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An Agricultural Law Research Article

**More than Property: An Argument for Adoption of  
the Universal Declaration on Animal Welfare**

by

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# MORE THAN PROPERTY: AN ARGUMENT FOR ADOPTION OF THE UNIVERSAL DECLARATION ON ANIMAL WELFARE

*Amy B. Draeger*<sup>1</sup>

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## I. INTRODUCTION

We do not accompany them through their blood tunnels.<sup>2</sup> Our continuous feed of restaurants, retail, and rodeo grows outside their stunned ninety seconds, outside their stalls, pens, and crates. To awaken in their blood tunnel would be to see our world suspended. Yet their world is our world. As voters and consumers, we are responsible for the world in which farm animals live.

This article asks readers to view the world of farm animals in America. The reader will look at farm animal law, farm animal welfare guidelines, and images that have influenced the development of animal law in the United States. This article amplifies absence – absence of law that protects farm animals in the

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1. Amy B. Draeger is a 2006 graduate of Hamline University School of Law. A writer, legal researcher, attorney, and animal advocate, she lives and works in Minneapolis, Minnesota.

2. “Blood tunnel” is a slaughter term that refers to the time between stunning and bleed-out. See NAT’L TURKEY FED’N, ANIMAL CARE BEST MANAGEMENT PRACTICES: FOR THE PRODUCTION OF TURKEYS 42, available at [http://www.eatturkey.com/foodsrv/pdf/NTF\\_animal\\_care.pdf](http://www.eatturkey.com/foodsrv/pdf/NTF_animal_care.pdf) (“Conduct 100-bird line checks, as listed on the form, to determine the percent of missed stun birds, hand-bled birds and birds that awaken in the blood tunnel (approximately 90 seconds after bleeding.)”); see also HUMANE FARM ANIMAL CARE, ANIMAL CARE STANDARDS: BROILER CHICKENS 27 (2004) [hereinafter HFAC STANDARDS BROILER], available at <http://www.certifiedhumane.org/pdfs/2004-std04.broilers.3A.pdf> (“Chickens must not be immersed in a scalding tank or plucked until at least 90 seconds have elapsed since the major blood vessels in their necks have been severed.”).

United States and absence of media images of farm animals living in confined animal production facilities. These absences argue the need for adoption of the proposed Universal Declaration on Animal Welfare ("UDAW").<sup>3</sup> International acceptance of the UDAW will ensure a global, social and political framework that compassionately addresses the welfare<sup>4</sup> of all animals in our care.

## II. FARM ANIMAL LAW/FARM ANIMAL GUIDELINES

The welfare of livestock and poultry in the animal agriculture industry<sup>5</sup> is the proper concern of the American people and the appropriate subject of federal regulation. As a practical matter, susceptibility to illness and disease increases in stressed or mistreated animals.<sup>6</sup> Protection of public health, therefore, mandates concern for the welfare of farm animals in order to prevent illness and disease, particularly zoonotic diseases like bovine spongiform encephalopathy, avian influenza, cryptosporidiosis, listeriosis, Rift Valley fever, and Newcastle disease.<sup>7</sup>

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3. News Release, World Soc'y for the Prot. of Animals, "*Animals Matter To Me*" *Global Petition Launch* (June 8, 2006), available at [http://www.wspa-usa.org/download/33\\_press\\_release\\_060606.pdf](http://www.wspa-usa.org/download/33_press_release_060606.pdf).

4. As used in this article, the term "welfare" refers to a state of optimal health (physical) and well-being (mental and psychological) of individual animals. See generally Marlene K. Halverson, *Farm Animal Health and Well-Being* 21-46 (Apr. 23, 2001), available at [http://www.eqb.state.mn.us/geis/TWP\\_AnimalHealth.pdf](http://www.eqb.state.mn.us/geis/TWP_AnimalHealth.pdf) (unpublished Supplemental Literature Summary and Technical Working Paper for the Minnesota Generic Environmental Impact Statement on Animal Agriculture discussing "welfare" and related terms and concept).

5. As used in this article, the term "industry" and "animal agricultural industry" refer to U.S. beef, pork, poultry, and dairy operations that rely on confinement of animals and/or one or more of the following production methods to maximize efficiency: 1) reduced lighting; 2) induced molting; 3) tethering for time periods of more than two hours; 4) farrowing stalls; 5) individual pens, crates, or hutches to house beef calves more than eight weeks old; 6) absence of materials to express natural behaviors of nesting, rooting, pawing, mouthing, or chewing. "Confinement" refers to the housing of animals in any way that prevents them from independently accessing an outdoor environment during daylight hours (except when weather conditions would endanger the animals' health if they were allowed outdoors).

6. See Keith E. Belk et al., *The Relationship Between Good Handling/Stunning and Meat Quality in Beef, Pork, and Lamb*, Address Before the American Meat Institute Foundation, Animal Handling and Stunning Conference (Feb. 21-22, 2002) (citing Vansickle: "[P]eople understand that rough, abusive handling costs money in bruises, sickness and lowered meat quality"; citing Grandin: "[R]educing handling stress improves both productivity and welfare of farm animals"; citing Grandin (1998d): "[f]eedlot managers have found that reducing electric prod usage in feedlots and increasing quiet handling helps cattle to go back on feed more quickly and reduces death loss due to respiratory sickness."), available at <http://www.grandin.com/meat/hand.stun.relate.quality.html>.

7. M. Ghirrotti, *Making Better Use of Animal Resources in a Rapidly Urbanizing World: A Professional Challenge*, 1 *WORLD ANIMAL REV.* 92 (1999), available at <http://www>.

As an ethical matter, animal welfare registers as a longstanding human concern in the United States. In 1641, Massachusetts Bay Colony prohibited men from exercising any “tiranny or crueltie towards any brute creature which are usualie kept for man’s use.”<sup>8</sup> In 1821, Maine enacted the first anti-cruelty law in the United States, making it illegal for “any person [to] . . . cruelly beat any horse or cattle. . . .”<sup>9</sup> Today, anti-cruelty statutes protect animals in all fifty states.<sup>10</sup> Federal law regulates treatment of animals under the care and control of research facilities, dealers, circuses, zoos and carriers.<sup>11</sup> Yet the majority of states exempt from anticruelty protection the use of animals as part of “customary,” “normal” or “accepted” agriculture practices.<sup>12</sup> No federal law regulates treatment of animals on farms.

Where federal animal welfare law exists in the United States today, it excludes or insufficiently protects farm animals. The Animal Welfare Act (AWA):

[I]nsure[s] that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; . . . assure[s] the humane treatment of animals during transportation in commerce; . . . and . . . protect[s] the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.<sup>13</sup>

From its definition of the word “animal,” however, the AWA specifically excludes birds, rats and mice bred for use in research, horses not used for research and “other farm animals.”<sup>14</sup> The Humane Methods of Slaughter Act (HMSA) defines humane slaughter as slaughter in which “all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”<sup>15</sup> Animals protected by the HMSA include “cattle, calves, horses, mules, sheep, swine, and other livestock.”<sup>16</sup> The phrase “other livestock,” however, does not apply to poultry.<sup>17</sup> This means that in 2005, U.S. law did not re-

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fao.org/docrep/x1700t/x1700t02.htm; JORDAN CURNUTT, ANIMALS AND THE LAW: A SOURCEBOOK 197 (2001).

8. CURNUTT, *supra* note 7, at 70.

9. *Id.* at 72.

10. *Id.* at 74.

11. See Animal Welfare Act, 7 U.S.C. § 2131 (2006).

12. CURNUTT, *supra* note 7, at 163.

13. 7 U.S.C. § 2131(1)-(3) (2006).

14. *Id.* at § 2132(g).

15. Humane Methods of Slaughter Act, 7 U.S.C. § 1902(a) (2006) (ritual slaughter that conforms to the requirements of § 1902(b) is also considered humane).

16. *Id.*

17. See Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56,624 (Sept. 28, 2005) (Supplementary information provides: “[t]he HMSA of 1978 . . . requires that humane me-

quire 98 percent of the animals slaughtered in the United States - over nine billion chickens, turkeys and ducks - to be “rendered insensible to pain” before being shackled, stunned, and cut.<sup>18</sup> Finally, the Twenty-Eight Hour Law of 1994 requires adequate food, water and rest for animals transported across state lines.<sup>19</sup> Yet interpretation of “animals” in this law, too, does not include poultry.<sup>20</sup>

Interpretation of “person” under the law has never included animals, yet legal classification of animals as “property” does not prohibit legal protection of their welfare. Classification of animals as property does not make them objects any more than the classification of corporations as “persons” makes them human. The law does not require such a restricted view of property. As mentioned previously, federal law protects the welfare of research, circus and zoo animals in the custody and care of humans.<sup>21</sup> State laws protect animals from cruelty. “Property” is not the subject of welfare laws. “Property” is not the subject of anti-cruelty statutes. In addition to statutes, other legal instruments may also address the welfare of animals. The Uniform Probate Code and the Uniform Trust Code now provide for pet trusts.<sup>22</sup> Judges in some states may now include pets in orders for protection.<sup>23</sup> Evolution in the law regarding animals reflects changes not in the animals themselves but in the way humans think about ani-

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thods be used for handling and slaughtering livestock but does not include comparable provisions concerning the handling and slaughter of poultry. . . [FSIS] regulations also require that poultry be slaughtered in accordance with good commercial practices, in a manner that results in thorough bleeding of the poultry carcass, and ensures that breathing has stopped before scalding so that the birds do not drown”).

18. CURNUTT, *supra* note 7, at 169 (updated to reflect 2005 poultry slaughter statistics). See NAT'L AGRIC. STATISTICS SERV., USDA, POULTRY SLAUGHTER: 2005 ANNUAL SUMMARY 2-3 (2006), available at <http://www.upc-online.org/slaughter/2005AnnualPoultrySlaughter.pdf>.

19. Twenty-Eight Hour Law, 49 U.S.C. § 80502(a)-(b) (2006).

20. CURNUTT, *supra* note 7, at 163.

21. See *supra*, note 11.

22. David Favre, *Integrating Animal Interests Into Our Legal System*, 10 ANIMAL L. 87, 93 (2004). See UNIF. PROBATE CODE § 2-907 (1993); UNIF. TRUST CODE §§ 408, 409 (2000).

23. Press Release, Humane Soc'y of the U.S., Vermont Becomes Second State to Include Animals in Domestic Violence Protection Orders (May 26, 2006) (providing information that in 2006, Maine and Vermont passed laws that allow judges to include companion animals in orders for protection), available at [http://www.hsus.org/press\\_and\\_publications/press\\_releases/vermont\\_second\\_state\\_pets\\_protection\\_orders.html](http://www.hsus.org/press_and_publications/press_releases/vermont_second_state_pets_protection_orders.html); Humane Soc'y of the U.S., *State Legislation*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/](http://www.hsus.org/legislation_laws/state_legislation/) (last visited Sept. 2, 2007) (a bill pending in Illinois allows courts to include animals in orders for protection and a bill pending in New Jersey allows courts to include animals in domestic violence restraining orders); Laurie Nikolski, Editorial, *Bringing our Animal Instincts to Bear on Stopping Abuse*, JOURNAL NEWS, Aug. 27, 2006, at 8B (a New York bill allowing animals to be included in protection orders passed the Assembly and House and was sent to the Governor on July 14, 2006).

mals. Whether the law will protect the welfare of farm animals depends not on whether and how farm animals “think,” but on whether and how people do.

At present, no federal law protects the welfare of farm animals as animals in their own right. As inputs and outputs of production, farm animals concern federal regulators only to the extent that their consumption as food products may endanger public health. No stock of farm animal welfare guidelines exists in the agencies or branches of the U.S. government. Farm animal welfare guidelines lie developed, grown, and housed in the animal agriculture industry. Exemption of farm animals from state and federal protection improperly makes the “law” that controls the welfare, customs and guidelines of the industry.

The welfare guidelines issued by groups with an economic interest in regarding animals as production units should not control the welfare of farm animals, which the law regards as more than “property” in non-farm settings. Federal law *does* protect many non-farm animals apart from their connection to public health. The federal government regulates the sale, purchase, import, export, delivery and transport of numerous wild animals in interstate and foreign commerce. The overriding purpose of federal laws such as the Endangered Species Act of 1973 (ESA),<sup>24</sup> the Wild Free-Roaming Horses and Burros Act of 1971<sup>25</sup> and the Bald Eagle Protection Act of 1940 (BEPA)<sup>26</sup> is not to protect public health, but to protect the lives and habitats of animals.<sup>27</sup> As federal law protects wild animals in their own right, so too may it protect farm animals.

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24. See generally Endangered Species Act, 16 U.S.C. §§ 1531-44 (2006); DAVID S. FAVRE & MURRAY LORING, *ANIMAL LAW* 225 (1983) (“The ESA consists of several elements: the listing of a species as protected, the determination of its critical habitat and its protection from taking. The entire Act has as its goal the population recovery of a species so that it may be removed from the endangered and threatened list.”).

25. 16 U.S.C. §§ 1331-1340 (2006); FAVRE & LORING, *supra* note 24, at 220 (“In 1971, Congress found that ‘free-roaming horses and burros are living symbols of the historical and pioneer spirit of the west; . . . [they] are fast disappearing from the American scene . . . [and they] shall be protected from capture, branding, harassment or death.’”).

26. 16 U.S.C. § 668 (2006); FAVRE & LORING, *supra* note 24, at 221 (“As early as 1940, the Congress of the United States recognized that the national symbol, the bald eagle, was threatened with extinction. In that year, Congress passed the original version of the Bald Eagle Protection Act. The original Act, very simply, made it illegal to take, possess, sell or purchase (etc.) any bald eagle, alive or dead, or any part thereof.”).

27. *Contra* CURNUTT, *supra* note 7, at 36 (“Nowhere in the ESA or its legislative history is there any statement or suggestion that these species have legally protected interests making them worthy of preservation for their own sakes or in their own right as the beneficiaries of direct legal duties. Similar language is written into other, major federal wildlife protection laws . . . These are not statements of respect and concern for the interests of animals; they are expressions of how certain species serve human interests in beauty, in entertainment, in money, in patriotism, and in nostalgia.”).

Federal guidelines should control the welfare of farm animals – federal guidelines that consider the opinions of groups and individuals without an economic interest in the production of farm animals. The federal government should not defer to the “expertise” and “accepted practices” of the animal agriculture industry in regulating farm animal welfare. The USDA does not defer to the “expertise” of the industry to protect public health. OSHA does not defer to the “customs and traditions” of the industry to protect worker safety. Animal welfare guidelines developed by the animal agricultural industry should not control the welfare of farm animals where the guidelines differ substantively from guidelines established by humane associations working outside the industry. Tables I - IV *infra* compare farm animal welfare standards issued by the animal agriculture industry to those issued by Humane Farm Animal Care (HFAC).<sup>28</sup>

**TABLE I BROILERS**

Practice	National Chicken Council (NCC) Standard	HFAC Standard
Lighting (Broilers)	“[T]he flock should be provided with at least four hours of darkness in every 24 [hours] . . . the four hours of darkness may be provided in increments of one, two or four hours.” <sup>29</sup>	“A minimum period of 6 continuous hours of darkness in every 24-hour cycle, except when the natural period of darkness is shorter.” <sup>30</sup>

28. See HFAC STANDARDS BROILER, *supra* note 2, at i (“Humane Farm Animal Care is a non-profit charity whose mission is to improve the lives of farm animals by providing viable, credible, duly monitored standards for humane food production and assuring consumers that certified products meet these standards. Humane Farm Animal Care is supported by a consortium of Animal Protection Organizations, Individuals and Foundations, such as the Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals.”).

29. NAT’L CHICKEN COUNCIL, NATIONAL CHICKEN COUNCIL ANIMAL WELFARE GUIDELINES AND AUDIT CHECKLIST 5 (2005) [hereinafter NCC GUIDELINES], available at <http://www.nationalchickencouncil.com/files/AnimalWelfare2005.pdf>.

30. HFAC STANDARDS BROILER, *supra* note 2, at 6.

TABLE II LAYERS

Practice	United Egg Producer (UEP) Standard	HFAC Standard
Space Allowances (Hens)	Space allowance should be in the range of 67 to 86 square inches of usable space per bird to optimize hen welfare. <sup>31</sup>	"A minimum of 1.5 sq ft [324 sq in] per hen must be allocated to allow normal behavior." <sup>32</sup>
Nest Boxes (Hens)	UEP's Guidelines do not address nest boxes for caged hens. UEP President confirmed via e-mail cage systems do not have perches and nests. <sup>33</sup>	"Individual nest boxes must be provided at not less than one per 5 hens. For community nest boxes, manufacturer's recommendations regarding nest box space should be followed . . ." <sup>34</sup>
Induced Molting (Hens)	"1. Only non-feed withdrawal molt methods will be permitted after January 1, 2006. 2. The hens should be	"Hens must not be induced to molt." <sup>36</sup>

31. UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES U.S. EGG LAYING FLOCKS 4 (2006) [hereinafter UEP GUIDELINES], available at [http://www.uepcertified.com/docs/2006\\_UEPanimal\\_welfare\\_guidelines.pdf](http://www.uepcertified.com/docs/2006_UEPanimal_welfare_guidelines.pdf).

32. HUMANE FARM ANIMAL CARE, ANIMAL CARE STANDARDS EGG LAYING HENS 6 (2004) [hereinafter HFAC STANDARDS LAYERS], available at <http://www.certifiedhumane.org/pdfs/2004-std04.layers.3A.pdf> ("All hens must have sufficient freedom of movement to be able, without difficulty, to stand normally, turn around, and stretch their wings. They must also have sufficient space to be able to perch or sit quietly without repeated disturbance."); Telephone Interview with Temple Grandin, Dept. of Animal Sci., Colo. State Univ. (July 15, 2006) [hereinafter Gardin Interview] (according to Dr. Grandin, most hens in America now live in cages in which they can flap their wings).

33. E-mail from Al Pope, President, United Egg Producers, to Amy Draeger, Hamline Univ. Sch. of Law (Aug. 1, 2006, 14:53:12 CST) (on file with author) ("[C]age systems do not have perches and nests. Cage nesting space will vary depending on type [sic] of cages and birds being housed.").

34. HFAC STANDARDS LAYERS, *supra* note 32, at 8.



	<p>able to consume nutritionally adequate and palatable feed suitable for a <i>nonproducing hen</i>.          3. Body weight loss should be sufficient so as not to compromise hen welfare.          ...          5. Water must be available at all times.”<sup>35</sup></p>	
<p>Beak Trimming (Hens)</p>	<p>“Scientific evidence suggest[s] that primary breeders of egg laying strains can select a more docile bird and minimize the need to beak trim, from a behavioral point of view. Using genetic stocks that require little or no beak trimming is the most desirable approach . . . . UEP recommends <i>beak trimming</i> only when necessary to prevent feather pecking and cannibalism and only when carried out by properly trained person-</p>	<p>“The practice of beak trimming is contrary to the principles of the standards. However at the present time it is accepted that in colony housing systems there is a risk of outbreaks of cannibalism. The pain and suffering of the hens that are being pecked to death is appalling and may quickly affect a considerable portion of the flock. The need for beak trimming is being constantly reassessed . . . . Producers will be required to phase out beak</p>

36. HFAC STANDARDS LAYERS, *supra* note 32, at 17.

35. UEP GUIDELINES, *supra* note 31, at 9-10 (“With respect to the egg production industry, molting results in the need to add approximately 40 to 50% fewer new hens each year than would be needed without induced molts. This in turn results in significantly fewer spent hens that have to be handled, transported, and slaughtered.”); Am. Veterinary Med. Ass’n. (AVMA), *Induced Molting of Layer Chickens* (2005), available at [http://www.avma.org/issues/policy/animal\\_welfare/molting.asp](http://www.avma.org/issues/policy/animal_welfare/molting.asp) (“Induced molting extends the productive life of commercial chicken flocks, improves long-term flock health and performance, and results in substantial reduction in the number of chickens needed to produce the nation’s egg supply.”).

	nel monitored regularly for quality control." <sup>37</sup>	trimming/tipping as soon as the causes of cannibalism and ways of preventing it have been identified." <sup>38</sup>
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**TABLE III YOUNG DAIRY BEEF**

<b>Practice</b>	<b>National Cattlemen’s Beef Association (NCBA)</b>	<b>HFAC Standard</b>
Housing (Young Dairy Beef) <sup>39</sup>	Individual calf housing benefits animals (diseases easier to control, customized nutrition for each calf). <sup>40</sup>	“Individual pens or hutches must not be used to house calves older than 8 weeks of age . . . [c]alves older than 8 weeks of age must be housed in groups . . . [c]alves must not be closely confined except in [specific] circumstances . . .” and then only for maximum of 2 hours. <sup>41</sup>

37. UEP GUIDELINES, *supra* note 31, at 7.

38. HFAC STANDARDS LAYERS, *supra* note 32, at 17.

39. See HUMANE FARM ANIMAL CARE, ANIMAL CARE STANDARDS: YOUNG DAIRY BEEF (2005) [hereinafter HFAC STANDARDS BEEF], available at <http://www.certifiedhumane.org/pdfs/2005.Std05.YoungDairyBeef.pdf> (“Young dairy beef” refers to male calves of dairy cows. HFAC uses the term “young dairy beef” because of varying interpretations of the term “veal” among restaurants, the USDA and consumers).

40. Nat’l Cattlemen’s Beef Ass’n, Animal Welfare, <http://www.beef.org/ncbaanimalwelfare.aspx> (last visited Sept. 2, 2007); NAT’L CATTLEMEN’S BEEF ASS’N, RECOMMENDATIONS FOR THE CARE AND HANDLING OF BEEF CATTLE 1-2, available at <http://www.ag.auburn.edu/~owslewf/BQA/NCBA%20Animal%20Care.pdf> (“Cattle are produced using a variety of management systems, in very diverse environmental and geographic locations of the United States. As such, there is not one specific set of production practices that can be recommended for all cattle producers to implement.”).

41. HFAC STANDARDS BEEF, *supra* note 39, at 8-10 (“specific circumstances” include while being fed, awaiting transportation, during routine veterinary treatment, for the purpose of marking, washing or weighing, or while facilities are being cleaned).

TABLE IV PIGS<sup>42</sup>

Practice	National Pork Board (NPD)	HFAC Standard
Tethering (Swine)	“Tethers can be used in breeding, gestation, or farrowing areas . . . Positive human interaction, good stockmanship, and good separation among neighboring sows may reduce the stressfulness of the tether stall. Unless these elements are present, tethers are not recommended.” <sup>43</sup>	“Individual stalls that prevent pigs from turning around (except hospital pens) and tethers for pigs are prohibited.” <sup>44</sup>
Floor Area (Sows)	“Research needs to be done in order to develop scientifically-based [breeding swine] space guidelines that will address measures of animal welfare and be economically sustainable. For this reason, specific recommendations about sow or boar stall size or pen sizes are not given.” <sup>45</sup>	“A sow must be housed in a farrowing environment that is bedded and allows her to turn around. Traditional, straight, narrow farrowing crates are not permitted.” <sup>46</sup>
Tail Docking	“Tails may be docked. Tail docking should be done shortly after birth because the piglet is small,	“Tail docking is against the principles of The An-

42. See NAT'L PORK PRODUCERS COUNCIL, SWINE CARE HANDBOOK 9-10 (1996) [hereinafter SWINE CARE HANDBOOK], available at <http://www.porkboard.org/swinecarehandbook/chapter1.pdf>; HUMANE FARM ANIMAL CARE, ANIMAL CARE STANDARDS: PIGS 7, 17-18 (2005) [hereinafter HFAC STANDARDS PIGS], available at <http://www.certifiedhumane.org/pdfs/2004-Std04.Pigs.3A.pdf> (noteworthy areas of general agreement between the National Pork Producers Council and HFAC include standards regarding floor area for pigs, needle teeth trimming, ear notching castration of newborn pigs and tusk trimming of boars).

43. SWINE CARE HANDBOOK, *supra* note 42, at 8.

44. HFAC STANDARDS PIGS, *supra* note 42, at 8.

45. SWINE CARE HANDBOOK, *supra* note 42, at 34.

46. HFAC STANDARDS PIGS, *supra* note 42, at 9.

	easy to hold and the procedure is less stressful.” <sup>47</sup>	imal Care Standards. However, at the present time it is acknowledged that it may be necessary to alleviate pain and suffering caused by tail biting. As soon as enough information is available regarding husbandry methods that prevent tail-biting outbreaks, the practice of tail docking for preventive reasons will not be permitted within the standards.” <sup>48</sup>
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Farm animal welfare cannot stand securely on slatted guidelines. Animals produced in confined animal agriculture can no longer bear the weight of the distance between welfare guidelines issued by the animal agriculture industry and guidelines issued by animal interest groups. As federal law protects the welfare of non-farm animals, so too should federal law protect the welfare of farm animals.

### III. FARM ANIMALS AND IMAGES

Intensive animal agriculture produces more than pork, beef or chicken – it produces animals’ lives. We rarely view images of farm animals living in confined animal production facilities. We seldom open our newspapers and magazines to photos of layer hens fit to 9-inch square battery cages, calves tethered in veal crates, or sows pressed to the bars of gestation stalls. Yet these animals interpret

47. SWINE CARE HANDBOOK, *supra* note 42, at 10.

48. HFAC STANDARDS PIGS, *supra* note 42, at 17.

their existence through images,<sup>49</sup> and the images of the battery cage, the veal crate, and the gestation stall are their entire world. The free-market tripod that supports intensive animal agriculture should collapse under the moral weight of these images. Humans who work outside the animal industry and have not become “habituated to [this] horror,”<sup>50</sup> and need to view these images. When voters and consumers see farm animals not as pork, chicken or veal, but as they are,<sup>51</sup> as they exist in confined animal production facilities, our law will protect farm animals.

A. *Animals Without Image: The Exclusion of Farm Animals from Public View*

Cultural disregard for farm animals’ lives requires their exclusion from public view.<sup>52</sup> As Favre notes, “The public would never support what happens to animals today, and for that reason, more and more animals are hidden away under conditions of which the public is not aware.”<sup>53</sup> In 1906, Upton Sinclair illuminated the viscera of Chicago’s meatpacking houses with publication of his novel, *The Jungle*. His words describing the unsanitary conditions under which farm animal slaughter took place inspired enactment of the first federal Pure Food and Drug and Meat Inspection Acts.<sup>54</sup> Today, Americans may sometimes read about animal agriculture or slaughtering facilities, but seldom, if ever, see them. Except for the textual prints of *The Jungle* and the HSA, farm animal welfare stalled in the chute of the twentieth century as history stunned, shackled, and bled one hundred years largely without notice.

Producing one hundred years of institutional exclusion requires the power of government and industry. Maintaining a century of resistance to publication of farm animal images requires the concentrated feed of political and economic interests. Are government and industry protecting the public interest or their own interests by excluding farm animals from public view? *Should* Americans see what goes on in growing houses and slaughter facilities?

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49. See TEMPLE GRANDIN & CATHERINE JOHNSON, ANIMALS IN TRANSLATION: USING THE MYSTERIES OF AUTISM TO DECODE ANIMAL BEHAVIOR 23-33 (2006) [hereinafter GRANDIN & JOHNSON] (describing how animals perceive the world).

50. SUSAN SONTAG, REGARDING THE PAIN OF OTHERS 82 (2003).

51. GRANDIN & JOHNSON, *supra* note 49, at 30 (“Animals . . . don’t see their *ideas* of things; they see the actual things themselves.”).

52. SONTAG, *supra* note 50, at 46 (“[T]o photograph is to frame, and to frame is to exclude.”).

53. Favre, *supra* note 22, at 91.

54. Paul Montazzoli, *Introduction* to UPTON SINCLAIR, *THE JUNGLE* vi (Barnes & Noble, Inc. 1995) (1906).

“Absolutely,” says Dr. Temple Grandin.<sup>55</sup> In her “ten-people-from-the-airport tests,” Dr. Grandin brings people to farm animal production and processing facilities to show them what goes on and to gauge their responses.<sup>56</sup> Not every person in America with the power to affect farm animals’ lives wants the public to see the places where farm animals live and die, however. Large-scale dissemination of images depicting the lives and deaths of farm animals in intensive animal production risks government restriction of production methods used in the animal agriculture industry. History shows publication of words alone can result in government restriction. Publication of a novel in 1906 resulted in federal legislation regulating slaughterhouses. In 1996, beef sales fell to their lowest level in ten years after a broadcast of a nationally popular afternoon talk show’s discussion of BSE.<sup>57</sup>

In an effort to defend against the threat posed by publication of images of intensively farmed animals, Missouri State Representative Ken Legan introduced a bill in 2002 that would have made it a class D felony for any person to “photograph, videotape, or otherwise obtain images from within the animal facility.”<sup>58</sup> A similar bill, H.B. 5793, passed in the Illinois House in 2002.<sup>59</sup> (Neither bill became law.)

Government diversion of ideas past the People requires a compelling reason. What compelling interest outweighs the public’s right to know of potential-

55. Grandin Interview, *supra* note 32 (“A big part of my job now is trying to make sure all food animals are given a humane slaughter, but even though there’s a lot of support for animal welfare it’s getting harder to make good reforms instead of easier. It’s harder because today government regulatory agencies are all run by people who’ve been to college, but who in some cases have never even been *inside* a meatpacking plant, let alone worked in one. It’s terrible. I keep telling them, ‘You’ve got to go out there and visit a plant.’”); *see also* GRANDIN & JOHNSON, *supra* note 49, at 27.

56. Grandin Interview, *supra* note 32.

57. CURNUTT, *supra* note 7, at 200 (“[W]hen Howard Lyman appeared on the *Oprah Winfrey Show* . . . , [he] revealed that American cattle are routinely fed road kill, euthanized pets, and sick cows that are rendered into feed. This is the same process of animal cannibalism that is widely acknowledge to be the cause of BSE in England, which then became vCJD when humans ate infected meat . . . . Almost immediately after the show aired, beef sales in the United States plunged to their lowest level in ten years. Within a couple more months a confederation of cattlemen. . . filed suit against Winfrey, Lyman, and the Texas television station that carried the show . . . .”); *See Texas Beef Group v. Winfrey*, 11 F. Supp 2d 858 (N.D. Tex 1998).

58. H.B. 1794, 91st Gen. Assem., 2d Reg. Sess. (Mo. 2002), *available at* <http://www.house.mo.gov/bills02/biltxt02/intro02/HB1794I.htm> (stating that “animal facility” includes the offices, barns, buildings, other structures, vehicles, and “any premises, private or public property, where animals are located, including but not limited to the barns or areas where the animals are pastured, housed, or otherwise quartered.”).

59. Bill Berkowitz, *Trouble on the Farm*, THE NATION (June 5, 2002), *available at* <http://www.thenation.com/doc/20020617/berkowitz20020605>.

ly ““unsanitary or illegal conditions in the care and feeding of livestock?””<sup>60</sup>  
 What threat justifies government restriction of a protected First Amendment activity?

For some in the industry and the government, little distinguishes the attack of an animal welfare advocate against the practices of the animal agriculture industry and the attack of an agroterrorist against the United States – any assault against animal agriculture threatens the national economy and national and social security. In a 2005 communication to the Senate Committee on Agriculture, Nutrition, and Forestry concerning the need for animal agterrorism protections, the Animal Agriculture Coalition stated:

[A]griculture today . . . is under siege from radical animal rights and environmental activists, who use violence and criminal activity to further philosophical and political agendas.

...

[T]oday every U.S. livestock and poultry producer lives under the threat of potential violence against his or her farm or ranch because the use of land, crops and animals to produce meat, milk, eggs, leather and fiber is offensive to environmental and animal rights extremists who use personal philosophy to rationalize violence against people and property.<sup>61</sup>

What about the concerns of the majority of animal welfare advocates who do not advocate or use violence? Will layer hens with perching space “cripple our economy, require geographic quarantines, cause massive social upheaval, and . . . produce illness and death?”<sup>62</sup> Will hens that are provided nest boxes disrupt a “\$1 trillion economic sector that creates one-sixth of our [GDP]?”<sup>63</sup> Will a sow tamping the floor of a farrowing stall immobilize the “sprawling industry that encompasses a half-billion acres of croplands, thousands of feedlots, countless processing plants, warehouses, [and] research facilities . . . ?”<sup>64</sup>

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60. News Release, Radio-Television News Dir. Ass’n & Found., RTNDA Battles Missouri Ban on Photographs of Farm Animals (May 17, 2002), <http://www.rtna.org/news/2002/051702.html> (quoting RTNDA President Barbara Cochran).

61. John Adams & Gary Weber, Animal Agric. Coal., Statement of the Animal Agriculture Coalition to the Senate Committee on Agriculture, Nutrition and Forestry Concerning the Need for Animal Agroterrorism Protections (July 20, 2005) (on file with author).

62. *Agroterrorism: The Threat to America’s Breadbasket: Hearing before the S. Comm. on Governmental Affairs*, 108th Cong. 2 (2003) [hereinafter *Agroterrorism Hearing*] (opening statement of Sen. Susan Collins, Chairman, S. Comm. on Governmental Affairs), available at <http://www.access.gpo.gov/congress/senate/pdf/108hr/91045.pdf>.

63. *Id.* at 1.

64. *Id.*

According to one of the world's leading animal welfare scientists, it is possible to increase or improve stall conditions and employ new management techniques without causing a big dent the farmer's or consumer's pocketbook.<sup>65</sup> According to a Humane Society of the United States (HSUS) report, replacing a battery cage hen housing system with a furnished cage system will increase production costs anywhere from 8 to 28 percent, but these costs may be offset by increased production of eggs from each hen.<sup>66</sup> The European Union Scientific Veterinary Committee found that, among young dairy beef producers building new livestock housing, the choice of group housing over individual crates increased total production costs only "0.9 percent pound liveweight."<sup>67</sup> Conversion of existing facilities from individual crates to group housing increased total production costs only \$0.08 per pound.<sup>68</sup>

For some in the industry and in the government, the measure of loss in animal agriculture is not diminished animal welfare—it is decreased profits and negative public perceptions; for example foot-and-mouth disease (FMD) cost Taiwan \$4 billion in 1997 and Britain \$5.6 billion in 2001.<sup>69</sup> An FMD outbreak on just ten American farms could cost the United States \$2 billion.<sup>70</sup> The testimony of Dr. Peter Chalk, policy analyst for the RAND Corporation, to the U.S. Senate Committee on Governmental Affairs illustrates the absence of concern for animal welfare in the event of an agroterrorist attack in the United States.<sup>71</sup> Also notable is the recitation of the conditions under which animals live in confined animal agriculture:

Most dairies in the country can be expected to house at least 1,500 lactating cows at any one time, with the larger facilities housing upwards of 10,000 animals . . . . An outbreak of contagious disease at any of these facilities . . . would be very difficult to contain and could quite easily necessitate the wholesale eradication of all exposed animals, which is both technically and financially demanding.

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65. See Bridget M. Kuehn & Susan C. Kahler, *The Stall in Sow Housing*, AVMA JOURNAL (Jan. 1, 2005), available at <http://www.avma.org/onlnews/javma/jan05/050101a.asp>.

66. Humane Soc'y of the U.S., *An HSUS Report: The Economics of Adopting Alternative Production Systems to Battery Cages*, available at [http://www.hsus.org/web-files/PDF/farm/econ\\_battery\\_1.pdf](http://www.hsus.org/web-files/PDF/farm/econ_battery_1.pdf) (last visited Sept. 2, 2007).

67. Humane Soc'y of the U.S., *An HSUS Report: The Economics of Adopting Alternative Production Systems to Veal Crates 2*, available at [http://www.hsus.org/web-files/PDF/farm/econ\\_veal.pdf](http://www.hsus.org/web-files/PDF/farm/econ_veal.pdf) (last visited Sept. 2, 2007).

68. *Id.*

69. *Agroterrorism Hearing*, *supra* note 62, at 2 (this figure includes compensation to farmers as well as lost revenue to tourism).

70. *Id.* at 3.

71. *Id.* at 73-82.



U.S. livestock has also reportedly become increasingly disease-prone as a result of husbandry changes that have been designed to elevate the volume, quality, and quantity of meat production . . . Biotechnic modifications have reportedly increased the stress levels of exposed animals, which has, in turn, lowered their natural tolerance to disease while at the same time increased the volume of bacteria that they could be expected to shed in the event of an infection.<sup>72</sup>

Unlike the mass killing of farm animals that takes place in animal processing facilities, the mass killing of farm animals to prevent the spread of disease involves the risk of public visibility and public criticism.<sup>73</sup> According to Dr. Chalk, the degree of media attention to farm animal eradication depends on the species of the affected animals.<sup>74</sup> A disease outbreak among small-scale animals like broilers may miss the electrified bath of public opinion: "You are not dealing with large-scale animals . . . [T]he visual impacts are not going to attract the same sort of media attention in terms of euthanization and eradication."<sup>75</sup>

Public perception of the animal agriculture industry should not turn on the presence or absence of media coverage of catastrophic farm animal events; it should turn on the public's visual access to the daily breeding, growing, finishing and slaughter of farm animals. An industry that produces psychologically damaging images should not only be open to public view, it should be subject to public scrutiny.

The psychological effects of viewing farm animal slaughter and euthanasia are known to the animal agriculture industry. Veterinarians J.K. Shearer and Paul Nicoletti caution:

[C]onstant exposure to, or participation in, euthanasia procedures may result in psychological damage leading to work-related dissatisfaction and a tendency toward careless or callous handling of animals . . . Euthanasia, regardless of the circumstances, impacts a person's emotional state.<sup>76</sup>

Strategies to mitigate psychological damage to humans caused by exposure to farm animal slaughter and euthanasia are also known to the animal agriculture

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72. *Id.* at 14-15.

73. *Id.* at 16.

74. *Id.* at 81, n.20.

75. *Id.* at 22. *But see* Scott Plous, *Is There Such a Thing as Prejudice Toward Animals?* in UNDERSTANDING PREJUDICE AND DISCRIMINATION 509 (Scott Plous ed., 2003) (citing his 1993 study in which participants watching videotaped scenes of what appeared to be animal abuse directed against a monkey, raccoon, pheasant, or bullfrog experienced higher physical arousal when the "abuse" was directed at a species of animal perceived to be more similar to humans).

76. J.K. Shearer & Paul Nicoletti, *Procedures for Humane Euthanasia of Sick, Injured, and/or Debilitated Livestock* 2 (2002), available at <http://www.utextension.utk.edu/topics/LivestockAnimals/hottopics/Humane%20Euthanasia.pdf>.

industry. In a 1988 commentary concerning behavior of slaughter plant and auction employees toward animals, Dr. Temple Grandin advises:

It is important to rotate the employees who do the killing, bleeding, shackling, and driving. Nobody should kill animals all the time. . . . Rotation every few hours between the kill chute and driving cattle up the chute ma[kes] it easier to maintain a humane attitude.<sup>77</sup>

Like every “species of livestock [that] balk[s] if a chute looks like a dead end,”<sup>78</sup> the American public should reject the argument that farm animal production involves images too graphic for it to see. Protecting the public from the psychological effects of seeing farm animals in confinement or slaughter facilities does not require exclusion of farm animals’ lives and deaths from public view. Keeping farm animals out of public view does require government and does protect the freedom of the animal agriculture industry to issue its own guidelines and make or break its own rules to the benefit or detriment of the animals.

B. *Animals with Image: Life Magazine’s “Concentration Camp for Dogs” – Hurricane Katrina and the 2006 PETS Act*

At least twice in the last forty years, widely disseminated images of abandoned and vulnerable animals have changed U.S. history. In 1966, *Life Magazine* published a photo essay, “Concentration Camps for Dogs” that resulted in near immediate passage of the Laboratory Animal Welfare Act of 1966.<sup>79</sup> In 2005, print and televised images of companion animals stranded in Hurricane Katrina resulted in immediate introduction in Congress of the PETS Act of 2005.<sup>80</sup> Seized by photojournalists, impounded by mass media and claimed by the American people, the *Life* and Katrina images identify hope for the redemption of farm animals.

In *Regarding the Pain of Others*, Susan Sontag wrote: “For photographs to accuse, and possibly to alter conduct, they must shock.”<sup>81</sup> “Concentration Camps for Dogs” shocks. The article informs readers of dog “dealers” in the

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77. Temple Grandin, *Commentary: Behavior of Slaughter Plant and Auction Employees toward the Animals System*, 1 ANTHROZOOS 205 (1988), available at <http://www.grandin.com/references/behavior.employees.html>.

78. TEMPLE GRANDIN, AM. MEAT INST. FOUND., RECOMMENDED ANIMAL HANDLING GUIDELINES AND AUDIT GUIDE 14 (2005), available at <http://www.certifiedhumane.org/pdfs/2005RecAnimalHandlingGuidelines.pdf>.

79. See Michel Silva & Stan Wayman, *Concentration Camps for Dogs*, LIFE, Feb. 4, 1966.

80. Pets Evacuation and Transportation Standards Act of 2005, H.R. 3858, 109th Cong. (2005).

81. SONTAG, *supra* note 50, at 81.

business of supplying dogs to U.S. research labs.<sup>82</sup> The article states, “[T]he Humane Society of the U.S. estimates that 50 percent of all missing pets have been stolen by ‘dognappers,’ who in turn sell them to the dealers.”<sup>83</sup> The black-and-white photo essay begins with the full-page photo of an “emaciated,” “cowering” English pointer auctioned three weeks previously at an Oklahoma fair.<sup>84</sup> The essay then places viewers on the scene of a raid at the “compound” of a dog dealer.<sup>85</sup> A two-page spread centers pigeons and puppies jammed into filthy coops; the only food in sight is stale bread piled in a washtub.<sup>86</sup> To the right of this picture lies the photograph of a chained collie “[t]oo weak to crawl to the frozen entrails scattered in [the] yard.”<sup>87</sup> Below the collie, the protruding rib cage and oversized collar of a “young beagle, staked out in [the] yard,” bleed off the page.<sup>88</sup> Five dogs chained to wooden boxes appear at the top of the fourth page.<sup>89</sup> The corpse of a female dog found “frozen inside a box” blankets half the fifth page.<sup>90</sup>

The photos of the dogs and puppies bought and sold for “30¢ a pound” or “10¢ apiece” appeared in the February 4, 1966, issue of *Life*.<sup>91</sup> Upon viewing the images, the public demanded government action:

The story instantly ignited public outrage . . . . More than 80,000 letters expressing disgust and indignation flooded Congress, a deluge eclipsing that of any other issue, including civil rights and the Vietnam War.

. . . The Laboratory Animal Welfare Act, later shortened to the Animal Welfare Act, was signed into law by President Lyndon Johnson in August 1966.<sup>92</sup>

In the years prior to publication of the *Life* expose, at least six bills were introduced in Congress to regulate the use of laboratory animals.<sup>93</sup> All six failed.<sup>94</sup> The National Institutes of Health, the American Medical Association, the American Veterinary Association and the National Society for Medical Research opposed them all.<sup>95</sup>

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- 82. Silva & Wayman, *supra* note 79, at 22.
  - 83. *Id.*
  - 84. *Id.* at 22-23.
  - 85. *Id.* at 24-27.
  - 86. *Id.* at 24-25.
  - 87. *Id.* at 25.
  - 88. *Id.*
  - 89. *Id.* at 26.
  - 90. *Id.* at 26-27.
  - 91. *Id.* at 22.
  - 92. CURNUTT, *supra* note 7, at 440-41.
  - 93. *Id.* at 439.
  - 94. *Id.*
  - 95. *Id.*

Introduced in the aftermath of Hurricane Katrina in September 2005, the PETS Act of 2006 received little opposition in the House, passed by unanimous vote in the Senate, and was approved by the President on October 6, 2006.<sup>96</sup> The Act requires “State and local emergency preparedness operational plans . . . [to address] the needs of individuals with household pets and services animals . . . following a major disaster or emergency.”<sup>97</sup> Speeches from the floor of the House at the bill’s introduction reveal the importance of images in inspiring government action:

There were many tragedies from Hurricane Katrina that will not soon be forgotten. Some of the most indelible images were the ones of people being forced to choose between leaving their pets behind or being evacuated to safety. In many cases, these loyal animals had stayed with their owners for days on rooftops waiting to be rescued, only to be abandoned because the rescuers refused to carry the pets to safety with their owners.<sup>98</sup>

....

All of us saw many horrible scenes of abandoned pets wandering through the flooded city of New Orleans.<sup>99</sup>

....

I was watching televisions one night . . . and I saw a 7-year old little boy with his dog. His family lost everything, and all they had left was their dog. And since legislation such as ours was not yet on the statute books, the dog was taken away from this little boy. To watch his face was a singularly revealing and tragic experience.

This legislation was born that moment. . . . This bill was born the moment the 7-year old little fellow had to give up his dog because there was no provision to provide shelter for his pet.<sup>100</sup>

Concern in the 109th Congress for the welfare of animals did not stop at companion animals. On June 8, 2006, Rep. Christopher Shays introduced H.R. 5557, a bill “[t]o promote the humane treatment of farm animals,” or the “Farm Animal Stewardship Purchasing Act.”<sup>101</sup> The bill prohibits federal government

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96. See Pets Evacuation and Transportation Standards Act of 2005, H.R. 3858, 109th Cong. (2006); Pets Evacuation and Transportation Standards Act of 2006, S. 2548, 109th Cong. (2006); 152 CONG. REC. S8894 (daily ed. Aug. 3, 2006); Pets Evacuation and Transportation Standards Act, Pub. L. No. 109-308, 120 Stat. 1725 (2006).

97. 120 Stat. 1725 § 2.

98. 152 CONG. REC. H2987 (daily ed. May 22, 2006) (statement of Rep. Oberstar).

99. *Id.* at H2986 (statement of Rep. Chandler).

100. *Id.* (statement of Rep. Lantos).

101. Farm Animal Stewardship Purchasing Act, H.R. 5557, 109th Cong. (2006).

purchases of any animal product from a “covered animal”<sup>102</sup> unless the animal is raised with:

- (1) adequate shelter which allows sufficient space for the covered animal to stand, lie down, get up, walk, move his or her head freely, rest, and turn around completely and fully extend all limbs or wings without touching any part of an enclosure;
- (2) daily access to adequate food and water sufficient to ensure the health and well-being of the covered animal without forced feeding or feed withdrawal; and
- (3) adequate veterinary care, including prompt treatment or humane euthanasia of a sick or injured covered animal.<sup>103</sup>

However, no major newspaper or television news broadcast covered introduction of H.R. 5557 in Congress.<sup>104</sup> No photo or video images accompanied H.R. 5557 to the House Committee on Government and the House Committee on Agriculture.<sup>105</sup> No farm animal images were loaded into media cues and transported to the public on June 14 when the House Committee on Agriculture referred H.R. 5557 to the Subcommittee on Livestock and Horticulture.<sup>106</sup>

Like the stall of research animal welfare bills in the early 1960s, the stall of Rep. Shays and other farm animal welfare bills in the early twenty-first century warns of descent. The absence of laws protecting the welfare of farm animals and the absence of farm animal images from public view makes adoption of the Universal Declaration on the Welfare of Animals compelled by moral gravity.

#### IV. THE UNIVERSAL DECLARATION ON THE WELFARE OF ANIMALS

The Universal Declaration on the Welfare of Animals (UDAW) neither explicitly nor implicitly excludes farm animals from state protection. The pro-

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102. *Id.* at § 5 (stating that “covered animal” means “any non-aquatic farm animal, including a pig, head of cattle, chicken, turkey, duck, goose, goat, horse, mule, sheep, rabbit, ostrich, emu, or rhea.”), § 4 (law exempting animals “(1) during lawful transport; (2) in lawful rodeo exhibitions, State or county fair exhibitions, or other similar exhibitions; (3) in lawful scientific or agricultural research; or (4) while undergoing an examination, test, treatment, or operation for veterinary purposes to improve the well-being of such covered animal.”).

103. *Id.* at § 3.

104. Westlaw ALLNEWS database search “Farm Animal Stewardship” & DA(AFT 6/01/2006) (conducted Aug. 2, 2006); Lexis Transcripts database search “farm animal stewardship” and date (Previous 6 Months), “farm animal” and “stewardship” and date (Previous 6 months) (conducted Aug. 11, 2006).

105. Farm Animal Stewardship Purchasing Act, *supra* note 101.

106. *Id.*

posed text of the declaration recognizes “animals” as living, sentient beings deserving of consideration and respect:

RECOGNIZING that animals are living, sentient beings and therefore deserve due consideration and respect . . . that animal welfare includes animal health . . . that the “five freedoms” (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour) . . . provide[s] valuable guidance for the use of animals . . . The welfare of animals shall be a common objective for all nations . . . All appropriate steps shall be taken by nations to prevent cruelty to animals and to reduce their suffering.<sup>107</sup>

Skeptics may ask if a U.N. declaration on the welfare of animals is “necessary” given the existence of animal welfare laws in a majority of the nations. Skeptics may question the effectiveness of an admittedly non-binding declaration in protecting animal welfare. Some critics may even argue that such a declaration improperly places animal interests “above” human interests. These arguments deny the billions of animals we bring into existence for the sole purpose of using as our resources,<sup>108</sup> and the commoditization of animals at the point of apocalypse.

Protecting animals from suffering and cruelty is a universal issue that, like other universal issues, is a legitimate subject of international agreement. The Constitution of India commands its citizens to “have compassion for living creatures.”<sup>109</sup> Treaties of the European Union recognize animals as sentient beings,<sup>110</sup> that “man has a moral obligation to respect all living creatures,”<sup>111</sup> and that an animal kept for farming purposes “shall not be restricted in such a manner as to cause it unnecessary suffering or injury.”<sup>112</sup> Costa Rica outlaws circuses that use animals.<sup>113</sup> Countries with animal protection organizations include Russia (38), Mexico (83), Brazil (93), Chile (67), China (38), Korea (20), Japan (54), South

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107. World Soc’y for the Prot. of Animals, *Universal Declaration on the Welfare of Animals* [hereinafter *Universal Declaration*], available at [http://www.animalsmatter.org/downloads/proposed\\_declaration\\_final\\_english.pdf](http://www.animalsmatter.org/downloads/proposed_declaration_final_english.pdf); See World Soc’y for the Prot. of Animals, *supra* note 3.

108. See GARY L. FRANCIONE, *INTRODUCTION TO ANIMAL RIGHTS: YOUR CHILD OR THE DOG?* xix-xxi (2000).

109. INDIA CONST. art. 51A(g).

110. Treaty Establishing a Constitution for Europe, Part III, Art. III-121, Oct. 29, 2004, O.J. (C310) 1.

111. European Convention for the Protection of Pet Animals, Jan. 5, 1992, ETS No. 125.

112. European Convention for the Protection of Animals Kept for Farming Purposes, Sept. 10, 1978, chap. 1, art. 4(1), ETS No. 87.

113. Neil Trent et al., *International Animal Law, with a Concentration on Latin America, Asia, and Africa*, in *THE STATE OF THE ANIMALS III* 67 (Deborah J. Salem & Andrew N. Rowan eds., 2005).

Africa (90), Zimbabwe (24), and Kenya (21).<sup>114</sup> That animal suffering *is* an issue of worldwide concern, is precisely the reason it *should* be the subject of universal declaration. That animal suffering at the hands of humans will not be eradicated by the UDAW does not render it ineffective any more than the genocides in Rwanda and Yugoslavia render the Universal Declaration of Human Rights ineffective.

The purpose of a U.N. *declaration* is to persuade, not to compel. The number of nations that join Costa Rica, Kenya, India, Czech Republic, and the Philippines in accepting the UDAW will serve as one measure of its success.

United Nations acceptance of the UDAW would not place animal interests “above” human interests. First, the UDAW addresses animal *welfare*, not animal *rights*.<sup>115</sup> The UDAW does not give animals legal status to assert any rights against the state. Second, the fact that animals do not have “rights” does not prohibit their protection from cruelty. The principal U.N. human rights instruments—the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—state that human rights derive from the “inherent dignity of the human person.”<sup>116</sup> If human *rights* are derived from the inherent dignity of the human person, not from human’s ability to reason, think, problem-solve, or feel pain, then the animal *welfare* should not require more. Animal welfare can and should derive from the inherent dignity of animals.

Animals “grown” without space to turn around, animals selectively bred for high production efficiency that suffer chronic hunger, bone deformities, gait abnormalities, lameness, breast blisters, hock burns, foot pad lesions and cardiovascular disease,<sup>117</sup> primates “caught, caged, transported to [an] abattoir, placed on a conveyor belt, stunned, killed, and butchered”<sup>118</sup> are not animals; they are commodities. And they do not have dignity.

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114. *Id.* at 66.

115. *See* Universal Declaration, *supra* note 107.

116. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3rd Sess., 1st plen. mtg., UN Doc A/810 (Dec. 1948) Preamble (“Whereas recognition of the inherent dignity . . . of all members of the human family . . .”); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1966), Preamble (“Recognizing that these rights derive from the inherent dignity of the human person . . .”); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1966) Preamble (“Recognizing that these rights derive from the inherent dignity of the human person . . .”).

117. Humane Soc’y of the U.S., *An HSUS Report: Welfare Issues with Selective Breeding for Rapid Growth in Broiler Chickens and Turkeys* 2-3 (2006), available at [http://www.hsus.org/web-files/PDF/farm/welfiss\\_breeding\\_poultry.pdf](http://www.hsus.org/web-files/PDF/farm/welfiss_breeding_poultry.pdf).

118. MATTHEW SCULLY, *DOMINION: THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY* 291 (2002).

In *AIDS and Its Metaphors*, Susan Sontag spoke of apocalypse as:

[A]n event that is happening and not happening. It may be that some of the most feared events, like those involving the irreparable ruin of the environment, have already happened. But we don't know it yet, because the standards have changed. Or because we do not have the right indices for measuring the catastrophe. Or simply because this is a catastrophe in slow motion.<sup>119</sup>

She continues:

That even an apocalypse can be made to seem part of the ordinary horizon of expectation constitutes an unparalleled violence that is being done to our sense of reality, to our humanity.<sup>120</sup>

Author Matthew Scully locates this "apocalypse" at the factory farm:

The worst becomes the standard. Tolerance of the factory farms dictates a tolerance of just about everything else, in effect moving the ethical bar lower and lower until, after a while, the critical faculties break down and one cruelty is used to justify another—new "necessary evils" defended and permitted merely because the old ones still go on.<sup>121</sup>

Agricultural consultant, Marlene Halverson identifies intensive animal production as a source of "potential catastrophe" in animal agriculture and society:

[T]he animal agriculture industry is placing tremendous pressures on farmed animals in ways that are adverse to their welfare . . . . By focusing only on increasing the productive performance of animals at the expense of vigor . . . and mental wellness we seem to be engaging in a very delicate and increasingly precarious balancing act between mass production and potential catastrophe for the animal industry and society.<sup>122</sup>

The rapid growth of confinement farming in the United States<sup>123</sup> and abroad<sup>124</sup> makes its attendant human and animal health and welfare risks immi-

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119. SUSAN SONTAG, *AIDS AND ITS METAPHORS* 88 (1988).

120. *Id.* at 93.

121. SCULLY, *supra* note 118, at 291.

122. HALVERSON, *supra* note 4, at 318.

123. EPA, *FEEDLOTS PRELIMINARY DATA SUMMARY 4, 7* (1998), available at <http://www.epa.gov/waterscience/guide/feedlots/execsumm.pdf> ("Historically, livestock production has taken place on a large number of relatively small farms, which were diversified crop-livestock farms that combined animal breeding, raising, and feeding operations. Increasingly, however, the breeding and raising phases of livestock production are occurring in large-scale, high-volume, specialized feeding operations, with few ties to traditional farming . . . . Two major trends in the U.S. livestock and poultry sector include: (1) a decrease in the total number of farms and (2) an increase in production efficiency. . . . Recent trends in the U.S. livestock and poultry sectors are



ment and the need for adoption of the Universal Declaration on the Welfare of Animals immediate. The UDAW will help facilitate enactment of effective domestic animal agriculture monitoring programs designed to address two areas of increasing international concern – the threat of transboundary diseases and the welfare of farm animals.

According to the United Nations Food and Agricultural Organization's (FAO) Animal Production and Health Division, livestock production contributed \$1 trillion to the global economy in 2001.<sup>125</sup> The doubling of demand for livestock products in the next ten to twenty years—the “Livestock Revolution”<sup>126</sup>—will result in increased numbers of industrial livestock operations and increased risk of the spread of transboundary animal diseases such as foot-and-mouth disease, rinderpest, swine fever and Rift Valley fever.<sup>127</sup> As stated by the World Organization for Animal Health (OIE):

With increasing globalisation, the persistence of transboundary animal diseases anywhere in the world poses a serious risk to world animal agriculture and food security and jeopardises international trade.<sup>128</sup>

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marked by a decline in the number of farms attributable to ongoing consolidation in the livestock and poultry industry.”).

124. B.S. Hursey, *Towards the Twenty-First Century – the Challenges Facing Livestock Production*, 2 WORLD ANIMAL REVIEW 89 (1997) available at <http://www.fao.org/DOCREP/W6437T/w6437t01.html> (“The burgeoning demand for reasonably priced and high-quality meat, eggs and dairy products has created the incentive for the rapid intensification and industrialization of animal production, thus representing economic, social and environmental implications of global dimensions.”); Andrew Speedy, *Livestock in the Future*, 1 WORLD ANIMAL REVIEW 92 (1991) available at <http://www.fao.org/docrep/X1700T/x1700t01.htm> (“The large increase in animal protein demand over the last few decades has been largely met by the worldwide growth in industrial production of pigs and poultry.”).

125. ANIMAL PROD. & HEALTH DIV., FOOD & AGRIC. ORG. OF THE U.N., LIVESTOCK POLICY BRIEF 01 1 (2001) [hereinafter LIVESTOCK POLICY BRIEF], available at [http://www.fao.org/AG/AGAInfo/resources/documents/pol-briefs/01/EN/AGA01\\_10.pdf](http://www.fao.org/AG/AGAInfo/resources/documents/pol-briefs/01/EN/AGA01_10.pdf).

126. WORLD ORG. FOR ANIMAL HEALTH, FOOD & AGRIC. ORG. OF THE U.N., THE GLOBAL FRAMEWORK FOR THE PROGRESSIVE CONTROL OF TRANSBOUNDARY ANIMAL DISEASES (GF-TADS) 5 (2004) [hereinafter GF-TADS], available at [http://www.oie.int/eng/OIE/accords/GF-TADS\\_approved\\_version24May2004.pdf](http://www.oie.int/eng/OIE/accords/GF-TADS_approved_version24May2004.pdf) (stating that the increase in demand for livestock products is “driven by urbanisation, increased income and a shift from cereal-based to more animal protein-based diets” and “will be met primarily by livestock producers in the developing world”).

127. LIVESTOCK POLICY BRIEF, *supra* note 125, at 3; GF-TADS, *supra* note 126, at 3 & n.1 (“Transboundary animal diseases are defined as: those that are of significant economic, trade and/or food security importance for a considerable number of countries; which can easily spread to other countries and reach epidemic proportions; and where control/management, including exclusion, requires cooperation between several countries.”).

128. GF-TADS, *supra* note 126, at 5.

The work of many international organizations reflects the growing and urgent concern for the welfare of all animals on earth. Animal interest NGOs with U.N. consultative status now include World Society for the Protection of Animals (1971), International Association Against Painful Experiments on Animals (1972), Humane Society of the United States (1996), World Animal Net (2001), International Fund for Animal Welfare (2002), and Sirius Global Animal Organisation Charitable Trust (2005).<sup>129</sup> The World Organization for Animal Health (OIE) identified animal welfare as a priority in its 2001-2005 Strategic Plan.<sup>130</sup> The OIE's permanent Working Group on Animal Welfare identified eight guiding principles for animal welfare in 2002.<sup>131</sup> Principle 2 notes the "five freedoms" cited by the WSPA's UDAW campaign.<sup>132</sup> According to WSPA, "Industrial animal farming is responsible for the biggest areas of suffering for animals in the world today."<sup>133</sup>

The Livestock Revolution must produce more than inexpensive animal protein – it must produce a uniform standard of farm animal welfare. Animals are not machines.<sup>134</sup> In the United States, the welfare of sows, calves, and hens should be more than a matter of national concern, it should be a subject of federal regulation. At the United Nations, the welfare of all the world's animals, farm and non-farm, should be the subject of universal declaration.

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129. U.N. Econ. & Soc. Council, Committee on Non-Governmental Org., *List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 31 August 2006*, 4, 33, 37, 61, 72, 73, U.N. Doc. E/2006/INF.4, available at [http://www.un.org/esa/coordination/ngo/pdf/INF\\_List.pdf](http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf) (The Humane Society of the United States has General Consultative Status.); U.N. Econ. & Soc. Council, Committee on Non-Governmental Org., *Consultative Status with ECOSOC*, <http://www.un.org/esa/coordination/ngo/about.htm> (last visited Sept. 3, 2007) ("General consultative status is reserved for large international NGOs whose work covers most of the issues on the agenda of ECOSOC and its subsidiary bodies.").

130. WORLD ORG. FOR ANIMAL HEALTH, FOOD & AGRIC. ORG. OF THE U.N., THE OIE'S INITIATIVES IN ANIMAL WELFARE (Feb. 27, 2007), [http://www.oie.int/eng/bien\\_etre/en\\_introduction.htm](http://www.oie.int/eng/bien_etre/en_introduction.htm).

131. WORLD ORG. FOR ANIMAL HEALTH, FOOD & AGRIC. ORG. OF THE U.N., TERRESTRIAL ANIMAL HEALTH CODE – 2006, art. 3.7.1.1, available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_3.7.1.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_3.7.1.htm).

132. *Id.* at art. 3.7.1.1(2).

133. World Soc'y for the Prot. of Animals, *supra* note 3.

134. See *People v. Arroyo*, 777 N.Y.S.2d 836, 841 (N.Y. Crim. Ct. 2004) (discussing the court's holding in *People v. O'Rourke*, 369 N.Y.S.2d 335 (Crim.Ct., N.Y.C. 1975) that "an animal used for labor must be provided with necessary medical attention if the animal is to continue working, especially after its lame condition has been brought to attention of owner.").

## V. CONCLUSION

An improperly stunned animal may blink in the blood tunnel—blinking is a sign the animal may still be sensible.<sup>135</sup> To inquire into the welfare of farm animals, however, is to ask more than whether animals blink in the blood tunnel; it is to ask whether we do. The purpose of this article is not to make readers wince; its purpose is to make readers blink.

Farm animals are excluded from major animal welfare legislation in the United States. Though chickens and turkeys make up 98 percent of all animals slaughtered in the United States, they are excluded from legal protections that guarantee their humane slaughter. The “law” that controls the welfare of farm animals in the United States is comprised of guidelines developed by the animal agriculture industry itself. As a society that values the humane treatment of animals, we cannot rely on the animal agriculture industry’s interest in profit to protect animal welfare; we must rely on the law.

The United States should adopt the Universal Declaration on Animal Welfare. The UDAW creates an internationally recognized norm upon which legislators may rely in developing animal welfare law in the United States inclusive of farm animals. More important, the UDAW establishes a universal standard upon which the public may rely when the image of a sow, hen or dairy calf awakens in us the need to change human history.

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135. Temple Grandin & Gary C. Smith, Dept. of Animal Sciences, Col. State Univ., *Animal Welfare and Humane Slaughter* (2004), available at <http://www.grandin.com/references/humane.slaughter.html> (“Blinking is another sign of an animal that has not been properly stunned and thus may still be sensible.”).