

5-1-2013

# Concentrated Animal Feeding Operations

Jeffrey Phang

Follow this and additional works at: [http://scholarship.shu.edu/student\\_scholarship](http://scholarship.shu.edu/student_scholarship)

---

## Recommended Citation

Phang, Jeffrey, "Concentrated Animal Feeding Operations" (2013). *Law School Student Scholarship*. Paper 285.  
[http://scholarship.shu.edu/student\\_scholarship/285](http://scholarship.shu.edu/student_scholarship/285)

# Concentrated Animal Feeding Operations

Jeffrey Phang

## Table of Contents

Introduction .....	3
Part I: The Rise of the Concentrated Animal Feeding Operation and the Failure of Animal Welfare .....	4
Chickens .....	7
Veal Calves .....	9
Hogs .....	10
Part II: Inadequacies of Existing Federal and State law, and Recent Developments .....	14
Part III: A Proposed Solution for Improving CAFO Living Conditions through a Combination of Legislation and Public Awareness. ....	23
Part IV: Conclusion. ....	34

## Introduction

In contrast to the small family farms of past centuries, most modern day meat products are produced at a facility called a Concentrated Animal Feeding Operation (CAFO).<sup>1</sup> The Environmental Protection Agency (EPA) defines an Animal Feeding Operation (AFO) as an “agricultural operation where animals are kept and raised in confined situations. AFOs generally congregate animals, feed, manure, dead animals, and production operations on a small land area.”<sup>2</sup> Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures.”<sup>3</sup> A farm reaches the status of a “Concentrated Animal Feeding Operation” when it houses at least 300 cattle, 750 pigs, or 25,000 chickens.<sup>4</sup>

The EPA’s definition of CAFOs barely hints at the grave inhumanities forced upon the animals raised in CAFOs that are caused by excessively confined conditions. While there are laws regulating inhumane slaughter and animal abuse, laws regulating living conditions of agricultural animals are virtually non-existent. Concededly, providing more humane conditions is likely to increase costs to farmers and this in turn means higher costs to consumers. The question that arises is why should we care? Why should we impose costs on society to better the lives of agricultural animals, most of which are going to be killed anyway?

---

<sup>1</sup> U.S.D.A., ERS, *How Has the Structure of Animal Agriculture Changed?* available at [http://www.ers.usda.gov/media/265078/eib43b\\_1\\_.pdf](http://www.ers.usda.gov/media/265078/eib43b_1_.pdf) (last visited Oct. 27, 2012) .

<sup>2</sup> EPA, *Animal Feeding Operations*, available at [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=7](http://cfpub.epa.gov/npdes/home.cfm?program_id=7) (last visited Oct. 27, 2012). You were supposed to explain EPA in fn

<sup>3</sup> *Id.*

<sup>4</sup> EPA, *Regulatory Definitions of CAFOs*, available at [http://www.epa.gov/npdes/pubs/sector\\_table.pdf](http://www.epa.gov/npdes/pubs/sector_table.pdf) (last visited Oct. 27, 2012).

The answer is because society's moral standards change. Our society reflects its morals through its laws; but here, the law has not kept pace. Abusing a dog or cat is illegal because our society views it as immoral. Abusing a cow, chicken, or pig is fundamentally no different. Agricultural animals do not experience pain or suffering any less than a dog or cat,<sup>5</sup> nevertheless our laws have yet to extend protection to these animals in a meaningful way. This lack of regulation is the result of a combination of lobbying by the agricultural industry and a lack of public awareness of the problem.

This paper discusses the concerns relating to CAFOs, the current status and inadequacies of laws concerning CAFOs, and the consequent need to create new incentives for the industry to reform through a combination of legislation and public awareness.

Part I of this paper will briefly discuss the rise of CAFOs, animal welfare concerns, and arguments for change. Part II will explore existing federal and state laws, explain their inadequacies, and discuss recent developments in the industry incorporating ideas of increased welfare for agricultural animals in the operations of CAFOs. Finally, Part III will explore potential methods of improving CAFO living conditions by creating minimum welfare standards as well as market incentives to exceed that floor.

## Part I: The Rise of the Concentrated Animal Feeding Operation and the Failure of Animal Welfare

---

<sup>5</sup> Gentle, M J, and Corr, *Endogenous Analgesia in the Chicken*, Neuroscience Letters, Dec. 15, 1995; 201(3): 211-214; Grandin, T and Deesing, *Genetic Effects on Behavior During Herding, Handling, and Restraint*, Genetics and the Behavior of Domestic Animals, 1998, 113-144 Academic Press, San Diego, California.

The advent of the CAFO is a relatively recent development caused by advances in nutrition, antibiotics, automation, and infrastructure. Historically, agriculture was a large part of American society where farming took place on small family-run farms and a greater number of farms were needed to feed a relatively small population. During the World War II era, twenty-four percent of the US population was employed in agriculture.<sup>6</sup> As nutritional science developed, farmers were able to raise larger animals more quickly.<sup>7</sup> Advances in antibiotics prevented illnesses from spreading and allowed animals to be housed in close quarters without a significant danger of spreading disease.<sup>8</sup> Automation allowed farmers to feed an ever increasing number of animals, dispose of animal waste, harvest eggs, milk, and slaughter meat with a smaller labor force.<sup>9</sup> Improved communication channels intensified competition among farms by allowing price shopping across the entire world, thus increasing the need to develop ever more efficient production systems.<sup>10</sup> Improvements in infrastructure allowed more supplies and products to travel to and from larger farms at lower costs, thus allowing for interstate and international competition.<sup>11</sup> Together, these advances provided the technology and competitive atmosphere to create the CAFO style farm.

---

<sup>6</sup> Matthew Scully, *Dominion*, 29 (2002).

<sup>7</sup> *Agriculture*, National Geographic, available at [http://education.nationalgeographic.com/education/encyclopedia/agriculture/?ar\\_a=1#page=6](http://education.nationalgeographic.com/education/encyclopedia/agriculture/?ar_a=1#page=6) (last visited Nov. 19, 2012).

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Livestock Marketing / Auction Barns*, Internal Revenue Service, 8 available at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Farmers-ATG---Chapter-Eight:-Livestock-Marketing---Auction-Barns#Exhibit4> (last visited Oct. 28, 2012).

CAFOs allow a farmer to increase automation, decrease costs per animal, increase overall food supply, and sell lower cost food to consumers.<sup>12</sup> The high capital investments required for CAFOs has resulted in a trend towards product specialization where the most efficient farms displace less efficient producers and free up labor to work in non-agricultural industries.<sup>13</sup> Today, a farming industry of less than five million people is sufficient to supply food to over three hundred and fourteen million people in the United States, as well as a substantial excess for export abroad.<sup>14</sup> This amounts to a farming industry that consists of just 1.5% of the population. Despite the decrease in manpower, output has increased from forty eight billion pounds of meat in 1977, to ninety six billion pounds of meat in 2012.<sup>15</sup> Consequently, CAFOs have benefited general public welfare by virtually eliminating food shortages, and have reduced the cost of food for all consumers. However, not all of the effects have been beneficial. The livestock and poultry in CAFOs now experience the pain and suffering imposed by the demands of a high efficiency system.

On traditional farms, animals are afforded an opportunity to engage in natural behaviors such as walking, socializing, and resting in privacy. They also have access to open air, sunlight, and natural ground to walk on. We often take these conditions for granted when we envision a farm; however, in a CAFO there is no room for Mother Nature. In the quest for efficiency, the CAFO structure ignores the fact that the products

---

<sup>12</sup>Shawn McKenzie, *The Rise of Industrial Agriculture*, available at [http://ocw.jhsph.edu/courses/nutritionalhealthfoodproductionandenvironment/PDFs/FoodEnv-sec2b\\_McKenzieOCW.pdf](http://ocw.jhsph.edu/courses/nutritionalhealthfoodproductionandenvironment/PDFs/FoodEnv-sec2b_McKenzieOCW.pdf) (last visited Oct. 28, 2012).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; see also, *Nat. Totals: 2011*, U.S. Census Bureau, available at <https://www.census.gov/popest/data/national/totals/2011/index.html> (last visited Oct. 28, 2012).

<sup>15</sup> *U.S. and State Farm Income and Wealth Statistic*, Econ. Res. Service, available at <http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx#27415> (last visited Oct. 28, 2012).

being produced are cognitive creatures and instead treats animals like objects that simply process nutrients and water culminating in meat products for human consumption.

In the United States CAFOs primarily produce chickens, cattle, hogs, turkeys, ducks, geese, horses and sheep.<sup>16</sup> This paper focuses on chickens, pregnant sows (hogs), and veal because they are subject to the most restrictive rearing conditions.<sup>17</sup> In a CAFO a chicken may not be able to spread its wings even once, a pregnant sow is often placed in a cage so constrictive that it will never be able to turn to see what is behind it, and a veal calf may never see the sun in its life. From birth to death, 8.9 billion chickens, 113 million hogs, and 34 million cattle endure a life designed by humans and shaped by economic profits.<sup>18</sup> This section will examine why the living conditions in CAFOs cause concern for each of these animals respectively.

#### Chickens:

Of the thirty five million chickens processed each day,<sup>19</sup> the fate of an individual chicken depends on what type of product is being produced: eggs or meat. In the industry, chickens used to produce eggs are called “battery hens” and chickens raised for meat are called “broilers.”

---

<sup>16</sup> Chad Nabity, *Guidelines for Special Use Permits for Confined Animal Feeding Operations*, Madison County Joint Plan. Dept., August 4, 1999, available at [http://www.co.madison.ne.us/mcjpc/faq\\_pdf/feedlotsfaq.pdf](http://www.co.madison.ne.us/mcjpc/faq_pdf/feedlotsfaq.pdf) (last visited Jan 7, 2013).

<sup>17</sup> Elizabeth Overcash, *Detailed Discussion of Concentrated Animal Feeding Operations: Concerns and Current Legislation Affecting Animal Welfare*, Animal Legal & Historical Center, 2011, available at <http://www.animallaw.info/articles/dduscafo.htm> (last visited Jan 7, 2013).

<sup>18</sup> *North Carolina Agricultural Statistics*, Nat'l Agric. Statistics Service., U.S. Dept. of Agric., 38–42, available at [http://www.ncagr.gov/stats/2010AgStat/Page037\\_056.pdf](http://www.ncagr.gov/stats/2010AgStat/Page037_056.pdf) (last visited Oct. 31, 2011).

<sup>19</sup> Davis, *The Need for Legislation and Elimination of Electrical Immobilization*, UPC, available at <http://www.upc-online.org/slaughter/report.html> (last accessed Nov. 21, 2012).

## Battery Hens

The modern battery hen will almost never see the sky, step on soil, or experience open air. After hatching, hens are placed into an 18”X20” cage<sup>20</sup> for the rest of their lives. Even for one adult chicken this would be a cramped living space, but in CAFOs efficiency is the top priority. The efficient use of space means the farm can hold more chickens, produce more eggs, and make higher profits. To this end, a CAFO will generally house five to ten chickens<sup>21</sup> in this cramped cage for the duration of their lives. The resulting concentration prevents a bird from expressing natural behaviors such as nesting, perching, foraging, stretching or exercising.<sup>22</sup> This crowded environment leads to feather-pecking and even cannibalism.<sup>23</sup> To disarm the birds, farmers often de-beak them, a painful procedure that is performed without anesthesia.<sup>24</sup> Because the birds have no room to walk about, they persistently stand on the wire floor of the cage. This constant pressure results in toe pad hyperkeratosis, a condition characterized by deep lesions in their feet that can give the appearance that the bird’s feet are growing around the cage wire.<sup>25</sup> Adding to this adversity, the lack of opportunity for exercise in the cage causes severe osteoporosis, sometimes resulting in paralysis and death.<sup>26</sup>

## Broiler Chickens

---

<sup>20</sup> *The Egg Industry*, PETA, 2012, available at <http://www.peta.org/issues/animals-used-for-food/egg-industry.aspx> (last visited Jan 9, 2013).

<sup>21</sup> Bell, D. *Cage Management for Layers*, Commercial Chicken Meat and Egg Production, 5th Ed. 2002.

<sup>22</sup> Shields, *An HSUS Report: A Comparison of the Welfare of Hens in Battery Cages and Alternative Systems*, available at <http://www.humanesociety.org/assets/pdfs/farm/hsus-a-comparison-of-the-welfare-of-hens-in-battery-cages-and-alternative-systems.pdf> (last visited Nov. 21, 2012).

<sup>23</sup> *Id.* at 5.

<sup>24</sup> Duncan, *The Welfare Problems in Poultry*, *The Well-Being of Farm Animals: Challenges and Solutions* (2004).

<sup>25</sup> Abrahamsson, Tauson, *Behaviour, Health and Integument of Four Hybrids of Laying Hens in Modified and Conventional Cages*. *British Poultry Science*, 521-40, (1996).

<sup>26</sup> *Miscellaneous Management Related Diseases*, Mississippi State University Cooperative Extension Service, available at [www.msstate.edu/dept/poultry/dismisc.htm](http://www.msstate.edu/dept/poultry/dismisc.htm) (last visited Nov. 21, 2012).



Broiler chickens have a very short life. As a result of scientific advances, the chickens can reach slaughter weight within five to seven weeks of birth.<sup>27</sup> However, evolution cannot keep up with this rapid growth. Because a bird's growth is capable of outpacing its lung and heart capacity, it may suffer from pulmonary hypertension and ascites,<sup>28</sup> a cardiovascular condition that can eventually cause death.<sup>29</sup> Because of its unnaturally high muscle to bone ratio, a broiler is also prone to skeletal disorders that cause chronic pain and may ultimately leave it unable to walk.<sup>30</sup> After the bird loses its mobility, it lies on the floor and eventually dies of dehydration.<sup>31</sup> Finally, as the broilers approach slaughter weight, the accumulated feces on the ground releases ammonia into the air causing eye lesions, keratoconjunctivitis (swollen cornea) and tracheitis.<sup>32</sup> At this stage in their development, exhausted from a rapid five weeks of growth and ammonia burning their eyes, slaughter may actually be a form of relief for the chickens.

## Veal Calves

Of the variety of cattle produced in CAFOs, veal calves are a primary concern. Unlike beef and dairy cattle, which can walk around their feed lots, a majority of calves raised for veal are housed in individual crates.<sup>33</sup> The crates are designed to restrict movement in order to prevent the meat of the calf from toughening; however, the

---

<sup>27</sup> *Broiler Chicken Fact Sheet*, Animals Australia, available at [http://www.animalsaustralia.org/factsheets/broiler\\_chickens.php](http://www.animalsaustralia.org/factsheets/broiler_chickens.php) (last visited Nov.21, 2012).

<sup>28</sup> Frank T. Jones, *Avian Advice*, 2005, Vol. 7, No. 3, available at <http://www.thepoultrysite.com/articles/500/understanding-and-controlling-ascites> (last visited Nov.21, 2012).

<sup>29</sup> R. Juilian, *Rapid Growth Problems: Ascites and Skeletal Deformities in Broilers*, available at <http://ps.fass.org/content/77/12/1773.full.pdf+html> (last visited Nov.21, 2012).

<sup>30</sup> *Id.* at 1779.

<sup>31</sup> *Id.* at 1780.

<sup>32</sup> *Interactive Effects of Ammonia and Light Intensity on Ocular, Fear and Leg Health in Broiler Chickens*, *International Journal of Poultry Science* 6 (10): 762-769, (2007), available at <http://www.pjbs.org/ijps/fin979.pdf> . (last visited Nov. 22, 2012).

<sup>33</sup> *Veal from farm to table*, Food Safety and Inspection Service, U.S. Dept. of Agriculture, available at [www.fsis.usda.gov/Fact\\_Sheets/Veal\\_from\\_Farm\\_to\\_Table/index.asp](http://www.fsis.usda.gov/Fact_Sheets/Veal_from_Farm_to_Table/index.asp) (last visited Nov. 22, 2012).

isolation and immobility deny calves social interaction, exercise, and space to adopt natural resting positions.<sup>34</sup> As a result of the constrictive confinement, calves suffer from anxiety, are more inclined to develop osteoporosis, and have a weaker immune system.<sup>35</sup>

The confinement in the crates also deprives calves the natural sucking, rumination and chewing behaviors, which are important for the release of metabolic hormones that aid digestion and satiety.<sup>36</sup> Their natural drive to exhibit these natural behaviors is so strong that it results in sham behavior, where a calf may suck at a non-existent object or attempt to ruminate, despite not having ingested an adequate amount of fiber to be able to do so.<sup>37</sup> The reason the calves do not have enough fiber to ruminate is because they are fed a milk replacement diet that is low in iron and fiber to lighten the color of the meat and increase its marketability.<sup>38</sup> However, this diet causes low hemoglobin levels and an underdeveloped immune system leaving the calf more susceptible to illness.<sup>39</sup> The conditions of such confinement are far worse than those experienced by a human during a life prison sentence and the industrial scale of suffering occurs merely so humans may satisfy their appetite for tender beef.

## Hogs

---

<sup>34</sup> *Report on the Welfare of Calves*, Scientific Veterinary Committee, Animal Welfare Section, European Commission, available at [http://ec.europa.eu/food/fs/sc/oldcomm4/out35\\_en.pdf](http://ec.europa.eu/food/fs/sc/oldcomm4/out35_en.pdf). (last visited Nov. 22, 2012).

<sup>35</sup> *Id.*

<sup>36</sup> De Passillé, *Sucking Motivation and Related Problems in Calves*, *Applied Animal Behaviour Science* 72(3):175-87, (2001).

<sup>37</sup> *Id.*

<sup>38</sup> Ngapo and Gariépy, *Factors Affecting the Meat Quality of Veal*, *Journal of the Science of Food and Agriculture* 86(10):1412-31, (2006).

<sup>39</sup> *Id.*

Sows, pregnant pigs, are housed in individual gestation cages to protect them from fighting with other pigs and to allow farmers to customize nutrition plans to each individual pig. However, the cages restrict movement to the point that the sows cannot turn around, groom themselves, or even stretch their limbs. Due to lack of movement and exercise, these sows have a greater incidence of urinary tract infections, cardiovascular complications, overgrown hooves, lameness, and weak muscle and bone structures.<sup>40,41</sup> Further, the cages deprive the sows of social interaction, space to forage, and the ability to regulate their own body temperature.<sup>42</sup> The result is the exhibition of abnormal stereotypic behavior<sup>43</sup> such as bar-biting, sham-chewing, head-weaving, repeated patterns of nosing in a trough, and tongue-rolling.<sup>44</sup> In recognizing that hogs have a relatively high cognitive function relative to most animals, the general consensus in the scientific community is that these gestation cages are physically and mentally harmful to the sows.<sup>45</sup>

Notwithstanding the living conditions faced by these animals, the question remains: why is animal welfare necessary when these animals will ultimately end up on our dinner plates? From an economic perspective, there is little to justify any change to the current infrastructure because the CAFO system allows a plentiful supply of affordable

---

<sup>40</sup> Broom and Fraser, *Domestic Animal Behaviour and Welfare*, 4th Ed., 274, (2007).

<sup>41</sup> *The Welfare of Intensively Kept Pigs*, Scientific Veterinary Committee, Animal Welfare Section, European Commission, 95, 2007, available at [http://ec.europa.eu/food/fs/sc/oldcomm4/out17\\_en.html](http://ec.europa.eu/food/fs/sc/oldcomm4/out17_en.html) (last visited Oct. 19, 2012).

<sup>42</sup> see *Domestic Animal Behaviour and Welfare* at 275. Improper cite.

<sup>43</sup> Appleby MC, *Welfare Challenges in Sow Housing*, *Journal of the American Veterinary Medical Association* 226(8), 1334-6, (2005).

<sup>44</sup> see *The Welfare of Intensively Kept Pigs* at 88. Improper cite. Need specific supra

<sup>45</sup> *Scientists and Experts on Gestation Crates and Sow Welfare*, HSUS, 1, 2012, available at <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Synopsis-of-Expert-Opinions-on-Gestation-Crates-and-Sow-Welfare.pdf> (last visited Dec. 17, 2012).

food to satisfy human's voracious meat appetite.<sup>46</sup> Mandating animal welfare standards will increase the cost of production to farmers and the cost of food to consumers. This increase could drive some farmers out of business as well as raise the possibility of starvation for low income households.<sup>47</sup> Still, animal welfare is justified because the increased cost to most consumers is marginal, the long term savings and commercial benefits outweigh the initial cost to farmers, and a large amount of unnecessary suffering can be avoided. It will create a system where only the biggest farms, controlled by only a few food companies, such as Tyson and Swift, monopolize production and pricing—according to recent studies!!

While farmers will have to invest in new equipment to meet welfare standards, the improved animal welfare will actually increase long term profits and reduce losses from poor meat quality. Farmers who raise their animals in humane conditions have seen an increase in the reproduction, growth, and productivity of their animals.<sup>48</sup> As a result of improved welfare, animals are able to produce more meat and eggs more quickly and fewer animals die in production.<sup>49</sup> This increases profitability per animal and reduces inventory losses. The initial cost is also justified by an increase in meat quality. The industry has long recognized that poor animal welfare causes stress,

---

<sup>46</sup> Shawn McKenzie, *The Rise of Industrial Agriculture*, available at [http://ocw.jhsph.edu/courses/nutritionalhealthfoodproductionandenvironment/PDFs/FoodEnv-sec2b\\_McKenzieOCW.pdf](http://ocw.jhsph.edu/courses/nutritionalhealthfoodproductionandenvironment/PDFs/FoodEnv-sec2b_McKenzieOCW.pdf) (last visited Oct. 28, 2012). Improper cite. You should refer to previous cite, fn. 11, not repeat full cite. This is true here, and in many other places.

<sup>47</sup> *Economic Impacts of Converting to Enriched Cage Systems*, Agralytica, June 1, 2012, available at <http://www.eggbill.com/images/Economic%20Impact%20of%20Egg%20Legislation%20June%202012.pdf> (last visited Nov 28, 2012).

<sup>48</sup> *Animal Welfare in Livestock Operations*, Environment and Social Development Department, International Finance Corporation, 5, available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_AnimalWelfare\\_GPN/\\$FILE/AnimalWelfare\\_GPN.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_AnimalWelfare_GPN/$FILE/AnimalWelfare_GPN.pdf) (last visited Jan 1, 2013).

<sup>49</sup> *Id.*

which increases the pH level of meat in slaughtered animals.<sup>50</sup> High pH levels adversely affect the color and taste of the meat and make it less marketable.<sup>51</sup> In Britain poor meat quality caused £9 million per year in lost revenue that could have been mitigated by modest investments in animal welfare.<sup>52</sup>

More importantly, society's moral compass demands a change in direction. There is a growing market demand for products that make assurances that farm animals have been well treated.<sup>53</sup> A majority of consumers in Europe and North America indicate they are willing to pay significantly more for products that come from animals that are humanely raised.<sup>54</sup> Cage-free eggs, for example, can sell for more than twice the price of similar caged eggs.<sup>55</sup> Thus, despite the industry's fear of increased production costs, the resulting increase in productivity, combined with the higher prices consumers are willing to pay, will offset higher initial costs and even increase long term profits for farmers.

Although humanely produced animal products currently sell for a premium, the predicted increase in cost to consumers is minimal<sup>56</sup> and would not create a risk of starvation. This is because welfare standards would be phased in over time, allowing

---

<sup>50</sup> Neville Gregory, *Meat Quality and Animal Welfare*, The Beef Site, June 6, 2008, available at <http://www.thebeefsite.com/articles/1454/meat-quality-and-animal-welfare> (last visited Dec 21, 2012).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 7.

<sup>54</sup> *Id.* at 8.

<sup>55</sup> *Id.*

<sup>56</sup> *Animal Welfare in Livestock Operations*, Environment and Social Development Department, International Finance Corporation, p. 10, available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_AnimalWelfare\\_GPN/\\$FILE/AnimalWelfare\\_GPN.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_AnimalWelfare_GPN/$FILE/AnimalWelfare_GPN.pdf) (last visited Jan 1, 2013).

farming infrastructure to be changed incrementally.<sup>57</sup> In the case of battery hens, production costs would increase by approximately 12% if welfare standards became effective immediately.<sup>58</sup> However, when standards are phased in over 17 years, the cost of eggs to consumers would increase by just 1.7%, from \$1.75 per dozen in 2013, to \$1.78 per dozen in 2030,<sup>59</sup> with similar increases predicted for other animals.<sup>60</sup> Do you accept these predictions as completely reliable? Is your source unbiased, or an “agent” for some producer or other interested party?? Because these standards will be implemented gradually, providing for animal welfare is unlikely to cause a significant threat of starvation to humans. With the minimal risk of starvation, productivity gains and market demand for moral production methods, the question thus becomes why have we not *already* implemented animal welfare standards? The answer is that we have, to a degree.

## Part II: Inadequacies of Existing Federal and State Law, and Recent Developments

Regulation over the welfare of agricultural animals is an area of developing law. Animals are currently considered property<sup>61</sup> but recent developments in the law and the continuing success of animal rights groups reflect a changing attitude towards animals as something more than mere property. However, most of this progress has focused around companion animals, such as dogs and cats, which are treated as pets. The laws reflecting our view of agricultural animals as something more than mere property have lagged behind at both the federal and state levels.

---

<sup>57</sup> *Id.* at 25.

<sup>58</sup> *Id.* at 23.

<sup>59</sup> *Id.* at 25.

<sup>60</sup> *Id.* at 10.

<sup>61</sup> David Favre, *Equitable Self-Ownership for Animals*, 50 *Duke L.J.* 473, 475 (2000).

At the federal level, only two acts govern the treatment of agricultural animals: The Humane Methods of Livestock Slaughter Act and the Twenty-Eight Hour Law. The Animal Welfare Act, while important for general animal welfare, excludes agricultural animals from its protection.<sup>62</sup>

The Humane Methods of Livestock Slaughter Act requires that animals be humanely killed. However, the act excludes 90% of slaughtered animals because it excludes chickens.<sup>63</sup> More importantly, the law only covers the method of slaughter, not the living conditions of the animals prior to slaughter.

The Twenty-Eight Hour Law also misses the mark. The law requires that animals may not be in transit “for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.”<sup>64</sup> Because the law only applies during the transport of animals, it offers no comfort to the animals while housed in CAFOs.

State anti-cruelty laws provide no sanctuary for farm animals either. Most state anti-cruelty laws prohibit cruel practices but provide exceptions for agricultural animals.<sup>65</sup> For example, Michigan’s anti-cruelty law states that the law does not prohibit the use or killing of an animal for “farming or a generally accepted animal husbandry or farming practice involving livestock.”<sup>66</sup> Such an exemption permits generally accepted farming practices even if they are objectively cruel. This is not to say that state laws are universally unhelpful; a select number of progressive states have enacted bills and

---

<sup>62</sup> 7 U.S.C. §3132(g), exempting farm animals from the scope of the Humane Methods of Livestock Slaughter Act.

<sup>63</sup> Jordan Curnutt, *Animals and the Law*, a Sourcebook, ABC-CLIO, Inc., (2001).

<sup>64</sup> 49 U.S.C. § 80502(a).

<sup>65</sup> Favre, David, *Animal Law: Welfare, Interests, and Rights*. 2nd. New York: Wolters Kluwer, 2011. 288.

<sup>66</sup> MCLA §750.50(8)(f).

legislative initiatives that show a trend towards providing for farm animal welfare that may foreshadow a nationwide change.

Florida took the first significant step towards increasing freedom of movement for agricultural animals. In 2002, a legislative initiative amended the state constitution making it “unlawful for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely.”<sup>67</sup> “Turn around freely” – is defined as “turning around without having to touch any side of the pig’s enclosure.”<sup>68</sup> The law makes exemptions for medical care and for the seven days leading up to birth.<sup>69</sup> Failure to comply with this provision is a first degree misdemeanor, punishable by up to one year in prison, and/or a fine up to \$5000.<sup>70</sup> While symbolically significant, the passage of the Florida initiative is somewhat undermined by its application to a relatively small pig industry with a breeding inventory of only 5,406 pigs compared, for example, to the 1,086,195 pigs being bred in Iowa, the largest pig producing state.<sup>71</sup> Notably, Iowa has no welfare law similar to Florida and further exempts agricultural animals from its anti-cruelty law.<sup>72</sup>

In 2006, four years after the Florida initiative passed, Arizona voters passed their own legislative initiative called the “Humane Treatment of Farm Animals Act” which took effect at the end of 2012.<sup>73</sup> Like the Florida initiative, the Arizona initiative makes it a

---

<sup>67</sup> Fl. Const. art X, § 21(a).

<sup>68</sup> Id. § 21(c)(2).

<sup>69</sup> Id. §§ 21(b)(1), (2).

<sup>70</sup> Id. § 21(d).

<sup>71</sup> National Agricultural Statistics Service 2007, available at <http://151.121.3.59/results/CA466495-196F-312C-AAB1-2E4DA6BBD499> (last visited Nov. 25, 2012).

<sup>72</sup> I.C.A. § 717.1.

<sup>73</sup> *General Election Results: Proposition 204*, Arizona Secretary of State’s Office, 2006, available at <http://www.azsos.gov/results/2006/general/BM204.htm> (last visited Nov. 25, 2012).



criminal offense to tether or confine a pig in a way that prevents it from lying down and fully extending its limbs or turning around freely.<sup>74</sup> However, Arizona goes further than Florida's protection of pigs and also extends this protection to calves raised for veal and prohibits the housing of calves in individual stalls.<sup>75</sup> In addition to the exceptions for medical treatment and for the seven days before birth, Arizona provides exceptions for transportation, exhibitions, slaughter, and research.<sup>76</sup> The penalty for noncompliance includes up to six months in prison, fines up to \$2,500 per individual, and \$20,000 per organization.<sup>77</sup> Again, this victory is dampened by a small inventory of only 16,093 pigs but is a notable accomplishment for the 619,234 calves in Arizona's cattle inventory.<sup>78</sup> After the voter sponsored ballot initiatives in Florida and Arizona, the next development came from the legislators in Oregon.

On June 14, 2007, Oregon's legislature created a law to directly address farm animal confinement.<sup>79</sup> The law applies only to pregnant pigs and prohibits confining a pregnant pig in a manner that prevents her from turning freely, lying down, or fully extending her limbs.<sup>80</sup> The law contains exemptions for medical care and for caging starting seven days before the anticipated day of birth. Oregon also includes the same exceptions as Arizona for transport, exhibition, slaughter, and research.<sup>81</sup> Unlike the Florida and Arizona laws that do not have a specific time limit, the Oregon law gives

---

<sup>74</sup> Az. Rev. Stat. Ann §§ 13-2910.01(a)(1)-(2) (2009).

<sup>75</sup> Id. § 13-2910.07(D)(2).

<sup>76</sup> Id. §§ 13-2910.07(B)(1)-(4).

<sup>77</sup> Id. §§ 13-802(A).

<sup>78</sup> National Agricultural Statistics Service 2007 available at <http://151.121.3.59/results/8E7C3D14-BDCF-3CEB-BB6F-FCB7599B58ED> (last visited Nov. 25, 2012). Again, use *supra* rather than repeating full city.

<sup>79</sup> S.B. 694, 2007 Leg., Reg. Sess. (Or. 2003) (introduced Feb. 7, 2007).

<sup>80</sup> Or. Rev. Stat. §§ 600.150(2).

<sup>81</sup> Id. §§ 600.150(3)(a)-(f).

certainty to farmers as to what constitutes legal confinement. The law specifies that such confinement shall not be for more than 12 hours in a 24-hour period.<sup>82</sup>

In May, 2008, less than one year after Oregon passed its bill, Colorado's legislature passed its own law for farm animal confinement. Effective January 1, 2012, Colorado requires minimum standards for freedom of movement for veal calf. The standards require that a calf must be able to stand, lie down, and turn around without touching the sides of its enclosure.<sup>83</sup> Effective January 1, 2018, a pregnant sow must have the same freedom of movement until twelve days before the sow is expected to give birth; at such time, the sow may be placed in a farrowing unit [what is this?] at the farmer's discretion.<sup>84</sup> In exchange for the bill's passage through both the state assembly and the senate *without* modification,<sup>85</sup> the Humane Society of the United States (HSUS) withdrew an initiative proposing the phase-out of cages for battery hens.<sup>86</sup> Because of its apparent strong-arm power to get the Colorado bill passed without modification (was that power based upon its threatening to try to get a public initiative passed?0, the HSUS may ultimately play a pivotal role in developing a solution for confinement conditions in CAFOs, at least in states that allow initiatives and referendums.

Evidence of the HSUS's full power came six months and \$4.1 million in contributions later<sup>87</sup> when California passed Proposition 2. "No question about it: Proposition 2 was a

---

<sup>82</sup> *Id.* §§ 600.150(2).

<sup>83</sup> Colo. Rev. Stat. § 35-50.5-103 (2009).

<sup>84</sup> *Id.*

<sup>85</sup> Colorado General Assembly, Summarized Bill History, S.B. 08-201.

<sup>86</sup> *Letter from Holly Tarry and Lisa Shapiro to Kirk Mlinek*, Dir. Colo. Leg. Council Staff, Jan. 25, 2008, available at [http://www.leg.state.co.us/lcs/initrefr/0708InitRefr.nsf/dac421cf79ad243487256def0067clde/ed149f840eb2293c872573db00768f79/\\$FILE/2007-2008%20%2364.pdf](http://www.leg.state.co.us/lcs/initrefr/0708InitRefr.nsf/dac421cf79ad243487256def0067clde/ed149f840eb2293c872573db00768f79/$FILE/2007-2008%20%2364.pdf) (last visited Nov. 27, 2012).

<sup>87</sup> *California Initiative Spending at a Glance*, S.F. Chronicle, Feb. 3, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/02/03/state/n180650S85.DTL> (last visited Nov. 27, 2012).

major wake-up call to the entire U.S. egg industry," said Chad Gregory, senior vice president of United Egg Producers, a trade organization that represents 95% the nation's egg farmers.<sup>88,89</sup> "The Humane Society could go into a state and say, 'You either work with us legislatively or we're going to do a ballot initiative in your state,'" Gregory said.

Proposition 2 prohibits the confinement of farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs.<sup>90</sup> Not only is this requirement applicable to pregnant pigs and veal calves, but for the first time protection extends to any egg-laying chicken, turkey, duck, goose or guinea fowl kept on a farm.<sup>91</sup> In 2008, the egg industry predicted that the new standards would increase their cost of production by 20% and the cost to consumers by 25%.<sup>92</sup> [these are a lot different predictions than the ones cited earlier!!!] The cost could potentially be more because Proposition 2 does not specifically describe what counts as compliance. For this reason, Proposition 2 was challenged as imposing unconstitutionally vague standards that would force farmers to guess how much space they must provide for the chickens.<sup>93</sup> However, this challenge was dismissed with prejudice as being without merit because the court found that a reasonable person would understand what the law

---

<sup>88</sup> Pfeifer, Stuart . *California's Egg-farm Law Prompts a Push for National Standards*, Los Angeles Times, May 27, 2012, available at, <http://articles.latimes.com/2012/may/27/business/la-fi-egg-farms-20120527> (last visited Nov. 27, 2012).

<sup>89</sup> *History and Background*, United Egg Producers, available at <http://www.unitedegg.org/history/default.cfm> (last visited Nov. 27, 2012).

<sup>90</sup> Cal. Health & Safety Code § 25990.

<sup>91</sup> *Id.* § 25991(b)-(c).

<sup>92</sup> Daniel Sumner, *Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in California*, University of California Agricultural Issues Center, July 2008, available at <http://aic.ucdavis.edu/publications/eggs/egginitiative.pdf> (last visited Nov. 27, 2012).

<sup>93</sup> *Cramer v. Brown*, No. 2:12CV03130, slip op. at 53 (C.D. Cal. Dec. 12, 2012).

required.<sup>94</sup> Having survived a constitutional challenge, Proposition 2 in turn threatened the survival of California's egg producers because it left them unprotected from out-of-state competition. Economists at the University of California, Davis, predicted that, if left unprotected, the California egg industry of twenty million hens would be destroyed by the time the law comes into effect on January 1, 2015.<sup>95</sup>

However, on September 20, 2011, California enacted a bill requiring all eggs imported for sale in California to comply with these new standards.<sup>96</sup> Not only does this prevent the egg producers from being priced out of the market but, because California imports half of the eggs it consumes, egg producers in other states will have to comply with the freedom of movement standards imposed by Proposition 2 if they want to export to California.<sup>97</sup> Because California is by far the most populated state, its laws have the potential to force nation-wide action and cooperation.<sup>98</sup> This is because producers that rely on the California market will have to abide by California law in order to remain in business. However, if the HSUS continues to succeed with similar initiatives in other states, these producers would be faced with the prospect of needing to implement parallel production systems for each state they ship to.<sup>99</sup>

Acknowledging that a state-by state-fragmentation would cause major market disruption and impose substantial costs, the United Egg Producers agreed to partner

---

<sup>94</sup> *Id.*

<sup>95</sup> See Sumner, *Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in California*, Jul. 2008.

<sup>96</sup> CA Assem. B. Hist., 2011-2012 A.B. 1023, Cal. Leg. Hist., 2011-2012 A.B. 1023; Cal. Health & Safety Code § 25996.

<sup>97</sup> *Economic Impacts of Converting To Enriched Cage Systems*, Agralytica, June 1, 2012, available at <http://www.eggbill.com/images/Economic%20Impact%20of%20Egg%20Legislation%20June%202012.pdf> (last visited Nov 28, 2012).

<sup>98</sup> *Annual Estimates for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2012*, U.S. Census Bureau, available at <https://www.census.gov/popest/data/state/totals/2012/tables/NST-EST2012-01.xls> (last visited Jan. 6, 2013).

<sup>99</sup> *Id.*

with the HSUS in July 2011 to jointly push for federal legislation to regulate how eggs are produced.<sup>100</sup> For years these two groups have been adversaries. Yet with their agreement to cooperate, the egg industry has shown that, at least where products are shipped across state lines, the uncertainty caused by a patchwork of state laws poses a greater threat than the cost of providing higher welfare standards for the animals.

The most valuable tool that animal welfare groups may have is the fragmentation of state laws they create with each successful state initiative. Because these initiatives also apply to veal calves and pregnant pigs, the threat of fragmentation extends to both the cattle and pig industries. This possibility is not unrealistic. Since the enactment of Proposition 2 in California, Maine's legislature enacted a statute covering pigs and calves that is similar to Oregon's but allowed local jurisdictions to provide additional protections; this creates the possibility for fragmentation not just *between* states, but *within* them as well.<sup>101</sup> In 2009, Michigan's legislature enacted a statute similar to California's initiative but specifying that each hen must have one square foot of floor space, a standard that may or may not meet California's requirement.<sup>102</sup> Finally, in June 2012, Rhode Island enacted the most recent confinement regulation; it prohibits tethering or confining any pig or calf in a manner that prevents such animal from turning around freely, lying down, standing up, or fully extending its limbs.<sup>103</sup> In addition to the exemptions provided by Arizona, Rhode Island allows the confinement of cattle being trained for exhibition; routine confinement in dairy and beef housing; and confinement

---

<sup>100</sup> Joel Greene, *Table Egg Production and Hen Welfare: The UEP-HSUS Agreement and H.R. 3798*, Congressional Research Service, available at <http://www.fas.org/sgp/crs/misc/R42534.pdf> (last visited Nov. 28, 2012).

<sup>101</sup> Me. Rev. Stat. Ann. tit. 7, § 4020(4); Me. Rev. Stat. Ann. tit. 17, § 1039(4).

<sup>102</sup> Mi. H.B. 5127, 2009. available at [www.legislature.mi.gov/documents/2009-2010/billenrolled/House/pdf/2009-hNB-5127.pdf](http://www.legislature.mi.gov/documents/2009-2010/billenrolled/House/pdf/2009-hNB-5127.pdf) (last visited Nov. 27, 2012).

<sup>103</sup> Ri Stat. § 4-1.1-3. Section 4 of what??

up to six hours in a twenty-four hour period unless modified by a licensed veterinarian.<sup>104</sup> Ohio has a similar proposed law that would ban gestation and veal crates and halt permits for battery cages in new constructions.<sup>105</sup> In addition, Connecticut, Illinois, Massachusetts, and New York have proposed bills prohibiting similar confinement practices for chicken, pregnant pigs, and veal calves.<sup>106</sup>

In total, Florida, Arizona, Oregon, Colorado, California, Maine, Michigan, and Rhode Island have all enacted laws extending varying degrees of protection to sows and veal calves. California and Michigan have also extended this protection to battery hens and legislation is pending in four more states that would protect all three types of animals. With each initiative differing slightly in terms of exceptions, farmers in the remaining states may suddenly find that they can no longer sell their products in states such as California, which extend protection to all imported animals. Worse still, since these welfare laws do not have a mens rea element and violations are often criminal offenses, a farmer without notice may end up in prison for continuing to sell his products after the effective date of such a law. California has not yet extended the requirements of Proposition 2 to importers of beef and pork, but if it does, the cattle and swine industries, like the egg industry, may soon have to seek to negotiate with the HSUS to try to achieve uniformity and stability in exchange for reform.

---

<sup>104</sup> 2011 Rhode Island Senate Bill No. 2191, Rhode Island, 2012 Legislative Session.

<sup>105</sup> *A Milestone for Ohio Farm Animals: Ohio Livestock Care Standards Board Finalizes Welfare Standards*, HSUS, available at [http://www.humanesociety.org/news/press\\_releases/2011/04/ohio\\_livestock\\_board\\_042011.html](http://www.humanesociety.org/news/press_releases/2011/04/ohio_livestock_board_042011.html) (last visited Nov. 28, 2012).

<sup>106</sup> Elizabeth R. Springsteen, *A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject*, 14 Drake J. Agric. L. 437, 463 (2009).

While the HSUS has been the driving force behind these confinement initiatives, other animal welfare groups have helped to lay the foundation for making change possible. These groups are co-participants in lobbying, enforcement, and raising public awareness, and in acquiring signatures and support for legal changes. Since 1951, the Animal Welfare Institute (AWI), has worked toward the adoption of federal animal welfare laws, including the Animal Welfare Act and Humane Slaughter Act.<sup>107</sup> While AWI is not involved in the current HSUS-UEP partnership due to its belief that the bill fails to offer enough protection,<sup>108</sup> AWI's contact network, lobbying experience, and past successes at the federal level make it a likely participant in future nation-wide reform. Additionally, the HSUS relies on state groups like the Animal Protection and Rescue League (APRL), which was instrumental in gathering signatures in support of Proposition 2<sup>109</sup>, in order to educate the public and gather support for its initiatives. Finally, after the passage of the initiatives, groups like PETA<sup>110</sup> and the Animal Legal Defense Fund (ALDF)<sup>111</sup> take on an important role in actively looking for violations and bringing suits against violators in order to encourage compliance.

As a result of the synergistic efforts of these animal welfare groups, the recent legislative changes have been a significant start, but remain mere steps towards a final solution to the problem. Before proposing a comprehensive solution, much can be

---

<sup>107</sup> *Legislation, Government Affairs*, Animal Welfare Institute, 2013, available at <http://awionline.org/content/legislation> (last visited Jan 8, 2013).

<sup>108</sup> *Egg Products Inspection Act Amendments of 2012*, Legislation, Government Affairs, Animal Welfare Institute, 2013, available at <http://awionline.org/content/egg-products-inspection-act-amendments-2012legislation> (last visited Jan 8, 2013).

<sup>109</sup> *End Factory Farm Confinement*, Campaigns, APRL, available at <http://www.aprl.org/campaigns.html> (last visited Jan. 8, 2013).

<sup>110</sup> *About PETA*, People for the Ethical Treatment of Animals, available at <http://www.peta.org/about/default.aspx> (last visited Jan. 9, 2013).

<sup>111</sup> *About Us*, Animal Legal Defense Fund, available at <http://aldf.org/section.php?id=3> (last visited Jan. 9, 2013).

learned by looking internationally. While many countries leave CAFOs largely unregulated, a rising number of countries have taken the initiative to reform the CAFO industry.

### Part III: A Proposed Solution for Improving CAFO Living Conditions through a Combination of Legislation and Public Awareness.

In examining the progress made in foreign jurisdictions, it seems increasingly unlikely that there will be a single legislative solution to providing better living conditions for America's farm animals. Instead, the solution may have to be found in a multi-prong approach similar to that employed by the European Union (EU).

The first prong employs all member state legislation as a tool to prohibit unacceptable welfare standards for EU's farm animals. The second prong takes an incentives-based approach by using public awareness to create an incentive for CAFOs to voluntarily meet or exceed the minimum standards imposed by legislation.

In the European setting, the catalyst for setting agricultural animal welfare standards was the 1976 European Convention for the Protection of Animals Kept for Farming Purposes.<sup>112</sup> With the exception of Greenland,<sup>113</sup> all members of the EU had to adopt provisions consistent with the convention to ensure that owners or keepers of animals look after the welfare of their animals and ensure that they are not caused any

---

<sup>112</sup> *European Convention for the Protection of Animals Kept for Farming Purposes*, Mar. 10, 1976, Europ. T.S. No. 87 available at [http://europa.eu/legislation\\_summaries/food\\_safety/animal\\_welfare/l12070\\_en.htm](http://europa.eu/legislation_summaries/food_safety/animal_welfare/l12070_en.htm) (last visited Nov. 28, 2012).

<sup>113</sup> *Council Decision of 19 June 1978 Concerning the Conclusion of the European Convention for the Protection of Animals Kept for Farming Purpose*, Council of the European Communities, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31978D0923:EN:HTML> (last visited Nov. 28, 2012).



unnecessary pain, suffering or injury.<sup>114</sup> This required member states to implement laws to ensure adequate freedom of movement based on an animal's physiological and ethological needs.<sup>115</sup>

The Convention created a Standing Committee to issue directives specifying minimum standards of welfare that member states had to implement within six months.<sup>116</sup> These directives are akin to the federal law's supremacy to state law in the United States, except that if more than two members refused to implement the directive then the directive would be void.<sup>117</sup>

After a number of proposals and revisions that delayed the process, the first of these directives was issued in 1998.<sup>118</sup> It set out minimum standards with respect to freedom of movement requirements, mandatory inspections, and prohibited the placement of animals in perpetual light or darkness.<sup>119</sup> Like the various initiatives and laws that have been enacted in the United States, the directive was purposely ambiguous in setting minimum standards. For example, the directive requires that "[t]he freedom of movement of an animal, having regard to its species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering or injury."<sup>120</sup> In doing this, the directive initially left it up to the member countries to determine the specific standards they would use.

---

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at Art. 4.

<sup>116</sup> *Id.* at Art. 8

<sup>117</sup> *Id.* at Art. 9

<sup>118</sup> *Instruments Cited, Council Directive 98/58/EC*, Eur-Lex, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0058:EN:NOT>

<sup>119</sup> Council Directive 98/58/EC.

<sup>120</sup> *Id.*

However, in subsequent years, the Committee issued more specific directives for laying hens, calves, and pigs, thus establishing specific minimum standards for all EU members. This time the directives specified, among other things, exact minimum cage dimensions based on the type and weight of the animal.<sup>121</sup> For example, the directive now specifies that a pig weighing less than 10kg must have at least 1 m<sup>2</sup> of floor space and a calf weighing less than 150kg must have 1.5m<sup>2</sup> of floor space.<sup>122</sup>

The increase in specificity foreshadows the need for a similar change to the initiatives and bills that have already been enacted in the US. Importantly, such minimum cage dimensions, based on the type and weight of the animal, must be a part of any federal law that may be adopted. The need for specificity has already been evidenced by the challenge to Proposition 2 in California for vagueness. Even though the challenge proved unsuccessful, such non-specific standards create practical implementation problems. But as EU has shown, perhaps the “ambiguity” provides some advantages??

Before the United States can implement a federal law that mimics the EU directives, it is important to consider the lessons the EU learned in its implementation and consider how we can learn from their mistakes.<sup>123</sup> In 2006, the Commission evaluated the effectiveness of the 1998 directive and found that the main problems were due to inconsistent levels of inspection, record keeping, and farmer compliance.<sup>124</sup> In response, the Commission recommended better training for inspectors and

---

<sup>121</sup> Council Directive 2008/119/EC.

<sup>122</sup> *Id.*; Council Directive 2008/120/EC.

<sup>123</sup> *Report from the Commission to the Council on the Experience Acquired on the Implementation of Directive 98/58/EC on the Protection of Animals Kept for Farming Purposes*, Lex-Europa, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0838:FIN:EN:HTML> (last visited Nov. 29, 2012).

<sup>124</sup> *Id.*

standardized methods of inspection and data collection through the use of detailed checklists. To combat the problem of inconsistent levels of compliance, the Commission now conducts its own random inspections of farming facilities to verify implementation of the standards by member states. Additionally, the Commission found higher rates of compliance when farmer subsidies were contingent on compliance with animal welfare requirements.<sup>125</sup>

Learning from the lessons of the EU, the United States should preemptively address the implementation and compliance issues in the legislative portion of the solution.

First, welfare standards must be specific enough to provide the industry with certainty as to what constitutes and does not constitute compliance.

Second, standards must be enforced universally across the states. As demonstrated by the UEP-HSUS partnership, the agricultural industry values uniformity and is willing to adopt welfare standards in exchange for a uniform standard across state lines. With both sides pushing for the same legislation, a uniform federal standard is realistically feasible. GOOD

To ensure uniform, unbiased and consistent enforcement of welfare standards, the United States should have well trained independent federal inspectors examine the nation's farms pursuant to a standard form checklist. The federal government already has the infrastructure to allow for inspection, certification, and reporting of farm compliance with health standards.<sup>126</sup> To avoid the cost of creating a new system from

---

<sup>125</sup> *Id.*

<sup>126</sup> See generally *About FSIS*, Food Safety and Inspection Service, Dec. 21, 2012, available at [http://www.fsis.usda.gov/About\\_FSIS/index.asp](http://www.fsis.usda.gov/About_FSIS/index.asp) (last visited Jan. 7, 2013). This could be more fully discussed.

scratch, the current infrastructure for health inspections can be expanded to include compliance with welfare standards. The results of the inspections should be quantified so that farms can be ranked according to their level of welfare and the results should be published online for public viewing. Such publication would also serve to further the educational prong of the solution while assisting in monitoring compliance.

To ease the economic burden of providing higher welfare standards, America should also adopt the Commission's recommendation of encouraging compliance by making farm subsidies contingent on passing welfare standards. This would give farmers an incentive to adopt humane practices by artificially increasing the profits of certified farmers. The government could also offer protection to farmers that are certified as humane from foreign competitors.

When it comes to protecting humane CAFOs from foreign competition, there are three options. We can place the increased cost of production on foreign companies, on US taxpayers, or the burden can be shared.

The World Trade Organization (WTO) allows for member nations, such as the United States, to impose restrictions on trade for the health and safety of its animals.<sup>127</sup> While a complete ban would unduly restrict trade, the US could impose tariffs on meat products that do not meet national welfare standards without violating its agreement with the WTO.<sup>128</sup> Not only would this allow US producers to remain competitive, but it would also increase tax revenue and create an incentive for foreign companies to adopt

---

<sup>127</sup> *The WTO Can Support the Environment and Health, Ten Things the WTO Can Do*, World Trade Organization, 2013, available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/10thi\\_e/10thi08\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi08_e.htm) (last visited Jan. 7, 2013).

<sup>128</sup> *Id.*

humane rearing practices in order to avoid the tariff. This method would effectively shift the cost of humane rearing overseas. However, this may cause foreign countries to retaliate with their own tariffs on US exports and place strain on our already delicate economy. Because of the risk of provoking a tariff war, shifting costs overseas has practical limitations. GOOD

Alternatively, the federal government could give subsidies or tax benefits to certified facilities, as is done in the EU. This can generate tax savings incentives for farms that are certified humane to offset the estimated increased production cost of approximately 12%.<sup>129</sup> In this way, the additional cost of production could be placed on the US taxpayer. This method would also eliminate the risk of starvation because households at the poverty level, which have low to no tax burdens, will not have to share in the increased cost of production.

A middle-ground approach may be the best solution. A small tariff should be placed on non-compliant meat product imports and the revenue used to supplement tax payer subsidies to certified farmers. In this way, foreign importers and US taxpayers would share the increased costs of production while keeping retail prices stable. While this may be a solution to the economic feasibility of humane CAFOs, there are political barriers that may make this solution a dream rather than a realistic answer.

The problem with using legislation to implement change in the US is that there is inertia against change in both the federal and state legislatures because of the agricultural lobby. The agricultural industry has made over sixty three million dollars in

---

<sup>129</sup>*Economic Impacts of Converting To Enriched Cage Systems*, Agralytica, June 1, 2012, available at <http://www.eggbill.com/images/Economic%20Impact%20of%20Egg%20Legislation%20June%202012.pdf> (last visited Nov 28, 2012).

political contributions just this year.<sup>130</sup> At this rate, the industry contributes the equivalent of all of HSUS's assets every thirty months.

Despite the accomplishment of the HSUS and its partnership with the UEP, the agricultural lobby appears too strong to accede to a free-range habitat for our farm animals. Even the bill proposed by the HSUS-UEP partnership does not eliminate cages for battery hens. Instead, the proposed new legislation is a compromise between efficiency and the welfare of the birds: it would provide battery hens approximately twice the floor space and areas to perch and scratch, and would require that egg carton labels inform consumers about how the eggs were produced.<sup>131</sup> Thus, if this is a best case scenario, given the political obstacles, the HSUS will only be able to marginally improve farm animal welfare by increasing free movement and natural behavior. In effect, the legislative prong of the solution will only be able to provide a less painful torture for CAFO animals, rather than remove their suffering altogether. The solution to this dilemma, therefore, may rest on the second prong of the EU's approach: increased publicity and better education of the public about the treatment of CAFO animals?.

One of the best ways to influence the industry is to affect its balance sheet. If farms that provide for animal welfare are able to generate higher profits than a traditional CAFO, farmers would take it upon themselves to institute change. The EU uses public awareness campaigns to inform consumers about the problems with CAFOs and encourages consumers to only buy products from farms that are certified as humane.

---

<sup>130</sup> *Interest Groups*, Center for Responsive Politics, available at <http://www.opensecrets.org/industries> (last visited Nov. 29, 2012).

<sup>131</sup> *Egg Industry and Animal Welfare Groups Enthusiastically Support Legislation*, United Egg Producers, available at <http://www.eggbill.com/images/Senate%20Egg%20Bill%20Final%20Press%20Release.pdf> (last visited Nov. 29, 2012).

By shifting consumer preference to food originating from farms that are certified as humane, revenue is effectively shifted from traditional CAFOs to these certified farms. The EU implements this approach through a program called “Freedom Foods,”<sup>132</sup> where food products are allowed to bear a Freedom Foods stamp if they are certified by independent inspectors as a humane production facility.<sup>133</sup> Obtaining a certification from Freedom Foods means farmers must go beyond the minimum standards imposed by the EU commission and meet RSPCA welfare standards which “aim to deliver improved animal welfare above and beyond 'standard' or typical UK production.”<sup>134</sup> To give the certification a tangible effect, Freedom Foods engages in on-going media campaigns to inform consumers of what these labels mean and encourages them to look out for them when making food purchases.

Surveys have shown that programs like Freedom Foods are effective. The Institute of Grocery Distribution (IGD) indicates that twice as many shoppers claimed to have bought higher welfare produce over the past four years, and that 48% of those surveyed said animal welfare is extremely or very important to them when making purchasing decisions.<sup>135</sup> The survey indicates that battery hens are the animals that people are most concerned about, followed by broiler chickens and beef cattle.<sup>136</sup> Thirty-Five percent of chicken and pork buyers say they would be prepared to pay extra for knowing that the farm inspections were conducted by independent experts.

---

<sup>132</sup> *About Freedom Food*, RSPCA, available at [www.freedomfood.co.uk](http://www.freedomfood.co.uk) (last visited Nov. 29, 2012).

<sup>133</sup> *How We Operate*, RSPCA, available at <https://www.rspca.org.uk/freedomfood/aboutus/howweoperate> (last visited Nov. 29, 2012).

<sup>134</sup> *Welfare Standards*, RSPCA, available at <https://www.rspca.org.uk/sciencegroup/farmanimals/standards> (last visited Nov. 29, 2012).

<sup>135</sup> *Impact Report*, RSPCA, 8 (2011), available at [https://www.rspca.org.uk/cmsstg/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobno\\_cache=false&blobtable=MungoBlobs&blobwhere=1232729832688&ssbinary=true](https://www.rspca.org.uk/cmsstg/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobno_cache=false&blobtable=MungoBlobs&blobwhere=1232729832688&ssbinary=true) (last visited Nov. 29, 2012).

<sup>136</sup> *Id.* at 9.

The survey also disclosed the impact of the publicity campaign on the industry. The number of animals certified as Freedom Food animals rose from approximately 49 million in 2006, to over 75 million at the end of 2011, an increase of 26 million.<sup>137</sup> The majority of the increase was due to chickens. The number of Freedom Foods certified broiler chickens increased 60% from 25 million to approximately 40 million chickens; laying hens increased 53% from 11.6 million to 17.8 million; and the number of pigs grew 84% from 1.4 million to 2.7 million.<sup>138</sup>

The United States may be ready to undergo a similarly successful campaign. Like the EU, the United States has large animal welfare organizations with enough funds to conduct awareness campaigns and provide leadership. Further, the fact that confinement initiatives have passed in eight states is evidence that the public is receptive to the idea of improving the welfare of our farm animals. Gene Gregory, president of UEP, said “in polling, consumers have told us, by an overwhelming margin of 12-to-1, that they prefer their eggs to be produced in the enriched colony cage system because it allows the hens nearly double the amount of space, as well as opportunities to perform more of their natural behaviors like perching and nesting.”<sup>139</sup>

Adding to the market pressure to reform, some of the world’s largest corporate consumers of meat products are already pledging to eliminate suppliers that raise their animals by inhumane means. Some of the big name companies that have already pledged to eliminate gestation crates from their supply line include McDonald’s, Costco,

---

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Changes Proposed in Federal Legislation May only Increase Egg Costs Two Center Per Dozen over 18 Years*, United Egg Producers, June 7, 2012, available at <http://farmpolicy.com/wp-content/uploads/2012/06/enriched-cages-economic-study-final-news-release.pdf> (last visited Nov. 28 2012).



Sysco, and Unilever.<sup>140</sup> The farms that supply these corporations thus have an incentive to adopt humane practices to prevent losing major customers.

If the advocates for better animal treatment in the United States conducted public awareness campaigns to educate consumers about the conditions in CAFOs and created a standardized way of certifying farms as compliant with RESPA-like rules, we could potentially achieve successes similar to Freedom Foods. The government should also play a role in educating the public by making the results of welfare compliance inspections publicly available and by allowing the farmers to use their rankings for marketing purposes. Combine this with an increasing list of corporate customers making pledges to eliminate inhumane suppliers, and soon market conditions could exist that render an efficient but inhumane farm economically infeasible. In effect, the legislative prong of the solution would set the floor while the publicity prong worked to create incentives for the industry to reform beyond what standards require in order to meet evolving consumer preferences.

### Conclusion

There is no doubt that reform will take time and even more persistence, but there is no quick and easy method of providing for the welfare of farming animals. It is also clear that the current laws are inadequate to protect CAFO animals because Federal laws are too narrowly constructed to provide protection. The Humane Methods of Livestock Slaughter Act and the Twenty-Eight Hour Law only apply to specific time periods of production: slaughter and transport. Neither law provides minimum living standards for

---

<sup>140</sup>*Timeline of Major Farm Animal Protection Advancements*, HSUS, available at [http://www.humanesociety.org/issues/confinement\\_farm/timelines/timeline\\_farm\\_animal\\_protection.html](http://www.humanesociety.org/issues/confinement_farm/timelines/timeline_farm_animal_protection.html) (last visited Nov. 28 2012).

farm animals. State anti-cruelty laws are equally inadequate, as farm animals are exempt from protection. The success of recent initiatives and bills requiring animals to be able to stand, lie down, and turn around, however, manifest a public desire to reform CAFOs. While the new laws do not guarantee animal welfare and have only been passed in eight states, they have had an unintended side effect: farms that sell across state lines are faced with the prospect of having to create different production methods to meet the specific requirements of each state. This prospect of fragmentation gives the CAFO industry an incentive to yield to a uniform national minimum standard, analogous to standards already developed in the EU, which sets out specific cage dimensions. However, to achieve genuine welfare, the industry must want to reform itself and achieve more than the minimum welfare standard. Drawing from the success of public awareness campaigns in the EU, the United States can create an inspection system to incentivize CAFO farms to meet higher standards in order to win over conscientious consumers. Faced also with the pledge of major corporate customers to eliminate products of inhumane practices from their supply lines, the CAFO farmer will see that it is in his best interest to elevate, rather than denigrate, the standards for humane treatment of animals upon which we depend for our egg and meat products.

Much better than first draft. But see my comment on page 12. Also you do not include much about how forced-feeding (with steroids) and genetic alteration of animals has increased in size--which also occur on CAFO farms. Such practices may also be considered "inhumane" as well as cruel. Also, as noted with first draft, you could have looked a little more thoroughly the at activities of other activist organizations other than simply HSUS. Final Grade: A-