

# FARMED ANIMAL WELFARE & THE LAW: USA

Presentation Notes  
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© April, 2021.

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## ACKNOWLEDGMENTS

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# Farmed Animal Welfare & the Law: USA

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## The History of Factory Farming in the US

Before we delve into a discussion of US farmed animal law, it is helpful to appreciate the scientific developments and economic realities that made industrialised farming possible in the first place. Notably, many of these developments took place in the United States.

(To streamline this narrative, we'll focus on the world's most farmed terrestrial animal, the chicken.)

### Scientific Developments

The discovery of vitamins provided the foundation for factory farming in the early 1900s. Their production was hailed as a means to supplement nutrition and prevent disease. But what did this mean for animals raised for agriculture? In the early 1900s, chickens were generally raised for eggs, not meat, which was considered a byproduct of egg production.<sup>1</sup> Egg production was relatively expensive and seasonal because chickens were less productive in winter due to lack of sunlight and a resulting deficiency in Vitamin D. But with the discovery of and ability to mass produce Vitamin D, chickens - both 'spring' chickens, also known as 'broiler' chickens, and egg-laying hens - could be raised indoors year-round.

The discovery of vaccines and antibiotics in the 1910s laid the foundation for factory farming. Later on, science provided for more robust animal husbandry practices to create more productive egg-laying hens and larger broiler chickens. In 1927, General Electric produced the world's first electric refrigerator, so consumers could safely store eggs and meat longer. Thus, consumers could buy more at any given time. In turn, farmers concentrated on raising chickens year-round. This led to less diversification and increased specialisation in agricultural production. To offer a snapshot of the sector in 1930, approximately one in five Americans worked in the agriculture industry.<sup>2</sup>

### The Impact of War

What followed was the era of the Great Depression and World War II. Americans faced food shortages and high prices, a dilemma that gave rise to a general lament as to the 'high cost of living'.<sup>3</sup> The United States Government set to work. Scientists initially focussed on improving livestock nutrition for non-ruminant animals, such as chickens. They knew these animals both gained more weight and gained it more quickly if their diets included animal-based proteins, such as cod liver oil and fish meal, and they knew their vegetable-based counterparts yielded less impressive results.<sup>4</sup> Growers had been importing cod liver oil from Norway and fish meal from Japan, but these channels dried up due to the war.<sup>5</sup> In response, scientists searched for viable alternatives.

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<sup>1</sup> National Chicken Council (USA), *U.S. Chicken Industry History* (Web Page) <<https://www.nationalchickencouncil.org/about-the-industry/history/>>.

<sup>2</sup> Carolyn Dimitri, Anne Efland and Neilson Conklin, *The 20th Century Transformation of U.S. Agriculture and Farm Policy* (Electronic Report, United States Department of Agriculture Economic Information Bulletin No. 3, June 2005) <[https://www.ers.usda.gov/webdocs/publications/44197/13566\\_eib3\\_1\\_.pdf?v=7007](https://www.ers.usda.gov/webdocs/publications/44197/13566_eib3_1_.pdf?v=7007)>.

<sup>3</sup> Maureen Ogle, 'Riots, Rage, and Resistance: A Brief History of How Antibiotics Arrived on the Farm', *Scientific American* (Blog Post, 3 September 2013) <<https://blogs.scientificamerican.com/guest-blog/riots-rage-and-resistance-a-brief-history-of-how-antibiotics-arrived-on-the-farm/>>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

This is where antibiotics entered the picture. Scientists had recently discovered vitamin B12 and hypothesised that it was what separated animal from plant-based proteins.<sup>6</sup> A scientist, Thomas Jukes, started feeding animals B12 produced as a byproduct of a particular antibiotic, Aureomycin, and what he discovered was that chickens fed Aureomycin-derived B12 saw their growth increase by 50%, with the *New York Times* hailing it a 'Wonder Drug' in 1950.<sup>7</sup> Soon, industry began to abandon costly animal proteins in favour of cheap antibiotic cocktails and vitamin B12, and as a result, livestock reached market weight faster and production costs dropped.<sup>8</sup>

As Maryn McKenna observes, this development ushered in an era where farmers could 'squeeze animals in more tightly, clean their barns less frequently, scrimp on nutrition, turn a blind eye to pests - and know they were protected against the diseases that would otherwise have resulted, because the antibiotic doses protected their livestock from the start'.<sup>9</sup> It spelled the beginning of the end for small-scale farmers, as market forces would enable the institutionalisation of animal cruelty that we see today.

## Industrialisation

Demand for animal products soared in the 1950s, but these innovations also saw supply increase several times over. The ultimate cost to the consumer went down for that reason. Why was this a problem? Because a farmer could be working full-time in the 1930s through the 1950s by raising 1,500 chickens and enjoying a certain quality of life. But to enjoy that same standard of living in a time of falling prices, that same farmer may have had to double or triple their stock. Where there might have been one chicken in one cage before, now there had to be two or three, with the cages stacked three-high. Many small-scale farmers could not adapt in time and had to either shut their operations down entirely or else be bought out. The industry consolidated.

Animals suffered due to this shift, which reduced them to units of production rather than seeing them as individual, sentient beings. Today, standard industry practices subject chickens to numerous cruelties, including the use of sub-therapeutic antibiotics to stimulate growth and stave off bacteria that thrive in densely crowded conditions. Egg-laying hens often have their beaks seared off with a hot blade to prevent damage to other hens as they seek to establish a natural pecking order. They are also subjected to forced molting, or the manipulation of light and withholding of food to stimulate egg production. Genetic modifications have seen hens produce more eggs than their ancestors. For example, in around 1950, a hen might produce 150 eggs a year. Today, that number has more than doubled. Most of these hens are killed in just their second laying year, which is when they are regarded as unproductive, or 'spent'. Broiler chickens now reach slaughter weight in as little as 6 weeks, whereas in the 1970s, it took approximately three times as long.

The cruelties of industrial agriculture are felt by other commonly farmed animals. Cows, pigs, and fishes also undergo routine mutilations. Piglets, for example, undergo tail docking and un-anaesthetised castration to combat 'boar taint', an odour that affects the smell and taste of pork from a percentage of male pigs who reach puberty. The conditions are so crowded in factory farm settings that pregnant

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<sup>6</sup> Ibid.

<sup>7</sup> Maryn McKenna, 'The Chicken Experiment That Shook the World', *Undark* (Book Excerpt)

<<https://undark.org/2017/10/06/chicken-experiment-shook-world/>>

<sup>8</sup> Ogle (n 3).

<sup>9</sup> McKenna (n 7).

sows are often confined to gestation crates, or metal cages that prevent them from turning around to prevent the crushing of newborns, who are likewise being raised for slaughter.

In the US, industrial animal agriculture represents the predominant form of farmed animal production, accounting for approximately 99% of terrestrial animals raised for food.<sup>10</sup> Although the foundation for industrial animal agriculture and practices find their roots in the US, factory-farming production methods have been exported around the world by an increasingly consolidated animal agriculture industry, and now make up 90% of global meat production.<sup>11</sup>

## Farmed Animal Statistics

An astronomical number of animals are slaughtered for food every year in the United States. As of 2019, the numbers of farmed animal deaths come out to 33 million cows for beef, 129 million pigs, over 9 billion broiler chickens, over 100 million 'spent' layer hens, more than 200 million turkeys and 2 million sheep and lambs.<sup>12</sup> If we consider aquatic animals, we have to note that we don't regard them as individuals but rather consider them in terms of tons, or as units of weight. Although this makes it difficult to determine the exact number of aquatic animals the US consumes, it is estimated that the US consumed 3.8 billion finned fish and 43.1 billion shellfish in 2013 alone.<sup>13</sup>

## Farmed Animal Law

The scope of farmed animal law in the US can be broken down into three categories – animal rearing, animal transport, and animal slaughter. Each of these will now be considered in turn.

### Farmed Animal Rearing

Notably, there is no national law that protects animals in a factory farm setting, where they spend almost the entirety of their lives. The principal US animal welfare law, the *Animal Welfare Act*,<sup>14</sup> specifically excludes animals being raised for food or fibre from the scope of its protections. This leaves the issue of farmed animal welfare to individual states, whose producers compete to increase profit at the cost of animal welfare. Given the lobbying power of the industrial agriculture industry, one of the most powerful in the US, states are encouraged to turn a blind eye to farmed animal suffering in their individual anti-cruelty codes.

Generally speaking, this disregard for farmed animal welfare manifests in one of two ways. The first is that farmed animals, such as pigs, sheep, cows, and chickens, are often excluded from the definition of

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<sup>10</sup> Jacy Reese Anthis, 'US Factory Farming Estimates', *Sentience Institute* (Web Page, 11 April 2019) <<https://www.sentienceinstitute.org/us-factory-farming-estimates>>.

<sup>11</sup> Kelly Anthis and Jacy Reese Anthis, 'Global Farmed & Factory Farmed Animals Estimates', *Sentience Institute* (Web Page, 21 February 2019) <<https://www.sentienceinstitute.org/global-animal-farming-estimates>>.

<sup>12</sup> United States Department of Agriculture Economic Research Service, 'Meat Statistics' (Spreadsheet, 26 March 2021) <<https://www.ers.usda.gov/webdocs/DataFiles/51875/MeatStatsFull.xlsx?v=1232>>.

<sup>13</sup> Animal Clock, '2021 U.S. Animal Kill Clock' (Web Page) <<https://animalclock.org/>>. Animal Clock explain that '[a]quatic animal deaths are challenging to calculate since these lives are measured in tons. A very thorough analysis completed by Counting Animals estimated that 3.8 billion finned fish and 43.1 billion shellfish were killed to support the U.S. food supply in 2013'.

<sup>14</sup> Animal Welfare Act - 7 U.S.C. § 2131 et. seq. See also (demonstrating that animals raised for food and fibre are not included under the Act's protections): 7 U.S.C. § 2132(g).

'animals' under a state's general anti-cruelty code.<sup>15</sup> But even if some farmed animals are recognised as 'animals' under a state's general or agriculture-specific anti-cruelty laws, the statutory language will exempt commonly accepted animal husbandry practices.<sup>16</sup> By design, this exemption is tailor-made to allow industry to treat animals almost any way they want.

Put differently, if some percentage of industry subjects animals to a cruel practice, by virtue of the simple fact that they do it, it may no longer be considered cruel under the law. Such treatment includes, for example, the tail docking of pigs and the debeaking of chickens.<sup>17</sup> If we examine this framework critically, the reason that there has to be this safe harbour for commonly accepted animal husbandry practices in the cruelty code is that they would otherwise be prosecuted for what they objectively are: animal cruelty.

*Case Study: New Jersey Society for the Prevention of Cruelty to Animals v. New Jersey Department Agriculture No. A-6319-03T1, 2007 WL 486764.*

As an example of how difficult it can be to improve conditions for farmed animals, the state legislature of New Jersey gave its Department of Agriculture oversight over farmed animal production methods in 1996, with a directive to consult an agricultural college on humane standards for the raising, keeping, and marketing of animals. Despite this directive, the New Jersey Department of Agriculture simply created a broad and general allowance for 'routine husbandry practices', as seen in many states. Opposing this appeasement, the New Jersey Society for the Prevention of Cruelty to Animals filed suit, arguing that the state's Department of Agriculture had created arbitrary standards that subjected farmed animals to unnecessary pain.

This case illustrates just how fraught effecting change for farmed animals can be. First, the agricultural college the legislature required the Department of Agriculture to consult with did not actually incorporate humane practices into its program, which was supported by the agricultural industry. In the end, even though the legislature mandated humane standards be created, the Court argued that a balance needed to be struck between animal welfare and the realities of modern-day production methods. As such, it afforded the state's Department of Agriculture significant deference in its interpretation of what constitutes humane farmed animal practices.

## Farmed Animal Transport

Although no federal law controls the welfare of animals while they are being reared, it does figure in the context of farmed animal transport. Notably, the *Twenty-Eight Hour Law*,<sup>18</sup> which was passed in 1873, created guidelines for farmed animal transport and represents the first federal law to contemplate animal welfare in any context. That said, it would be a mistake to characterise the law as purely or even predominantly concerned with the welfare of animals.

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<sup>15</sup> See, for example: IOWA CODE § 717B.1(1)(a) (2015) (defining 'animal' to not include livestock); UTAH CODE ANN. § 76-9-301(1)(b)(ii) (2015) (defining 'animal' as not including livestock).

<sup>16</sup> See, for example: Neb. Rev. Stat. §§ 54-902, 54-903, 54-907 (2013).

<sup>17</sup> David N Cassuto and Cayleigh Eckhardt, 'Don't Be Cruel (Anymore): A Look at the Animal Cruelty Regimes of the United States and Brazil with a Call for a New Animal Welfare Agency' (2016) 43(1) *Boston College Environmental Affairs Law Review* 1, 6-7.

<sup>18</sup> 49 U.S.C. § 80502.

The law was the product of significant outcry by ranchers in western states who shipped their cattle, pigs, and sheep by train hundreds if not thousands of miles to midwestern and eastern states for slaughter and sale. In the mid-1800s, the railroad was a monopoly and represented the only practical means of long-distance transport. Given that the transport of animals was less profitable than transporting other commodities, farmed animals were often kept in rail cars for days with little or no care. Many animals did not survive the trip. Those who did lost significant weight and as such lost considerable value when weighed at the time of slaughter.

In response, farmers petitioned Congress, who responded with the *Twenty-Eight Hour Law*. The law applies to interstate transport of pigs, sheep, and cows and requires carriers to provide them with food, water, and rest for every 28 hours of travel. However, the law allowed for longer periods of confinement without food or water as a result of accidental or unavoidable causes. Subsequent revisions allowed this time to be unilaterally extended by 8 hours by the animals' owner or by an additional 8 hours for sheep by the carrier if the 28-hour period ended at night. Together, these and other provisions render the *Twenty-Eight Hour Law* as something of a misnomer.

While the law was arguably created with the economic interests of the animals' owners as opposed to the welfare of animals in mind, it did usher in important animal welfare gains. That said, the law features significant loopholes. For example, due to revisions of the law, it no longer covers water or air transport. And it has been interpreted by courts to include pigs, sheep, and cattle only. Poultry, who represent approximately 95% of all terrestrial animals farmed for food, do not qualify as 'animals' under the law according to the US Department of Agriculture (USDA), which has balked at having to enforce its provisions. As with many farmed animal protection laws, fishes are also excluded. Another shortfall of the law is that it applies only to interstate transport. Animals transported within state lines do not benefit from its protections.

Approximately three-dozen states include language specific to transport in their anti-cruelty statutes.<sup>19</sup> In most cases, the relevant welfare provisions prohibit the transport of animals in an 'inhumane manner', a definition that does not set specific guidelines. Four states prohibit transport in a manner that poses a risk of injury to an animal or jeopardises their safety. The state of Vermont addresses only 'overcrowding' in vehicles, and the state of Arizona limits its regulations to equines being transported for slaughter.<sup>20</sup>

## Farmed Animal Slaughter

The regulation of farmed animal slaughter largely arises out of undercover reporting. In 1906, Upton Sinclair published the novel *The Jungle*, which exposed the treatment of Chicago slaughterhouse workers. But what most captured the public's attention were the unsanitary conditions in which the meat they were eating was being produced. Notably, the US President at the time, Theodore Roosevelt, was suspicious of Sinclair, who was a socialist, and sent officials to make surprise inspections to debunk Sinclair's narrative. What his officials reported so disturbed Roosevelt that he became one of the loudest champions of meat production regulation. Just months after *The Jungle* came to print, he signed the *Federal Meat Inspection Act* (FMIA) into law.<sup>21</sup>

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<sup>19</sup> See for example, California's Farmed Animal Transport Law: Cal. Food & Agric. Code § 16902 – § 16908.

<sup>20</sup> Animal Welfare Institute, 'Legal Protections for Farm Animals During Transport' (Fact Sheet)

<<https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/FA-LegalProtectionsDuringTransport-081910-1282577406-document-23621.pdf>>.

<sup>21</sup> 21 U.S.C. § 601, et. seq.



The FMIA made it a crime to adulterate or misbrand meat or meat products sold for human consumption. The law was designed to ensure that meat and meat products were processed under sanitary conditions, whether in the US or abroad. Notably, poultry were not covered by the FMIA at this time. The regulation of poultry slaughter came in 1957 with the passage of the *Poultry Production Inspection Act* (PPIA),<sup>22</sup> which afforded regulatory oversight of poultry production to the USDA.

At this time, much attention was being paid to the conditions in which meat was produced—and as animal agriculture became more centralised and slaughter line speeds increased, the US sought to account for the status of animals as sentient beings who feel pain, pleasure, fear, distress, and so on. The US had to confront the realities inherent in this new, industrialised era of farmed animal production. The resulting *Humane Methods of Livestock Slaughter Act* (HMSA) features a disturbing history.<sup>23</sup> It first passed under the title of the Humane Slaughter Act in 1958, one year after animal activist Arthur Redman filmed the mistreatment of pigs at a slaughterhouse. That film was shown at a Congressional hearing, when then-Senator Hubert Humphrey, who would later ascend to the vice presidency said, '[w]e are morally compelled, here in this hour, to try to imagine, to try to feel in our own nerves, the totality of the suffering of 100 million tortured animals. The issue before us today is pain, agony and cruelty—and what a moral man must do about it in view of his own conscience'.<sup>24</sup>

Although Humphrey was far better known for his championing of civil rights, humane slaughter represented part of his focus for years. The 1958 bill made humane slaughter a condition of doing business with the federal government. The law took aim at employees called 'knockers' who would stun, or attempt to stun, animals with a sledgehammer. In place of knocking these animals out, the Act required slaughterhouses doing business with the government to render livestock insensitive to pain by, for example, a single blow or gunshot, before the animals were to be 'shackled, hoisted, thrown, cast or cut'.<sup>25</sup>

The FMIA was amended in 1978. Compliance with the HMSA was made mandatory across the board, regardless of whether a government contract was involved. Because the FMIA does not include poultry within its purview, the HMSA has been read to not implicate the interests of poultry as well. This exclusion is perplexing given that Congress amended the FMIA in 2005 to replace the initial list of animals originally covered by the FMIA with the term 'amenable species' - that is the species previously listed in the FMIA, as well as those species the USDA Secretary deems appropriate to be covered. As many in the farmed animal rights movement argue, the HMSA should also apply to poultry, who represent something on the order of 95% of all terrestrial animals slaughtered for food. To date, however, the USDA Secretary has not moved to cover poultry.

Other important welfare issues in the US concern the de-regulation of slaughter line speeds, which are increased to the point where humane slaughter is not truly achievable. In 2019, for example, US pork producers lobbied to both do away with slaughter lines speeds altogether and reduce the number of federal inspectors at slaughterhouses - changes that would benefit the agricultural industry at the expense of animal welfare. To keep up with such extreme-speed slaughter, the American Society for the Prevention of Cruelty to Animals (ASPCA) has expressed the concern that workers may be pressured to use excessive force and roughly handle animals; additionally, the increase in speed may result in

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<sup>22</sup> 21 U.S.C. § 451, et. seq.

<sup>23</sup> 7 U.S.C. 48 § 1901 et. seq.

<sup>24</sup> Lawrence W Baker, *Animal Rights and Welfare: A Documentary and Reference Guide* (ABC-CLIO Greenwood, 2015) 118.

<sup>25</sup> 7 U.S.C.A. § 1902(a).

animals failing to be properly stunned before slaughter.<sup>26</sup> Worker safety is also compromised. Indeed, workers at slaughterhouses are already three times more likely to experience a serious injury than the average American worker and seven times more likely to suffer from repetitive strain.<sup>27</sup> In this regard, both the animals and workers suffer.<sup>28</sup>

*Case Study: National Meat Association v. Harris 565 U.S. 452, 132 S. Ct. 965, 181 L. Ed. 2d 950 (2012).*

While these federal laws regulating slaughter lay an important, albeit imperfect, foundation for the welfare of many farmed animals in the final moments of their lives, states are prohibited from improving upon or deviating in any way from federally prescribed slaughter regulations. For example, when undercover video documenting the dragging, kicking, and electro-shocking of downed, or non-ambulatory, cows at a California slaughterhouse came to light in 2008, it led to the then-largest beef recall in US history. To offer context as to why this cruelty occurred, it is important to know that the meat from non-ambulatory animals may be labelled 'condemned' and thus prevented from being sold for human consumption, as the animal in question could be diseased. To avoid this outcome and the associated financial loss, slaughterhouses are encouraged to force animals to make their way to the killing floor. In response to the gruesome footage and the prospect of consumers potentially eating diseased meat, California passed regulations to prevent this kind of abuse. The industry brought suit. In the end, the Court determined that Congress had intended federal law to preempt any state regulations that either ran counter or in addition to the national framework. As such, states are essentially prevented from improving upon farmed animal slaughter laws.

That said, another case, *Cavel International, Inc. v. Madigan*,<sup>29</sup> held that a state may prevent a particular animal from being slaughtered in their jurisdiction. In this case, the state of Illinois banned the slaughter of horses for food. Read in concert with *National Meat Association v. Harris*, this case illustrates that while a state may not alter slaughter regulations in its borders, it does have the power to end the slaughter of certain animals altogether.

## Activism and Law Reform

### Ag-Gag Laws

As discussed above, farmed animals suffer horrific abuses as part of routine factory farming practices, which are purposefully concealed from the public's view. When the public sees the abuses inflicted upon animals in factory farm settings, the industry faces severe backlash and even legislative action to curtail their practices. In order to avoid this negative publicity and sustain profits, the agricultural industry has criminalised the documentation of farmed animal abuse by lobbying state legislatures to create what are referred to as 'ag-gag' laws.

The first ag-gag law was created in Kansas, with several other states following suit. Today, ag-gag laws in the US fall broadly into one of three categories, or any combination thereof. The first is an outright ban on recording at these facilities. As the name suggests, these laws ban recording images or sounds

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<sup>26</sup> American Society for the Prevention of Cruelty to Animals (USA), 'Stopping Extreme-Speed Slaughter' (Web Page) <<https://www.aspc.org/animal-protection/public-policy/stopping-extreme-speed-slaughter>>.

<sup>27</sup> Tom Levitt, 'US Moves to Scrap Speed Limits on Pig Slaughter Lines', *The Guardian* (online, 19 September 2019) <<https://www.theguardian.com/environment/2019/sep/18/us-moves-to-scrap-speed-limits-on-pig-slaughter-lines>>.

<sup>28</sup> American Society for the Prevention of Cruelty to Animals n (26).

<sup>29</sup> *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 552 (7th Cir. 2007).

at farming facilities without the owner's consent. The second type of ag-gag law criminalises entering or applying for employment at any farming operation under false pretenses. This type of ag-gag law effectively makes it a crime for undercover activists seeking employment at a factory farm to not disclose their affiliation with an animal protection organisation if asked. Of course, if the activist does so, they would no longer be undercover and almost certainly would not be hired.

Both of these types of laws have faced considerable legal challenges on the grounds that they stifle free speech, which is protected by the First Amendment. Indeed, it was clear from their legislative histories that the animal agriculture industry intended to target animal advocates who wanted to shed light on industry abuses. For example, the state of Utah passed its 2012 ag-gag law to stop what one legislator referred to as 'propaganda groups' bent on 'undoing animal agriculture'.<sup>30</sup> The bill's sponsor framed it as a means to combat 'vegetarian people' from 'hiding cameras and trying to . . . modify the films'.<sup>31</sup> In having ruled many of these ag-gag laws to be unconstitutional, the courts have warned that they strike at the core of public debate and free speech in their desire to silence just one side of an important issue.<sup>32</sup>

The third type of ag-gag law, the quick reporting law, is arguably the most insidious. Given that the first two types of laws were heavily scrutinised by courts, this third type of law does not criminalise the actual recording of industry practices or the seeking of employment under false pretenses. Rather, this law requires all evidence of animal abuse to be turned over to law enforcement officials within 24 hours. On its face, this law appears to benefit animals by virtue of its law enforcement notification requirement. In reality, however, the law is designed to immediately expose undercover activists, who may then be dismissed from employment or relocated. And because this happens immediately, the activist cannot document a pattern of abuse to show that management knew about or even sanctioned the cruelty.

Again, what these ag-gag laws illustrate is the extreme length to which the industry will go to ensure that animal agricultural industry practices are never seen. And the reason why is that animal cruelty upsets consumers, who look to hold the industry accountable. Indeed, many consumers do care about how farmed animals are treated.

### State-Based Ballot Initiatives

The farmed animal protection landscape may look bleak given the influence industry has over the legislators who pass anti-cruelty laws with the exceptions baked into them. However, activists in some states have put the issue of farmed animal welfare directly to voters. This was the case in 2001 when animal advocates in Florida sponsored a ballot initiative to ban gestation crates at their state's constitutional level.<sup>33</sup> Over 600,000 signatures had to be gathered to get the initiative on the ballot. In November of 2002, 2.5 million Floridians voted to outlaw gestation crates, enshrining this protection at the highest level of state law.

The preamble to the initiative is important. It reads that the:

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<sup>30</sup> Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193 (D. Utah 2017), at 1198, 1212.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Example of Ballot Initiative in Florida: Florida Const. Art. X, Sec. 21. See further: Animal Rights Foundation of Florida, 'Florida's Historic Ban on Gestation Crates' (Web Page) <<http://arff.org/gestation-crates>>.

Inhumane treatment of animals is a concern of Florida citizens. To prevent cruelty to certain animals . . . [t]he people of the State of Florida hereby limit the cruel and inhumane confinement of pigs during pregnancy as provided herein.<sup>34</sup>

Notably, the initiative faced little opposition from state industry because Florida did not have a strong pork market. As such, it effected little change on the ground. However, its success lay in illustrating a proof of concept: consumers care about farmed animal protections and will individually vote to act to improve farmed animal welfare when legislators will not.

In 2008, advocates turned their attention to California to change the industrial agriculture framework there. What resulted was the then-most expensive ballot initiative in the country's most populous state. Putting the question of farmed animal welfare to its people, California became the first state to require that egg-laying hens, pregnant sows, and veal calves have enough room to stand up, sit up, lie down, turn around, and fully spread their limbs. Voters voted in favour of the ballot initiative by a substantial margin - approximately two to one. As a result, producers in the state of California had to create more spacious accommodations for the animals in their care.

It should be noted that the California legislature drastically increased the reach of the law by illustrating how eggs produced by hens in battery cage conditions, the predominant mode of egg farming in other states, increased the likelihood of salmonella poisoning. In light of this finding, California passed a law requiring that all eggs sold in California - not just those produced in California - had to come from hens housed in the same-sized or larger cages. What this saga illustrates is just how important farmed animal cruelty issues are to consumers, who will vote not only at the ballot box but also with their spending dollar to buy products that afford animals more humane conditions.

On the heels of California's success, other states have passed similar farmed animal welfare improvements through ballot initiatives, thereby bypassing state legislatures.

### Factory Farming and False Advertising

Perhaps nowhere is consumer desire for animal products that come from more humane conditions clearer than by advertising on packaging. In the US, the industry has taken note of this consumer preference and willingness to pay more for higher welfare animal products. In turn, animal product packaging often displays labels like 'humanely raised' or 'cage-free', or pictures of animals being raised on open pastures with access to sunlight. Unfortunately, the claims made on the packaging are not always accurate. In response to these deceptive practices, often referred to as 'humane washing', animal lawyers in the US have sued on behalf of misled customers under false advertising laws. Courts have upheld these claims, observing that conscientious consumers have made their decision to purchase a product based upon the producer's claims of treating animals humanely.

### *Case Study: Barnes v. Tillamook (ongoing)*

In one case from Oregon, a class-action lawsuit consumer protection law was filed by the Animal Legal Defense Fund on behalf of consumers who were misled by the Tillamook County Creamery Association. The Association advertised their milk products as being locally sourced and their cows as reared by small-scale farmers and on open pasture and rolling hills. Unfortunately, the evidence showed that the company's cows were confined in inhumane conditions at a distant desert factory farm.

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<sup>34</sup> Ibid.

## Factory Farming and the Environment

The raising of animals for food in the US has had devastating impacts on the environment, climate, and rural communities. Factory farms in the US produce more than a million tons of manure each day. The industry uses this animal waste as fertiliser; however, the amount of waste produced by factory farms far exceeds demand. As such, it is collected into open-air 'manure lagoons' that can stretch as long as several football fields. Problematically, these industry lagoons are prone to leaks. In addition to nearby communities being affected by noxious odors, there have been accounts of leachate polluting water supplies. Making this threat all the more harmful to people, animals, and the environment are the significant amounts of sub-therapeutic antibiotics that remain in the animals' urine and faeces.

Poor, rural communities and communities of colour are often the most affected by factory farming's impact on the environment.<sup>35</sup> Combatting factory farming in these areas has been a major issue for the environmental justice movement, which seeks to combat environmental racism. In North Carolina, for example, environmental justice advocates have won nuisance lawsuits against the animal agriculture industry, arguing that factory farms have interfered with the enjoyment of their clients' property. However, this victory was quickly followed by intensive industry lobbying of the government, which passed bills to limit the compensation local communities could receive. As such, environmental justice advocates have pinpointed factory farming as a significant issue in the United States.<sup>36</sup>

While the danger posed by factory farms in the US is hardest felt by local, often poorer communities, the impact is global. Factory farms are a major producer of methane, a greenhouse gas 70 times more potent than carbon dioxide and a key driver of climate change.<sup>37</sup> According to the United Nations Food and Agriculture Organization, livestock production, increasingly in the form of factory farming around the world, accounts for 14.5% of human-related emissions.<sup>38</sup>

## Factory Farming and Human Diseases

The outbreak of COVID-19 in Wuhan, China has unleashed a pandemic of historic proportions, bringing local and international travel to a halt, shuttering entire industries, and claiming hundreds of thousands of human lives. Although the novel coronavirus likely jumped from animals into humans at a wet market, experts are increasingly pointing to factory farms as a threat for zoonoses, or illnesses that can pass between humans and animals.

Because animals are crowded into filthy conditions and have been genetically engineered to be practically identical, pathogens can sweep through an entire farm with ease. The Food and Agriculture Organization of the United Nations addressed this in a 2013 report, asserting that that 'livestock health

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<sup>35</sup> Leah Douglas, 'Big Ag Is Pushing Laws To Restrict Neighbors' Ability To Sue Farms', *NPR* (Article, 12 April 2019) <<https://www.npr.org/sections/thesalt/2019/04/12/712227537/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms>>. See also: Maria C Mirabelli, Steve Wing, Stephen W Marshall and Timothy C Wilcosky, 'Race, Poverty, and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations' (2016) 114 (4) *Environmental Health Perspectives* 591.

<sup>36</sup> Douglas *ibid*.

<sup>37</sup> Ronnie Cummins, 'How Factory Farming Contributes to Global Warming', *EcoWatch* (Article, 21 January 2013) <<https://www.ecowatch.com/how-factory-farming-contributes-to-global-warming-1881690535.html>>.

<sup>38</sup> P J Gerber, H Steinfeld, B Henderson, A Mottet, C Opio, J Dijkman, A Falcucci and G Tempio, *Tackling Climate Change Through Livestock: A Global Assessment of Emissions and Mitigation Opportunities* (Report, Food and Agriculture Organization of the United Nations, 2013) xii <<http://www.fao.org/publications/card/en/c/030a41a8-3e10-57d1-ae0c-86680a69ceea/>>.

is the weakest link in our global health chain'.<sup>39</sup> Indeed, outbreaks like the ones it warns of have already occurred. For example, factory farm conditions resulted in an outbreak of H1N1 in the US in 2009 and led to the deaths of hundreds of thousands of people.<sup>40</sup> As experts have illustrated, factory farms pose vital risks, as viruses are readily transmitted among intensely confined animals, thus leading to the emergence of more virulent strains.

To return to the foundation of what made factory farming possible, the antibiotic cocktails that the industry gives animals to both stimulate their growth and prevent disease present an equally significant threat. With their rampant use now leading to the emergence of antibiotic-resistant bacteria, our own ability to survive infections is increasingly at risk.<sup>41</sup>

In recognising that the intensive confinement of animals on factory farms inherently poses such risks to human health, high-profile elected officials have recently proposed legislation that would impose a moratorium on factory farms, and phase them out by the year 2040.<sup>42</sup> Although the proposed bill, the *Farm System Reform Act* (2019), is unlikely to gain traction, it is noteworthy for calling public attention to the threat factory farming poses not just to animals but also to the environment and human health.<sup>43</sup>

## Conclusion

Although the scientific discovery that made today's industrial animal agriculture complex possible may have been characterized as a 'wonder' in 1950, the reality of factory farming has led to considerable harms with respect to public health, the environment, and animal welfare. As such, the benefits of ending factory farming cannot be overstated. In this vein, although the US gave rise to the development of the factory farm, advocates in the US are also at the forefront of novel legal efforts to combat this paradigm and effect meaningful change.

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<sup>39</sup> Food and Agriculture Organization of the United Nations, *World Livestock 2013: Changing Disease Landscapes* (Report, 2013) ix <<http://www.fao.org/3/i3440e/i3440e.pdf>>.

<sup>40</sup> Sigal Samuel, 'The Meat We Eat is a Pandemic Risk, Too' *Vox* (Article, 20 August 2020) <<https://www.vox.com/future-perfect/2020/4/22/21228158/coronavirus-pandemic-risk-factory-farming-meat>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> Dylan Matthews, 'Factory Farms Abuse Workers, Animals, and the Environment. Cory Booker Has a Plan to Stop Them', *Vox* (Article, 20 December, 2019) <<https://www.vox.com/future-perfect/2019/12/20/21028200/factory-farms-abuse-workers-animals-and-the-environment-cory-booker-has-a-plan-to-stop-them>>.

<sup>43</sup> *Ibid.*