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University of Arkansas School of Law

NatAgLaw@uark.edu • (479) 575-7646

An Agricultural Law Research Article

**Are Moderate Animal Welfare Law and a Sustainable
Agricultural Economy Mutually Exclusive? Laws,
Moral Implications, and Recommendations**

by

Steven J. Havercamp

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ARE MODERATE ANIMAL WELFARE LAWS AND A SUSTAINABLE AGRICULTURAL ECONOMY MUTUALLY EXCLUSIVE? LAWS, MORAL IMPLICATIONS, AND RECOMMENDATIONS

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I. INTRODUCTION

The continued industrialization of agriculture,¹ particularly as it relates to pork production, has positioned a variety of related economic and social

1. Jan Stout, Note, *The Missouri Anti-Corporate Farming Act: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 *UMKC L. REV.* 835, 835 (1996). The concept of agricultural industrialization lacks a concrete, universally accepted definition. See Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 *DRAKE L. REV.* 289, 290 n.2 (1997) [hereinafter *Reaping What We Have Sown*]. Hamilton quotes Justice Stewart's famous statement relating to pornography, "I know it when I see it," to describe the difficulty in comprehensively relating the litany of concepts that might encompass a definition of agricultural industrialization. *Id.* (quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J. concurring)).

issues at the political front stage.² These issues include the permissibility, locality, and liability of large-scale pork confinement operations, as well as the impact such facilities will have on the “economic and social health of family farms and rural communities, the stewardship of the land, and the effect on the cost and quality of our food.”³ Related and added to this already volatile mix is a push to reform the laws governing the appropriate treatment of animals⁴ that are used in agriculture by correcting husbandry practices perceived as cruel.⁵

Media attention has recently focused on a number of actions, both legal and illegal, taken by a minority of animal rights activists against persons and property⁶—the most notorious in Iowa being the assault of a young girl, appearing as the Iowa Pork Queen, which was perpetrated by a member of the organization People for the Ethical Treatment of Animals (PETA).⁷ While such an action rightly offended many people in an agriculture-based state such as Iowa⁸ and limited constructive debate to one of the most complex,

2. *Reaping What We Have Sown*, *supra* note 1, at 289-90.

3. Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210, 214 (1993) [hereinafter *Feeding Our Future*].

4. As common practice dictates, and as used in this Note, “animal” will refer to nonhuman animals only. Nevertheless, it should be noted that 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 from the guilt of their actions and omissions—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 FINSSEN & SUSAN FINSSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA: FROM COMPASSION TO RESPECT* 55 (1994); PETER SINGER, *ANIMAL LIBERATION* 8 (2d ed. 1990)). Speciesism, according to Singer, allows “humans [to] inflict suffering on nonhumans for trivial purposes.” PETER SINGER, *ANIMAL LIBERATION* 213 (2d ed. 1990). For an excellent overview of animal rights literature, see CHARLES R. MAGEL, *KEYGUIDE TO INFORMATION SOURCES IN ANIMAL RIGHTS* (1989).

5. Animals raised for food related products have traditionally been granted only limited protection from cruelty. See David J. Wolfson, *Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food or Food Products*, 2 ANIMAL L. 123, 123 (1996). For a discussion of the protections afforded animals used in agriculture see *infra* Part IV.

6. See *infra* Part V.

7. See *infra* Part V for a discussion of the distinctions between the theories underlying animal welfare groups and those underlying animal rights groups.

8. In its criticism of actions taken by animal activists, the media has failed to distinguish between two separate and distinct philosophies underlying the call for reform of laws regulating animal use—animal welfare and animal rights. See *infra* Part V. More importantly, the media has failed to identify actions that are accepted by most animal activists and those that are discouraged and, in some instances, condemned. While a certain amount of tolerance is shown for illegal acts taken against property—for example breaking into a laboratory to free animals that are perceived as being exploited—acts of violence against humans are almost without exception viewed as intolerable, particularly when perpetrated on children. See *infra*

divisive, and emotional agricultural issues—the proper treatment of animals in agriculture—legitimate animal welfare issues should not be barred from playing a role in determining the future direction of agriculture in general, and large-scale pork confinements in particular. Indeed, this Note proposes that addressing animal welfare issues will not only ensure that animals used in agriculture are more humanely treated, but will effectuate a positive change in a variety of human quality of life issues, including an improved environment and a sustained rural economy.⁹

Part V. Unfortunately, members of organizations that may have legitimate concerns, choose means that delegitimize the entire movement. For example, the People for the Ethical Treatment of Animals' (PETA) mission statement is that "animals are not ours to eat, wear, experiment on, or use for entertainment." People for the Ethical Treatment of Animals, *About PETA: PETA's Mission* (visited Jan. 1, 1998) <<http://www.peta-online.org/about/mission.htm>>. The irony that an organization so devoted to the protection of animals would design and perpetrate an assault on a child was not lost to many. See Letter to Editor, *DES MOINES REG.*, Nov. 1, 1993, at 14A (discussing the contradiction of PETA's pledge to eliminate animal suffering through violent acts, such as hitting the Iowa Pork Queen in the face with a pie). But violent acts against humans are extremely infrequent, perpetrated by a significant minority of members, and almost universally disavowed by most animal rights activists. See *infra* Part V. It is a disservice, therefore, to lump such acts with the legitimate messages of those that advocate change through legal means.

9. The position that animal interests are to be compared or weighed against human interests is controversial. See *infra* Part V. This Note is theoretically utilitarian in nature—focusing primarily on how changes in animal welfare laws could positively contribute to quality of life issues for humans. Utilitarianism, the theoretical underpinnings of animal welfareism, is generally considered the theory that is most acceptable of animal use. See Rebecca Dresser, *Research on Animals: Values, Politics, and Regulatory Reform*, 58 S. CAL. L. REV. 1147, 1175 (1985) (stating that utilitarianism is flawed, according to a rights perspective, because "imposing suffering and other harm upon certain individuals is right if it will bring about the best overall consequences for everyone effected"—something that a rights perspective strictly prohibits). This Note accepts the proposition that moderate changes in the laws governing animal usage in agriculture is a step toward a better predicament for animals than currently exists. Nevertheless, this proposition is not without substantial criticism. Even Singer, an utilitarian, does not believe animals should be used for such "trivial" interests as food. SINGER, *supra* note 4, at 161 (stating that the individual choice of becoming a vegetarian "is a highly practical and effective step one can take toward ending both the killing of nonhuman animals and the infliction of suffering upon them"). Others that propose that animals possess rights, such as activists Tom Regan and Gary Francione, hold that animals, as rights-bearing entities, can *never* have their rights usurped, whether or not there is a benefit to humans. See TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 150-51 (1983); GARY L. FRANCIONE, *ANIMALS, PROPERTY, AND THE LAW* 9-10 (1995). This Note does not discard the possibility of animals having rights. Instead, without going down the controversial road of rights, this Note proposes that clear lines of prohibited animal practices in agriculture can easily be drawn. Current laws governing livestock benefit a very small percentage of the United States farm population and occur at a tremendous social, environmental, and economic cost to the rest of society. Additionally, and perhaps most significantly, many of the laws permit treatment of animals that would find limited, if any, public support. Proposing moderate changes in the way that animals are treated in agriculture gives an opportunity for immediate action resulting

This Note examines laws, particularly Iowa laws, protecting the welfare of animals, used in agriculture. There is little dispute with the premise that animals have been and are currently used for a variety of consumptive purposes.¹⁰ There are a multitude of uses for animals, each with a degree of

in mutual benefit of humans and animals, leaving the more difficult issues to be resolved at a later date. Francione posits that such welfarist ideas are misguided, counterproductive, and completely capitulate to ideals that are not only permissive of unacceptable animal suffering, but will perpetuate such practices in the future. GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* 3, 4, 221 (1996) [hereinafter *RAIN WITHOUT THUNDER*] (describing animal welfarism as a “structurally defective” position that “has not—and *cannot*—lead to the abolition of animal exploitation” and a “theory that was born to feed on itself forever”); *see also* Gary L. Francione, *Animal Rights and Animal Welfare*, 48 *RUTGERS L. REV.* 397, 468 (1996) (“The property status of animals, however, ensures that welfarist reforms will generally only facilitate the efficient exploitation of animal property.”). Francione persuasively argues that an animal welfare position may only result in “longer chains for the slaves.” *RAIN WITHOUT THUNDER, supra*, at 220 (quoting *People and Animals, THE ECONOMIST*, Aug. 19, 1995, at 11). Francione’s ideas, whether right or wrong, would find limited, if any support among the legislators in agriculturally dominated states, such as Iowa. To say that Iowa is dependent upon pork production would not be an overstatement. *See* Daniel M. Otto, *The Impact of Pork Production on Iowa’s Economy*, in *THE IOWA PORK INDUSTRY IN TRANSITION: LOCAL DECISIONS IN A GLOBAL MARKETPLACE* 15 (Iowa State Univ. ed., 1995) [hereinafter *IOWA PORK INDUSTRY*] (“The pork industry is the largest single commodity industry in Iowa.”). It is estimated that nearly “89,000 Iowa jobs are directly or indirectly related to the hog industry.” Daniel Otto et al., *Community and Economic Impacts of the Iowa Hog Industry*, in *IOWA’S PORK INDUSTRY—DOLLARS AND SCENTS* 25 (Iowa State Univ. ed., 1998) [hereinafter *DOLLARS AND SCENTS*]. But it is the position of this Note that the interests of animals and humans need not always be polarized as opposites; the interests of each are more closely related than one might expect.

10. Early animal use is difficult to precisely document because of the lack of written records. H.H. COLE MAGNOSONNING, *ANIMAL AGRICULTURE: THE BIOLOGY OF DOMESTIC ANIMALS AND THEIR USE BY MAN* 7-8 (1972). Nevertheless, paleontological evidence suggests that our human ancestors used wild animals for at least several million years. BRUCE D. SMITH, *THE EMERGENCE OF AGRICULTURE* i (1995); *see also* DESMOND MORRIS, *THE NAKED APE: A ZOOLOGIST’S STUDY OF THE HUMAN ANIMAL* 20 (1967) (describing our ancestral predecessors’ scavenge techniques for animal protein and eventually, with the development of tool-making and using techniques, increased capacity for hunting). The domestication of animals for human consumption is a relatively recent phenomenon. Definitions of “domestication” differ, but the concept generally entails the “human creation of a new form of . . . animal—one that is identifiably different from its wild ancestors and extant wild relatives.” SMITH, *supra*, at 18. It is an artificial selection process, which Charles Darwin called “husbandry,” and it is in such a process that “[m]ankind has conducted an experiment of gigantic proportions.” CARL SAGAN & ANN DRUYAN, *SHADOWS OF FORGOTTEN ANCESTORS: A SEARCH FOR WHO WE ARE* 53 (1992) (quoting CHARLES DARWIN, *ORIGIN OF SPECIES* (1859)). The domestication of animals began with the domestication of the dog for the probable purpose of protection and hunting. MAGNOSONNING, *supra*, at 5 (stating that the evidence of a domesticated dog has been roughly dated as 14,000 years old); *see also* GERALD CARSON, *MEN, BEASTS, AND GODS: A HISTORY OF CRUELTY AND KINDNESS TO ANIMALS* 4 (1972) (stating that evidence exists suggesting the

acceptance that is dependent upon a variety of societal, cultural, and economic factors.¹¹ The interplay of these factors results in each animal use being placed either within or outside “our sphere of moral consideration.”¹² Animal uses placed within this moral sphere tend to be more closely scrutinized than those that fall outside.¹³ This Note deals with the production of animals for food.¹⁴ Generally, the raising of animals to be consumed in the form of food has garnered a high degree of acceptance.¹⁵ However, some of the new

domestication of the dog could be 35,000 or 60,000 years old). The domestication of animals for food occurred approximately 11,000 years ago. MAGNOSONNING, *supra*, at 5; *see also* SMITH, *supra*, at 12-13 (describing the simultaneous development of plant and animal domestication in seven regions throughout the world between 4000 and 10,000 years ago). With the passage of time the lives of humans and animals became more closely entwined. *See* CARSON, *supra*, at 3-12 (describing the evolution of humans and civil society and the corresponding sophisticated uses of animals for food, protection, religious practices, and sport).

11. *See* SINGER, *supra* note 4, at 97 (discussing the impacts of animals being placed outside “our sphere of moral consideration”). The factors of moral consideration might be absolute, like a rights perspective where no animal use is acceptable. *See* Francione, *supra* note 9, at 398 (The “rights theorist rejects the use of animals in experiments or for human consumption, because such use violates fundamental obligations of justice that humans owe to nonhumans.”). On the other hand, it might encompass a balancing of factors, advanced by utilitarianism; if the human need is sufficient, animal use is acceptable. *Id.* at 397 (stating that the animal welfare position “assumes the legitimacy of treating animals instrumentally as means to human ends as long as certain ‘safeguards’ are employed”).

12. *See* SINGER, *supra* note 4, at 97 (“Once we place nonhuman animals outside our sphere of moral consideration and treat them as things we use to satisfy our own desires, the outcome is predictable.”). One example of a factor may be the type of animal to be used. Companion animals—dogs, cats, and other animals viewed as pets—and animals utilized in agriculture, have been the recipients of separate treatment under the law at given periods in history. Wolfson, *supra* note 5, at 127. Dogs, for example, were once viewed as having so little worth “that not only did the criminal system not protect dogs, but special statutes were passed to preclude a dog owner from seeking recourse for harm to the animal.” *Id.* (quoting DAVID FAVRE & MURRAY LORING, *ANIMAL LAW* 122 (1983)). Livestock, because of their economic worth, were afforded some protection. *Id.* Today, the protections afforded have been reversed. *Id.* More recently in Iowa, distinctions were made in the Iowa Code to protect companion animals. *See* IOWA CODE § 717B (1997); *see also infra* note 144 and accompanying text. Such distinctions are expected in a highly agricultural state.

13. *See* SINGER, *supra* note 4, at 97.

14. Animal products are commonly regarded as an important source of human food. W. Ray Stricklin & Joy A. Mench, *An International Conference on Farm Animal Welfare: Ethical, Scientific and Technological Perspectives*, 6 J. AGRIC. & ENVTL. ETHICS 1, 1 (1993). *But see* Ann Reed Mangels & Suzanne Havala, *Vegan Diets for Women, Infants, and Children*, 7 J. AGRIC. & ENVTL. ETHICS 111, 118 (1994) (stating that a vegan diet—a diet void of all animal products, including meat, fish, eggs, and milk—is safe, if foods, including supplements, are effectively utilized).

15. For example, a recent poll in the *Des Moines Register* found that despite health concerns and negative publicity, 68% of adult Iowans eat beef, pork, or lamb daily, or “at least several times a week”—numbers that are comparable to surveys taken in 1988 and 1991.

technologies employed in agricultural production systems to produce these food products cause a variety of objectionable results, including the severe behavioral restrictions of the animals being raised in confinement operations.¹⁶ These technologies are justified because they result in lowered production costs and cheaper food for society.¹⁷ But, while the concept of animals being raised for consumption receives a substantial amount of acceptance, there is considerably less consensus in what constitutes tolerable conditions in which the animals are reared and slaughtered.¹⁸ Therefore, it is not surprising that with the intensification of the agricultural commercial enterprise system—where large number of livestock are raised in an intense environment¹⁹—a corresponding amount of criticism has arisen.²⁰ This Note

Thomas A. Fogarty & Bill Bell, Jr., *Despite Concerns, Red Meat Staying on Iowans' Plates*, DES MOINES REG., Aug. 4, 1996, at 1A; see also DESMOND MORRIS, *THE ANIMAL CONTRACT* 112-15 (1990) (defending the consumption of meat). Consuming animals, however, is not without critics. See CAROL ADAMS, *THE SEXUAL POLITICS OF MEAT* 26, 167 (1990) (linking meat consumption to power and a metaphorical means of oppressing women); JEREMY RIFKIN, *BEYOND BEEF* 4-5 (1992) (stating that as a society we must adopt a vegetarian diet to promote a healthy planet and feed the world's expanding population); SINGER, *supra* note 4, at 159-83 (advocating individual vegetarianism). The vegetarian trend should be of particular interest to the agricultural sector. Vegetarianism has increased in popularity in recent years. Edward R. Blonz, *For Health or Ethical Reasons, More People Eating Their Veggies*, DES MOINES REG., June 16, 1993, at 1T; see also LAWRENCE FINSSEN & SUSAN FINSSEN, *THE ANIMAL RIGHTS MOVEMENT IN AMERICA* 25 (1994) (tracing the emergence of vegetarianism in the Western world through seventeenth and eighteenth-century philosophers). Estimates on the numbers of vegetarians vary from 1% to 4% of the population. Mangels & Havala, *supra* note 14, at 111. Other figures have put the number of vegetarians at roughly 12.4 million and growing. Blonz, *supra*, at 1T. While nearly half of the vegetarians polled attribute their eating manner to health concerns, other vegetarians' choice of food was attributable to ethical concerns, including beliefs about animal welfare. See *id.* It is estimated that nearly 15% of college students in the United States "eat vegetarian" daily. Chip Walker, *Meet the New Vegetarian*, AM. DEMOGRAPHICS, Jan. 1995, at 9, 9.

16. Stricklin & Mench, *supra* note 14, at 1. Industrialization and concentration is not confined only to agriculture involved in the production of animal products, but also is apparent in all areas of agriculture. See *Feeding Our Future*, *supra* note 3, at 213-15.

17. Stricklin & Mench, *supra* note 14, at 1. Largely as a result of modern agricultural practices, Americans have never had a greater selection of food products available, nor have they ever had to spend a lower portion of their income to enjoy the selection. Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 *DRAKE J. AGRIC. L.* 7, 8 (1996). For a discussion, however, of the negative elements accompanying a highly concentrated pork industry see *infra* Part II.C.

18. See discussion *infra* Part V. The slaughter of animals even raises constitutional issues. See Mercedes A. Sanchez, Note, *Is the Death Knell Sounding for Animal Rights? The Sacrifice of Animals for Religious Purposes Under the Guise of the First Amendment Right to the Free Exercise of Religion*, 7 *ST. THOMAS L. REV.* 217, 245 (1994) (discussing the Supreme Court and Congress's reluctance to infringe on religious practices utilizing animals because of the belief that such involvement would implicate the religion clause of the First Amendment).

19. 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."

addresses whether current Iowa laws comport with the prevailing views of how animals should be reared for consumption and what the social and moral implications of adhering to the current laws are. Particular attention will be paid to the emergence of large-scale hog confinement operations, the recent push to alter laws governing such facilities, and how animal welfare issues may add to the debate.

Iowa currently finds itself at a crossroads. Historically, Iowa evolved as a bread basket for the region, nation, and world. Coinciding with this unparalleled agricultural production has been a generally high quality of life, including superior education, employment, housing, health care, recreation, and a strong family and community commitment. The economic pressures realized in the 1980s,²¹ however, propelled some to conclude that in order for Iowa to thrive economically, a switch from small and medium farms to larger, more efficiently operated "factory farms"²² was not only necessary, but inevitable.²³ Such a switch did not occur without certain negative costs.²⁴ Nor has such a transformation found unanimous support.²⁵ In part, resistance to

Richard F. McCarthy & Richard E. Bennett, *Statutory Protection for Farm Animals*, 3 PACE ENVTL. L. REV. 229, 230 (1985); *see also infra* Part II.A.

20. McCarthy & Bennett, *supra* note 19, at 231.

21. According to the 1990 Census, the 1980s farm crisis resulted in a 25% decline in the number of Iowa farmers. *Feeding Our Future*, *supra* note 3, at 218.

22. Ruth Harrison, *Animal in Factory Farms*, in ANIMALS AND THEIR LEGAL RIGHTS 69 (Emily Stewart Leavitt ed., 3d ed. 1978). 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." McCarthy & Bennett, *supra* note 19, at 230. 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.*

23. *Cf.* JIM MASON & PETER SINGER, ANIMAL FACTORIES 129 (1980) (concluding that "factory methods of animal production are not . . . the inevitable result of a 'natural tide of history'" but rather the "product of decades of government policy and corporate profiteering").

24. Two perceived negative effects were a decline in the small to medium sized independent farms and the corresponding increased potential for large-scale environmental occurrences that coincide with large intensive farm operations. *See infra* Part II.C. Small farms have difficulty competing with the larger factory farms. MASON & SINGER, *supra* note 23, at 97-99. Farmland prices continue to increase, due largely to the demand for farmland from "nonfarm interests and from established farmers with mortgageable land and equipment who want to expand." *Id.* at 98. As a result, big farmers, backed by extensive capital, increase farm productivity "to cover the cost of added acreage." *Id.* Smaller farms cannot afford that luxury and subsequently find continuance difficult. *Id.*

Additionally, these intensive farm operations produce enormous concentrations of animal waste, which when unintentionally released into waterways, has extensively poisoned water resources. Perry Beeman, *Ag Spills in '96 Killed 731,000 Fish*, DES MOINES REG., Feb. 5, 1997, at 2M. In 1996 alone, seven large fish kills were attributable to animal wastes from industrial-type farms. *Id.*

25. Kay Anne Carothers, *Activists Expert at Attracting Attention*, DES MOINES REG., July 14, 1996, at 1A.

the proposed reliance on intensive agricultural farming techniques can be attributable to a shift in awareness and perception—from a view of a world to be exploited at will to a view of the “world as a seamless web of life” where emphasis is placed on the interrelationship of humans and their environment.²⁶

While some of the messages of animal rights groups,²⁷ as well as some of the tactics employed, have raised concerns in this agricultural-based state, animal welfare advocates cannot be summarily dismissed as having nothing constructive to contribute to the debate regarding the future of the Iowa agricultural environment. The question then becomes: What does Iowa have to fear the most, the tenets of animal welfare groups or the practices of proponents of large intensive factory farming operations? It is proposed that moderate animal welfare legislation, while invariably interfering with factory farming operations, is most likely to fulfill the growing desire for: (1) relatively plentiful cheap animal products for consumption; (2) the continuance of small and medium-sized family farms; (3) a cleaner environment; and (4) the desired stronger moral commitment to species other than our own.²⁸

This Note seeks to investigate the growing influence of the animal welfare movement as it corresponds to perceived and realized alterations in Iowa's agriculture-based economy. Part II examines traditional farming practices and compares such practices to the methods employed by modern large-scale swine production facilities. Part III briefly surveys the shift away from the dominate social paradigm to the new environmental paradigm. The new environmental paradigm is comprised, in part, of a high valuation of

26. Roger W. Galvin, *What Rights for Animals? A Modest Proposal*, 2 PACE ENVTL. L. REV. 245, 246-47 (1985); see also ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 284 (1985) (discussing the interconnectiveness between humans and the impact such relations have on their natural environment); LESTER W. MILBREATH, *ENVIRONMENTALISTS: VANGUARD FOR A NEW SOCIETY* 22 (1984) (listing among emerging variables the need for humans to harmoniously exist with nature).

27. For example, PETA officially states their mission is to “oppos[e] all forms of oppression and exploitation of animals. . . . [including] the exploitation and abuse of animals in experimentation and testing, and the factory farming of animals for food.” MAGEL, *supra* note 4, at 193. But members frequently state that one of their goals is a complete abolition of the consumption of animals for any purpose including food or clothing. William Ryberg, *Putting a Face on PETA Enigmatic Animal-Rights Group Wants Meatless Society*, DES MOINES REG., Aug. 25, 1991, at 1B. Ingrid Newkirk, cofounder of PETA, has been quoted as saying, “Our motto is, ‘animals aren’t ours to eat, wear or experiment on.’” *Id.* In a state such as Iowa, which is dependent upon pork production, such a stance is facially offensive, as it essentially advocates a complete deconstruction of agriculture by threatening “the very existence of much of world agriculture.” *Feeding Our Future*, *supra* note 3, at 249. Yet, the principle that animals cannot be used for any purpose is not a position universally held by all individuals interested in the welfare of animals. See *infra* Part V for a discussion of the division between the animal rights and animal welfare branches of the animal movement.

28. *Iowans' Agenda*, DES MOINES REG., Jan. 16, 1993, at 1A (reporting that 64% of Iowans' view protecting the environment as being very important).

nature and a strong compassion toward other animal species.²⁹ Part IV scrutinizes the common law and Iowa and federal statutory law, to determine if they are reflective of the beliefs the public holds or is adopting regarding the agricultural industry. Part V explains how many of those ideas advocated by animal welfare groups have found their way into mainstream ideology. Part VI recommends moderate changes in Iowa laws regarding farm animal welfare. Concluding, Part VII concludes by reiterating heightened compassion for other animals, evidenced within the new environmental paradigm, it is not a radical shift away from, but rather is a return to many values Iowans have traditionally held in high esteem, including a clean environment and love of nature and animals.³⁰ Additionally, this Note proposes that legislation aimed at fulfilling these goals will not only ensure that humanity's compassion is more universally felt, but that such measures are a means of preserving the traditional Iowa economy, environment, and lifestyle. Increased protection of the health and welfare of farm animals will ultimately result in the preservation of a higher quality of life for humans.

II. SHIFTING FROM TRADITIONAL FARMS TO MODERN LARGE-SCALE SWINE CONFINEMENT FACILITIES

A. *A Shift in Farming Practices*

Traditionally, the majority of animals used for food and other products were produced on small-scale farms managed by families.³¹ The relatively small number of animals raised on each farm were raised in simple outdoor operations; the outdoor pastures exposed the animals to sunlight and naturally fulfilled many of the animals' subsisting needs, including disease control and providing Vitamin D.³² The technology and methods employed on such farms was relatively universal.³³ This picture, however, has recently undergone a radical alteration.

Increasingly, pork is being produced by a small number of owners or operators in large-scale swine confinement facilities, where a large number of animals are raised in concentrated areas.³⁴ Rather than a few hundred hogs in the pasture, modern large-scale swine production is technologically

29. LESTER W. MILBRATH, *ENVISIONING A SUSTAINABLE SOCIETY: LEARNING OUR WAY OUT* 119-25 (1989).

30. *See id.* at 133.

31. Nicole Fox, Note, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145, 145 (1995); *see also* Joby Warrick & Pat Stith, *Midwest Farmers Fear N.C.-Style Expansion*, NEWS & OBSERVER (Raleigh), Feb. 12, 1995, at A7 (stating that in Iowa "[t]he tradition . . . is to raise hogs in relatively small lots—a few hundred animals—in a barn just behind the family homestead").

32. Fox, *supra* note 31, at 145.

33. John D. Lawrence et al., *How Iowa Compares to Other States*, in DOLLARS AND SCENTS, *supra* note 9, at 13, 14. As recent as ten years ago, pork production was seen as "relatively homogeneous," at least with regard to design, technology, and production. *Id.*

34. *See id.*

advanced and very efficient, similar to “an industrial assembly line.”³⁵ Consider the increasingly popular technique of producing pork, as described by Joby Warrick and Pat Stith in their Pulitzer Prize winning series on large-scale swine facilities:

Holding Pens: Sows spend most of their lives in narrow metal 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.^{36]}

Breeders: Sows are mated or artificially inseminated under close supervision.^{37]} Computers monitor the reproductive rates and gestation cycles of each animal. 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.

. . . .

35. *Manufacturing Hogs*, THE NEWS & OBSERVER (Raleigh), Feb. 21, 1995, at A8.

36. In a large-scale swine facility farmers have a choice between housing the sows in pens or crates. See Charles M. Stanislaw & Authur J. Muehling, *Swine Farrowing Units*, PORK INDUSTRY HANDBOOK, May 1997, at 1, 2. Pens are larger, affording the sow more room, but, crates—where “the sow is essentially completely restrained”—offer the newborn pigs the best protection. *Id.*

37. The benefit of artificial insemination include central genetic introduction and the prevention of disease by promoting closed herds—“where no animals are brought into an existing herd.” John R. Diehl, *Artificial Insemination in Swine*, PORK INDUSTRY HANDBOOK, Sept. 1994, at 1, 1.

Lagoon: Large outdoor pits, called lagoons hold the liquid waste from hog barns. The wastes are broken down by bacteria and then sprayed on croplands and pastures.³⁸

The process is efficient and as a result, “thousands of lean, carbon-copy hogs [are] produced at the least possible cost.”³⁹ Significantly, the current trend of pork being produced in large-scale swine facilities shows little sign of subsiding. Since 1991, an estimated 850 farms in Iowa stopped producing hogs, yet Iowa continues to be the country’s leading pork producer.⁴⁰ The use of large-scale swine operations, at the surface, offers a variety of social and economic benefits.

B. *Benefits of Large-Scale Swine Production*

The use of large-scale swine confinements does result in a variety of social and economic benefits.⁴¹ Clearly, the strongest justification of large-scale swine facilities has been its ability to maximize “cheap and plentiful food.”⁴² Coinciding with these farm systems has been lowered costs and expanded utilization, which in turn increases the net sum of farm animals.⁴³ Further, “initial economic impacts of the construction and operation of large-scale swine facilities on the local community, county, or multicounty area are likely to be positive.”⁴⁴ Additionally, employment opportunities, local wages, and demand for housing may increase.⁴⁵ There is also an indication that large-scale pork facilities create skilled labor jobs, which offer higher pay.⁴⁶

These systems have also been responsible for improvement in some aspects of animal welfare.⁴⁷ The animals are subjected to less temperature change, disease and pest controls are improved, nutrition is enhanced, and

38. *Manufacturing Hogs*, *supra* note 35, A8.

39. *Id.*

40. John D. Lawrence, *The State of Iowa's Pork Industry*, in DOLLARS AND SCENTS, *supra* note 9, at 5. Ironically, these last farmers reflect more traditional farming practices; 84% of the farms were those that had less than 500 hogs; of the breeding and gestation facilities; 87% were “open-front buildings with concrete lots; open lots with shelters or pastures”; of the finishing facilities, 53.5% were “open-front buildings with concrete lots,” and 29% “were open lots and pastures.” *Id.* at 6.

41. See John A. Miranowski, *Analyzing the Costs and the Benefits*, in DOLLARS AND SCENTS, *supra* note 9, at 49, 50-51.

42. Fox, *supra* note 31, at 145.

43. *Id.*

44. Proceedings from an Interdisciplinary Scientific Workshop, Understanding the Impacts of Large-Scale Swine Production 30 (Kendall Thu ed., June 29-30, 1995) (on file with *Drake University Law Review*) [hereinafter *Understanding Swine Production*].

45. *Id.*

46. Miranowski, *supra* note 41, at 51.

47. Luther Tweeten, *Public Policy Decisions for Farm Animal Welfare*, 6 J. AGRIC. & ENVTL. ETHICS 87, 88 (1993).

predators are eliminated.⁴⁸ Large-scale swine operations are becoming more intertwined with Iowa's economy, an economy seemingly dependent upon pork production. Iowa is the nation's leading pork producer,⁴⁹ and is ranked fifth in cattle production.⁵⁰ In Iowa, 24.1 million hogs were sold in 1995 alone, for "cash receipts of \$2.55 billion—30 percent of all agricultural receipts and more than 50 percent of all livestock receipts."⁵¹ It is estimated that "pork production and processing contributes \$3.1 billion of gross state product, 89,000 jobs and \$2.87 billion of personal income to Iowa's economy."⁵² Yet, these figures do not reflect the full costs of increased large-scale swine production.⁵³ So, while there appears to be a tremendous dependence of certain regions upon these agricultural outputs and a reasonable reluctance to enact or enforce any law, regulation, or policy that might restrict production, it must not be forgotten that "[t]o be sustainable over time, production systems must cover all costs: economic or accounting, as well as environmental and social."⁵⁴

C. Externalities Associated with Large-Scale Swine Production: Negative Impacts

While obvious benefits from the introduction of large-scale swine production have occurred, particularly as reflected in the cost of pork product for customers, these benefits must be weighed against factors that have not been included in the calculation—negative consequences of externalities.

1. On Humans

Large-scale swine production has, directly and indirectly, adversely affected humans in a number of ways on quality of life issues. The growing trend of concentrating larger production facilities into smaller geographic areas and the effects were analyzed recently in the study, *Understanding the Impacts of Large-Scale Swine Production*.⁵⁵ The results of the study, which focused on five areas—water quality, air quality, social issues, economic development, and occupational health—are disturbing.⁵⁶

a. *Water Quality*. The study found that the increased concentration of animals creates complex livestock waste issues, including various water prob-

48. *Id.*

49. Lawrence, *supra* note 40, at 5.

50. Ryberg, *supra* note 27, at 1B.

51. Lawrence, *supra* note 40, at 5.

52. *Id.* The production of hogs significantly impacts corn and other grain sales. *Id.* In 1995 alone, hogs consumed nearly \$639 million of corn and \$639 million in feed supplements, which are comprised largely of soybean meal. *Id.*

53. See *infra* Part II.C.

54. *Understanding Swine Production*, *supra* note 44, at 27.

55. See *id.*

56. See *id.*

lems.⁵⁷ Among the concerns are “known, foreseeable problems associated with long-term, high density livestock systems, such as atmospheric deposition of nitrogen and accumulation of heavy metals and phosphorus in soils.”⁵⁸ Additionally, the study indicated that there “are several unknown but potentially devastating risks associated with human pathogens and antibiotic-resistant organisms in swine waste.”⁵⁹ Each concern presents hazards to the ground water that cannot be cleaned up; instead water only becomes usable again with the passage of a significant period of time—in some cases as long as twenty years.⁶⁰

Water can become contaminated in a variety of ways. Lagoons and basins may leak, breach, or overflow.⁶¹ The improper application of waste to fields or spray fields could result in flooding, which may result in toxic waste finding its way to water sources.⁶² Since 1992, the Iowa Department of Natural Resources imposed monetary penalties or restitution for fish kills in fifty-six separate incidents of improper discharges by swine confinement operators.⁶³ Some of these prohibited discharges resulted in tremendous environmental destruction. In one incident, spray irrigation waste runoff entered a local creek, killing 60,650 fish.⁶⁴ These figures, of course, represent only the known releases. There could be more.

b. *Air Quality.* Air quality has also been adversely affected. Although large-scale swine production facilities animals are kept completely enclosed, factors created by such confinement, which affect air quality—“odors, gases, and airborne particles”—are not.⁶⁵ “Odors emitted from confined swine facilities are primarily derived from the anaerobic decomposition of protein waste material, including feces, urine, skin cells, hair, feed and possibly bedding.”⁶⁶ Poor air quality can “elicit nausea, vomiting and headache, cause shallow breathing and coughing; upset sleep, stomach and appetite; irritate eyes, nose and throat; and disturb, annoy and depress.”⁶⁷ It is posited that “[s]ome of the gases from a swine confinement building may be harmful and can cause adverse physiological responses if present in sufficiently high

57. *Id.* at 6.

58. *Id.* at 7.

59. *Id.*

60. Joby Warrick & Pat Stith, *New Studies Show Lagoons are Leaking*, THE NEWS & OBSERVER (Raleigh), Feb. 19, 1995, at A1.

61. See generally Iowa Dep't Nat. Resources, Prohibited Discharges at Iowa Livestock Operations Resulting in Monetary Penalties or Restitution for Fish Kill Being Proposed, Collected, or Pending 1-7 (Jan. 22, 1998) (working document) (chronicling fines imposed by the Iowa Department of Natural Resources for prohibited discharge of animal waste) (on file with *Drake University Law Review*).

62. *Id.*

63. *Id.*

64. *Id.* at 3.

65. Understanding Swine Production, *supra* note 44, at 11.

66. *Id.*

67. *Id.* at 12.

concentrations.”⁶⁸ Concentrations of hydrogen sulfide may reach lethal levels when “agitated prior to removal.”⁶⁹

c. *Social Issues.* The negative impacts of large-scale swine production on social issues are equally noteworthy. Consider the following table on social and health consequences, reported in *Understanding the Impacts of Large-Scale Swine Production*:⁷⁰

<i>Problem</i>	<i>Reported Consequence</i>
Odor	Alteration of outdoor family activities, e.g., grilling, children playing, friends visiting.
Waste runoff	Contamination of private well drinking water. Contamination of public waterways; fish kills.
Facility presence	Decline in property values, traffic problems, flies.
Concentration of production	Loss of independent hog producers because of market control.
Economic	Job loss and control of economic conditions as the result of bypassing local economic systems.
Political control	Loss of political control and sense of violation of democratic principles and channels of redress.
Loss of community values	Loss of community values of neighborliness that include reciprocity, respect, honest, and shared identity.
Health	Headaches, cough, plugged ears, watering eyes, runny nose, scratchy throat, tiredness, shortness of breath, nausea, dizziness, and tightness of chest.

d. *Economic Development.* As stated previously, initially large-scale swine industries may provide minimal economic benefits to local communities and the counties that they reside in.⁷¹ Following these potential gains,

68. *Id.* It has been found that residents in North Carolina living near large hog confinements experience “more anger, confusion, tension, depression, fatigue and less vigor than people not living near intensive swine operations.” *Id.* at 13.

69. Stanley E. Curtis, *The Environment in Swine Housing*, PORK INDUSTRY HANDBOOK, Aug. 1991, at 1, 3.

70. *Understanding Swine Production*, *supra* note 44, at 17.

71. *Id.* at 30.

however, there are negative effects. Neighboring property values, for example, may decline.⁷²

e. *Occupational Health.* Large-scale swine production facilities pose additional health concerns to the workers that operate them. Swine workers are exposed to various health risks, including “[c]hemical, biological (non-infectious), . . . infectious hazards, . . . noise, trauma, fires, explosions, electrocutions, thermal stress, poisonings, and drownings.”⁷³ Additionally, swine workers are exposed to respiratory disease, including sinusitis, rhinitis, bronchitis, and occupational asthma.⁷⁴ Noise is an additional hazard. It has been found that the “[n]oise inside a hog barn is so powerful that workers often must wear ear protection against the din of hundreds of animals squealing and banging against their metal cages.”⁷⁵

Upon analysis, large-scale swine production facilities may not be as necessary or economical as they appear at first glance; particularly when the above externalities are taken into consideration. The practice becomes even more questionable when it is realized that large-scale swine production may not even be necessary. It is estimated that “approximately 40 percent of traditional Midwest producers are competitive with large-scale production units”⁷⁶ indicating that such large-scale facilities are obviously not necessary. There is one more externality, however, that must be considered when determining whether or not large-scale hog confinements are an enterprise necessary, or even acceptable, to our way of life; that being the standard of animal husbandry practiced at such facilities.

2. *On Animals*

Large-scale swine production facilities provide minimal benefits to animals.⁷⁷ These policies, however, only facilitate animal welfare to less than minimum needs.⁷⁸ A large percentage of pigs are produced in a total-confinement operation⁷⁹—seeking to “maximize[] the use of land and space in order to maximize corporate profits.”⁸⁰ Large-scale swine facilities are designed for “maximum exploitation of the pig’s reproductive and growth cycles.”⁸¹ A particularly objectionable practice in this type of farming is breeding. Normally, 300 or more sows and several boars are maintained as a

72. *Id.* at 35.

73. *Id.* at 38.

74. *Id.*

75. *Manufacturing Hogs*, *supra* note 35, at A8.

76. *Understanding Swine Production*, *supra* note 44, at 28.

77. *See supra* Part II.B.

78. *See supra* Part II.B.

79. A “total-confinement” operation is a system in which an animal is “born, weaned, and ‘finished’ (fed for market)” in buildings which have “automatic feeding, watering, manure removal, and environmental control” features. MASON & SINGER, *supra* note 23, at 8.

80. Fox, *supra* note 31, at 146.

81. MASON & SINGER, *supra* note 23, at 8.

breeding herd.⁸² The breeding colony produces the pigs that are eventually sent to market.⁸³ After insemination, sows are removed to a "gestation" building and placed in a small pen.⁸⁴ One week prior to delivery the sow is moved to a farrowing building, she is confined to a pen that permits her to "lie and stand, but she cannot walk or turn around."⁸⁵ Such confinement creates an atmosphere where the animal lives a "stressful, sickly and grotesquely inhumane existence."⁸⁶

These conditions appear to constitute cruelty to animals. Cruelty to animals is defined as "the infliction of physical pain, suffering, or death upon an animal, when not necessary for the purpose of training or discipline or (in the case of death) to procure food . . . but done . . . with reckless indifference to its pain."⁸⁷ In reality, however, these conditions are neither violative of common law, nor federal, and state law norms.⁸⁸

III. QUALITY OF LIFE ISSUES AND THE EVOLUTION OF THE NEW ENVIRONMENTAL PARADIGM⁸⁹

Large-scale swine production, and its negative social and economic impacts, is giving agriculture a black eye. Agriculture, in order to reclaim its traditional title of land steward, must continue to come to grips with the growing concerns and demands of an environmentally aware populous.⁹⁰ A continued expansion of large-scale swine confinement facilities will fail to meet this demand. There is every indication that in the United States we are experiencing a paradigm shift.⁹¹ The shift is away from the "Dominate Social Paradigm," (DSP) comprised of a world view that emphasizes

82. *Id.*

83. *Id.*

84. *Id.* at 10.

85. *Id.* at 11.

86. Fox, *supra* note 31, at 146.

87. *Id.* at 145 n.1 (quoting BLACK'S LAW DICTIONARY 377 (6th ed. 1990)).

88. *See infra* Part IV.

89. *See generally* THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970) (describing both the paradigms of different disciplines and the shifts of dominance of those paradigms).

90. Husbandry practices have long been considered a key factor in determining successful land stewardship. United States farmers are no longer being perceived by the European Union as good stewards. *See* Kristin Mueller, Note, *Hormonal Imbalance: An Analysis of the Hormone Treated Beef Trade Dispute Between the United States and the European Union*, 1 DRAKE J. AGRIC. L. 97, 102 (1996). The European Union has recently expressed concerns about United States hormone-treated beef. *Id.* Regardless of the scientific validity of the European consumer's perceptions, their views have played a key role in the international market. *Id.* at 99 (stating that United States hormone-treated beef has been banned in the European market since 1989).

91. MILBRATH, *supra* note 29, at 116.

“economic growth, big projects, domination of nature, and competition.”⁹² Adherence to such a world view has left an indelible mark⁹³—overflowing landfills, mass extinction of plants and animals, polluted land, water and air, deforestation, and massive amounts of nuclear waste.⁹⁴ This degradation and its subsequent social impacts have forced many to question whether it is desirable or even possible to lead a high quality life while existing in such an atmosphere.⁹⁵ The predicament, created by an adherence to the DSP, forced a change in the way many view the world and is, in all likelihood, a contributing factor to the emergence of an alternative paradigm, the “New Environmental Paradigm” (NEP).⁹⁶ Ironically, the NEP contains many values that have traditionally been held in high esteem—“love of nature, living frugally, *love of animals* and plants, compassion for other people, [and] cooperation.”⁹⁷ The strength of this view is reflected in a number of recent surveys indicating both concern for the environment and a desire for a healthy environment, even at the cost of economic growth.⁹⁸ While the DSP, for the last several decades, has overshadowed several competing paradigms,⁹⁹ the NEP is evolving with the public holding or adopting many of the beliefs that comprise it.¹⁰⁰ It is not surprising that, with the renewed focus on love of nature and animals, there has been an increase in concern about the way animals are utilized in agriculture.¹⁰¹

A wide spectrum of “feelings and views regarding animal welfare” exists.¹⁰² In part, this is reflective of the fact that the United States has evolved from a rural land to an urban one.¹⁰³ Corresponding with the demographic

92. *Id.* (discussing the Dominate Social Paradigm); see BELLAH ET AL., *supra* note 26, at 277 (discussing the empty promises of the modern era, concluding that “[p]rogress . . . seems less compelling when it appears that it may be progress into abyss”).

93. See *supra* notes Part II.

94. See *supra* notes 35-54 and accompanying text.

95. JERRY STOCKDALE, ENVIRONMENT, SOCIETY, AND QUALITY OF LIFE: SELECTED IDEAS AND ISSUES 2 (1992) (“Quality of life is assumed to be concerned with the extent to which individuals’ physiological and human needs are met, they are able to develop their potential, and they experience feelings of well-being.”).

96. MILBRATH, *supra* note 29, at 118.

97. *Id.* at 133 (emphasis added).

98. One survey found that 85% of United States citizens had a great deal or fair amount of personal concern about environmental problems; another found that United States citizens chose environmental protection over economic growth by a ratio of 3 to 1. RILEY E. DUNLAP ET AL., HEALTH OF THE PLANET: RESULTS OF A 1992 INTERNATIONAL ENVIRONMENTAL OPINION SURVEY OF CITIZENS IN 24 NATIONS 122 (1993).

99. MILBRATH, *supra* note 29, at 133.

100. *Id.*

101. See *id.*

102. James W. Glosser & David K. Waggoner, *Animal Welfare Policy in the United States*, 6 J. AGRIC. & ENVTL. ETHICS 118, 119 (Supp. I 1993).

103. *Id.* During the 1980s, rural populations dramatically declined in certain areas of the Midwest. See *Feeding Our Future*, *supra* note 3, at 218 (discussing population shifts in Illinois, Minnesota, and Missouri). Iowa lost approximately 135,000 people—roughly 34%—

rural to urban shift is a shift from the Northeast to Southwest.¹⁰⁴ Each of these shifts “reflects a shift away from traditional agricultural priorities and interests.”¹⁰⁵ Currently, it is estimated that the percentage of population engaged directly in agricultural production is less than two percent.¹⁰⁶ This is a dramatic change because less than one hundred years ago eighty percent of the United States population was employed in agriculture.¹⁰⁷ In fact, most United States citizens are now “two or three generations removed from farm life and production agriculture.”¹⁰⁸ These demographic shifts have resulted in “fewer farms, larger operations, and concentrated land ownership.”¹⁰⁹ Corresponding with this population shift, a new urban view of animal life has emerged.¹¹⁰

Previously, the value judgments regarding the techniques and goals of animal agriculture focused almost exclusively on production efficiency.¹¹¹ “Housing systems and production methods which ensured the highest productivity, the lowest price for the consumer and the highest profit for the farmer were classified and advertised as good techniques.”¹¹² Therefore, the primary interest of both farmer and consumer was the abundance of affordable food.¹¹³ Animal “well-being essentially lay outside the sphere of societal moral concern, except in cases of intentional cruelty or serious negligence.”¹¹⁴ With the emergence of the NEP, the concept of “maximized production” has given way to a more comprehensive concept of “optimal production.”¹¹⁵ Optimal production looks not just at yield, but also at factors such as ecological integration and consumer acceptance; factors that make large-scale swine facilities less appealing.¹¹⁶

from its farm population. *Id.* Such shifts have resulted in a wide disparity between rural and urban population, 9% and 61% respectively. *Id.*

104. *Id.*

105. Glosser & Waggoner, *supra* note 102, at 119.

106. *Id.* While only a small percentage of United States citizens are directly involved in agriculture, in some states a large percentage of its citizens are involved in agricultural production indirectly. Anne Fitzgerald & Thomas A. Fogarty, *IBP Cuts Seen as Illustrating Pork Industry's Decline in Iowa*, DES MOINES REG., Feb. 26, 1997, at 1A. For example, in Iowa, approximately 7% of the work force is directly involved in farming. *Feeding Our Future*, *supra* note 3, at 218.

107. Glosser & Waggoner, *supra* note 102, at 119.

108. *Id.*

109. *Feeding Our Future*, *supra* note 3, at 219.

110. Franklin M. Loew, *Turning Plowshares into Volvos: Changing American Attitudes Toward Livestock*, 6 J. AGRIC. & ENVTL. ETHICS 105, 108 (Supp. I 1993).

111. J.F. Humik, *Ethics and Animal Agriculture*, 6 J. AGRIC. & ENVTL. ETHICS 21, 21 (Supp. I 1993).

112. *Id.* at 22.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

Environmental degradation and its observable negative consequences appear, once again, to be reasserting themselves as prevailing concerns.¹¹⁷ Increasingly, the modern method of producing food is being called into question as it relates to “food quality, human health, and the environment.”¹¹⁸ They are beginning to see the way their life styles, the environment, and their quality of life are mutually dependent.¹¹⁹ They may be willing to make appropriate choices, when such choices are available, to ensure a high quality of life for themselves and the generations that will follow. Alan Durning posits that “[v]alues . . . are social creations as much as individual ones, and they effectively restrain and direct our behavior only when they are backed up by the force of social institution.”¹²⁰ Large-scale swine facilities are likely to need a statutory push in order to leave the temporary exploitative and environmentally and socially degradative position that they presently enjoy. Such a push might come from an unlikely source—the passage of more stringent laws regarding livestock neglect and abuse.¹²¹

IV. LAWS PROTECTING AGRICULTURAL ANIMALS

A. *Protection of Farm Animals at Common Law*

At common law, animals were treated as chattel and granted limited or no protection.¹²² An owner was free to do with the animal as he saw fit, barring permitting the animal being a nuisance.¹²³ While owners were able to do what they wanted to the animals, animals did receive minimal protection against molestation from anyone other than the owner.¹²⁴ This was not to protect the animal from perceived abuses, but to protect the owner from potential damage and devaluation of the animal.¹²⁵

The prevailing common law comported easily with the majority of the prevailing religious and philosophical ideology that had evolved over time.¹²⁶

117. See *supra* Part II.C.

118. Hurnik, *supra* note 111, at 22.

119. *Id.*

120. ALAN DURNING, *HOW MUCH IS ENOUGH?* 146 (1992).

121. See *infra* Part VI.

122. McCarthy & Bennett, *supra* note 19, at 234; Larry Falkin, Note, *Taub v. State: Are State Anti-Cruelty Statutes Sleeping Giants?*, 2 PACE ENVTL. L. REV. 255, 266 (1985).

123. McCarthy & Bennett, *supra* note 19, at 234; see also Wolfson, *supra* note 5, at 127 (discussing recent changes in state farming practice statutes).

124. McCarthy & Bennet, *supra* note 19, at 234; see also Wolfson, *supra* note 5, at 127.

125. McCarthy & Bennett, *supra* note 19, at 234.

126. For an invaluable resource on information regarding animal rights and welfare issues, see MAGEL, *supra* note 4. Magel references Aristotle's view that animals, because they possess a “lower-type sensitive soul,” are to serve their higher reasoning human counterparts. *Id.* at 3. Additionally, Magel cites Saint Thomas Aquinas' *Summa Theologica*, which holds that the theories of Aristotle and Christianity taken together regard animals as irrational; therefore, humans can use them as they please. *Id.* at 5. Descartes, however, considers animals

Like many religious doctrines, the Judeo-Christian ethic in many ways suggests that humans are free to exploit the world's resources as they see fit.¹²⁷ The restrictions imposed were largely to protect humans from having their property destroyed.¹²⁸ As time progressed, however, there has been a shift in the common law away from animals being treated as mere chattel to chattel that must be treated with some responsibility.¹²⁹ Neglected responsibility results in penalization.¹³⁰ Yet, under the common law few animal cruelty convictions have resulted.¹³¹

B. Federal Protection of Farm Animals

The United States was slow to enact animal welfare legislation, and present federal laws regulating farming, like the common law, "were primarily established to protect family farmers from unfair competition" rather than to protect the welfare of animals.¹³² Except for a handful of federal statutes such as the Twenty-Eight Hour Law of 1906,¹³³ the Humane

as "God-created machines (automations) without consciousness," or the capability for pleasure or pain. *Id.* Descartes equated animals as a form of complex clock that humans may use as they wish; eating, killing, experimenting without guilt. *Id.* Hegel considers that the nature of animals is such that they are incapable of reasoning, therefore, they cannot have a will. *Id.* at 8. They are therefore not entitled, as humans are, to life. *Id.* But Jeremy Bentham questions whether rationality is the proper test: "The question is not, Can they *reason*? nor, Can they *talk*? but, *Can they Suffer*?" *Id.* at 7. Voltaire posed the difficult question to Descartes and his perception of animals with, "Answer me this, machinist has nature arranged all the springs of sentiment in this animal that he should not feel?" *Id.* at 6-7.

127. McCarthy & Bennett, *supra* note 19, at 234-35. For example, humans are to have "dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all earth, and over any creeping thing that creeps upon the earth." *Id.* at 235 n.30 (quoting *Genesis* 1:26 (King James)).

128. Wolfson, *supra* note 5, at 127.

129. *See id.*

130. *Id.* at 132.

131. *Id.*

132. Fox, *supra* note 31, at 146.

133. The Twenty-Eight Hour Law of 1906, 49 U.S.C. § 80502 (1994). The Twenty-Eight Hour Law prohibits the transportation of animals "across state line for more than twenty-eight hours by a rail carrier, express carriers, or common carriers (except by air or water) without being unloaded for at least five ours of rest, watering, and feeding." Wolfson, *supra* note 5, at 126 (citing 49 U.S.C. § 80502 (1994)). Congress purposefully limited the Twenty-Eight Hour Law to transportation conditions, refusing to extend comparable protection to day-to-day living. Fox, *supra* note 31, at 146. Additionally, exceptions are granted for animals given food, water, and room to rest. Wolfson, *supra* note 5, at 126. Further, the 28 hours may be exceed by as much as eight hours if the owner or custodian grants consent. *Id.* This law clearly offers less protection than those of Britain and the European Community, which require 15 and 8 hours respectively. *Id.* While punishment for a violation of the Twenty-Eight Hour Law could result in a fine of at least \$500, enforcement is improbable. *Id.*

Methods of Livestock Slaughter Act of 1978,¹³⁴ and the Animal Welfare Act of 1966,¹³⁵ the protection of agricultural animals has been left largely up to the states.¹³⁶

Federal protection of farm animals is inadequate.¹³⁷ Despite the recent pushes to bring farm animals under federal acts that protect animal welfare in experimentation, transportation, and slaughter, farm animals are largely dependent upon state anticruelty statutes to ensure their welfare is met.¹³⁸

134. Humane Methods of Livestock Slaughter Act of 1978, 7 U.S.C. §§ 1901-1906 (prohibiting the inhumane slaughter of livestock). While the Humane Methods of Livestock Slaughter Act does protect certain livestock, there are notable exceptions. First, poultry is not covered because it is not considered livestock. Fox, *supra* note 31, at 147 n.18. Second, ritually slaughtered animals are not covered. *Id.* (citing 7 U.S.C. § 1902).

135. Animal Welfare Act of 1966, 7 U.S.C. §§ 2131-2159. The Animal Welfare Act was enacted in 1966 because lost and stolen pets, primarily dogs and cats, were ending up as test subjects in research laboratories. Glosser & Waggoner, *supra* note 102, at 121. Farm animals are specifically excluded from this Act. Fox, *supra* note 31, at 147 (citing 7 U.S.C. §§ 2132, 2143).

136. James Glosser and David Waggoner discuss the apparent willingness, or at least interest, of the federal government to begin involving itself in animal welfare issues in the agricultural sector. See Glosser & Waggoner, *supra* note 102, at 121. Despite the limited role that the federal government has played in protecting farm animals, recent trends suggest that the government may be striving for an expanded role. *Id.* For example, subsequent amendments to the Animal Welfare Act have produced results that may foreshadow future federal control over farm animals. *Id.* First, “[m]inimal husbandry standards for the humane care of laboratory and research animals have been established and improved,” is noteworthy because it indicates that the federal government feels it is capable of successfully implementing and monitoring quantitative husbandry standards. *Id.* Second, “[a]dditional species have been added to the Act so that it now includes rabbits, guinea pigs, hamsters, nonhuman primates, and marine mammals.” *Id.* Such additions indicate that the federal government is comfortable in administering a more comprehensive program. See *id.* Also noteworthy is that more important issues than simply improved animal husbandry techniques were pushed—a dramatic change from the past. *Id.* Attention, instead, “focused on the relief of pain and suffering, the use of anesthesia and analgesia, and the elimination of unnecessary duplication of research.” *Id.* Animal testing alternatives came under consideration as well. *Id.* “In addition, a new emphasis was placed on the psychological well-being of two types of animals, specifically dogs and non-human primates.” *Id.* The Animal Welfare Act, originally enacted to protect stolen pets from animal experimentation has, therefore, evolved into a strong social movement concerned with broader goals of welfare of animals. *Id.* This movement “shows no sign of slowing.” *Id.* Indeed, the United States Department of Agriculture (USDA) was “petitioned to cover horses and farm animals used in animal research,” and has indicated that it intends to “regulate horses and livestock used in non-agriculture research.” *Id.* The USDA is currently engaged in the development of “standards for farm animals used as research animals.” *Id.*

137. See Fox, *supra* note 31, at 159-68 (arguing that the federal law governing animal welfare must be revamped).

138. *Id.* at 158-59.

C. Iowa's Protection of Farm Animals

It is believed that the first anticruelty statutes passed in the United States was by the Maine Legislature in 1821 to protect horses and cattle from being "cruelly beat."¹³⁹ New York, Massachusetts, Connecticut, and Wisconsin soon followed suit.¹⁴⁰ Anticruelty statutes existed in almost every state by 1920.¹⁴¹ Currently, state statutes are generally framed to "prohibit wanton, purposeless conduct against animals such as torturing, starving, beating, mutilating, and other inhumane acts."¹⁴² Yet, most state animal cruelty laws commonly exempt "customary farming practices."¹⁴³ Iowa is no exception. Iowa has divided farm animal protection into two categories, livestock abuse¹⁴⁴ and livestock neglect.¹⁴⁵ Section 717.2 provides insight into the current condition of Iowa laws protecting the welfare of farm animals. It reads:

717.2 Livestock^[146] neglect:

1. A person who impounds or confines livestock, in any place, and does any of the following commits the offense of livestock neglect:
 - a. Fails to provide livestock with care consistent with *customary animal husbandry practices*.^[147]
 - b. Deprives livestock of necessary sustenance.^[148]
 - c. Injures or destroys livestock by any means which causes pain or suffering in a manner inconsistent with *customary animal husbandry practices*.

139. Wolfson, *supra* note 5, at 127.

140. *Id.*

141. Falkin, *supra* note 122, at 266.

142. David R. Schmahmann & Lori J. Polacheck, *The Case Against Rights for Animals*, 22 B.C. ENVTL. AFF. L. REV. 747, 762 (1995).

143. Wolfson, *supra* note 5, at 123, 135 ("[A] majority of U.S. states prohibit, at least in part, the application of their anticruelty statutes to farm animals.").

144. IOWA CODE § 717.1A (1997). Livestock abuse is concerned with one person's abuse of another's animals. It states, in relevant part, "A person is guilty of livestock abuse if the person intentionally injures or destroys livestock owned by another person, in any manner, including, but not limited to, intentionally doing any of the following: administering drugs or poisons to the livestock, or disabling the livestock by using a firearm or trap." *Id.* A commission of livestock abuse is a an aggravated misdemeanor. *Id.*

145. *Id.* § 717.2.

146. Livestock as defined in the Iowa Code is "an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rneas, emus; farm deer, as defined in section 481A.1; or poultry." *Id.* § 717.1(2).

147. This concept is left undefined in the Iowa Code. Twenty-eight other states have similar provision although their terminology may vary slightly, permitting farm practices that are "accepted," "common," "customary," or "normal." Wolfson, *supra* note 5, at 123.

148. Sustenance is defined as "food, water, or a nutritional formulation customarily used in the production of livestock." IOWA CODE § 717.1(6).

2. A person who commits the offense of livestock neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of livestock neglect which results in serious injury to or the death of livestock is guilty of a serious misdemeanor. However, a *person shall not be guilty of more than one offense of livestock neglect punishable as a serious misdemeanor, when care or sustenance is not provided to multiple head of livestock during any period of uninterrupted neglect.*
3. This section does not apply to an institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.¹⁴⁹

Several potentially significant problems emerge. First, Iowa does not prohibit nor interfere with established methods of animal husbandry. It is only when animal production is not consistent with "customary animal husbandry practices" that a violation of the livestock neglect provision occurs. So, it would appear, whether the livestock is (1) provided with necessary care,¹⁵⁰ (2) necessary sustenance,¹⁵¹ or (3) is slaughtered with an unnecessary amount of pain or suffering¹⁵² is determined by the customs of those entities that dominate the animal industry. This gives "the farming community the power to define cruelty to animals in their care."¹⁵³ But intensive farming operations, such as large-scale swine production facilities, are currently moving into a dominate position in Iowa's agricultural environment, but is this who we want to define our cruelty standards?¹⁵⁴ A conflict arises because such operations, in pursuit of a superior model to produce cheap animal products, customarily disregard animal welfare issues as not economically feasible.¹⁵⁵ Therefore, cruelty will be defined by the

149. IOWA CODE § 717.2 (emphasis added). Compare the current version of Iowa Code with section 717.2 of the 1993 Iowa Code, which stated in part:

A person who impounds or confines, in any place, a domestic animal or fowl, or an animal or fowl subject to section 481A.60, or dog or cat, and fails to supply the animal during confinement with a sufficient quantity of food, and water, or who fails to provide a dog or cat with adequate shelter, or who tortures, torments, deprives of necessary sustenance, mutilates, overdrives, overloads, drives when overloaded, beats, or kills an animal by any means which cause unjustified pain, distress, or suffering, whether intentionally or negligently, commits the offense of cruelty to animals.

IOWA CODE § 717.2 (1993). In 1994, the title "livestock neglect" was substituted for "cruelty to animals." 1994 Iowa Acts ch. 1103, § 9.

150. IOWA CODE § 717.2.1(a) (1997).

151. *Id.* § 717.2.1(b).

152. *Id.* § 717.2.1(c).

153. Wolfson, *supra* note 5, at 123.

154. See Lawrence, *supra* note 40, at 6.

155. See Hurnik, *supra* note 111, at 22.

governing practices of the industry, no matter how cruel they may seem.¹⁵⁶ Iowa has positioned those that have systematically dismantled traditional animal husbandry practices to set the new standards governing Iowa's livestock laws.

Second, even if a violation were found to exist—an unlikely event under the current model—large-scale violations would result in only one criminal conviction.¹⁵⁷ Section 717.2.2 states a “person shall not be guilty of more than one offense of livestock neglect . . . during any period of uninterrupted neglect.”¹⁵⁸ Once again, intensive animal producing is an on-going operation, subjecting the large-scale producers to, at the most, one violation. Hypothetically, if the operation continued unabated—as confinement facilities operate—the neglect would be viewed as continuing. Thus, the state would forfeit any additional livestock neglect claims.

Iowa animal welfare laws, like those of other states, are incomplete. Indeed, it appears that control of the laws has fallen into the very hands that animal welfare laws were traditionally sought to punish. Given the increased awareness and compassion of the plight of farm animals raised in large-scale confinement operations, it is not surprising that there has been a corresponding increase in the numbers of animal rights or welfare groups. Nor should it be surprising that in response, various animal activists have employed tactics designed both to draw attention to animal issues and to attempt to alleviate animal suffering.¹⁵⁹ While the overwhelming amount of activity is legal, other actions taken are not—such as “vandalism, property destruction, and animal theft.”¹⁶⁰ Nevertheless, to understand the actions taken by individuals and groups, an understanding of their history and philosophy is necessary. Once understood, it should debunk the myth that all people interested in animal welfare issues seek to eliminate animals raised for consumptive uses, and seek to achieve this end through violence.

V. THE ANIMAL WELFARE/RIGHTS MOVEMENT

While animal activism did not start solely in response to the abuse of farm animals, this perceived animal abuse played a strong role in the direction

156. Wolfson, *supra* note 5, at 137-38.

157. See IOWA CODE § 717.2.

158. *Id.* § 717.2.2.

159. Kniaz, *supra* note 4, at 776. For example, the Animal Liberation Front's (ALF) stated goals are:

- (1) To liberate animals from places of abuse . . . and place them in good homes where they can live out their natural lives free from suffering;
- (2) to inflict economic damage [upon] those who profit from the misery and exploitation of animals; and,
- (3) to reveal the horror and atrocities committed against animals behind locked doors by performing non-violent direct actions and liberations.

Id.

160. *Id.* at 773. This has resulted in a number of animal activists and activist organizations being labeled terrorists or extremists by the FBI. *Id.*

activism has taken. For example, it was made illegal to “exercise any tyranny or cruelty toward any brut [sic] creatures which are usually kept for the use of man.”¹⁶¹ The common English practice of overworking and beating farm animals prompted the English Parliament to pass the Dick Martin’s Act.¹⁶² The Act commanded punishment of up to three months in prison for those “who wantonly and cruelly beat or ill-treated the horse, . . . mule, . . . sheep . . . or cattle.”¹⁶³

Widespread advocacy for the welfare of animals originated principally in response to large-scale animal experimentation that began in the nineteenth century under the direction of European physiologists.¹⁶⁴ In Great Britain, antivivisectionists,¹⁶⁵ sought to eliminate what they considered unnecessary, painful animal experimentation and to end what they perceived as abominable practices and the corresponding degradation of humanity they felt naturally followed.¹⁶⁶ These actions resulted in the passage of the Cruelty to Animals Act of 1876, limiting the kinds of experiments, methods, and types of animals that could be utilized in animal experimentation.¹⁶⁷

The early successes of the English animal welfare movement prompted similar groups to form in the United States.¹⁶⁸ Initial success came at the state level. For example, in 1828, New York passed a statute that provided “[e]very person who shall maliciously kill, maim, or wound any horse, ox, or other cattle, or sheep, belonging to another, or shall maliciously and cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.”¹⁶⁹ A perceived lack of effective laws still existed, which prompted a call for reform at both the state and federal level.¹⁷⁰

Membership in animal rights or welfare groups have dramatically increased in the last several decades.¹⁷¹ Animal activists estimate their numbers approximate 10 million members.¹⁷² Industry and biomedical entities claim that such figures are inflated.¹⁷³

161. FINSSEN & FINSSEN, *supra* note 15, at 42 (quoting section 92 of a 1641 Massachusetts Bay Colony document titled “Body of Liberties”).

162. *Id.* at 31.

163. *Id.*

164. Dresser, *supra* note 9, at 1148.

165. Antivivisectionists are people opposed to animal experiments. Fox, *supra* note 31, at 157.

166. Dresser, *supra* note 9, at 1148.

167. Fox, *supra* note 31, at 157.

168. *Id.* at 157-58.

169. *Id.* at 158 (quoting EMILY STEWART LEAVITT, ANIMALS AND THEIR LEGAL RIGHTS 13 (2d ed. 1970) (citing the 1828 New York Statute)).

170. See *supra* Part IV.

171. HEIDI J. WELSH, ANIMAL TESTING AND CONSUMER PRODUCTS 5 (1990).

172. *Id.* Numbers are difficult to correctly estimate because numerous organizations, such as the Animal Defense League, have engaged in serious criminal offenses and have been classified as terrorist organizations by the federal government. Kniaz, *supra* note 4, at 773. It

While there is a legitimate dispute over the numbers enrolled in the ranks of animal activist organizations, the ability of some of these organizations to attract media attention cannot be disputed. People for the Ethical Treatment of Animals (PETA), in particular, has been at the center of a variety of controversies in Iowa. The most noted example of extreme measures employed by animal rights groups involved the teenage Pork Queen who was hit in the face with a pie by an adult PETA member.¹⁷⁴ But, there are also a number of other well published incidents. Three PETA members, one dressed in a black and white cow costume and another who held a fake meat cleaver, were arrested for attempting to "butt heads with Iowa's cattle raisers" at the Iowa Cattlemen's Association.¹⁷⁵ PETA raised a controversy for having its members dress as a carrot and attempt to hand out leaflets advocating vegetarianism to children entering school.¹⁷⁶ PETA placed a full page ad in the Des Moines Register on August 9, 1991, comparing the murders of Jeffrey Dahmer to the packing-plant slaughter of farm animals.¹⁷⁷ And a PETA representative was arrested for criminal trespass for blocking the Oscar Mayer Wiener Mobile.¹⁷⁸

While some of these events may appear mild or even humorous other activities do not. In 1993, a wholesale meat company in Urbandale, Iowa, was hit with gun shots and a Des Moines retail meat shop was bombed with Molotov cocktails.¹⁷⁹ Most recently, two fur stores in Des Moines and Urbandale were vandalized, with a group calling themselves the Paint Panthers shooting out windows and painting antifur slogans on the walls.¹⁸⁰ Thus, the question becomes are these actions representative of the theoretical underpinnings of the animal reform movement.

Currently, the agenda of the proponents for changes in the laws regulating animal use varies. There are a myriad of groups and coalitions interested in the conditions in which animals are raised and slaughtered. They can generally be separated into two groups: animal welfare and animal rights

can, therefore, be expected that members of such organizations would not make their names available. *Id.*

173. WELSH, *supra* note 171, at 5.

174. *Pie Incident Lingers*, DES MOINES REG., Dec. 22, 1991, at 2B.

175. Dirck Steimel, *3 PETA Members Charged in Protest*, DES MOINES REG., Dec. 16, 1993, at 8S.

176. Jay P. Wagner, *Carrot Mascot to Give Children PETA Message Youngsters Will Be Advised to Eat Their Vegetables and Warned that Meat Can Cause Health Problems*, DES MOINES REG., Sept. 14, 1993, at 2B.

177. David Elbert, *PETA Ad Impact Still Felt*, DES MOINES REG., Sept. 27, 1992, at 1J.

178. Jay P. Wagner, *PETA "Pig" is Arrested for Blocking Wiener Wagon*, DES MOINES REG., Aug. 24, 1995, at 8S.

179. Tom Alex, *Vandals Hit Fur Stores in Metro Area*, DES MOINES REG., Jan. 28, 1997, at 1M. While some animal rights activists do turn to illegal means in achieving their objectives, the focus of these tactics has been on "things," not people. See Kniaz, *supra* note 4, at 779-80. Indeed, there have been no substantiated cases of violent attacks on humans. *Id.* at 779.

180. Alex, *supra* note 179, at 1M.

organizations.¹⁸¹ Currently there is a tendency to collapse animal rights and animal welfare positions into a single category, however, the positions are nevertheless comprised of fairly distinguishable characteristics.¹⁸² Generally, animal welfare reflects the belief that animals "well-being" should be taken into account with all necessary laws enacted and enforced to ensure that animals are treated humanely.¹⁸³ As such, consuming animals for food and clothing, and to a certain extent, the necessary testing of products on animals is acceptable, as long as all practical means are taken to ensure that the animal does not needlessly suffer.

Animal rights groups, on the other hand, advocate that animals "have basic rights."¹⁸⁴ These rights include the right to "be free from torture, abuse and perhaps even death."¹⁸⁵ While the concept of nonhuman animals having rights may seem foreign, it should be contextualized amid other rights bearing entities. Justice Douglas in *Sierra Club v. Morton*¹⁸⁶ argued that it might be possible that inanimate objects may have legal standing.¹⁸⁷ It is not surprising, therefore, that an abundance of philosophical and legal literature supporting animal rights has emerged.¹⁸⁸

It is a simple but often ignored reality that as a society we have moved away from the views strongly held and advocated by Rene Descartes—that animals are merely automations, incapable of pleasure and pain.¹⁸⁹ Significant evidence indicates animals exhibit qualities humans once thought unique to humans, such as pain, and are capable of relatively complex cognitive abilities.¹⁹⁰ One need not walk down a road of rights in order to effectuate

181. McCarthy & Bennett, *supra* note 19, at 229 n.1.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Sierra Club v. Morton*, 405 U.S. 727 (1972).

187. *Id.* at 741-53 (Douglas, J., dissenting). In his often quoted dissent, Douglas indicates that trees may have legal standing to sue, stating: "The voice of inanimate objects . . . should not be stilled." *Id.* at 749. There are a host of entities that have been endowed with rights, such as corporations and boats. *See id.* at 742; Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights For Natural Objects*, 45 S. CAL. L. REV. 450, 450-51 (1972).

188. Galvin, *supra* note 26, at 248 & n.15; *see also* Anthony D'Amato & Sudhir K. Chopra, *Whales: Their Emerging Right to Life*, 85 AM. J. INT'L L. 21, 22 (1996) (stating that the protection of whales should be granted because whales have "a life of their own"); THE GREAT APE PROJECT 4 (Paola Cavalieri & Peter Singer eds., 1994) (advocating the "right to life" for great ape members, including "human beings, chimpanzees, gorillas and orang-utans") [hereinafter GREAT APE PROJECT]; S.F. SAPONTZIS, *MORALS, REASON, AND ANIMALS* (1987) (advocating that humans ought to morally liberate animals from human exploitation). *But see* Schmahmann & Polacheck, *supra* note 142, at 747 (positing the impossibility of animals being endowed with legal rights corresponding with our current legal system).

189. *See supra* note 126 and accompanying text.

190. *See, e.g.*, Jane Goodall, *Chimpanzees—Bridging the Gap*, in GREAT APE PROJECT, *supra* note 188, at 10, 13 (comparing the similarities of "postures . . . with which chimpanzees

immediate changes to alleviate unnecessary suffering; with increased recognition corresponds additional duties.

There is a growing abundance of information that presents us with convincing reasons to perceive farm animals as worthy of moral concern.¹⁹¹ Animals have been shown to suffer and animal suffering is unnecessary in some instances.¹⁹² Assuming that "(1) animals can suffer, (2) their suffering may be unnecessary in some circumstances, and (3) they are worthy of moral concern," certain farming practices must be recognized as "ethically unacceptable if they cause suffering to animals which is morally unjustified."¹⁹³ There are several immutable aspects of human nature that seem to reinforce a strong interest in animal well-being. First, humans try to "protect those who cannot effectively protect themselves."¹⁹⁴ Second, humans seek to prevent "suffering which is preventable."¹⁹⁵ Third, humans tend to apply "moral standards to action that falls within the sphere of one's personal responsibility."¹⁹⁶ These elements necessarily lend themselves to farm animals.

At the same time, these moral duties, like all human interests must be balanced with economic necessity.¹⁹⁷ We seem to have an unquenchable desire for inexpensive and safe food.¹⁹⁸ This desire is supplemented with the

communicate . . . such as kissing, embracing, holding hands, patting one another on the back . . . tickling," with those exhibited by humans); H. Lyn White Miles, *Language and the Orang-utan: The Old 'Person' of the Forest*, in GREAT APE PROJECT *supra* note 188, at 42, 49 (indicating an orang-utan had the "mental age equivalent to that of a two to three-year-old child" and had a "tendency to endow objects and events with the attributes of living things"); REGAN, *supra* note 9, at 12 (reporting rather complex sign language conversations that take place between chimps and observers). *But see* MICHAEL ALLEN FOX, THE CASE FOR ANIMAL EXPERIMENTATION 32-33 (1986) (accepting the view that humans are "not totally unique, [but] humans are still different from all other animals in significant respects (they possess characteristics that are different in kind, not just in degree)"); MICHAEL P. T. LEAHY, AGAINST LIBERATION: PUTTING ANIMALS IN PERSPECTIVE 253 (1991) (describing the similar comparisons between humans and animals exaggerated to the extent of a "falsifying dream"). Interestingly, Fox has since recanted his position. *See* Michael Allen Fox, *On the "Necessary Suffering" of Nonhuman Animals*, 3 ANIMAL L. 25, 26 (1997).

191. *See supra* note 190.

192. *See supra* note 190.

193. Hurnik, *supra* note 111, at 26.

194. *Id.*; *see also* Bernard E. Rollin, *The Legal and Moral Bases of Animal Rights*, in ETHICS AND ANIMALS 109 (Harlan B. Miller & William H. Williams eds., 1983) (indicating that protection is frequently given to infants, mentally handicapped, and people in comas).

195. Hurnik, *supra* note 111, at 26.

196. *Id.*

197. *But see* BERNARD E. ROLLIN, ANIMAL RIGHTS AND HUMAN MORALITY 75-76 (1981) (stating that animals as objects of moral concern, are entitled to certain "legal/moral rights, which trump utilitarian consideration" and the economic factors may not be considered).

198. Loew, *supra* note 110, at 106.

increased buying power of an average household.¹⁹⁹ The dramatic reduction in food prices has, in part, been attributed to the emergence of intensive farming practices.²⁰⁰ Yet, even if higher prices would attend products produced under a system containing better animal welfare conditions,²⁰¹ there seems to be an increased understanding that our moral concerns and obligations cannot solely be met in the simple pursuit of profit policy.²⁰² Indeed, people seem to be willing to pay more for a higher quality product and to negate various perceived moral and environmental degradation.²⁰³

More stringent animal welfare laws would be beneficial in at least three ways. First, they would "prevent objectionable industry practices, so that producers employing more humane techniques [can compete] on a level playing field . . . [with] 'factory producers.'"²⁰⁴ Second, modifying animal welfare laws would more closely reflect the prevailing social attitudes regarding human relations to other animals. Finally, making laws governing animal husbandry practices more stringent would effectuate immediate and positive changes in a variety of social, environmental, and moral issues.

VI. RECOMMENDATIONS

The question is no longer whether changes in laws protecting animals used in agriculture are needed, particularly as exemplified by the practices of large-scale swine production facilities. Instead, the real and more difficult question is what types of changes can be made that will not only adequately protect the welfare of animals utilized in agriculture, but will refrain from significantly interfering with sustainable agriculture practices.

Certainly, a starting point is open dialogue. The recent acts (some illegal, some legal but misguided) by a few animal rights activists has

199. *Id.* ("Twenty-five years ago Americans were paying 25% of their disposable income for food"; currently they pay 12% to 15%).

200. *See id.* at 106-07.

201. Tweeten, *supra* note 47, at 101. This may not be true, given the externalities that are associated with large-scale swine confinements. *See supra* Part II.C.

202. *Ethical Perspectives: Discussion Group Report*, 6 J. AGRIC. & ENVTL. ETHICS 50, 50 (1993) [hereinafter *Ethical Perspectives*].

203. While it is not conclusive that changing from a large-scale pork confinement to smaller pork production would be attended by higher price, particularly if social and environmental externalities are taken into account, prices may increase. Nevertheless, consumers increasingly appear willing to pay higher prices for products that exhibit characteristics such as freshness, being organically grown, and being safe. Hamilton, *supra* note 17, at 10-11. There has been a tremendous increase in the demand for high quality food products such as organic foods. *Id.* at 12-13, 14-16. Sales of organic products in 1994 were predicted to exceed \$7.6 billion, and market growth was expected to exceed 23% yearly. *Id.* at 14-15. While much of this demand has been attributed to a concern about the "safety" of food products, this does not prohibit a demand for animals produced in facilities that meet the minimum standards of being free from cruelty. This indicates that "for a growing portion of consumers, information and quality can make food more satisfying." *Id.* at 12-13.

204. *Ethical Perspectives, supra* note 202, at 50.

promoted an atmosphere in Iowa where all interests voiced relating to animal use issues are now inappropriately labeled as attempts to radically alter both the agricultural economic system and humans' traditional relation to animals used in agriculture. But, this is not the case. As previously discussed, there are fundamental distinctions between the philosophical underpinnings of the concepts of animal rights and animal welfare. Animal rights includes the precept that animals have certain basic non-voidable rights; rights that can not be traded away no matter what human interests they may serve.²⁰⁵ Such philosophical underpinnings would, as frequently interpreted, prohibit even the most basic and widely accepted use of animals—animals produced for food. Animal rights, as thus interpreted, would, therefore, pose a serious threat to the agriculture community, at least that portion involved in raising livestock. Framed this way, an animal rights position would find very limited, if any, support. Animal welfare, on the other hand, proffers no such absolutism. Instead, animal welfare, being theoretically utilitarian in nature, balances a multitude of interests, with an animal's well-being, being only one of many interests taken into account. Of course, our increased understanding of animals has resulted in compassion and a corresponding interest in protecting their well-being. But, this interest need not be viewed as diametrically opposed to the interests of the agriculture sector. Instead, it should be viewed merely as one of many social and economic concerns raised with the development and expansion of large-scale swine facilities. Such a recognition would permit another legitimate voice to be added to the debate of the future direction agriculture in Iowa should take.

Livestock abuse and neglect are defined in many states, including Iowa, by compliance or noncompliance with customary animal husbandry practices. In designing animal welfare laws around the definition of customary animal husbandry practices, it is necessary the definition be comprised of practices that afford certain minimum protections for animals well-being. If, therefore, customary animal husbandry practices are practices that are reflective of action promoting a reasonable level protection of the animal's welfare, the laws are effective. A problem arises, of course, if customary animal husbandry practices no longer affords protection for the animal's well-being. Large-scale swine facilities continue grow in dominance in the agricultural sector, as it relates to the production of pigs. Yet, the practices of these confinement operations little resemble the traditional way swine were produced. Their increased popularity and dominance in the agriculture sector, nevertheless, makes Iowa's livestock abuse and neglect laws susceptible to reinterpretation, where customary animal husbandry practices are defined by the current practices of the large-scale confinements. It would be a very low standard, and a standard that would find little support, even in the agricultural community.²⁰⁶

205. *But see* Rollin, *supra* note 194 at 106 (stating that rights can indeed be trumped, but only for the "gravest of reasons").

206. *See, e.g.,* Ted Williams, *Assembly Line Swine*, AUDUBON, March-April 1998, at 30 (quoting a farmer as stating, "We're not animal rights wackos. We all raise cattle for slaughter, but there's a right way and a wrong way to raise animals.").

We are entering an time where specific animal welfare measures should be legislated.²⁰⁷ Instead of simply deferring to a standard of "customary animal husbandry practices," the underlying concepts that might be encompassed within the standard should be given specific meaning. For example, proper husbandry practices might include "adequate fresh water, nutrition for full health and vigor, veterinary care, grazing, shelter, exercise, and housing in compatible social groups under as natural conditions as possible."²⁰⁸

Europe offers animal welfare models, which may provide assistance to Iowa and other states in developing effective animal welfare laws.²⁰⁹ In the 1960s, concern of intensive farming husbandry practices resulted in the formation of the Brambell Committee in Britain.²¹⁰ Following an investigation, the committee recommended "Five Freedoms":

In principal we disapprove of a degree of confinement of an animal which necessarily frustrates most of the major activities which make up its natural behavior. . . . An animal should at least have sufficient freedom of movement to be able without difficulty to turn around, groom itself, get up, lie down, stretch its limbs.²¹¹

The Brambell Committee's "Five Freedoms" should be viewed as a minimum rule of thumb today—"An animal should at least have sufficient freedom of movement to be able, without difficulty, to stand up, lie down, turn around, stretch its limbs and groom itself."²¹² While large-scale hog confinement operations would have difficulty meeting these minimum requirements, the vast majority of farmers would not.

207. See Wolfson, *supra* note 5, at 150.

208. *Id.*

209. See *id.* at 140-44.

210. *Id.* at 140.

211. *Id.* (quoting Steven Wise, *Of Farm Animals and Justice*, 3 PACE ENVTL. L. REV. 191, 212 (1986)) (internal quotations omitted).

212. *Id.* (quoting the Brambell Committee).

VII. CONCLUSION

Legislative reform relating to the regulation of hog confinement facilities must enjoy both wide support and be pragmatic in attainment.²¹³ Three agricultural interests readily meet these criteria and would be promoted with the enactment of moderate animal welfare laws. These interest are: (1) to supply an abundance of relatively cheap food; (2) to create an agriculture system that can coexist harmoniously with the environment; and (3) to "restrict livestock systems to only those which offer the animal a life of comparative fulfillment."²¹⁴ These interests need not be mutually exclusive. Indeed, they appear to mutually dependent.

Steven J. Havercamp

213. See Tweeten, *supra* note 47, at 102.

214. Ruth Harrison, *Since Animal Machines*, 6 J. AGRIC. & ENVTL. ETHICS 4, 13 (1993).