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**THE LEGAL STATUS OF FARM ANIMALS:**

**ORIGINS AND PROGRESS**

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## **Abstract**

Billions of farm animals die each year to feed the American population. During the animal production process, most farm animals undergo mental and physical suffering. A primary reason for the persistence of this institutionalized suffering lies in the legal status of farm animals. While some animal rights activists call for complete animal liberation, this solution is vastly impractical for the present societal climate. To lessen the suffering of farm animals, a new legal framework can be devised. This pragmatic, welfare-based framework will retain farm animals' status as property, while imposing stricter regulations on the personal space requirements and rearing methods of the animals in question. This framework and its associated regulations act as a compromise between ethical valuations and social and economic considerations.

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## **Introduction**

To complete this research, I work toward three primary objectives. First, I seek to illuminate the magnitude of farm animal suffering in the United States. Second, I seek to explore the legal and social reasons behind the persistence of this suffering. Third, I seek to propose a new legal framework which would lessen this suffering.

Most consumers undoubtedly realize that animals are killed to feed humans. However, the majority of consumers may lack knowledge of the details behind the process. The abusive conditions to which these animals are exposed do not correlate with the quaint, wholesome illustrations often emblazoned onto packaged animal products. I seek to quantify the suffering generated by these conditions in order to paint an accurate landscape of the current legal status of farm animals.

Humans have not always dominated farm animals as they currently do in modern production settings. In addition, the present human-animal relationship is not the inherently correct human-animal relationship. This present relationship, with humans as owners and animals as property, has developed over time and has been influenced by a myriad of legal, social, and economic factors. I will explore the development of this relationship and the resultant factory farming system.

Finally, further development of this relationship is possible. That is, with certain federal regulations, producers and consumers of animal products can rethink the relationships between humans and animals. I propose that a new legal framework can help

to ensure the physical and mental welfare of farm animals. This framework can reduce the overall magnitude of animal suffering with minimal effects on consumer demands and public welfare.

## Methods

This thesis is a work of secondary research. To complete this project, I am employing the method of literature reviews of primary and secondary sources. I am distilling these sources in order to assemble an argument. Examples of sources include federal and state government documents, agricultural industry reports and handbooks, data compiled by nonprofit organizations, articles from academic journals of philosophy, law, and the environment, and a variety of additional sources.

Many parties involved in the animal welfare debate hold strongly polarized views and biases. For example, some agribusiness companies tend to downplay animal suffering, while some animal activism groups tend to exaggerate such suffering. Nonetheless, I have worked to include sources from the divergent perspectives of government, agribusiness, and animal activist groups.

As the researcher, I possess my own biases. Years ago, I identified as a vegan and as an animal rights activist. While I am now omnivorous and far less radical, I am still critical of the factory farming system. I believe that federal regulators should reform the factory farming system, and I seek to present a rational argument for reasonable positive change in the realm of animal welfare in the United States.

## Significance

This research is relevant to anyone who produces, purchases, or consumes animal products. Since only one percent of Americans identify as strictly vegan, the vast majority of Americans do consume these products (Associated Press, 2011). This topic is of exceptional importance to individuals and companies involved in the production of animal products. Animal agriculture, encompassing the production of dairy, beef cattle, sheep, hogs, turkeys, broiler chickens, eggs, and aquaculture, contributes a variety of positive economic impacts to the United States. In 2009, animal agriculture provided 1,818,843 jobs and contributed \$252 billion in total output to the economy. It generated \$41 billion in household incomes, and it paid \$10 billion in income taxes and \$6 billion in property taxes (Promar International, 2010). Animal agriculture comprises a substantial portion of the United States economy. Thus, the effects of any alteration to the legal status of farm animals will be widespread, and the issue must be dealt with prudently.

These enormous streams of revenues are generated by the enormous streams of animals raised and killed in the agricultural industry. In 2008, in the United States alone, the whole of slaughtered animals included 2,555,000 sheep, 24,149,000 ducks, 35,321,500 cattle, 116,452,000 pigs, 271,245,000 turkeys, and 9,075,261,000 chickens (USDA, 2009). To put these figures into perspective, approximately 1.12 cows, 3.68 pigs, and 287 chickens are killed *every second*. These figures do not include animals slaughtered on farms or postmortem condemnations, meaning deceased animals deemed unfit for human

consumption. Slaughter counts skyrocket upon the inclusion of fish and other seafood raised via aquaculture. However, for the purposes of this thesis, I focus solely on terrestrial farm animals, specifically cattle, pigs, and chickens. This focus is remarkably broad as is, so I leave further discussion to future investigators.

As a result of the staggering numbers of animals slaughtered each year, and each second, not to mention the cultural significance of animal product consumption, this topic is of the utmost importance. Any change to the status quo will affect nearly every person residing in the United States. Billions of dollars and billions of lives are at stake.



## **Point of Entry**

In the struggle to reduce animal suffering, many points of entry exist. For example, some reformers look to companies and industries themselves for voluntary improvements, which can boost a company's public image (Leslie, 2007). Others look to state laws and propositions, as evidenced in progressive states such as California (Linnekin, 2010). Others hope to inspire populist vegetarian, vegan, locavore, or free-range movements (Pluhar, 2010). A variety of avenues exist, but, in my research, I look to federal laws which denote the legal standing and rights of farm animals.

I am of the mind that any tangible, widespread progress toward reducing animal suffering will occur at the federal, legal level. Seeking to change the values of millions of people is impractical and unlikely, and consumers face limited incentives to pay higher costs for more "ethical" products. Under the status quo, ethical products generally cost more money than standard products (Leslie, 2007). Due to this status quo, only consumers with strong moral convictions or deep pockets can afford to pay the extra price. However, widespread institutional change, i.e. stricter regulations, would result in the prices of most animal products being raised to appropriately, drastically higher levels. At present, even products which incorporate only minor improvements to farm animal welfare, such as free-range eggs, cost roughly 60 percent more than battery-cage eggs (Ibrahim, 2007). Despite this increase in price, cage-free egg production still involves heavy use of antibiotics and the cramming of tens of thousands of birds into a single room. Furthermore, the majority

of consumers are unwilling even to pay extra for these products which boast marginal ethical improvements. Animal products which incorporated even more significant animal welfare improvements would cost even more money and dissuade even more consumers from purchasing them (Ibrahim, 2007). In general, customers are too dissuaded by the cost factor to make ethical purchasing decisions. However, with tighter welfare regulations, the federal government could bypass its citizenry's cost-driven consumer choices and make appropriate ethical choices on behalf of consumers.

Therefore, the goal of this work is to propose a new legal framework which incorporates specific rights and improved living conditions for farm animals. By focusing on institutional changes rather than individual changes, I seek to create a possible future which balances the rights of farm animals with the practical demands of consumers. Any solution must satisfy multiple parties with multiple interests. In short, a tradeoff must be made: lower welfare and lower costs vs. higher welfare and higher costs.

Left to their own purchasing habits, it is unlikely that consumers will choose higher animal welfare and higher costs for animal products. Federal government intervention is necessary for these ethical decisions to be made on a national level. Although this is a contentious perspective, I do believe that such powers and responsibilities fall under the jurisdiction of a political state. A political state should certainly serve its citizenry first, but it must not overlook its noncitizen, nonhuman residents, e.g. farm animals. This view differs dramatically from that of more radical animal rights activists, who often believe that animals are equals, rather than subordinates (Francione, 2007). However, my view is more

progressive than the federal status quo, which seems to suggest that human interests are paramount and farm animal interests are negligible (Cowan, 2011).

Both current and prospective federal animal welfare regulations are indeed supported by the United States Constitution. Paired together, the Commerce Clause and the Necessary and Proper Clause pave the way for such regulations (Barnett, 2001; Hamilton, 1788). Explanations of these clauses and their ramifications, as well as current federal welfare regulations, are explored later in this thesis.

## **Animal Agricultural Trends in the United States**

The majority of animal rights literature has arisen as a response to the spread of factory farming in the mid twentieth century. Prior to this time, meat and other animal products enjoyed higher prices and lower availabilities. Only the wealthy could afford to eat meat daily, and only those people with refrigeration technology could purchase large quantities of meat and other animal products. However, American culture changed rapidly in the years following World War II, as more people acquired the funds to increase their meat intake. In the post-war boom, the middle class expanded and fast food restaurants appeared, thereby increasing the demand for animal products (Ibrahim, 2007). To accommodate this change in demand for meat, producers increased the supply of meat. More meat necessitated more animals, animals which grew more quickly, or both, as the case proved to be.

Owning more animals typically led to owning larger, more efficient farms, à la economies of scale. According to microeconomic thought, as a facility's size and level of output increase, the average cost of production will decrease. By applying economies of scale to animal agriculture, farmers gave way to agribusiness owners, and traditional farms gave way to factory farms, expansive corporate farming operations which are described later in this thesis (Ibrahim, 2007).

Along with larger farms came technological advances to create larger animals in a shorter amount of time. New technologies included modern genetics to breed more

productive animals, Concentrated Animal Feed Operations (CAFOs), and protein-dense nutrition to maximize meat, egg, and milk production. In addition, factory farm operators began to administer vaccines, antibiotics, and vitamin D to prevent diseases which occur from CAFO confinement and unnatural, grain-based diets, particularly among cattle (Matheny, 2007).

Before this shift to factory farming, with smaller operations, farmers possessed more of a stake in the wellbeing each individual animal that they owned. However, increased numbers and increased mechanization have diminished the importance of maintaining healthy, well-fed animals. With new technology, factory farmers can raise 100,000 chickens in a single building, a move which would have been unthinkable in earlier times. The animals can survive long enough to be slaughtered, but they regularly suffer from diseases like mastitis, ascites, liver abscesses, lameness, and uterine prolapse (Matheny, 2007).

The task of treating these animals is the duty of merely 220 veterinarians working on factory farms. Altogether, these approximately 220 individuals are responsible for the care of almost ten billion farm animals (Matheny, 2007). The math is quite telling in this scenario. Producers find it cheaper to accept animal losses from disease and premature death than to prevent those losses through medical care. Some studies suggest that approximately 70 percent of pigs have pneumonia by the time of their slaughter (Ibrahim, 2007). In response to questions of medical care for farm animals, one producer said “We don’t get paid for producing animals with good posture around here. We get paid by the

pound” (Ibrahim, 2007). Thus, animals live in crippling conditions, and producers maximize their profits.

Over the past half century, the general agricultural trend has been to house more animals on fewer farms. In recent years, hog farms provide an excellent example of this phenomenon. In 1980, the United States boasted 667,000 hog farms with a total of 62.3 million hogs. By 2005, the total number of hogs had only decreased to 60.7 million hogs, but the number of farms plummeted to 67,000 (Becker, 2009). To recapitulate, during that time, 600,000 hog farms disappeared. Not surprisingly, the average number of hogs per farm increased from 93 head to 906 head. Furthermore, operations with over 10,000 hogs now contribute to more than half of the total hog population in the United States (Becker, 2009). With such inflated numbers, care for the wellbeing of individual animals is extremely limited. To factory farmers, these animals often represent merely a means to an end. The United States is the number one exporter of pork in the world, and producers are faced with a global economy in which cost minimization earns the highest profits (Becker, 2009). However, while massive animal operations maximize producer welfare, they do not maximize animal welfare.

Before further analysis, an altogether realistic point must be made. The goal of this research endeavor is not to introduce a legal framework which would maximize animal welfare. In a scenario involving the maximization of animal welfare, animals would receive the finest, most expensive food imaginable. They would be free to go anywhere and live in the most splendid conditions. They could breed at will and retain their milk and eggs for

their own personal, natural use. They could even live free from the fear of slaughter, and they would exist as free beings, rather than a means to anthropogenic profits.

However, a scenario which maximizes animal welfare would be greeted unfavorably by consumers and producers of animal products. After all, humans benefit from the exploitation and slaughter of farms animals, in terms of foodstuffs and nourishment. This may seem like common sense, but it is a crucial point. The goal here is not to maximize animal welfare, nor is it to maximize human welfare. Rather, the goal is to strike a balance between human welfare and animal welfare. The goal is to continue human consumption and production of animal products, but in a manner which treats the affected animals respectfully and humanely, within the confines of a cost-minimizing omnivorous society.

## **The Lives of Animals on Factory Farms**

The present factory farming system treats farm animals neither respectfully nor humanely. Cruelties and injustices have been well documented by animal rights activists and industry monitoring groups, but I will elucidate them here to briefly quantify the magnitude of animal suffering.

The factory farm is not a “farm,” in the traditional sense. In the United States, 99 percent of farm animals never spend any time outdoors. Instead, they live alongside tens of thousands of other animals in overcrowded sheds and buildings. They typically reside amongst their own manure and deceased peers (Matheny, 2007).

Conditions are remarkably dreadful for birds. The 9 billion chickens and 270 million turkeys slaughtered each year vastly consist of fast-growing breeds produced by a few specific breeding companies. Fifty years ago, broiler chickens took about 21 weeks to reach market weight. Now, they only take seven weeks to reach this size. This rapid growth results in skeletal, respiratory, and cardiovascular disease. A quarter of all farmed birds likely suffer from chronic pain, and nearly half of the birds suffer from leg deformities (Matheny, 2007). This sort of life sounds unpleasant enough, but, considering the magnitude of the collective operation—encompassing billions of living beings—these practices represent the epitome of the shameful preference of economic efficiency over respect for the welfare and lives of others.



Conditions are even worse for the nation's 350 million chickens bred for producing eggs. At birth, all male chicks are destroyed via gassing or grinding, as these animals have virtually no economic value to producers. The females chicks become laying hens (Cassuto, 2007). Approximately 95 percent of these birds live in battery cages, barren wire cages stacked on top of others by the dozens. Birds in these conditions suffer from bone weakness and fractures, and they are unable to exhibit natural behaviors such as nesting, perching, or dust-bathing. Between 80 and 90 percent suffer from osteoporosis by the time they are classified as "spent." On average, laying hens in factory farms undergo a laying cycle ten times higher than their natural rate (Matheny, 2007). At the end of their lives, all factory farmed birds, including chickens, ducks, and turkeys, have their throats cut and are immersed in boiling water, often while still conscious (Cowan, 2011).

At factory farms, most pigs exist in cramped, crowded conditions. However, breeding sows fare the worst. In commercial production in the United States, six million breeding sows are maintained, comprising ten percent of the total pig population. During pregnancy, almost 70 percent of these females are housed in gestation crates. These barren stalls of concrete and steel typically measure seven feet long by two feet wide. Thus, the pigs are virtually imprisoned and immobilized for periods of sixteen straight weeks, the length of an average pregnancy (Matheny, 2007). This method of housing reduces costs of labor and feeding equipment.

Factory-farmed cattle also live in cramped, crowded conditions. While chickens and pigs can stomach diets of corn, soybeans, and antibiotics, cattle eat their factory-farm fare with greater difficulty. They have evolved to nourish themselves on a diet of grasses, and a

diet of primarily corn damages their livers and causes a myriad of other health problems (The Issues: Feed, 2012). However, out of all factory farmed cattle, dairy cows and veal calves fare the worst. Dairy cows are repeatedly impregnated and separated from their children. Female calves become the next line of dairy cows, and male calves become veal calves. Sometimes veal calves are tethered by the neck, but usually they are locked in individual stalls. Their lives consist of merely a few months, but, in mainstream operations, all of these months are spent immobilized, with the calves unable even to turn around in their stalls. This immobilization reduces cost and prevents muscle development, resulting in meat of a pale color, which some veal connoisseurs prefer (Matheny, 2007).

All in all, factory farms often provide animals with little but a terrifying, tortured existence. Factory farm workers cut off the tails of pigs, the horns of cattle, and the beaks of chickens with no anesthetics. Pain ensues for weeks. This practice began when the animals, literally driven to madness, began attacking each other in their cages (Cowan, 2011). Peter Singer accurately critiques the institution of the factory farm: "Animals are treated like machines that convert low-priced fodder into high-priced flesh, and any innovation will be used if it results in a cheaper 'conversion ratio'" (Ibrahim, 2007). Dozens of undercover investigations have shown the atrocities and inhumane conditions of factory farms, and video footage exhibits these horrors far more accurately than words can describe (Meat.org, 2012).

## **Federal Regulations**

Few federal regulations govern the treatment of farm animals. The Animal Welfare Act of 1966 requires a minimum standard of care for most warm-blooded animals used in research, transported commercially, exhibited in public, or bred for commercial sale. However, this Act does not extend to farm animals. Primarily, only two federal laws deal directly with farm animal welfare. The Twenty-Eight Hour Law regulates the animals' transportation, and the Humane Methods of Slaughter Act regulates their slaughter (Becker, 2009). The Poultry Products Inspection Act of 1957 does specifically regulate the poultry industry; however, the Act primarily deals with packaging, sanitation, and labeling, rather than welfare during the lives of the animals in question (Poultry and Poultry Products Inspection, 2011).

The Twenty-Eight Hour Law, passed in 1877, dictates that "commercial carriers may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest" (Becker, 2009). At first glance, this ordinance appears harsh but reasonable. However, until 2006, the Law did not include trucks, which account for 95 percent of all livestock transportation. In addition, the Law still does not cover birds, which account for the vast majority of slaughtered animals. Furthermore, violations of the Twenty-Eight Hour Law result in fines of between only 100 and 500 dollars, per case, not per animal (Matheny, 2007). As a result, the Law is largely ineffective and embodies the federal government's disregard for farm animal welfare.

The Humane Methods of Livestock Slaughter Act, passed in 1958 and amended in 1978 and 2002, dictates that large mammals must be rendered unconscious before slaughter. Usually via a gunshot or electrical shock to the head, animals are stunned before slaughterhouse workers begin butchering them (Becker, 2009). This regulation is effective on animals which fall under the Act's jurisdiction and which are stunned properly. In fact, compared to livestock in developing countries, American livestock experience a relatively brief window of slaughter (Nierenberg, 2011). However, the Act allows exceptions for ritual slaughter, typically by those who adhere to traditional Muslim and Jewish diets. In these instances, slaughterhouse workers typically practice some sort of slitting of the throat and draining of the blood. Perhaps the most glaring hole in the Act is the fact that it only applies to cattle, calves, sheep, pigs, horses, mules, and other large mammals. The Act excludes geese, ducks, turkeys, chickens, and rabbits, so slaughterhouses are permitted to kill and process these animals in the most "efficient" manner possible (Humane Methods of Livestock Slaughter, 2011).

In 2010, California Representative Diane Watson introduced a bill related to animal welfare into the U.S. House of Representatives. The bill in question, the Prevention of Farm Animal Cruelty Act, was an updated version of a failed bill from the previous session of Congress, the sweeping Farm Animals Anti-Cruelty Act (Cowan, 2011). The 2010 bill would have prohibited all federal agencies from purchasing any food products which originated from veal calves, female pigs held in gestation crates, or female chickens held in battery cages (H.R. 4733, 2010). The federal government spends over \$1 billion each year to purchase animal products for federal programs such as the National School Lunch

Program. The passage of the bill would have supported more ethical methods of animal agriculture, and it would have informed the agribusiness sector that the federal government did not tolerate the abuse of farm animals (Farm Sanctuary, 2010). However, despite the merits of the Act, the House of Representatives did not pass the proposed legislation.

A major reason for animal welfare's low priority in Congress is the power wielded by agribusiness lobbyists. In 2011, agribusiness lobbying groups spent approximately \$124 million on lobbying campaigns on Capitol Hill. Furthermore, a strong "revolving door" mechanism functions in Washington, D.C., in which individuals work for both the private sector and public sector, simultaneously or sequentially (Sector Profile: Agribusiness, 2012). In these types of situations, individuals move between the divergent roles of the regulators and the employees of industries affected by such regulation. Thus, these individuals are maximizing their own welfare, via career interests, as agribusiness corporations maximize their own welfare, via decreased regulation and increased profits. The losers in this scenario are the ten billion farm animals, as well as genuinely concerned citizens.

The federal government has further enabled factory farming through the use of generous subsidies. Over the past decade, concentrated animal feeding operations (CAFOs) received tens of billions of taxpayer dollars in grain subsidies, money not available to farmers raising animals on pasture lands. Furthermore, the federal government offered factory farms another \$100 million in subsidies to control the pollution generated by these

massive operations (Farmed Animals and the Law, 2012). Rather than trying to curb the practice of factory farming, the federal government is encouraging it.

As the state and history of regulation has shown, farm animal welfare has remained a low priority for the federal government. Members of the House and Senate Agriculture Committee claim that the burden to initiate action lies with concerned consumers. According to the Committee, these concerned consumers should pressure companies to impose stricter regulations on their suppliers, citing recent changes in the supplier policies of McDonald's and Burger King. For example, in 2007, Smithfield Foods, the largest pork producer in the nation, announced that its Murphy-Brown subsidiary would cease the usage of gestation crates for sows within ten years (Becker, 2009). However, moves such as these are few and far between and act more as marketing devices to convince consumers that a company's products are ethical (Ibrahim, 2007). The predominant business approach among agricultural corporations is best summarized by this pork producer: "Forget the pig is an animal. Treat him just like a machine in a factory. Schedule treatments like you would lubrication. Breeding season like the first step in an assembly line. And marketing like the delivery of finished goods" (Ibrahim, 2007).

This preference of Congress for "voluntary approaches" is evidenced by the Farm Bill of 2008. Approximately every five years, the United States Congress passes an omnibus farm bill, the federal government's primary policy tool to dictate food and agriculture in the country. In the most recent farm bill, known as the Food, Conservation, and Energy Act of 2008, the topic of farm animal welfare did not arise once. The passage of the Act affected animals involved in medical research and dogfighting, but not farm animals (Becker, 2009).

As farm animals constitute over 98 percent of all owned animals in the United States, this regulatory hole is a particularly glaring one (Matheny, 2007).

The Congressional preference for voluntary approaches may reveal a discrepancy between different parties' perceptions of the role of the state. As I will discuss, the Commerce Clause and the Necessary and Proper Clause do enable the federal government to dictate animal welfare laws (Becker, 2009). However, some politicians may ideologically favor minimal government interference and regulation in matters of animal welfare. Thus, the debate of animal welfare regulation is entrenched in debate over the role of the state in society.

Another likely explanation for the Congressional preference for voluntary approaches lies simply with the motivations of politicians. It is not uncommon for politicians to become either more federalistic or less federalistic depending on their current interests. While the federal government could and should enact farm animal welfare reform, their power to do so is not in constitutional contention, as I will explain (Scherer, 2011). Rather, politicians likely prefer voluntary approaches, i.e. a lack of federal action on the issue, due to the power of special interests and the frequent political dilemma of re-electability.

## **Federal Regulations and State Regulations**

Despite the roadblocks in Washington, some progress in the realm of animal rights has been made in several states, particularly in California. In this progressive state, perceptions of animal cruelty may be evolving more quickly than throughout the remainder of the country. Furthermore, Californians have the privilege to introduce ballot propositions for a direct citizen vote, thereby bypassing the state legislature. In 2004, the state enacted a law which banned the force-feeding of ducks and geese to produce foie gras, a French delicacy consisting of engorged liver. The law also banned the sale of the product in California. In 2008, California's Proposition 2 passed, outlawing the use of battery cages, veal crates, and pig gestation crates in the state by 2015. In 2009, the state government enacted a bill which ended the unnecessary and painful amputation of dairy cows' tails. Building upon Proposition 2, in 2010, California banned the sale of eggs from hens confined to battery cages (Farm Sanctuary, 2011). Furthermore, California is the only state to include chickens and other poultry in its slaughter statute, the California Humane Slaughter Act (Hirsch, 2012).

To date, other states which have passed statutes pertaining to farm animal welfare include Oregon, Arizona, Colorado, Florida, Michigan, and Maine. Most of these statutes outlaw the more egregious confinement standards: battery cages, veal stalls, and gestation crates (Rumley, 2012). While this does represent progress, still, only seven of the fifty states have taken action. Even if seven more states ratify statutes, and then seven more



states ratify statutes, still only less than half of the state governments will have taken a legal stand for animal welfare. In addition, stringent state laws only encourage producers to relocate to states with lax welfare regulations (Centner, 2010). For example, when California banned the use of battery cages for egg production, lawmakers in Nevada, Idaho, and Georgia began actively recruiting Californian egg producers to relocate to their respective states, which offer lower costs and less stringent regulations (Etter, 2010). Incremental state-level improvements could very well create a scenario in which most major factory farms operate in only a handful of states with minimal regulations, leaving states with stricter welfare laws at a loss of the economic activity generated by large agricultural operations. To avoid this pitfall, unified, sustained progress must occur at the national level.

Furthermore, progressive state law can sometimes fall victim to the Supremacy Clause, giving the federal government preferential legal authority. An example lies in the issue of non-ambulatory livestock, also known as downed animals or downers, which are animals too injured, weak, or sick to walk from transport trucks to the slaughterhouse. Workers sometimes lift these animals with forklifts or else drag them by their legs to a slaughtering pen (Farm Sanctuary, 2011). As long as the animals can be slaughtered, whether they received food, water, or medical treatment makes little difference to the producers. In 2003, the United States experienced its first outbreak of bovine spongiform encephalitis, also known as mad cow disease. As a result of these human health concerns, the USDA temporarily banned the slaughter of downed cattle for human consumption. This ban was made permanent in 2007 (Farm Sanctuary, 2011). One year later, in 2008, the

State of California took this ban further by extending it to all non-ambulatory livestock, rather than only cattle, via an amendment to Section 599f of the Penal Code (Section 599f, 2011). During a span of a couple years, all downed animals in California were humanely euthanized and removed from the food supply. Thus, the law provided agribusinesses with monetary incentives to keep their farm animals healthy enough to walk.

However, in January of 2012, the United States Supreme Court reached a significant decision in the case *National Meat Association v. Harris*, in which a meat trade group challenged the California law regarding the ban on slaughtering downed pigs. Citing the Supremacy Clause, the Court ruled that California Penal Code 599f clashed with the Federal Meat Inspection Act of 1906, which contains no mention of downed pigs (Mears, 2012). The Supremacy Clause dictates that judges must follow federal law when federal law and state law clash. Thus, the California law was nullified, signifying a victory for agribusiness and a loss for animal welfare. In their legal briefing, pork producers stated that about three percent of pigs are non-ambulatory upon arrival at the slaughterhouse (Mears, 2012). Three percent seems like an insignificant number, but it adds up to approximately 3,500,000 pigs (USDA, 2009). In other words, 3.5 million pigs are too injured, weak, or sick to walk upon arrival at the slaughterhouse, and the Supreme Court has ruled that this practice is acceptable. California Penal Code 599f clearly represented a step toward progress in the realm of animal welfare, yet the federal government struck it down in favor of profit-maximizing, welfare-minimizing agribusiness, as the Supremacy Clause dictated that it should. Unless progressive animal welfare regulations become the federal norm,

state attempts at such welfare regulations may unfortunately continue to fall victim to the Supremacy Clause.

In the first place, the fact that the federal government has banned the slaughter of downed cattle but permitted the slaughter of downed pigs provides a key insight to its priorities. As potential carriers of mad cow disease, downed cattle posed a major threat to human health. Banning the slaughter of downed cattle eliminated this threat to humans, whilst acting as progressive step toward animal welfare. On the other hand, downed pigs may be weak and sickly, but they do not pass any known diseases to humans. Banning the slaughter of downed pigs solely progressed the cause of animal welfare with no tangible benefit to human health. By supporting one ban over another, the Supreme Court, and the federal government as a whole, has stated their opinion that animal welfare for the sake of animal welfare is not worth upholding.

Nonetheless, the Supremacy Clause remains a necessary facet of the Constitution. In Federalist No. 33, Alexander Hamilton explains, “But it is said that the laws of the Union are to be the supreme law of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A law, by the very meaning of the term, includes supremacy” (1788). Thus, without the Supremacy Clause, the United States would consist of a divided confederation, rather than a unified republic. It is the Supreme Clause which binds the states together into a nation. While California Penal Code 599f did promote animal welfare, it also clashed with federal law, as a result of the Supremacy Clause. Since the Supremacy Clause is a paramount concept in the governance of the United States of America, the problem lies not

with the Supremacy Clause, but with the lack of federal regulations pertaining to the issue of animal welfare improvement.

## **Animals as Property**

The federal government and the individuals who comprise it have failed to uphold farm animal welfare largely due to the fact that farm animals are classified as property. This property status arises primarily from the human-animal dichotomy which pervades Western, Judeo-Christian culture. Scientifically and evolutionarily speaking, humans are animals, yet most humans view themselves as spiritually and intrinsically superior to all other animals, regardless of whether the animals in question are fellow great apes or incomprehensible shellfish (Cassuto, 2007). This severe dichotomy enables the property status, which in turn enables producers to treat animals like mere means to an end. One agribusiness manager summarizes this mindset: “We’re no different from any other business. These animal rights people like to accuse us of mistreating our stock, but we believe we can be most efficient by not being emotional. We are a business, not a humane society, and our job is to sell merchandise at a profit. It’s no different from selling paper-clips, or refrigerators” (Ibrahim, 2007).

Many more ideological animal rights activists support the complete elimination of animals as property. They call for pure animal liberation and hold that animals possess the right not to be owned for exploitation of any kind (Francione, 2007). While this is a popular philosophical doctrine among some animal rights activists, the argument quickly collapses into absurdity (Aaltola, 2010). If humans could not own animals, all animal agriculture would officially grind to a halt. Even in a hypothetical world in which Congress

banned the ownership of animals, the practice of animal agriculture would still occur, since many consumers would continue to demand meat. Black markets would likely appear, and the treatment of animals on black market farms would proceed completely unchecked. An adoption of such abolitionist rhetoric would result in an end to zoos, seeing-eye guide dogs, many medical experiments, and even pets. The doctrine of animal liberation is far too radical to be considered in this current investigation. Again, I seek to strike a balance between animal interests and human interests, and complete animal liberation favors the interests of animals far too greatly.

By abandoning the idea of animal liberation on practical grounds, farm animals will retain their status as property of some kind. Some scholars propose that animals can potentially comprise a new type of property: living property (Favre, 2010). As living property, farm animals could legally be owned while retaining certain rights to further their own interests. Depending on the species in question, some of these rights could include finding and consuming food daily, socializing with others, mating, caring for their young, sleeping, accessing sunlight, exercising their inherent mental capacities, and moving about in their physical environment (Favre, 2010). Although the animals would still meet their ends in slaughterhouses, they would find some fulfillment in their lives until that time.

## A New Legal Framework

The notion of living property is a noble one, but it still remains too radical for immediate consideration. A status of living property would entail bestowing legal rights onto farm animals, and even a moderate liberal might find such talk alienating. Grand visions of animal liberation and animal rights are acceptable from a philosophical perspective, but not from a policy perspective. In reality, anyone seeking progress for farm animals should look to the realm of gradual animal welfare reform. One must win battles before one can win wars.

Thus, a new legal framework for farm animals would incorporate gradual welfare reforms at the federal level of government. Visions of comprehensive animal rights may someday help farm animals 200 years from now, but campaigns for increased animal welfare will help farm animals five or ten years from now. Again, this change must occur at the federal level in order to prevent the Supremacy Clause from overturning progressive state animal welfare laws, as seen in the recent case *National Meat Association v. Harris*. In addition, comprehensive federal animal welfare legislation would prevent animal agriculture operations from simply relocating to laxer states. After the passage of stricter federal regulations, operations could theoretically move outside the United States, but international relocation requires much more energy and effort. In addition, the United States could correct for such relocations by imposing welfare standards on imported animal products or by imposing heavy tariffs.

The federal government has already exhibited its ability to govern animal welfare via the Animal Welfare Act of 1966. The Act dictates animal welfare regulations for animals used in most commercial purposes, with the obvious exception of farming. These federal regulations for different categories of animals trump any state regulations which deal with similar issues (Favre, 2002). Federal farm animal welfare laws would operate on the same principle and simply regulate one additional category of animals: farm animals.

The federal government already possesses the constitutional powers to regulate farm animal welfare. In Article I of the United States Constitution, the Commerce Clause allows the federal government “To regulate commerce with foreign nations, and among the several states, and with the Indian tribes” (Barnett, 2001). As a powerful national industry, agribusiness falls into the realm of the Commerce Clause, since animals and animal products are constantly transported across state lines around the country.

The imperative for federal action is furthered by the Necessary and Proper Clause, also in Article I of the Constitution. The clause allows the federal government “To make all laws which shall be necessary and proper for carrying into execution the powers by that Constitution vested in the Government of the United States, or in any department or officer thereof” (Hamilton, 1788). Thus, the Commerce Clause enables the federal government to govern farm animal welfare, and the Necessary and Proper Clause enables the federal government to enact laws to accomplish this governance. As a result, a new legal framework for improved animal welfare falls under the powers of the federal government as expressed in the United States Constitution.



The new legal framework would incorporate many of the welfare reforms already on track in several US states as well as in the European Union. These include a ban on gestation crates, a ban on veal crates, and a ban on battery cages. However, confinement issues must not overshadow other negativities resulting from the factory farming system, such as castration, tail docking, and horn removal without anesthetics (Centner, 2010). These issues can be dealt with via gradual welfare reform. Other reformation mechanisms could involve limits on the number of individual animals that a corporation could legally own. This tactic would halt the rampant horizontal and vertical integration among agribusiness corporations. In addition, smaller animal populations would lead to more personalized care and more farmers' vested interest in the wellbeing of their animals (Favre, 2010).

Thus, the new legal framework should focus on these battles, rather than on the unwinnable war for animal liberation. The new legal framework should embrace a compromise between the interests of animals and the interests of humans. John Mackey, founder and CEO of Whole Foods, explains: "The animals have to flourish, but in such a way that it'll be cheap enough for the customers to buy it" (Ibrahim, 2007). Mackey's words read as a tad cynical, yet he understands that animal welfare must be balanced with the economic realities of a cost-minimizing omnivorous society.

The eventual passage of gradual welfare reforms would inevitably result in higher prices for animal products. However, both producers and consumers would likely oppose such a transformation. Factory farming has allowed even low-income consumers to enjoy meat on a daily basis. Between 1960 and 1990, retail prices of turkeys and chickens fell by

three percent annually, while consumption of turkeys and chickens rose by over three percent annually (Ibrahim, 2007). With Americans now consuming greater quantities of meat at lower prices, convincing them to reverse this trend would prove a difficult task. Nonetheless, appropriate animal welfare reforms would allow the federal government to leave them no choice. Again, a political state should certainly serve its citizenry first, but it must not overlook its noncitizen, nonhuman residents, e.g. farm animals.

An institution of more ethically-minded animal agriculture operations could possibly bring an end to cheap fast food and expectations of meat served at every meal for some families. Despite their higher prices, animal products purchased at local farmers' markets are not inherently expensive; on the contrary, they frequently reflect the high cost of raising animals humanely. The widespread adoption of factory farming has allowed for outrageously cheap meat, but at the cost of animal welfare (Appleby, 2003). Again, the legislative bodies of the United States must make a choice regarding farm animals and animal products: lower welfare and lower costs vs. higher welfare and higher costs. Since farm animals cannot voice their preference, the legislators of America should act on behalf of all parties involved in this crucial issue.

## Summary and Conclusions

Farm animal welfare is an important polarizing issue in the United States, yet it often does not garner the attention which it deserves. In the United States alone, approximately 10 billion warm-blooded farm animals suffer and die each year to feed the American populace. When comprehended, this is a truly staggering figure, yet many Americans do not think twice when consuming animal products. However, thinking twice will not mitigate farm animal suffering. Even adopting a vegan diet will have negligible effects. For real progress, concerned individuals should turn to the federal government to promulgate stricter animal welfare regulations.

Thus far, the federal government has shown little concern for farm animal welfare. Some state governments have made progress, yet this progress is easily negated by the federal government's lack thereof. All the while, billions of farm animals live in cramped conditions and experience unnecessary suffering.

Federal legislators are unlikely to spring into action anytime soon. The public interest simply does not exist on a wide enough scale. Furthermore, the social and economic factors which prevent the improvement of animal welfare standards are staggering. The road to improved federal farm animal welfare standards is a long road, but at least it is the correct road. Other paths, such as state welfare regulations, animal liberation philosophical extremities, and minor consumer choice campaigns, are continually proving ineffective at promoting sustained, widespread change.

A new legal framework for farm animal welfare could emerge at some point in the near future. This framework is not radical; therein lies its potential. It simply balances human interests with animal interests. It allows for the continuation of animal production and animal slaughter, with the caveats of improved living conditions for the animals involved in the process. Animals will remain property, and humans will remain property owners. As long as animal agriculture exists, farm animals will continue to die. However, with stricter federal welfare regulations, perhaps the lives of farm animals can be made more bearable, and, perhaps, even a bit fulfilling.

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## Education

**The Pennsylvania State University**, University Park, PA  
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Major: Community, Environment, and Development (B.S.)  
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Minors: Geography; English; Science, Society, and the Environment of Africa  
Thesis: *The Legal Status of Farm Animals: Origins and Progress*

## Experience

**AmeriCorps Conservation Intern** Summer 2011

*Student Conservation Association, Umatilla National Forest, Oregon*

- Completed trail maintenance and construction projects with a five-person trail crew
- Worked with the U.S. Forest Service in remote settings under strenuous conditions
- Achieved certification in Wilderness First Aid and mastered backcountry skills

**Undergraduate Researcher** Spring 2011

*Parks and People, Eastern Cape, South Africa*

- Undertook ecological fieldwork regarding climate change in various S. African biomes
- Produced research proposals involving community adaptation to climate change

**Orphanage Volunteer** Summer 2010

*Homes of the Indian Nation (HOINA), Kothavalasa, Andhra Pradesh, India*

- Completed construction and maintenance projects on the orphanage compound
- Taught geography lessons and served as a mentor to the children

**Student Participant**

Summer 2010

*Exploring Indigenous Ways of Knowing Among the Anishinaabeg*

- Completed a month-long cross-cultural seminar in Bemidji, Minnesota
- Convened with American Indian leaders to understand the Ojibwe worldview

**Teaching Intern**

Fall 2009 - Spring 2010

*Geography 160: Mapping Our Changing World*

- Mastered the utilization of ArcGIS and related geographic software
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**Senior Writer**

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*OnwardState.com, State College, PA*

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*Philadelphia Field Project: Rethinking Urban Poverty*

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