restrictions on bestiality under the premise that animals are

[60] WA 16.52.205 (2006).

others who have the right not to be harmed. Much credit is owed to Peter Singer who sparked the interest in this topic in 2001 when he made the claim that "sex with animals does not always involve cruelty."[61] Similar to the claim made by Midas Dekker, Singer was merely suggesting that some animals may enjoy certain sexual acts with humans, and therefore the acts may not necessarily be bad. Animal rights academics Tom Regan and Piers Beirne quickly responded to Singer's claim.[62]

Regan and Beirne essentially made the same argument against Singer. That argument can be summarized as follows:

P1. Sex without consent harms the non-consenting actor.
P2. Consent requires both participants are:
    a. Conscious;
    b. Fully informed; and
    c. Positive in their desires.
P3. Animals are incapable of saying "yes" or "no" to humans in forms that humans can readily understand.
4. Animals cannot consent to sex. (2,3 modus tonens)

Therefore: Sex with animals is harmful to the animal and that which is harmful should be prohibited. (1,4 modus ponens)

To rebut Singer, both scholars draw the analogy between sex with animals and other forms of sex where one of the participants *cannot* consent. They admit that sex with children may not always involve cruelty, but that does not mean the act should be tolerated. The analogy suggests that if sex with a child is wrong because a child is incapable of consent, then sex with an animal is wrong when an animal is incapable of consent.

[61] See F.N. 12 at 3.

[62] See Regan, Tom Animal Rights, Human Wrongs Rowman & Littlefield Publishers (2003); Piers (2001) at 50-51.

Animals cannot consent, Beirne contends, "because they are incapable of saying yes or no to humans in a form that humans can readily understand."[63] There are at least two problems with this argument. The first problem is that animals can express their desires in many different ways that humans can understand. They can freely participate in certain acts and display certain species-specific archetypical and biological behavior consistent with excitement and happiness.[64] When engaging in interspecies sexual acts, animals can be as informed regarding that act as they would be for any same species sexual act. Children are given special protection because of the possible psychological harm that will likely occur if they engage in sexual acts at too early an age. There is insufficient data or argument to suggest that animals would undergo the same harm. Therefore, they do not require our protection for this reason.

The second problem with the Regan/Beirne argument is that it overvalues animal consent. As a society and a species, we do care about the liberty and harm of an *other* in a way that does not transcend the species barrier. With very few exceptions, any rights afforded to animals are the property rights attributed to the animal's human owner. Traditionally, animals are not considered *others* so they do not have rights of their own. Without rights, there is no good reason to value animal consent, particularly above the liberty interests of people. Furthermore, it would be morally inconsistent of society to value animal consent with regard to sex but disregard animal consent with respect to animals used for food, science, clothing, and entertainment. While food and science might be justified by a balancing of interests where the human interests for food and

[63] Beirne (2001) at 50.

[64] Singer and Dekkers both refer to dogs who initiate sexual acts with humans by humping the leg of their owner. See Singer at 3; Dekkers at 64.

scientific development outweigh the life interests of animals, such a justification cannot be established with regard to animals used for clothing and entertainment, because to hold otherwise would devalue the weight of an animal's interest in its life into nonexistence.

Beirne argues a separate Harm to Others justification for prohibiting bestiality. He contends that bestiality is wrong because "it is a form of sexual violence linked to other forms of violence, particularly in the family."[65] If he is correct, this would be sufficient justification under the harm principle, because arguably the state's interest in the protection of future human sexual assault victims would outweigh the liberty interest of the zoophiles[66]. This argument is flawed, however, because it is too attenuated and it is not supported by sufficient data. Beirne is making an inferential leap when he concludes that unrestricted zoophiles will have no choice but to expand their sexual lusts onto people. As a point of contention, I believe that most people, zoophiles or not, are free actors capable of choosing their sexual partners whether they be animal, human, or vegetable, and the sexual acts with one such partner will not necessarily lead to sexual acts with another. Additionally, at least according to one study, Beirne is wrong as a factual matter. Andrea Beetz refers to a study that tracked a group of 750 convicted Australian zoophiles over 14 years.[67] Of the group, 87% were never convicted again of a sexual offense, and the remaining 13% were convicted a second time for either bestiality

[65] Id. at 52.

[66] Zoophiles are those people who engage in sex with animals. The term is broad enough to apply to any person who romatically loves an animal, but I use it in this paper is its narrower meaning, limited to those persons who engage in acts of bestiality. See Beetz at 9.

[67] Id. at 8.

or a different sexual offense.[68] It is not clear what percentage of the 13% committed a sexual offense other than bestiality, but even without this information it appears that Beirne's fears of progressive sexual misconduct are unsupported.

To sum up, the Harm Principle fails as a justification for bestiality. Animals are not others. Even if they were, states are not seeking to protect animals through bestiality statutes. To do so would be morally inconsistent, when animals are used for food, science, clothing, and entertainment. Additionally, no credible evidence exists suggesting that sex with animals necessary leads to other sexual crimes.

Preventing Harm to Self

A second possible justification for laws prohibiting bestiality is to prevent harm to the actor. This principle entitled Legal Paternalism suggests that "[i]t is always a good reason in support of a prohibition that is probably necessary to prevent harm (physical, psychological, or economic) to the actor himself."[69] Unlike the Harm Principle, Legal Paternalism is not seeking to protect an innocent other, but rather the actor herself. States can essentially pass two types of paternalistic laws, those requiring certain behavior and those prohibiting it. The former type includes seatbelt laws while the latter type includes prohibitions against narcotics and fireworks.[70] Since laws prohibiting bestiality fall into this second type, we will limit our analysis accordingly.

In order to justify laws prohibiting bestiality through Legal Paternalism, it must be proven that Legal Paternalism is a valid principle and that such laws appropriately

[68] Id.

[69] Feinberg (1984) at 26-27.

[70] Feinberg, Joel Harm to Self 8 Oxford University Press (1986).

apply. Under the balancing test, a state would be justified in prohibiting an act for the safety of the actor only if the harm to the actor outweighed the harm of restricting his liberty interest. In order to correctly balance the relative harms the state must consider a number of variables. These variables include the risk of harm to the actor, the amount of harm to the actor, and whether the actor has assumed that risk. If the state accurately weighs the relative harms and is compelled to prohibit an activity it ought to do so in the least restrictive way possible to achieve its goal. To illustrate, consider the narcotics example. If an person takes drugs, the risk and the severity of the harm will depend on the type of drug. Certain drugs carry more probable risks and more severe harms than others. For a state to prohibit the drug, it must have determined that the risks to the person have outweighed the harm from depriving liberty. After making this determination, the state ought to use the least restrictive means possible to achieve its goal. Outlawing dangerous narcotics would achieve the goal of protection in the least restrictive way, but banning all pharmaceuticals would not.

Assumption of risk is another consideration. In order to fully assume the risk of harm our actor cannot be mistaken about his conduct or be mistaken about the risks of his conduct. If for example, our actor believes he is lighting an ordinary cigarette, when really it is laced with cyanide, we would not think twice about interfering with her smoking. Or alternatively, if our actor chooses to smoke under the mistaken belief that smoking will cure her asthma the state would have an interest in restricting her. In such a case, Mill would argue that a state should be limited to educate or persuade the person not to smoke because of the actual risks, but not to restrict the person from smoking by

criminal penalty.[71] There is no easy solution to this debate, so rather than choosing sides I will explain why bestiality laws cannot be applied under this principle.

Laws prohibiting bestiality are not justified through Legal Paternalism, both in practice and in theory. Recall from Part I that state laws prohibiting bestiality are typically based on preventing immorality. States prohibit the act out of concern for decency and morals rather than preventing harm to the actor. Remember however, that Washington, the sole exception, passed its statute in 2006 partly in response to the death of one of its citizens who was engaging in bestiality with a horse. This scenario fits the legal paternalism framework, because the state is prohibiting an activity that can seriously harm the actor. However, two points can be made in contention. First of all, the Enumclaw case is extremely rare.[72] The investigating Police Commander, Eric Sortland was shocked by this occurrence stating, "In the rare, rare case this happens, it's the person doing the animal."[73] Since the risk of harm to the zoophile is so low, the balance must be struck in favor of liberty. The second point is that the bestiality statutes are not the least restrictive means to achieve the goal of protection. All of the state laws banning bestiality ban any sexual contact between man and animal without regard to whether the human is the giver or the receiver. Washington, for example, bans a laundry list of sexual contact with animals, little of which pose any health concerns to the human participants.[74] If a state felt compelled to pass a bestiality law to protect the welfare of its

[71] Id. at 3.

[72] Most bestiality involves men penetrating animals or women receiving oral stimulation. See generally Dekkers.

[73] Seattle Times F.N. 19 at 2.

[74] See WA 16.52.205. (2006)

citizens it ought to restrict that law to cases of bestiality where there is some risk of harm to the actor.

There does exist one other possible paternalistic motive for banning bestiality. States could justify the prohibition, although none have, in order to prevent the spread of disease from animal to man. This fear, if rational, would be an appropriate paternalistic concern. I contend, however, that this fear is not rational and the risk of disease is so minimal that states are not justified in the prohibition. Today, few if any cases of bestiality involve animals that are not domesticated. The days of hunting through the forest to find an appropriate "mate" have passed. Since the animals are domesticated, the owners have an interest in keeping the animal healthy and knowing the condition of the animal. It would be a strange case indeed for an animal owner to choose to fornicate with his sick livestock or pet. Such a strange case that the risk of harm is outweighed by the collateral costs of enacting such a law.

In sum, Legal Paternalism may be a justifiable theory, but states are not justified in prohibiting bestiality through this theory. In all but a few cases, bestiality does not pose a risk of harm to the actor, and in those rare instances it is harmful to the actor, the law is unjustified because it is too broad in its scope, prohibiting acts that do not involve such a risk. Additionally, a statute that is narrowly defined so that it prohibits only those cases of bestiality that could cause harm to the actor, would be unjustified when their collateral costs would outweigh their benefit.

Preventing Offense to Others

A third possibility for justifying laws prohibiting bestiality is under the Offense Principle. This Principle suggests that it is good for states to pass laws in order to protect people from unpleasant mental states wrongfully imposed on them from knowledge of the occurrence of certain loathsome behavior.[75] The classic examples are the desecration of religious symbols and human remains. Whether this Principle has any validity turns on the nature of the offense. In order for a person to be offended, he must suffer a disliked state, attribute that state to the wrongful conduct of another, and resent the other for his role in causing him to be in that state.[76] Once an offense has been established, in order for a state to prohibit that offense, it must balance the offense against the harm of the prohibition. Weighing on the side of the offense include the seriousness of the offense – the intensity, duration, and extent – the ease of avoidance, the assumption of risk of the offended, and a proper discounting of the offended's abnormal susceptibilities.[77] Weighing on the side of the harm through loss of liberty is an extended list of collateral costs. In addition to the costs associated with passing any law, regulating offense results in a long list of undesirable "side effects." These side effects include, encouraging busybodies, eavesdroppers, and informers, elevating police investigation, hindering privacy, leading to arbitrary selective enforcement, leveraging blackmailers, and the problem of minimal deterrence when such laws could only carry minimal penalties.[78] The result of so many additional costs is that a state will only be justified in

[75] Feinberg, Joel Offense to Others 68 Oxford University Press (1985).

[76] Id. at 2.

[77] Id. at 26, 35.

[78] Id. at 66-67.

regulating offense in very extreme circumstances. Additionally, to justify such regulation, the controlling statute must be narrowly tailored to achieve its means.

Feinberg considers the offense of bestiality explicitly in his book. In a series of examples, he asks to reader to pretend he is on a crowded bus and judge his reaction to different examples of possibly offensive behavior. In "Story 27" the reader is to consider his reaction to the following:

> A passenger with a dog takes an aisle seat at your side. He or she keeps the dog calm at first by petting it in a familiar and normal way, but then petting gives way to hugging, and gradually goes beyond the merely affectionate to the unmistakably erotic, culminating finally with oral contact with the canine genitals.[79]

Feinberg classifies this type of offense as "disgust" because it passes the "yuk" test.[80] However, to pass legislation prohibiting offensive behavior, the behavior must be more than yucky. The offense must outweigh the harm of the prohibition. Feinberg's example of bestiality seems to satisfy the offense requirement and the balancing requirement. First there is an offense. The innocent bus passenger has suffered a disliked state. That state is attributed to the wrongful conduct of another, and the offended resents the zoophile for causing him to endure that mental state. Second the balance swings in favor of prohibition when the innocent passenger is greatly offended and the harm to the zoophile by restricting his public act of bestiality is not very great. Therefore, states are justified in prohibiting this type of bestiality. However, our analysis cannot stop here. Recall that the Offense Principle requires states to narrowly tailor their laws to achieve their means.

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[79] Id. at 27.

[80] Id.

State statutes prohibiting bestiality on the basis of offense are unjustified because they are unduly broad. Many states have laws which prohibit sexual acts in public. But many of these sexual acts are not prohibited in private. This is especially true after the Supreme Court found a right to privacy in homosexual acts in Lawrence v. Texas. Problematically, statutes prohibiting bestiality do so both in public and in private. Assuming a person is not forced to watch, private acts of bestiality are not directly offensive to anybody. They may however be indirectly offensive. An indirect offense derives from the "bare knowledge" that such activities occur without punishment. However, offense through bare knowledge is not sufficient to warrant prohibition when the offended party is not a victim to any offensive act and his rights are not being violated.[81] These types of indirect offenses fail the second offense requirement. The offended party cannot rightfully attribute his disliked mental state to the conduct of another, when the offended is the person creating the offensive image. Since the statutes are not narrowly tailored to protect against offense, they cannot be justified under the Offense Principle.

Preventing Immorality

Legal Moralism is different than our other theories of justification, because it does not rely on harm or offense to anyone. Instead it seeks to justify itself through dogmatic adherence to religious texts and thousands of years of tradition. I contend that unjustified sources and years of oppression do not amount to legal justification sufficient to restrict a

[81] Id. at 69, 94.

person's liberty. The burden therefore rests with the state to prove why governing morality is justifiable. That burden has not been met.

The oldest and most relied upon opponent to bestiality has been the Church. For thousands of years Christianity has condemned bestiality as immoral, unnatural, and harmful to the traditional way of life.

> Neither shall thou lie with any beast to defile thyself therewith: neither shall any woman stand before a beast to lie down thereto; it is a confusion.[82]

> And if a man lie with a beast, he shall surely be put to death: and ye shall slay the beast. And if a woman approach unto any beast, and lie down thereto, thou shall kill the woman, and the beast: they shall surely be put to death: their blood shall be upon them.[83]

> Cursed be he who lieth with any manner of beast.[84]

Religious leaders have had the role of interpreting the above through Christian moral literature called Penitentials.[85] These penitentials shaped Catholic sexual doctrine between the 6th and 11th centuries. They often grouped bestiality among a class of sex sins including fornication before marriage, adultery, and masturbation. While the Bible specifically called for death to the bestial sinner, the early penitentials were more lenient because people lived in very rural communities filled with domesticated animals, providing lots of temptation.[86] The common punishments during this era included public begging for forgiveness, prolonged severe fasting, sexual abstention, and public

[82] Leviticus 18:33 King James Version.

[83] Leviticus 20:15-16.

[84] Deuteronomy 27:21.

[85] Brundage F.N. 1 at 152.

[86] Id. at 168.

whipping.[87] The later penitentials linked bestiality to acts of sodomy including oral and anal sex. The punishment for these sins was more severe. The animals were usually burned to death so as not to tempt any other people. The offending persons were typically banned from the Church and some offenders were required to go barefoot for the rest of their lives.[88]

As explained in Part I, secular law has justified prohibitions on bestiality by relying on religious sentiment. The state has typically borrowed the language of the Church criminalizing sodomy and unnatural sexual acts. One problem with a religious justification is that is always arbitrary. There are many passages in the Bible that the state no longer follows. For example, in Exodus 2, slavery was regarded as a legitimate institution. Or in Genesis 3:16, God declared that men should rule over women.[89] Since the state chooses to enforce the Bible in one regard, but not another, the burden is on the state to explain why. The state will not be able to meet this burden, because in a secular society the law cannot rely on unjustified religious doctrines when its citizens are entitled to disbelieve those doctrines.[90] The moral view of the majority may not always comport with the teachings of the Bible and in many instances there are people who disagree with the morality of the majority. A valid defense of Moral Legalism will require legal argument above and beyond adherence to dogmatism.

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[87] Id. at 153.

[88] Id. at 168, 400. For a more modern example of the offending animal being punished in order to prevent it from tempting others see ZOO (THINKFilm LLC 2007). Zoo is a documentary made in response to the Enumclaw, Washington bestiality death. The film explains that Enumclaw animal services seized the offending horse and castrated it, to prevent future harms to others.

[89] Francione, Gary L. An Introduction to Animal Rights. Your Child or Your Dog? 10 Temple University Press (2000).

[90] Devlin, Patrick Morals and the Criminal Law 273 Oxford University Press (1965).

Sir Patrick Devlin suggests that feelings of intolerance, indignation, and disgust are sufficient justification for criminal law.[91] There are a few problems with Devlin's theory. First, morals are often difficult to identify and are often in a state of flux. Second, enforcing morals leads to selective prosecution. Third, the collateral costs of enforcing morals outweigh the gains from the prohibition.

H.L.A. Hart explains, social morals are vague and hard to identify in the tough cases. [92] Morals change which lead to due process concerns when people cannot accurately gauge the state of the law. Consider for example the German laws regarding bestiality. In 1969, the country legalized the act finding that morals change overtime and should not be the basis of penal law. The country argued that bestiality humiliates the person rather than society or mankind in general.[93]

Regulating morals leads to the problem of selective enforcement. Police officers and prosecutors are responsible for bringing criminals to justice, but in the case of moral crimes, there is a risk that these officials will only charge those people they do not like for whatever inappropriate reason.

The collateral costs of preventing immorality outweigh its gains. These costs include the loss of liberty associated with the prohibition and the loss of privacy required for enforcement. In order for police to regulate moral conduct, they would be required to regulate that conduct both in public and in private. Unless society is willing to surrender its right to privacy, such Legal Moralism is ultimately unenforceable. Consider for example France which does not have laws prohibiting bestiality. France has found that

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[91] See Id. at 277.

[92] H.L.A. Hart Immorality and Treason 162 The Listener (1959).

[93] Beetz at 6.

"it is preferable in the interest of public morals, to throw a veil over those turpitudes with a difficult investigation, which, on being given publicity, would only cause scandal."[94] In sum, Legal Moralism is a departure from the Harm Principle and cannot be the justification for criminal laws when its harms outweigh its gains.

Conclusion

Laws prohibiting bestiality are poorly defined, inconsistent, and unjustified. In Part I of the paper we defined Bestiality as sexual contact between human and non-human animals for human sexual gratification. We found that this definition comported with our detached view of what types of behavior constituted bestiality. Next, we learned that half the states in the U.S. prohibit bestiality as deviant sexual acts, sodomy or buggery, crimes against nature, or bestiality by name or through other animal sex prohibitions. The first three types have religious origins and the latter type is concerned with animal welfare. Of the twenty-four states prohibiting bestiality, only Washington does so explicitly for animal rights concerns. The statutes themselves are riddled with vague terms that are reinterpreted by the judiciary. The courts, in the few instances they have heard a bestiality case, have read their own morals and the morals of the legislature directly into the statute. The result has been the perpetuation of inappropriately grounded and vaguely defined prohibitions against bestiality.

In part II of the paper we considered four possible justifications for laws prohibiting bestiality. The Harm Principle served as an adequate standard for criminalization. States are justified in preventing harm against others so long as the

[94] Parker at 104.

balance tips sufficiently in favor of criminalization. Bestiality could not be justified under this theory when animals are not others. In practice animals have nearly no rights of their own and will continue to have no rights so long as they are used for food, science, clothing, and entertainment. Next, we considered the possibility that criminalization can be justified through Legal Paternalism. Preventing harm to self is persuasive in theory but could not be readily applied to bestiality in practice or experiment. As a matter of fact, states simply do not prohibit bestiality for the safety of their citizens. Even if they did, they would be required to narrow the law to prohibit only the dangerous forms of bestiality, which they fail to do. Third, under the Offense principle we acknowledged that states could restrict public acts of bestiality the same way they restrict other displays of public sex. However, states could not restrict private acts of bestiality through the Offense Principle when there is no direct offense to its citizens who are not witnessing the act. Finally, we dismissed Legal Moralism as a legitimate principle of justification when it is based on vague shifting morals, that are selectively enforced, and sufficiently outweighed by their collateral costs.

The laws prohibiting bestiality as they stand today are not justified. Their very existence undermines the legitimacy of our legal system. To be justifiable, I suggest rewriting the statutes in clear, precise language geared toward preserving animal rights. But before we can justify legislating on animal rights we must as a society agree that animals do have rights and interests, and then stop subjugating those rights in unjustifiable ways.

Appendix

State Statutes Prohibiting Bestiality

The following is an up to date list of the laws of the 50 states with regard to bestiality. Any statutes prohibiting bestiality solely because the acts a) involve minors; b) are done in public view; or c) involve the commercial sale, creation, or dissemination of recordings of these acts are excluded.

Alabama
Ala.Code 1975 § 13A-6-63 Deviate Sexual Intercourse; sodomy
A person commits the crime of sodomy in the first degree if: He engages in deviate sexual intercourse with another person by forcible compulsion… The statute defines deviant sexual intercourse as any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another. This section is broad enough in its terms to embrace all unnatural carnal copulations, whether with man or beast.

Alaska
No statute.

Arizona
No statute.

Arkansas
Bestiality statute declared unconstitutional by state supreme court in 2002.
Jegley v. Picado, 80 S.W.3d 332 (2002).

California
C.A. § 286.5 (1975) Sexually assaulting an animal; misdemeanor
Any person who sexually assaults any animal for the purpose of arousing or gratifying the sexual desire of the person is guilty of a misdemeanor.

Colorado
No statute.

Connecticut
No statute

Delaware
11 Del.C. § 777 (1993). Bestiality
A person is guilty of the felony of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Florida
No statute

Georgia
Ga. Code Ann., § 16-6-6 (1833)
(a) A person commits the offense of bestiality when he performs or submits to any sexual act with an animal involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.
(b) A person convicted of the offense of bestiality shall be punished by imprisonment for not less than one nor more than five years.

Hawaii
No statute

Idaho
I.C. § 18-1505B (2005) Sexual abuse and exploitation of a vulnerable adult; I.C. § 18-6605. (1972) Crime against nature--Punishment
It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to involve a vulnerable adult in any act of bestiality. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

Illinois
No statute.

Indiana
IC 35-46-3-14 (2007) Bestiality
Sec. 14. A person who knowingly or intentionally performs an act involving:
(1) a sex organ of a person and the mouth or anus of an animal;
(2) a sex organ of an animal and the mouth or anus of a person;
(3) any penetration of the human female sex organ by an animal's sex organ; or
(4) any penetration of an animal's sex organ by the human male sex organ;
commits bestiality, a Class D felony.

Iowa
I.C.A. § 717C.1 (2001) Bestiality
A person who performs a sex act with an animal is guilty of an aggravated misdemeanor.

Kansas
KS ST § 21-3505 (1969) Criminal Sodomy; KS ST § 21-3501 (1969) Definitions
Oral or anal copulation or sexual intercourse between a person and an animal is a misdemeanor.

Kentucky
No statute.

Louisiana
State's crime against nature statute declared unconstitutional in 2005. See Louisiana Electorate of Gays and Lesbians, Inc. v. Connick, 902 So.2d 1090 (2005).

Maine
17 M.R.S.A. § 1001 (1975) REPEALED
State's crime against nature statute was repealed in 2006.

Maryland
MD Code, Art. 27, §554 Repealed
The State's perverted sexual practices act was repealed in 2002.

Massachusetts
M.G.L.A. 272 § 34 (2000) Crime against nature
Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for not more than twenty years.

Michigan
Mich. Stat. Ann. § 28.355
Any person who shall commit the abominable and detestable crime against nature either with mankind or with any animal shall be guilty of a felony.

Minnesota
Minn. Stat. § 609.294 (2007)
Whoever carnally knows a dead body or an animal or bird is guilty of bestiality, which is a misdemeanor. If knowingly done in the presence of another the person may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000 or both.

Mississippi
Miss. Code Ann. § 97-29-59 (1930) Sodomy
Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years.

Missouri
V.A.M.S. 566.111 (1991) Unlawful Sex with an Animal
1. A person commits the crime of unlawful sex with an animal if that person engages in sexual conduct with an animal or engages in sexual conduct with an animal for commercial or recreational purposes.
2. Unlawful sex with an animal is a class A misdemeanor unless the defendant has previously been convicted under this section, in which case the crime is a class D felony.

Montana
The State's Deviant Sexual Conduct statute prohibiting bestiality was declared unconstitutional by the state in 1997. See Gryczan v. State, 942 P.2d 112, 113 (1997).

Nebraska
NE ST § 28-1010. (1977) Indecency with an animal; penalty; NE ST § 28-318 (1977) Terms, defined.
A person commits indecency with an animal when such person subjects an animal to sexual penetration. Sexual penetration includes sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen. Indecency with an animal is a Class III misdemeanor.

Nevada
No statute.

New Hampshire
No statute.

New Jersey
No statute.

New Mexico
No statute.

New York
McKinney's Penal Law § 130.20 (1965) Sexual misconduct
A person is guilty of a misdemeanor when:
He or she engages in sexual conduct with an animal. . .

North Carolina
The State's crimes against nature statute was declared unconstitutional by the state supreme court in 2005. See State v. Whiteley, 616 S.E.2d 576, 577 (2005).

North Dakota
ND ST 12.1-20-12 (1973) Deviant Sexual Act ND ST 12.1-20-02 (1973) Definitions
A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a class A misdemeanor. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.

Ohio
No statute.

Oklahoma
21 Okl.St.Ann. § 886 (1910) Crime Against Nature
Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years.

Oregon
No statute.

Pennsylvania
18 Pa.C.S.A. § 3124. Repealed. 1995
The State's Deviate sexual intercourse statute was repealed in 1995.

Rhode Island
RI § 11-10-1. (1998) Abominable and Detestable Crime Against Nature
Every person who shall be convicted of the abominable and detestable crime against nature, with any beast, shall be imprisoned not exceeding twenty (20) years nor less than seven (7) years.

South Carolina
SC Code 1976 § 16-15-120. (1962) Buggery.
Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be guilty of felony and shall be imprisoned in the Penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court.

South Dakota
22-22-42. (2003) Bestiality--Acts constituting--Commission a felony
It is a felony for any person, for the purpose of that person's sexual gratification, to:
(1) Engage in a sexual act with an animal; or
(2) Coerce any other person to engage in a sexual act with an animal; or
(3) Use any part of the person's body or an object to sexually stimulate an animal; or
(4) Videotape a person engaging in a sexual act with an animal; or
(5) Kill or physically abuse an animal.

Tennessee
No statute.

Texas
No statute.

Utah
U.C.A. 1953 § 76-9-301.8 (1993) Bestiality

(1) A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor.
(2) For purposes of this section only:

(a) "Animal" means any live, nonhuman vertebrate creature, including fowl.
(b) "Sexual activity" means physical sexual contact:
(i) between the actor and the animal involving the genitals of the actor and the genitals of the animal;
(ii) the genitals of the actor or the animal and the mouth or anus of the actor or the animal; or
(iii) through the actor's use of an object in contact with the genitals or anus of the animal.
(3) A crime of bestiality is a class B misdemeanor.

Vermont
No statute.

Virginia
Va. Code Ann. § 18.2-361. (1975) Crimes against nature; penalty
If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony. . .

Washington
WA 16.52.205. (2006) Animal cruelty in the first degree
A person is guilty of animal cruelty in the first degree when he or she:
(a) Knowingly engages in any sexual conduct or sexual contact with an animal;
(b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;
(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control;
(d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or
(e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.
(4) Animal cruelty in the first degree is a class C felony.

West Virginia
No statute.

Wisconsin
W.S.A. 944.17 1987
Whoever does any of the following is guilty of a Class A misdemeanor:
Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal. Commits an act of sexual gratification involving his or her

sex organ, mouth or anus and the sex organ of an animal.

Wyoming
No statute.