



# How We Mistreat the Animals We Eat

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How We *Mistreat* the Animals We Eat<sup>1</sup>

Samantha J. Haas

ID #20505583

Food and Drug Law

Final Paper

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<sup>1</sup>Battered Birds and Crated Herds, How We Treat the Animals We Eat 4 (MBK Publishing 1996).

Despite enormous strides in recent decades in the field of animal rights and animal welfare, very little has been accomplished with respect to preventing the systematic abuse and institutionalized cruelty towards animals raised for food and food production. With the dominion of man over nonhuman animals (“animals”)<sup>2</sup> dating back to ancient times, perhaps there is nothing truly novel about the manner in which our society treats farm animals. Perhaps current husbandry practices merely represent the extension of longstanding beliefs and traditions. With the advent of industrialized agriculture and its attendant inhumane treatment towards farm animals, however, the issue of the manner in which we treat the animals we eat has come to a head. Laws protecting animals from abuse ostensibly exist at both state and federal levels, indicating broad support for animal protection and societal concern for kind treatment of animals, and yet, this concern generally does not extend to how our food gets to the dinner table. The substance of state and federal animal welfare laws indicates a selective insensitivity to the welfare of farm animals. Many of the statutes exempt actions that fall within acceptable animal husbandry methods, and others suffer from inadequate scope and improper enforcement, culminating in widespread acquiescence to a system contaminated by large-scale institutionalized cruelty towards farming animal. With the instances of objectively cruel farming practices snowballing under the pressure of an ever-growing, industrialized agriculture nation, driven by profit and efficiency, exposing such atrocities represents the first step in determining what constitutes the proper treatment of such animals. Our moral bells out to deafen our ears when faced with the troublesome irony that current animal husbandry practices are objectively cruel, and yet, for the most part, neither violative of state nor federal law. Although the basic construct of our Constitutional design and our history, affords

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<sup>2</sup>As common vernacular dictates, and as used henceforth, “animal” will refer to nonhuman animals only. Nevertheless, making such a distinction can be problematic. The classification of animals into two separate categories, human and nonhuman, a concept termed ‘speciesism’ by Richard Ryder and popularized by philosopher Peter Singer, describes the human tendency to disassociate from other animals, thereby relieving themselves of the guilt of their actions resulting in the exploitation, suffering and death of nonhuman animals. Laura G. Kniaz, Comment, *Animal Liberation and the Law: Animals Board the Underground Railroad*, 43 *Buff. L. Rev.* 765, 768 (1995) (citing Lawrence Finsen & Susan Finsen, *The Animal Rights Movement in America: From Compassion to Respect* 55 (1994)); Peter Singer, *Animal Liberation* 8 (2d ed. 1990). Peter Singer defines speciesism as discriminating on the grounds of species membership alone, “a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.” *Id.* at 6 note 6. According to Singer, speciesism is akin to discrimination based on race or sex (i.e., racism or sexism). *Id.* at 1-8.

a certain latitude with respect to fundamental rights inherent in humans, the denial of basic fundamental rights to sentient, living organisms deemed, in today's parlance, "nonhuman animals," inevitably sets a dangerous precedent in a society that places the ultimate premium on liberties that apply equally across all social barriers.

The notion of man's superior place in a dichotomy between human and nonhuman animals dates back to our most ancient teachings, such that perhaps there is nothing truly novel about the absolute dominion of man over animal. The history of the Western understanding of a hierarchical universe in which everything fell along an immutable "Great Chain of Being" and was designed for the use of humans permeated through ancient philosophies, justifying the denial of even the most fundamental rights to animals. Basically,

these ancients believed in "teleological anthropocentrism,"<sup>3</sup> the idea that the outer physical world had been designed, and that its Designer had created the world to serve humanity. This designed world was populated, in theory, by an infinite number of finely-graded forms, immutably arranged in a hierarchical "Great Chain of Being" from the barely alive to the sentient to the intellectual to the wholly spiritual.<sup>4</sup> The "great and true Amphibium," the rational human being, dwelt upon the topmost rung assigned to corporeal beings. . .<sup>5</sup>

Socrates' friend Xenophon tells us that Socrates believed animals existed solely for the sake of humans.<sup>6</sup> Plato imagined "a 'principle of plenitude,' by which every conceivable form that could exist in the universe did."<sup>7</sup> Aristotle envisioned that all nature, and specifically animals, existed and operated for the sole purpose of mankind.<sup>8</sup> These ancient Greek ideas fused into "one of the most potent and persistent presuppositions in Western thought,"<sup>9</sup> the "Great Chain of Being." The proposition that humans occupy such a superior place in the universe serves as one of the fundamental tenets of "a Judeo-Christian world suckled on Genesis,"<sup>10</sup>

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<sup>6</sup>Wise, *Rattling the Cage*, at 11 (citing, Xenophon, *Recollections of Socrates*, 4.3.9-10, at 115 (Anna S. Benjamin, Trans. Bobbs Merrill Co., Inc. 1965)).

<sup>7</sup>*Id.* at 10 (citing, Lovejoy at 59, 242).

<sup>8</sup>Wise, *How Animals Were Trapped in a Nonexistent Universe*, at 21-23.

<sup>9</sup>Wise, *Rattling the Cage*, at 10 (citing, Lovejoy at viii). Lovejoy noted that up until about a century ago the notion was probably the most widely familiar conception of the general scheme of things, of the constitutive pattern of the universe. *Id.*

<sup>10</sup>*Id.* at 17.

uncontroverted, and apparently settled. The Great Chain metaphor resonates throughout Genesis, “God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.”<sup>11</sup> After the Flood, God, who had originally not permitted humans to kill animals for food,<sup>12</sup> bestowed upon Noah and his sons, “into your hand are they delivered, every moving thing that liveth shall be meat for you. . . I have given you all things.”<sup>13</sup> St. Augustine of Hippo crystallized these ancient beliefs, explaining that the commandment, “Thou shall not kill,” applied only in respect to other humans and any extension outside the human realm would have been preposterous.<sup>14</sup> Unfortunately, these opinions cannot be ascribed to the Ancients, as the prevalence of “teleological anthropocentric”<sup>15</sup> paradigms in justifying historical and present treatment of animals by humans diffused quite thoroughly into contemporary Western common sense, paving the way for centuries of acquiesce towards the cruelty with which we treat all animals, particularly farm animals.

As with many shameful episodes in our past, our moral alarm bells ought to deafen our ears when the government claims the right to single out a group of individuals and suspend the great safeguards upon which this nation was built and we ought to be doubly vigilant when this disadvantage is tied to a physical or mental “condition” of the individual, for this ought to recall shameful epochs of our history when such “differences” were the bedrock on which legal disadvantages of all sorts were justified. American history, replete with embarrassing rationalizations and denials of fundamental rights to certain individuals, should

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<sup>11</sup>Genesis 1:28 (Authorized King James Version).

<sup>12</sup>*Id.* at 1:29.

<sup>13</sup>*Id.* at 9:1-3.

<sup>14</sup>Steven M. Wise, *How Animals Were Trapped in a Nonexistent Universe*, at 32.

<sup>15</sup>Animals were not the only victims of teleological anthropocentrism. In *Dred Scott*, Chief Justice Taney alluded to the Great Chain of Being when he declared that blacks had been “looked upon as so far below [whites] in the scale of created beings.” *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 409 (1856)). Women were also considered to occupy an inferior place in the Great Chain of Being; “[s]ome humans, males, free men, and adults, for example, occupied superior positions with respect to others, such as females, slaves and children. Women, believed deficient in reason and, in a sense, in justice, occupied a place between men and nonhuman animals.” Steven M. Wise, *How Animals Were Trapped in a Nonexistent Universe*, at 24-5.

cause, at the very least, troubling hesitation when justifying the denials of basic rights to any sentient being. In 1894, the California Supreme Court banned Chinese witnesses from testify in proceedings involving a white person as a party, reasoning that the Chinese were a race of people “whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point.”<sup>16</sup> The American sentiment at the time being,

The same rule which would admit them to testify, would admit them to all the equal rights of citizenship. . . This is not a speculation which exists in the excited and over-heated imagination of the patriot and statesman, but it is an actual and present danger. The anomalous spectacle of a distinct people, living in our community. . . bringing with them their prejudices and national feuds, in which they indulge in open violation of law, whose mendacity is proverbial; a race of people whom nature has marked as inferior. . . as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our Government.<sup>17</sup>

The perceived economic necessity of the institution of slavery underscored countless 19<sup>th</sup> century court rulings and pervaded the common knowledge at the time. For example, the court in Mitchell v. Wells, after denying the right of a freed slave to sue on his own behalf in a slave state by reasoning that the logical conclusion of conferring such a right would be the extension of the same right to great apes,<sup>18</sup> noted,

. . . [Mississippi’s] climate, soil, and productions, and the pursuits of her people, their habits, manners, and opinions, all combine not only to sanction the wisdom, humanity, and policy of the [slave system] thus established by her organic law and fostered by her early legislation, but they require slave labor. It was declared in the convention that framed the Federal Constitution, by some of their delegates, that Georgia and South Carolina would become barren wastes without slave labor. . .<sup>19</sup>

Hindsight reveals, among other things, the falsity inherent in this logic. In addition to the perception that slavery was an economic necessity, courts continued to proclaim that slavery was consistent with the natural order of life.

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<sup>16</sup> People v. Hall, 4 Cal. 399, 405 (1854).

<sup>18</sup> 37 Miss. 235 (1859).

To inculcate care and industry upon the descendants of Ham, is to preach to the idle winds. To be the “servant of servants” is the judicial curse pronounced upon their race. And this Divine decree is unreversible. It will run on a parallel with time itself. And heaven and earth shall sooner pass away, than one jot or tittle of it shall abate. Under the superior race and no where else, do they attain to the highest degree of civilization; and any experiment, whether made in the British West India Islands, the coast of Africa, or elsewhere, will demonstrate that it is a vain thing for fanaticism, a false philanthropy, or anything else, to fight against the Almighty. His ways are higher than ours; and humble submission is our best wisdom, as well as our first duty! Let our women and old men, and persons of weak and infirm minds, be disabused of the false and unfounded notion that slavery is sinful, and that they will peril their souls if they do not disinherit their offspring by emancipating their slaves!<sup>20</sup>

In the infamous Dred Scott decision, the United States Supreme Court declared in its now notorious holding that a “[Negro] of the African race” was not a citizen of the United States because of the status of his race at the time and the ratification of the United States Constitution. Blacks, then seen as “beings of an inferior order. . . [so] far below [whites] in the scale of created beings. . . had no rights which the white man was bound to respect. . . He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it.”<sup>21</sup> In 1875, a unanimous Supreme Court of Wisconsin summarily denied a woman’s motion to practice before it, reasoning that the female practice of law was a “[departure] from the order of nature,” indeed “treason against it.”<sup>22</sup> The Court rationalized, “[t]he law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of law, are departures from the order of nature; and when voluntary, treason against it. . .”<sup>23</sup> Such shameful periods of our history should, at the very least, warn us from the systematic denial of basic fundamental rights to any sentient beings.

In light of ancient Western teachings, perhaps the treatment of farm animals raised for food merely rep-

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<sup>21</sup>Dred Scott at 403-409.

<sup>22</sup>In re Goodell, 39 Wis. 232, 245 (1875).

<sup>23</sup>Id. at 245.

resents the natural extension of long-standing religious and philosophical beliefs. Yet, however cohesively one's personal views, or even our historical identity, dovetails with the notion of man's superior place in the universe, this paradigm at least fails to justify the current cruelty and abuse so prevalent in animal husbandry practices. The emergence of the factory farm<sup>24</sup> and the attendant mistreatment of farm animals mark a pivotal and disturbing change from the traditional treatment of such animals. It was not always this way. Before the 1940s, small-scale farms, principally managed by families, raised the majority of farm animals used for food.<sup>25</sup> These local farmers raised their relatively small herds of animals in simple outdoor operations. These outdoor pastures not only ensured the animals received proper sunlight exposure and daily Vitamin D supplements, but also that the animals had sufficient physical space to live comfortably while minimizing the threat of disease.<sup>26</sup>

The picture of the traditional, small scale, family-run farm has undergone a radical renovation in recent time. Beginning around the 1940s, large corporations purchased a majority of available farmland, permanently transforming farming into a large-scale business operation.<sup>27</sup> "Nationwide, the corporate takeover of traditional family practices is evidenced by the fact that five corporations now control eighty-nine percent of all beef processing operations and four companies control over half of all pork processing operations."<sup>28</sup> Corporate farms have enjoyed rampant prosperity because "federal policy and market forces have favored large-scale mechanized and capital-intensive farming as a means of ensuring cheap and plentiful food."<sup>29</sup>

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<sup>24</sup>The concept of a "factory farm" is used quite loosely. Some define it as "any commercial enterprise in which a large number of live stock are raised in an intense environment other than the animals' natural habitat solely for the purpose of producing food." Richard F. McCarthy & Richard E. Bennett, *Statutory Protection for Farm Animals*, 3 *Pace Env'tl. L. Rev.* 229, note 19 at 230 (1985). As such, the vast majority of "chickens, hogs, calves, and dairy cattle" raised in the United States would be classified as factory farm products. *Id.*

<sup>25</sup>Nicole Fox, Comment and Note, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 *Whittier L. Rev.* 145 (1995) (citing, Wayne Pacelle, *Bio-Machines: Life on the Farm Ain't What it Used to Be*, 137 *Vegetarian Times* 30, 31 (1989)).

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>Thomas R. Head, III, *Local Regulation of Animal Feeding Operations: Concerns, Limits, and Options for Southeastern States*, 6 *Env'tl. Law.* 503, 512 (2000) (citing, Center for Rural Affairs, *Corporate Farming and Industrialization* (visited Feb. 1, 2000) <<http://www.cfra.org/Issues.htm>>).

<sup>29</sup>Fox at 145 (quoting, Steve Lustgarden, *The High Price of Cheap Food: Consumers—and Family Farms—Are the Losers As Factory Farms Take Over*, 205 *Vegetarian Times*, 72, 73 (1994)).



Incredibly, “[w]hile nationwide the production of livestock and poultry has remained relatively constant or increased steadily, the number of farms has decreased dramatically, leading to a concentration of a large number of animals on a decreasing number of farms.”<sup>30</sup> For example, while the number of hogs produced annually has remained virtually constant over the past fifteen years, the number of farms has dropped by seventy-six percent, from 600,000 to 157,000.<sup>31</sup> Similarly, “in the cattle industry, forty percent of all cattle produced come from just two percent of the feeding operations.”<sup>32</sup> The poultry business exhibits similar consolidation trends “with poultry production almost tripling between 1969 and 1992, while the number of broiler production farms fell by thirty-five percent over the same period.”<sup>33</sup> The consolidation of the farming industry and its concentration in corporate hands transformed the American farming practice into an industrialized nation of agribusinesses.

The relatively recent shift from smaller, family-owned and operated farms to larger corporate factory farms arguably yields a variety of social and economic benefits.<sup>34</sup> At the same time, however, factory farming systems have largely eroded free-market incentives to consider the welfare of farm animals in food production. No economic principles call for the protection of farm animals from abuse. As a result, in order to remain competitive, farmers generally implement husbandry techniques that enhance productivity without regard for their effect on farm animals. Not surprisingly, institutionalized mistreatment of today’s farm animals is inextricably linked to the objectives that pioneered the shift from traditional, small-scale family farms

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<sup>30</sup>Head at 511.

<sup>31</sup>*Id.* (citing, Minority Staff, Senate Comm. On Agric., Nutrition, and Forestry, 105th Cong., Animal Waste Pollution in America: An Emerging National Problem 15 (1997)).

<sup>32</sup>*Id.*

<sup>33</sup>*Id.*

<sup>34</sup>Critics of corporate farming often argue that despite potential short-term monetary benefits, rural communities ultimately will suffer as factory farms force small producers out of business and that the dominance of factory farms will degrade fragile ecosystems by concentrating the release of animal waste into the environment. John D. Burns, Comment, The Eight Million Little Pigs—A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming, 31 Wake Forest L. Rev. 851, 856-58 (1996). Critics of factory farms argue that the concentration of huge numbers of animals not only leads to environmental problems but also to the loss of the family farm and the rural way of life. Eric Voogt, Pork, Pollution, and Pig Farming: The Truth About Corporate Hog Production in Kansas, 5 Kan. J.L. & Pub. Pol’y 219, 220 (1996) (discussing the environmental, social, and economic issues associated with corporate ownership of farms and noting that the debate has been labeled agriculture’s “abortion fight” in the Midwest).

to giant, corporate factory farms, namely efforts to lower production costs, increase efficiency, maximize corporate profits, and generate cheaper food products for society.<sup>35</sup> As the American agricultural commercial enterprise system flourishes, with new technologies implemented in the name of profit and efficiency, systematic abuse of farm animals will continue to plague the industry.

As large-scale farming operations subordinate animal welfare to pecuniary concerns, the question of what constitutes tolerable conditions in which the animals are reared and slaughtered must be addressed. Corporate farms raise animals through intensive confinement methods as a means of capitalizing on the use of land and space in order to maximize corporate profits.<sup>36</sup> Farm animal confinement conditions meet the demands of profit and efficiency through this use of small, overcrowded cages often with a single farmer raising over five million animals.<sup>37</sup> Generally, an intensive farming operation is an “enclosed, confined building where feeding, watering and waste disposal are conducted in an automated or semi-automated manner.”<sup>38</sup> Such assembly line, factory-like conditions force farm animals “to live stressful, sickly and grotesquely inhumane existences.”<sup>39</sup> For example, a large percentage of pigs are produced in “total confinement operations,” “a system in which an animal is ‘born, weaned, and “finished” (fed for market)’ in buildings that have ‘automatic feeding, watering, manure removal, and environmental control’ features.”<sup>40</sup> Each year in the U.S., nearly 100 million pigs are raised and slaughtered, most born to sows in farrowing crates.<sup>41</sup>

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<sup>35</sup>David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 *Animal L.* 123, 146 (1996).

<sup>36</sup>Fox at 145-6 (citing, Amy Blount Achor, *Animal Rights: A Beginner’s Guide* 78 (1992)).

<sup>37</sup>*Id.* at 146 (citing, Wayne Pacelle at 32).

<sup>38</sup>Steven J. Haverkamp, *Are Moderate Animal Welfare Laws and a Sustainable Agricultural Economy Mutually Exclusive? Laws, Moral Implications, and Recommendations*, 46 *Drake L. R.* 645, 650 note 19 (1998) (quoting, Richard F. McCarthy & Richard E. Bennett, *Statutory Protection for Farm Animals*, 3 *Pace Env’tl. L. Rev.* 229, 230 (1985)).

<sup>39</sup>Fox at 146.

<sup>40</sup>Haverkamp at 659 (citing, Jim Mason & Peter Singer, *Animal Factories* 8 (1980)).

<sup>41</sup>*Battered Birds and Crated Herds* at 19.

Modern breeding sows are treated like piglet-making machines and live a continuous cycle of impregnation and birth. . . After being impregnated, sows are confined in small pens or metal gestation crates which are just two feet wide. At the end of their gestation period, sows are transferred to farrowing crates where they barely have room to stand or lie down. They are denied straw bedding and lie on hard floors [because the straw is too expensive]. . . After giving birth and nursing their young for two weeks. . . the sow is reimpregnated. Hog factories keep their sows “100% active” . . . [until] sent to slaughter.<sup>42</sup>

As babies, the pigs’ tails are removed without anesthesia to minimize the instances of tail-biting, an aberrant behavior occurring when these highly intelligent animals are kept in depraved factory farm environments, and notches are similarly cut from their ears for identification purposes.<sup>43</sup> At two or three weeks of age, the piglets are taken away from their mothers, fifteen percent of whom will have already died in the farrowing crates, and placed in crowded nursery “pens” with metal bars and concrete floors, and as they grow they will be moved to “grower” and then “finisher” houses, and finally slaughtered at six months when they reach 250 pounds.<sup>44</sup> A Pulitzer Prize winning series described the increasingly popular, intensive confinement, technique of producing pork through large-scale swine production facilities:

Holding Pens: Sows spend. . . their lives in narrow metal [farrowing] crates barely larger than their bodies. The animal stands on a steel grate that allows waste to fall into the waste through. Food is dispensed through the overhead distribution system and water is available on demand through a tube connected to an overhead water line. During hot weather water is dripped onto the hogs to cool them. The farrowing pen has a cradling device that prevents the sow from crushing the piglets.<sup>45</sup> Breeders: Sows are mated or artificially inseminated under close supervision. After about two years, or whenever their reproductive performance declines, they are killed. Pigs: Piglets are weaned at about 21 days and trucked first to nursery farms. At about 50 pounds they are taken to finishing farms where they are grown on a scientifically proportioned diet of corn, soybeans and supplements. Going to market: After about six months the hogs have grown to roughly 240 pounds, and their ability to convert feed into muscle peaks. The hogs are loaded into trucks and taken to packing houses for slaughter. [The] standard sow barn used... measures 340 by 60 feet and holds 1,076 sow crates. All the animals are fed, watered, heated and cooled through automated systems. The wastes drop through slots in the floor and are flushed out of the barns with water recycled from the lagoons. . . .The process is efficient and as a result, “thousands of lean, carbon-copy hogs [are] produced at the least possible cost.” Significantly, the current trend of pork being produced in large-scale swine facilities shows little sign of subsiding.<sup>46</sup>

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<sup>43</sup>Id.

<sup>44</sup>Id.

The swine factory air that the hogs breathe their entire lives, laden with dust, dander and noxious gases produced by the animals' urine and feces, causes respiratory disease in a large percentage of the animals.<sup>47</sup> As such, modern hog factories run rampant with a variety of transmittable diseases. Rather than a few hundred hogs in an outdoor pasture, modern large-scale swine facilities, where a large number of animals are raised in concentrated areas resembling manufacturing plants, exemplify the massive technological and efficiency advances in agriculture in recent years,<sup>48</sup> rendering today's farms industrialized businesses and today's farmland a nation of agribusinesses.

Along with the unbelievably inhumane, over-crowded, prison-like, living conditions of today's factory farms, a tremendous amount of additional, equally unspeakable, often ignored cruelties are inflicted upon today's farm animals. Perhaps most disturbing, however, is that all this occurs while regulation of animal husbandry practices ostensibly claims to protect farm animals from unnecessary suffering. But, full of many loopholes and deficiencies, these animal welfare regulations with respect to farming practices only create an atmosphere of indifference and acceptance of such cruelties. With most Americans turning both a blind eye and a deaf ear towards animal husbandry practices, answering the question what constitutes tolerable conditions for farm animals, necessitates exposing, in detail, the deplorable conditions under which the animals we eventually eat suffer.

Animals are cognitive, sentient beings capable of varying levels of pain and suffering, particularly higher-evolved species.<sup>49</sup> The illusion that animals lack the capacity to feel pain or lack the ability to have thoughts and feelings makes it much easier for humans to exploit animals.<sup>50</sup> Those arguing that such animals neither

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<sup>47</sup>Battered Birds and Crated Herds at 19.

<sup>48</sup>Havercamp at 653-4.

<sup>49</sup>See Margaret Rose & David Adams, Evidence for Pain and Suffering in Other Animals, in *Animal Experimentation: The Consensus Changes* 42 (Gill Langley ed., 1989) (discussing animal pain, suffering, and anxiety). See also, Patrick P.G. Bateson, Assessment of Pain in Animals, 42 *Animal Behav.* 827 (1991); David DeGrazia & Andrew Rowan, Pain, Suffering, and Anxiety in Animals and Humans, 12 *Theoretical Med.* 193 (1991).

<sup>50</sup>Marc Bekoff, Essay: Animal Welfare, Animal Rights, or Something Else? "Do Dogs Ape?" Or "Do Apes Dog?" And Does

feel pain nor suffer might pause to “recall that until recently, many doctors believed that human newborns couldn’t either and mercilessly operated on them without anesthesia.”<sup>51</sup> A “1977 study revealed that more than half the children between the ages of four and eight months who had undergone major surgery were given no medication for postoperative pain.” Current medical knowledge on infant pain now warns, “humane considerations should apply as forcefully to the care of . . . infants as they do to children and adults in similar painful and stressful situations.”<sup>52</sup> In addition, like humans, it is not difficult to imagine animals suffering pain when they feel out of control, when the course of pain is unknown, when the meaning of the pain is dire, or when the pain is apparently without end.<sup>53</sup> Countless studies document animals’ capacity to feel pain and suffering.

On June 19, 1997, the longest case in English court history, known throughout the world as “McLibel,” finally concluded. After seven years from the service of initial writs and 313 days of trial, Judge Justice Bell took two hours to read his summary of the verdict finding, in relevant part, the defendants correctly stated that McDonalds (and, by inference, similar corporations)<sup>54</sup> was culpably responsible for the large-scale mistreatment of certain animals raised for food and food production in the United States and the United Kingdom. <sup>55</sup> McDonalds sued Helen Steel and Dave Morris, claiming that Steel and Morris had defamed them by asserting, among other things, that McDonalds was culpably responsible for cruel treatment of animals in its common farming practices.<sup>56</sup> While the defendants, a postman and gardener with a

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It Matter? Broadening and Deepening Cognitive Theory, 3 *Animal L.* 13 (1997).

<sup>51</sup>Wise, *Rattling the Cage*, at 182 (quoting, Roselyn Rey, *The History of Pain* 293 (Harvard University Press 1998) (1993); K.J.S. Anand and P.R. Hickey, “Pain and its Effects on the Human Neonate and Fetus,” 316 *New England Journal of Medicine* 1321 (1987)).

<sup>52</sup>*Id.* (quoting, K.J.S. Anand and P.R. Hickey at 1326).

<sup>53</sup>*Id.* (citing, Eric J. Cassell, *The Nature of Suffering and the Goals of Medicine* 32, 35, 36 (Oxford University Press 1991) (reporting similar suffering capacities in humans)).

<sup>54</sup>The plaintiffs were two huge corporations, McDonalds Corporation (U.S.) and McDonalds’ British subsidiary, McDonald’s Restaurant Limited [hereinafter McDonalds]).

<sup>55</sup>David J. Wolfson, *McLibel*, 5 *Animal L.* 21, 21-22 (1999).

<sup>56</sup>McSpotlight (visited Feb. 1, 2001) <<http://www.mcspotlight.org/case/index.html>>.

combined annual income of merely \$12,000 U.S., represented themselves *pro se*, McDonalds spent over \$16 million on its legal representation.<sup>57</sup> Despite remarkable obstacles against them, the defendants received a positive judgment with the judge finding so many common farming practices cruel and McDonalds culpably responsible for them.<sup>58</sup> Most significantly, the McLibel decision exposed a disturbing contradiction: the court had held that many common farming practices in the United States and the United Kingdom were cruel in the view of a reasonable person and yet, at the same time, entirely legal.<sup>59</sup> The unique legal context of the McLibel decision with respect to animal law, specifically animal cruelty law, yielded a groundbreaking holding that represented “the most extensive and critical legal discussion in legal history about the inherent cruelty in modern common farming practices.”<sup>60</sup> McLibel’s distinct legal posture allowed the court to determine whether, according to a reasonable person, common farming practices were cruel, a simple question that had never before been so extensively addressed. The unique nature of the case allowed the court to rule on issues relating to the treatment of farm animals that rarely, if ever, are subject to judicial scrutiny.

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<sup>57</sup>Wolfson, McLibel, at 22 (citing, John Vidal, Empire of Burgers, The Guardian, June 27, 1997 (visited Apr. 29, 1999) <[http://www.mcspotlight.org/media/press/guardian\\_20jun97.html](http://www.mcspotlight.org/media/press/guardian_20jun97.html)>).

<sup>58</sup>In addition to their vast financial and legal disadvantage, the defendants faced numerous constraints. For example, McDonalds refused to allow the defendants to inspect any of its animal production or slaughter facilities; thus, most of the defendant’s evidence for animal cruelty had to be provided by McDonalds’ own witnesses. *Id.* at 29 (quoting, Chief Justice Bell, Verdict Section 11, The Rearing and Slaughtering of Animals, (visited Apr. 29, 1999) <[http://www.mcspotlight.org/case/trial/verdict/verdict\\_jud2c.html](http://www.mcspotlight.org/case/trial/verdict/verdict_jud2c.html)> [hereinafter Opinion]). The one-sided nature of the circumstances surrounding the case only reinforces and validates the ultimate judgment in the case and, at the same time, begs the question how much more might have been proven about the cruel conditions farm animals endure had the playing field been level.

<sup>59</sup>*Id.* at 23-4.

<sup>60</sup>*Id.* at 22.

Historically, courts determine whether a common farming practice is cruel solely in the context of the application and interpretation of anticruelty statutes. *McLibel*, however, was founded in the civil tort of defamation. No court had ever examined the cruel treatment of farm animals in this legal context. The legal posture of *McLibel* allowed a simple question to be posed to the court that had never before been addressed. In a typical prosecution for cruelty in relation to a common farming practice, the court must determine whether the particular practice violates the statutory definition of cruelty. By contrast, in *McLibel*, Mr. Justice Bell was asked to determine whether, according to a reasonable person, a common farming practice was cruel. As *McLibel* demonstrates, the answers to these two questions are not the same. In addition, because *McLibel* was grounded in the tort of defamation, the court was able to examine evidence and rule on farming practices that would normally not reach the court. The legal posture of defamation allowed the defendants to avoid the multiple hurdles, obstacles, and barriers that face anyone who argues a cruel common farming practice violates an anticruelty statute.<sup>61</sup>

Also, had Steel and Morris made these allegations in the United States as opposed to England, “McDonalds likely would not have initiated suit. In England, the law presumes defamatory statements are false until proven otherwise by the defendant, whereas, in the United States, the plaintiff has the burden of proving defamatory statements false.”<sup>62</sup> Additionally, in the United States, the First Amendment of the Constitution would have provided the defendants with free speech protection.<sup>63</sup>

In determining whether the methods by which animals were reared and slaughtered to make McDonalds’ food were cruel and inhumane, the court handed down the following judgments.<sup>64</sup> As to the first charge regarding the rearing of animals raised for food, the court, after examining a number of common farming practices, specifically the egg-laying hens battery cage operations used in both the United States and the United Kingdom, held that while “the evidence failed to demonstrate a chicken spending her whole life without sunshine or fresh air was cruel. . . the severe restriction of movement caused by the battery cage, whereby one bird is provided. . . an area about eight inches by eleven inches, was proven to be cruel.”<sup>65</sup> The

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<sup>62</sup>*Id.* at 33 (quoting, *New York Times v. Sullivan*, 376 U.S. 254, 292) (1964)).

<sup>63</sup>*Id.* (noting, *New York Times v. Sullivan* at 286)).

<sup>64</sup>The court limited the trial’s reach where it concluded that McDonalds had insufficient influence over certain industries to be held vicariously liable for cruelty towards animals (i.e., the cattle rearing industries in the United States and United Kingdom and the pig suppliers in the United States. The court found that these industries and suppliers existed in large numbers and were well-established before McDonalds’ existence and the defendants failed to show that McDonalds had sufficient control to demand practices be altered, even if they were cruel.) *Id.* at 37-8 (citing, Opinion at 7-8).

<sup>65</sup>*Id.* at 40 (citing, Opinion at 32).

judge found,

[i]t seems to me that even the humble battery hen probably has some sentience, some power of perception by its senses, of virtually total deprivation of all normal activities save eating, drinking, some minimal movement, defecating and laying eggs, and that one in three or four of them which suffer broken bones on “harvesting” for slaughter must feel some significant pain. I conclude that the battery system as described to me is cruel in respect of the almost total restraint of the birds and the incidence of broken bones when they are taken for slaughter.<sup>66</sup>

Similarly, the judge found that while housing meat-producing broiler chickens in a broiler house for their whole lives without access to open air or sunshine was not proven to be cruel, the severe space restrictions these animals suffered due to overstocking in their last few days prior to slaughter was also cruel.<sup>67</sup> The judge also noted,

grow[n] together as a “crop”...The sheer size of the system does not...appear to lend itself to humane treatment...[Ultimately,] while I have felt unable to judge that broiler house birds suffer from dim light or inability to express what would be normal behavior in other conditions, I do not consider that I am indulging in too much anthropocentrism in judging them to be uncomfortable for the last few days...The high density is intentional and unnecessary and it probably causes the birds some level of real discomfort.<sup>68</sup>

In terms of sows raised for pork in the United Kingdom, the judge found their restriction of movement cruel.<sup>69</sup> The sows are placed in “narrow metal barred stalls in which the sow can only stand up or lie down and cannot turn around, with no access to open air and sunshine and without freedom of movement.”<sup>70</sup> The judge further explained that, “[p]igs are intelligible and social animals and I have no doubt that keeping [them] in dry sow stalls for extended periods is cruel.”<sup>71</sup> Remarkably, this practice, now illegal in the United Kingdom, continues to be legal in the United States.<sup>72</sup> The judge further noted that while “[t]here may be cruel practices in relation to pigs which go for [McDonalds’] ... pork products in the U.S.,... I have

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<sup>67</sup>Id. (citing, Opinion at 19, 21).

<sup>69</sup>Id. at 41(citing, Opinion at 44).

<sup>70</sup>Id. at note 150 (citing, Opinion at 44).

<sup>71</sup>Id. (citing, Opinion at 38).

<sup>72</sup>David J. Wolfson, *Beyond the Law*, at 141.



insufficient evidence to find them.”<sup>73</sup> The court’s findings of cruelty, however, were entirely sufficient to justify the first particular allegation by the defendants that McDonalds’ farming methods subjected farm animals to unnecessarily cruel and inhumane pain and suffering during rearing.<sup>74</sup>

As to the defendants’ allegations regarding McDonalds’ cruelty towards animals in the process of slaughter, the judge found the proof lacking with respect to the cruel circumstances surrounding the slaughter of cattle and pigs in the United States and United Kingdom; however, he found animal cruelty in that frequently chickens in the United States and United Kingdom are still fully conscious when they have their throats cut.<sup>75</sup> “Recognizing that between forty and one-hundred twenty birds each hour are fully conscious when their throats are cut in the United Kingdom, the court found this practice to be ‘frequent. . . I judge neck cutting while conscious cruel by modern standards. The whole purpose of stunning animals is to render them unconscious and insentient before their throats are cut.’”<sup>76</sup> In the United States, chickens remain without federal protection, as the pertinent statute, the Humane Slaughter Act<sup>77</sup> specifically exempts poultry, and any state protection is generally insufficient or not enforced.<sup>78</sup> In addition, the judge noted that “significant evidence [had been presented] suggesting that many chickens, cows and pigs in the United States are fully conscious when their throats are cut.”<sup>79</sup> The judge conceded that not all of the defendants specific allegations had been proven true as a legal matter; however, sufficient evidence had been shown “to justify the general charge that both plaintiffs are culpably responsible for cruel practices in the rearing and slaughtering of

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<sup>73</sup>Wolfson, McLibel, at 41 (citing, Opinion at 44).

<sup>74</sup>*Id.* (citing, Opinion at 50).

<sup>75</sup>*Id.* at 42 (citing, Opinion at 30, 41, 47, 48).

<sup>76</sup>*Id.* at 41 (citing, Opinion at 30).

<sup>77</sup>Humane Slaughter Act of 1958. 7 U.S.C. §§1901-1906 (1994). The statute states, “in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are [to be] rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective.” *Id.* §1902. The definition of “other livestock” does not include chickens. 9 C.F.R. §301.2 (qq) (1998).

<sup>78</sup>Wolfson, McLibel, at 42 (citing, Gail A. Eisnitz, A Pandora’s Box of Pathogens, in *Slaughterhouse 194* (1997)).

<sup>79</sup>*Id.* (citing, Eisnitz at 121, 144).

some of the animals which are used to produce their food.”<sup>80</sup> The general proposition that common farming practices employed by McDonalds, and similar agribusinesses, in the production of food subjected farm animals to cruel and inhumane treatment according to a reasonable person had undoubtedly been proven.

Although the defendants had affirmatively proved the truth of their general allegation, the judge felt compelled to condemn in addition to the specific charges claimed by the defendants, numerous additional examples of McDonalds’ cruel common farming practices revealed by the trial’s evidence. Even though these findings were superfluous and not relevant to the ultimate holding, their inclusion validates the extent and severity of the cruelty found. First, the judge determined that calcium deficiencies in battery hens cause osteopaenia, a leg problem leading to fractures, in both the United States and the United Kingdom.<sup>81</sup> Second, the judge found the feeding limitations on breeder broilers in the United Kingdom and the United States cruel, especially since the “birds are bred from a generic strain chosen for its appetite, fast growth, and heavy weight ‘for economic reasons.’ . . . The court specifically held ‘the practice of rearing breeders for appetite, that is to feel especially hungry, and then restricting their feed with the effect of keeping them hungry, is cruel. It is a well-planned device for profit at the expense of suffering of the birds’”<sup>82</sup> Third, the judge found that the “leg problems in these broilers bred for weight gain caused both by their genetic breeding and crowded conditions in the United States and the United Kingdom caused the birds undue pain and suffering.”<sup>83</sup> Fourth, the court found the gassing of male chickens by carbon monoxide in the United Kingdom cruel.<sup>84</sup> The judge noted,

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<sup>80</sup>Id. at 42-3 (citing, Opinion at 50).

<sup>81</sup>Id. at 43 (citing, Opinion at 33-4, 51).

<sup>82</sup>Id. (citing, Opinion at 16).

<sup>83</sup>Id. (citing, Opinion at 23-4, 51).

<sup>84</sup>Id. (citing, Opinion at 13).

I bear in mind the danger of substituting one's own imagination of what it must be like to be gassed in this way. I bear in mind that a very young chick's awareness must be limited...but...as chickens are living creatures we must assume that they can feel pain, distress and discomfort in some form although we do not know exactly how they feel it. In my view chicks gassed...do suffer significantly, albeit for a short period, when gassed by CO2 and when an alternative method of instantaneous killing is available...I find the practice cruel.<sup>85</sup>

Ironically, culling male chickens, which are of no use to the egg industry, by CO2 gassing, continues as a common farming practice in the United States.<sup>86</sup> Fifth, the court found the manner in which broiler chickens are caught and handled when captured for slaughter in the United Kingdom cruel.<sup>87</sup> The Court noted that the rush to load chickens into the processing drawers leads to handlers grabbing chickens in a rough fashion, whereupon they are held by one leg, upside down, until the handler has several in each hand.<sup>88</sup> The evidence showed that this violent handling often results in the birds hemorrhaging from hip dislocations and suffering broken legs.<sup>89</sup> Afterwards, the handlers drop the handfuls of birds into a processing drawer, where a number of their heads are crushed when the drawer is shut.<sup>90</sup> The judge noted that, "[t]his cruelty was in my judgment compounded by the fact that the bird was already injured...the catching...had often been done hurriedly and clumsily under pressure of time, with the result that it has been cruel, in my view."<sup>91</sup> Finally, the judge found the pre-stun electric shocks suffered by broiler chickens to render them immobile and easier to slaughter in the United Kingdom cruel. "McDonalds' own witness, Dr. Gregory, stated the killing methods for the birds did not comply with governmental codes of practice."<sup>92</sup> In the United States, no federal codes of practice for the killing of poultry exist, and generally, any state protection is ineffective or not enforced.<sup>93</sup> Remarkably, the defendants successfully represented themselves *pro se*; they

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<sup>86</sup>Id. at 44 (citing, Karen Davis, *Prison Chickens, Powdered Eggs: An Inside Look at the Poultry Industry* 122 (1996)).

<sup>87</sup>Id. (citing, Opinion at 25).

<sup>88</sup>Id. (citing, Opinion at 25, 27-8).

<sup>89</sup>Id. (citing, Opinion at 25).

<sup>90</sup>Id. (citing, Opinion at 25-6).

<sup>91</sup>Id. (citing, Opinion at 27-8).

<sup>92</sup>Id. (citing, Opinion at 28).

<sup>93</sup>Id.

were heavily outmatched, produced limited amounts of evidence, and undoubtedly faced many additional legal disadvantages because of their lack of legal training, and yet, they were able to bring about a judgment that had yet to be declared before in a court of law, that numerous commonly accepted, customary farming practices were objectively cruel towards animals. One can only speculate how much more robust the decision would have been had the defendants had anywhere close to the same resources, financial support and legal muscle as the plaintiffs.

A quintessential facet of McLibel's astonishing holding denouncing a whole host of customary farming practices was that the judge took a novel approach to defining the term "animal cruelty," an approach that should have legal implications in both the United Kingdom and the United States. Rejecting both the defendants' definition, "any practice that caused an animal to suffer any degree of stress of discomfort or transitory pain was necessarily cruel,"<sup>94</sup> and the plaintiffs' suggestions, the judge instead opted for a more reasonable, objective standard. Of particular note, the plaintiffs suggested the court adopt the classic agribusiness position, termed the 'Customary Approach,' which finds that any farming practice in accordance with common modern farming or slaughter practices, even if it is cruel, acceptable and legal.<sup>95</sup> The Customary Approach is codified in the anticruelty statutes of thirty U.S. states; twenty-five of which exempt all customary farming practices, while the remaining states exempt many common farming practices.<sup>96</sup> Of particular importance to U.S. animal cruelty jurisprudence, the judge analyzed and unequivocally rejected the reasoning underlying U.S. modern statutory approach towards cruelty to animals raised for food, noting that accepting it in this case, "would be to hand the decision as to what is cruel to the food industry completely, moved as it must be by economic... considerations."<sup>97</sup> Others have condemned the United States' deference to the farming

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<sup>94</sup>*Id.* at 38 (citing, Opinion at 5).

<sup>95</sup>Wolfson, *Beyond the Law*, at 135.

<sup>96</sup>*Id.* at 135, 138.

<sup>97</sup>Wolfson, *McLibel*, at 39 (quoting, Opinion at 5).

community, revealing the inherent irony that,

[l]egislatures in the United States have endowed agribusiness with complete authority to decide what is, and is not, cruelty to animals under their care. The majority of states in the United States have enacted laws mandating that prosecutors, humane enforcement agencies, and the judiciary cannot examine farming practices for cruelty or animal abuse once the particular practice is demonstrated to be a customary practice of the United States farming community. In effect, state legislatures have granted agribusiness a legal license to treat farm animals as they wish.<sup>98</sup>

Ultimately, the judge settled on a standard that he felt fairly incorporated the interests of both parties; one guided by neither blind fanaticism nor political influence, but rather, common sense. He used his own judgment to “decide whether a practice is deliberate and whether it causes sufficiently intensive suffering for a sufficient duration of time to be justly described as cruel.”<sup>99</sup> Even though this standard is subjective to a certain extent, in that the judge used his “own judgment,” “it is undoubtedly preferable to the Customary Approach because it provides considerably more objectivity in determining what is a cruel practice. Most importantly, this determination is made by a judge, a more objective party, rather than the farming industry.”<sup>100</sup> The importance of the judge’s novel definition of what constitutes animal cruelty should not be underestimated, especially with respect to relevant U.S. jurisprudence. Most significantly, the standard chosen and the decision itself reveal the deplorable deficiencies in United States laws that ostensibly protect animal welfare. The irony, namely that a farming practice can be judged cruel, within the ordinary meaning of the word, and yet, legal under the law, mandates that serious consideration be given to why our country claims to care about animal welfare, and yet, almost unequivocally fails to protect the animals we eventually use for food.

Although the *McLibel* decision unveiled numerous inhumane animal husbandry practices occurring in the

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<sup>99</sup>Wolfson, *McLibel*, at 39 (quoting, *Opinion* at 6).

<sup>100</sup>Id.

United States, unfortunately the trial, while extensive, did not afford a comprehensive look at the entire industry. A range of additional farming practices continue to inflict upon the animals we eat widespread pain and suffering, which according to the same standard used in *McLibel*, or according to almost any rational, reasonable, objective standard should offend our moral code. Unfortunately, the *McLibel* decision could not denounce all the cruel practices that persist in the farming industry due both to the lack of resources on the defendants' side and, more significantly, to the fact that the judge found any more evidence superfluous, as sufficient proof had been presented to the court to conclude that McDonalds' customary farming practices treated farm animals cruelly and inhumanely.<sup>101</sup>

Unfortunately, "farming practices in the United States dictate the fate of the majority of animals that come into contact with humans."<sup>102</sup> Over 9.4 billion animals were killed for food in the United States in 1998, including 41.3 million cattle and calves, 117.2 million pigs, 4.7 million sheep and lambs, 8.5 million 'broiler' chickens, 438 million laying hens, 322 million turkeys, and 25.4 million ducks. The great majority of these animals are raised under intensive husbandry practices<sup>103</sup> resulting in widespread animal cruelty. When discussing the treatment of such a massive number of animals, "it is hard not to write either in a droning monotone or somewhat sensationally, but a brief analysis of a few customary practices is necessary to understand what a simple legal exemption actually achieves in practice. It is not simply [9 billion or so] animals a year; but it is one, and one, and one, amounting to the large scale mistreatment of individual animals."<sup>104</sup>

Agribusiness subjects cattle of all ages to various inhumane farming practices. Day-old calves, for example, are immediately taken away from their mothers and "transported from the dairy farm before they are able to walk;" often, as a result, "these calves are "thrown, dragged or trampled."<sup>105</sup> Some of these newborn calves

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<sup>101</sup>*Id.* at 41 (citing, *Opinion* at 50).

<sup>102</sup>Wolfson, *Beyond the Law*, at 133.

<sup>103</sup>*Id.*

<sup>104</sup>*Id.*

<sup>105</sup>*Id.* at 134.

are sent to “calf ranches” where they are raised by the thousands, each confined to a barren wooden crate or, in less intensive states, the calves are raised individually in small pens or hutches.<sup>106</sup> The female dairy calf newborns are raised to replace their mothers, generally impregnated at 15 months of age, while most of the males, of no use to the dairy industry, as they will never produce milk, are raised and slaughtered for meat, but nearly one million of the males are used for veal each year.<sup>107</sup> Veal calves, after being taken away from their mothers immediately, spend approximately sixteen weeks in tiny wooden crates where they cannot turn around, stretch their legs, or even lie down comfortably, fed only a liquid milk substitute, deficient in iron and fiber.<sup>108</sup> The liquid diet suppresses the normal function of the calf’s rumen, which makes the calves anemic, resulting in the light colored flesh, prized as veal. As a result of this purposeful neglect, the little calves develop an insatiable craving for iron. They used to lick any iron fittings they could find in their crates, including the metal chains tied around their necks, rusty nails, and, even, and their own urine and manure, in a desperate attempt to obtain some of the mineral. Now, however, veal vendors have caught onto the behavior and commonly prevent it by chaining the calves so tightly so they cannot obtain any iron in this pitiful way.<sup>109</sup> The suffering endured by these calves should diminish the value of veal, and yet, it remains one of the most expensive, cherished items at the finest restaurants. However, the tax this treatment should toll on our social conscience does not factor into the price.

Dairy cows have to give birth in order to start producing milk. Therefore, “dairy cows are forced to have a calf every year because such a schedule results in maximized milk production and profit. Like human beings, the cow’s gestation period is merely nine months long; thus, giving birth once every twelve months is physically taxing. The cows’ bodies are further stressed, as they are forced to give milk seven out of their nine months of gestation.”<sup>110</sup> The instances of dairy cow industry diseases and disorders run rampant. For

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<sup>106</sup>Battered Birds and Crated Herds at 8.

<sup>107</sup>*Id.* at 9.

<sup>108</sup>*Id.*

<sup>109</sup>See *Animal Legal Defense Fund of Boston v. Provimi Veal Corp.*, 626 F. Supp. 278 (D. Mass. 1986).

<sup>110</sup>*Id.* at 7.

example, approximately one-half of today's dairy cows suffer from mastitis, a bacterial infection in their udders, which can be fatal in its advanced stage.<sup>111</sup>

Although the dairy industry is well aware of the cows' health problems and suffering associated with intensive milk production, it continues to subject cows to even worse abuses in the name of increased profit. In the early 1990s, the U.S. government was persuaded by the agricultural industry to approve Bovine Growth Hormone (BGH), an injectable synthetic hormone. BGH can increase milk production by as much as 25% per cow, placing an additional burden on animals who are already pushed beyond their biological limits. Another side effect of BGH is an increase in birth defects in calves.<sup>112</sup>

Beef cattle commonly suffer from a malady called "cancer eye," where when "[l]eft untreated, the cancer eats away at the animal's eye and face, eventually producing a crater in the side of the cow's head."<sup>113</sup> Most beef cattle spend the last months of their lives at feedlots, where, "crowded by the thousands into dusty, manure-laden holding pens... [t]he air is thick and full of harmful bacteria... [where] the animals are at constant risk for respiratory disease. Feedlot cattle are routinely implanted with growth-promoting hormones, and they are fed unnaturally rich diets designed to fatten them quickly and profitably," resulting in high risk for metabolic disorders.<sup>114</sup> In addition, beef cattle are dehorned, castrated and hot-iron branded without anesthetic.<sup>115</sup> The hot-iron branding of cattle "is extremely traumatic and painful, and the animals bellow loudly" as ranchers' brands are burned into their flesh and hide.<sup>116</sup> Another common cattle identification marking practice, "waddling," consists of a painful procedure of cutting chunks out of the hide that hangs under the animals' necks, chunks large enough so that ranchers can identify their cattle from a distance.<sup>117</sup>

Another customary farming practice, in the poultry egg-laying business, is "the disposal of male chicks or live, unhatched eggs in plastic garbage bags, where they suffocate under the weight of other chicks dumped

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<sup>111</sup>Id.

<sup>113</sup>Id. at 11.

<sup>114</sup>Id. at 11-12.

<sup>115</sup>David J. Wolfson, *Beyond the Law*, at 134.

<sup>116</sup>*Battered Birds and Crated Herds* at 11.

<sup>117</sup>Id.



on top of them.”<sup>118</sup> In the case of laying hens, after the male chicks are disposed of, it is custom to debeak the females by the use of hot cauterizing blades<sup>119</sup> to stop them from pecking each other and engaging in cannibalistic behavior resulting from the stress of living in extremely dense living quarters.<sup>120</sup> Researchers analogize the pain felt by chickens during debeaking to that felt by humans who have limbs amputated.<sup>121</sup> After debeaking, the chickens are housed in cages, averaging 12-by-20 inches in size, with five birds per cage.<sup>122</sup> The small size of the cage makes it impossible for the birds to open their wings to full span and extremely difficult for them to turn around with ease.<sup>123</sup> The chickens often spend their entire lives in these overcrowded cages, the stress of which often causes them to become so aggressive that some end up killing and eating other birds.<sup>124</sup> Another disturbing phenomena about the laying chicken is that their toes often get caught in the wire bottoms of their cages, and, as a result, their toes actually grow around the wire.<sup>125</sup> These chickens, without any other alternative, repeatedly rub their bellies against the bottoms wires to groom themselves, resulting in feather loss and painful sores on their bellies.<sup>126</sup> In addition, “force molting,” the starving of laying hens to compel them into the next laying cycle is a common farming practice. When laying hens are no longer productive, they are slaughtered for human consumption.

In addition to the suffering farm animals undergo from various rearing techniques, the last days of their lives are filled with unspeakable cruelties resulting from inhumane methods of transportation and slaughter. Approximately nine billion animals are transported to slaughter in the United States each year. Farm animals suffer extreme stress constantly, and hundreds of millions animals endure painful injuries or die

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<sup>118</sup>Fox at 151 (1995) (citing, Singer at 107-108). See also, Wolfson, *Beyond the Law* at 134.

<sup>119</sup>Wolfson, *Beyond the Law* at 134.

<sup>120</sup>Fox at 151 (citing, Singer at 102, 107).

<sup>121</sup>*Id.* (citing, Singer at 101).

<sup>122</sup>*Id.* at 152 (citing, Singer 111).

<sup>123</sup>*Id.* (quoting, Singer at 111(noting that the chickens’ full wing span approximately covers 30 inches)).

<sup>124</sup>*Id.* (quoting, Singer at 114).

<sup>125</sup>Wolfson, *Beyond the Law*, at 134.

<sup>126</sup>Fox at 152 (citing, H.B. Simonsen et al., *Effect of Floor Type and Density on the Integument of Egg-Layers*, 59 *Poultry Sci.* 2202, 2205-6 (1980)).

horrible deaths every year in transit to slaughterhouses.<sup>127</sup> Overcrowded into huge transportation trucks and driven vast distances, the animals sometimes trample one another, endure long periods without food or water, undergo tremendous stress, and face, unprotected, all extremes in weather. In transit, the animals “may freeze to death in the winter or die of heat prostration in the summer.”<sup>128</sup> With less than ten horse slaughterplants in the United States, “a horse’s last journey may be hundreds of miles long—sometimes across national borders. The suffering horses experience is compounded because these tall animals are often transported in livestock trucks designed for other species.”<sup>129</sup> Pervasive overcrowding, readily acknowledged as the norm in the livestock industry because the profits generated outweigh the losses, exacerbates the agony animals endure during transportation. Unfortunately, the economics dictate that conditions not change. It is cheaper to lose those injured or dead on arrival, than to make their trip more bearable. In addition to the numerous injuries caused by overcrowding the animals, one hog expert explains, “[d]eath losses during transport are too high—amounting to more than \$8 million per year. But it doesn’t take a lot of imagination to figure out why we load as many hogs on a truck as we do. It’s cheaper. So it becomes a moral issue. Is it right to overload a truck and save \$.25 per head in the process, while the over-crowding contributes to the deaths of 80,000 hogs per year?”<sup>130</sup> The answer unfortunately is yes.

The animals’ fear during loading and unloading is one of the most stressful parts of the pre-slaughter experience, “exacerbated by impatient livestock handlers who resort to excessive beating and prodding to hurry animals along. In some cases, depraved handlers act sadistically, shocking the animals’ genitalia with electric prods.”<sup>131</sup> Ironically, such abusive handling results in enough meat discarded to feed a large city. As such, “[t]he livestock industry is losing \$46 million annually from bruises on cattle and hogs. . . Ten percent of all fed lambs have carcass damage. The most common cause of bruising is grabbing sheep by the wool or

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<sup>127</sup>Battered Birds and Crated Herds at 43.

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

<sup>129</sup>*Id.* at 44.

<sup>130</sup>*Id.* (quoting Lancaster Farming, October 27, 1990).

<sup>131</sup>*Id.*

by the hind leg.”<sup>132</sup> Again, the cost of such losses does not outweigh the gain from the efficiency that brings them about.

Millions of slaughter-bound turkeys and chickens die from traumatic injuries caused by rough, careless handling, while millions of survivors arrive at the slaughterhouses with broken bones or dislocated wings and leg bones caused by handlers violently grabbing birds by one leg or by one wing.<sup>133</sup> Upon arrival to the slaughterhouse, poultry are either pulled from their crates or the crates are lifted off the truck, usually by a crane or forklift, and then the birds are dumped onto a conveyor belt, some falling on the ground instead of the conveyor belt. Slaughterhouse employees, “intent upon ‘processing’ thousands of birds every hour, don’t have the time nor the inclination to pick up individuals who fall through the cracks.”<sup>134</sup> Often these fallen birds die under the crush of heavy machinery or vehicles operating nearby or from starvation, exposure and exhaustion.<sup>135</sup> Of those that make it onto the belt, fully conscious birds are hung by their feet from metal shackles on a moving rail, which takes them to the stunning tank, where the birds are immobilized by submerging their heads into the electrified pool of water.<sup>136</sup> With inadequate stunning methods, often some of the birds proceed to the next station, either fully conscious or unconscious, but still capable of feeling pain.<sup>137</sup> Next, the birds’ throats are slashed, usually by a mechanical blade, which inevitably misses some birds, who then proceed to the final scalding tank fully conscious to be boiled alive.<sup>138</sup> The boiling of birds alive occurs so regularly, “affecting millions of birds every year, that the industry has a term for these birds. They are called ‘redskins.’”<sup>139</sup> Hog slaughterplants, killing 1,000s of pigs hourly, subject millions of pigs to a similar boiled alive fate, as inadequate stunning methods fail to render them unconscious.<sup>140</sup>

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<sup>132</sup>Id. at 45

<sup>133</sup>Id. at 46

<sup>134</sup>Id. at 52.

<sup>135</sup>Id.

<sup>136</sup>Id. at 52-3.

<sup>137</sup>Id. at 53.

<sup>138</sup>Id.

<sup>139</sup>Id.

<sup>140</sup>Id. at 54

“Insufficient current will render in a paralyzed hog which will feel everything. In other cases, stunned animals revive prior to bleeding. Eyewitnesses accounts described incidents where live hogs entered the scalding tank and were boiled alive.”<sup>141</sup> Like poultry, cattle stunning techniques, usually a mechanical blow to the head, are imprecise and inadequate. Inevitably, resulting in conscious cows hanging upside down, thrashing their legs and struggling to get loose, while a slaughterhouse worker makes another attempt at rendering them unconscious.<sup>142</sup> “Eventually, the animals will be ‘stuck’ in the throat... whether conscious or not.”<sup>143</sup> Additionally, slaughterhouses have been reluctant to use the stunning technique on calves, in particular, since destroying the calves’ brains lessens its resale value.<sup>144</sup>

With increasing consolidation and industrialization occurring, especially in the meat industry, animals suffer immeasurable fear and terror in slaughterhouses, as a growing number of animals die in massive, assembly-line slaughterplants. “Although ‘humane’ standards exist for the killing of animals, so many are slaughtered, about 240 each second, it’s difficult to ensure each animal a relatively painless death. For some seven billion animals, because they are poultry, there is no legal protection.”<sup>145</sup> Animal suffering is exacerbated by the fact that slaughterhouse workers detach from their jobs, becoming numb to animal suffering, some even turning sadistic.<sup>146</sup> At cattle slaughterplants, workers, under tremendous stress themselves to keep up with rushed assembly lines, find it increasingly difficult to treat animals with any semblance of humanity. “Good handling is extremely difficult if equipment is ‘maxed out’ all the time. It is impossible to have a good attitude towards cattle if employees have to constantly over-exert themselves, and thus transfer all that stress right down to the animals, just to keep up with the line.”<sup>147</sup>

Despite the McLibel holding declaring a whole host of customary farming practices cruel, the continuing

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<sup>141</sup>Id.

<sup>142</sup>Id. at 53.

<sup>143</sup>Id.

<sup>144</sup>Id.

<sup>145</sup>Id. at 51.

<sup>146</sup>Id.

<sup>147</sup>Id. at 53

industrialization of American agriculture coupled with a deficient regulatory scheme, create an atmosphere of virtually complete acquiescence to unspeakable cruelties towards farm animals. Today, every U.S. state has an anticruelty statutes,<sup>148</sup> the majority of which prohibit, at least in part, their application to farm animals. Thirty states have anticruelty laws that specifically exempt all or some farming practices deemed “normal,” “customary,” “accepted,” or “common,” no matter how cruel, twenty-five of which prohibit their application to all such farming practices, eighteen of which amended their statutes in the last ten years to place agribusiness out of their reach.<sup>149</sup> This “trend indicates a nationwide perception that it was necessary to amend anticruelty statutes to avoid their possible application to animals raised for food or food production. Amendments specifically exempting customary husbandry practices indicate that, but for the exemption, such practices would be determined to be cruel.”<sup>150</sup> These exemptions create the perverse result of allowing the corporate, farming industry, whose interests are primarily economic and minimal, if at all, with respect to animal welfare, to determine what constitutes cruelty towards animals. Moreover, any practice considered “normal,” “customary,” “accepted,” or “common,” no matter how cruel is, by definition, not cruel.

Legislatures have endowed the agribusiness community with complete authority to define what is, and is not, cruelty to the animals in their care. Particularly striking is the recently enacted Idaho statute, which not only states that the anticruelty statute shall not be construed as interfering with accepted practices of animal husbandry or any “other normally or commonly considered acceptable” practice, but also places enforcement power in the Department of Agriculture.<sup>151</sup>

Ironically, these anticruelty statutes, more often than not, immunize farmers from prosecution. For example, Idaho’s statute, not dissimilar to a majority of anticruelty laws, indicates that “normal or commonly accepted animal husbandry and other practices ‘shall not be construed to be cruel nor shall they be defined as cruelty to

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<sup>148</sup>Due to the discomfort felt by many drafters and courts in applying criminal sanctions solely on the basis of the welfare of animals, many “anticruelty laws were justified on the ground that acts of cruelty dulled humanitarian feelings...the legal duty to animals has been perceived as somewhat indirect, based on ‘the proposition that we have no duty directly to animals... [s]uch views are still prevalent in the interpretation of today’s anticruelty laws.” Wolfson, *Beyond the Law*, at 127-8.

<sup>149</sup>*Id.* at 135.

<sup>150</sup>*Id.* at 137.

animals, nor shall any person engaged in these practices, procedures or activities be charged with cruelty.”<sup>152</sup>

The effect being, if cruel practices are widespread enough or normal, they cannot be prosecuted; the incentive being, to increase inhumane practices or, at least, not to decrease them.

Ultimately, many of the examples of customary farming practices. . . constitute cruelty to animals raised for food. . . , and state anticruelty states that cover animals raised for food. . . are not applied to these practices. It is also clear that a large number of legislatures in the United States have created legal exemptions to allow such cruelty to continue. In effect, state legislatures have recognized that without amending anticruelty statutes, many of [these practices] could be criminal offenses.

By allowing the farming community to define cruelty to animals in their care, the control of anticruelty laws as they apply to farm animals has fallen into the hands of those that animal welfare laws traditionally have sought to punish.<sup>153</sup> Given that there is also no civil or criminal federal law governing the treatment of animals raised for food or food production while on the farm, the sole protection from unnecessary suffering and cruel treatment falls within state criminal anticruelty statutes, and animals within the states that exempt customary farming practices now have no legal protection from institutionalized cruelty.”<sup>154</sup>

Due to the want of federal protection, state anticruelty statutes, generally govern the treatment of animals raised for food and food production in the United States. Because of the exemptions that exist in many states for farm animals and agricultural practices, prosecutors face a daunting task and a myriad of problems when attempting to protect farm animals from institutionalized cruelty. In addition the disturbing trend in a majority of U.S. states removing legal protection all together from animals raised for food or food production, those state anticruelty statutes that do purport to protect farm animals contain substantial ambiguities and procedural obstacles, rendering them almost entirely useless. Of the states that do apply anticruelty

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<sup>152</sup>Id. at 146 (quoting, Idaho Code §§25-3501, 25-3514(5)(9) (Supp. 1995)).

<sup>153</sup>The first anticruelty statutes were enacted to protect animals such as cows, sheep and horses. Id. at 123.

<sup>154</sup>Id. at 124, 128.

prohibitions to farming practices, nineteen of them and the District of Columbia “prohibit both depriving an animal of ‘necessary substance’ and failing to provide ‘food, water, and shelter. Several states require the provision of ‘necessary substance’ without further reference to food, water, shelter, and the application of this phrase varies from state to state.”<sup>155</sup> Nearly half the state statutes fail to define “shelter,” even more so, most require the failure to provide such shelter be proven intentional or cruel.<sup>156</sup> It is important to note that “[p]rovisions for adequate exercise, space, light, ventilation, and clean living conditions for confined animals are important but infrequent requirements of state anticruelty laws.”<sup>157</sup> Additionally, statutes often consist of excessively broad, general terms “with discretion left to the courts to exclude certain animals, or they specifically exclude certain animals, such as fowl.”<sup>158</sup> Significant problems and legal hurdles make enforcement of these statutes nearly impossible. Approximately “half the states have laws that stipulate that cruelty to animals is an offense only if committed ‘willfully,’ ‘maliciously,’ or ‘cruelly.’”<sup>159</sup> Burdens placed so high, especially considering farms are privately owned, discourage suit. Finally, and perhaps most significant, “most laws are not effectively enforced, and enforcement is largely directed at dogs, cats and horses rather than animals raised for food and food production.”<sup>160</sup> Further compounding the problem, “[t]he enforcement of these criminal statutes is typically left to a public prosecutorial agency, itself overwhelmed by human problems, or to an overburdened private Society for the Prevention of Cruelty to Animals (SPCA) or similar society, with no private enforcement right.”<sup>161</sup> Presumably, little incentive exists to prosecute the cases even in the gravest of circumstances and virtually insurmountable legal obstacles quite often squelch any desire. In addition, civil enforcement of anticruelty statutes faces almost insurmountable legal standing obstacles.<sup>162</sup>

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<sup>155</sup>*Id.* at 128 (citing, Animal Welfare Institute, *Animals and Their Legal Rights: A Summary of American Laws From 1641-1990* 7-10 (1990)).

<sup>156</sup>*Id.* at 128-29 (citing, Animal Welfare Institute at 9).

<sup>157</sup>*Id.* at 131 (citing, Animal Welfare Institute at 10).

<sup>158</sup>*Id.*

<sup>159</sup>*Id.* at 128 (citing, Animal Welfare Institute at 7).

<sup>160</sup>*Id.*

<sup>161</sup>*Id.* (citing, Steven Wise, *Of Farm Animals and Justice*, 3 *Pace Env'tl. L. Rev.* 191, 206 (1986)).

<sup>162</sup>*Id.* “Any attempt to step outside the criminal arena by initiating a civil lawsuit to determine whether [a particular practice is cruel] would face enormous obstacles. The individual would most likely not satisfy the standing requirement because she has

A New York court summarized this dismal situation,

[t]he reluctance or inability on the part of the defendant ASPCA... raises serious questions, vis-à-vis the effectiveness of our present procedure for dealing with allegations of cruelty to farm animals on the large scale. However, refinement or amendment of this procedure is in the province of the legislature rather than this court... It's ironic that the only voices unheard in this entire proceeding are those of innocent, defenseless animals.<sup>163</sup>

As a result, individuals can only view such laws as irrelevant.

Federal laws regulating the treatment of farm animals are effectively nonexistent. Although three major federal statutes providing for animals welfare exist, only two pertain to farm animals. Perhaps, the most significant piece of federal legislation passed in recent years relating to animals, the Animal Welfare Act,<sup>164</sup> expressly exempts animals raised for food or food production. The Act reads, “the term ‘animal’... excludes... farm animal, such as, but not limited to livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management, production, efficiency, or for improving the quality of food or fiber.”<sup>165</sup> Despite several amendments to the Act, no explanation exists why Congress has again and again exempted farm animals from its coverage.<sup>166</sup> As such, the Animal Welfare Act is irrelevant to the issue of the treatment of farm animals, except for the important fact that its exemption sends a disturbing message that the welfare of farm animals is inconsequential.

By contrast, the Twenty-Eight Hour Law of 1877<sup>167</sup> applies to farm animals and “provides that animals cannot be transported across state lines for more than 28 hours by a ‘rail carrier, express carrier, or com-

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suffered no cognizable ‘injury.’” Wolfson, McLibel, at 31.

<sup>164</sup>7 U.S.C. §§ 2131-2159 (1994).

<sup>165</sup>*Id.* at § 2132(g).

<sup>166</sup>Fox at 168 (citing, Becker at 26).

<sup>167</sup>49 U.S.C. § 80502 (1995).



mon carrier (except by air or water)' without being unloaded for at least five hours of rest, watering and feeding."<sup>168</sup> Initially, the law sought to quash public outcry about the shocking treatment of cattle during transportation.<sup>169</sup> Reports chronicled shipments of cattle across the United States, where animals, after exposure to extreme temperatures in overcrowded vehicles without food and water, arrived at the "stockyards emaciated, injured, or dead."<sup>170</sup> The legislative history also indicates concern for the potential economic loss suffered by the animal's owner when its flesh and weight deteriorated from exposure to such extreme conditions during transportation.<sup>171</sup> The statute, however, does not apply to animals transported intrastate, nor to animals in a vehicle or vessel in which the animals have food, water, space and an opportunity to rest. In addition, sheep may be confined for an extra eight hours when the 28-hour period ends in the evening, and "animals may be confined for 36 consecutive hours upon the request of the owner or person having custody of the animals."<sup>172</sup> Remarkably, although the law was designed to ensure animals did not suffer in transport, having not been updated since the advent of trucking, it most likely does not apply to animals transported by truck.<sup>173</sup> This ambiguity renders the law almost entirely irrelevant considering the vast majority of transportation of farm animals is by truck.<sup>174</sup> While it is arguable whether the 28-hour period is even a humane time limit, especially when compared to the 15-hour British limit and the 8-hour limit for standard vehicles in the European Community, the federal statute is rarely enforced by the Attorney General and has no private right of action.<sup>175</sup> Moreover, the statute specifically sets its penalty not to exceed \$500,<sup>176</sup> hardly a deterrent. The state humane transportation laws that do exist suffer from similar deficiencies as the federal statute and the anticruelty laws already mentioned. Furthermore, some states

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<sup>168</sup>Wolfson, *Beyond the Law*, at 126 (citing, 49 U.S.C. § 80502 (1995)).

<sup>169</sup>Fox at 159 (citing, Becker at 27; Emily Stewart Leavitt, *Animals and their Legal Rights* 29-30 (2d ed. 1970)).

<sup>170</sup>*Id.* (citing, Becker at 27).

<sup>171</sup>*Id.* at 159-60 (citing, *United States v. Oregon R. & Nav. Co.*, 163 F. 640, 640 (C.C.D. Or. 1908)).

<sup>172</sup>Wolfson, *Beyond the Law*, at 126 (citing, 49 U.S.C. § 80502 (1995)).

<sup>173</sup>See Fox at 162 (citing, Becker at 27). See also, Wolfson, *Beyond the Law*, at 126.

<sup>174</sup>See Fox at 162 (citing, Becker at 27).

<sup>175</sup>Wolfson, *Beyond the Law*, at 126 (citing, 49 U.S.C. § 80502 (1995)).

<sup>176</sup>*Id.*

specifically exempt farm animals from their transportation laws, and some states exempt them generally.<sup>177</sup> The only other piece of relevant federal legislation, the Humane Slaughter Act, which requires that livestock slaughter “be carried out only by humane methods... [to prevent]... needless suffering,”<sup>178</sup> fails from insufficient enforcement.<sup>179</sup> Under the statute, two humane slaughter practices are approved, either,

(a) all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut... [or]... (b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.<sup>180</sup>

Further, when using the stunning instrument to render the animal insensible to pain, the animal should not be excited or uncomfortable and the animal should be taken into the stunning area in a manner that limits such excitement and discomfort, as “accurate placement of stunning equipment is difficult on nervous or injured animals.”<sup>181</sup> Slaughterhouse reports, alone, indicate the lack of proper enforcement of the federal law.

The Humane Slaughter Act suffers from a number of deficiencies. It only applies to slaughterhouses under Federal meat inspection and it specifically excludes application to poultry slaughter and possesses a significant exemption for ritual slaughter.<sup>182</sup> Therefore, no federal legislation currently exists that provides for the humane slaughter of poultry. Additionally, the regulation’s exemption for ritualistic slaughter has produced some troubling results. For example, under the laws of kashrut, the animal must be slaughtered with a sharp knife that “cut[s] the animal’s throat severing the arteries, veins, and windpipe in one continuous stroke.

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<sup>177</sup>*Id.* at 129.

<sup>178</sup> 7 U.S.C. §§ 1901-1906 (1994).

<sup>179</sup> Wolfson, *Beyond the Law*, at 126.

<sup>181</sup>*Id.* at 164 (citing, 9 C.F.R. § 313.15(a)(1)-(2) (1995)).

<sup>182</sup> Wolfson, *Beyond the Law*, at 126.

In this way, blood drains so quickly from the brain that the animal feels no pain.”<sup>183</sup> In Jones v. Butz,<sup>184</sup> the plaintiff challenged Kosher ritual slaughter as inhumane. It was conceded in the case that, in practice, because a Department of Agriculture regulation required that an animal not be put down on the ground when killed,<sup>185</sup> the Jewish slaughter method often involves the animal’s being shackled and hoisted before it lost consciousness.<sup>186</sup> In Jones, the plaintiff objected to the conscious hoisting, as the animal was aware of its pain. The court, however, disagreed and determined that when Congress enacted the Humane Slaughter Act, it was fully aware of this method of kosher slaughter and the legislative history indicates the method is indeed humane under the Act.<sup>187</sup>

Read logically, the opinion and law set out the following rules: a) “Humane killing” requires the animal be rendered insensible prior to being shackled and hung upside down for vivisection and killing; b) A killing is “inhumane” if a fully aware animal is shackled and hung upside down before being killed; c) Kosher slaughter requires animals to be shackled and hung upside down while fully aware; and d) Kosher slaughter is humane.<sup>188</sup>

In Church of the Lukumi Babalu Aye,<sup>189</sup> the Supreme Court held, essentially, that the City of Hialeah could not determine which ritualistic slaughter practices would be allowed. Here the court deferred to Congress’ determination that kosher-type slaughter is humane.

As with the transportation law, the limited reach and inefficiency of the Federal Humane Slaughter Act necessitates that state law govern and insist upon humane slaughter conditions. Presently, 27 states have humane slaughter laws, nine of which “do not prohibit what is generally recognized as an inhumane method of stunning before slaughter (the manually operated sledgehammer), and four [Georgia, Kansas, Michigan and

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<sup>183</sup>Catherine Beth Sullivan, Are Kosher Food Laws Constitutionally Kosher?, 21 B.C. Env’tl. Aff. L. Rev. 201, 205 (1993) (citing, Leo Trepp, Judaism: Development and Life 154 (1966)).

<sup>184</sup>374 F. Supp. 1284 (S.D.N.Y. 1974).

<sup>185</sup>Id. at 1290 note 8. See 21 U.S.C. § 610 (1988) (prohibiting as unsanitary the placement of a killed animal on the floor).

<sup>186</sup>Id.

<sup>187</sup>Id. at 1291.

<sup>189</sup>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993).

Ohio] have not even charged an official or department with the enforcement of the law.”<sup>190</sup> Moreover, fifteen states have designated the State Department of Agriculture or the Board of Agriculture, whose primary purpose is not animal welfare, in charge of enforcement.<sup>191</sup> Finally, the penalty for failing to comply with such state laws averages about \$500, with certain states even limiting the maximum fine at \$100 or not specifying any penalty at all.<sup>192</sup>

In sum, federal laws regulating abuse towards farm animals are essentially illusory, with the three pieces of federal regulation that purport to protect animal welfare either inapplicable, limited, defective, arguably inhumane, and largely enforced. No federal law regulates how farm animals are treated on the farm while being reared. While every state has enacted an animal anticruelty statute (with their own problems), the federal government has been woefully negligent in prescribing similar protections for farm animals. The Twenty Eight Hour Law merely limits the time period animals may be transported to twenty-eight hours. Congress expressly limited the Act’s application to transportation, immunizing rearing practices from federal sanction. The Humane Slaughter Act, while prohibiting the inhumane slaughter of livestock, does nothing to stop the inhumane slaughter of poultry or the painful handling of ritually slaughtered animals. In addition, relevant state statutes and anticruelty laws, themselves imperfect and rarely enforced when applicable, fail to cure the federal deficiencies. With its many exemptions, loopholes and inadequacies, the regulatory scheme, both state and federal, has declared analogous treatment inhumane, but it has been remiss in declaring so for farm animals. As a result, the laws, in fact, give license to corporate farmers to continue to abuse their animals without the treat of any effective sanctions.

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<sup>190</sup>Wolfson, *Beyond the Law*, at 130.

<sup>191</sup>*Id.*

<sup>192</sup>*Id.* at 130-1.

Ralph Waldo Emerson poignantly captured the manner in which much of American society turns both a deaf ear and a blind eye to the institutionalized mistreatment and inadequate protection of animals against unnecessarily cruel animal husbandry practices in the United States when he wrote, “[y]ou have just dined, and however scrupulously the slaughterhouse is concealed in the graceful distance of miles, there is complicity.”<sup>193</sup> Emerson’s sentiment is particularly appropriate today, in the wake of an enormous transition in the United States from a nation comprised of small-scale, local family farms to one dominated by large-scale, corporate operations, appropriately termed “factory farms.” The farming industry inflicts a virtual holocaust on animals raised for food and food production, forcing them to endure needless suffering and pain. Nothing indicates that such cruelties will subside in the future. As such, we must face the moral dilemma of constantly striving to create an ideal society amidst such cruelties. With other countries finally addressing this irony and making significant positive changes,<sup>194</sup> the United States lags behind. Our legal system has failed to extend the shelter of compassion and pity to those animals we eventually eat. Do they not deserve the same respect as other animals, or possibly even more since we eventually deprive them of the ultimate freedom, their lives? Does our moral obligation not extend to them? Must they suffer so much? With the main thrust of the Food and Drug Administration, and particularly, the Federal Food, Drug, and Cosmetic Act, being the protection of people not the welfare of animals, and with the FDA’s lack of financial resources, little hope exists for change. Needless to say, once we recognize that “[l]aws, and enforcement or observance of laws for the protection of [farm animals] from cruelty are... among the best evidences of the justice and benevolence of men,”<sup>195</sup> only then will we be able to come close to obtaining an ideal society.

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<sup>193</sup>Fox at 145.

<sup>194</sup>See Wolfson, *Beyond the Law*, at 139-45.

<sup>195</sup>Wolfson, *Beyond the Law*, at 151 (quoting, Steven v. State, 3 So. 458 (Miss. 1888)).