

# FACTORY FARMING: AN IMMINENT CLASH BETWEEN ANIMAL RIGHTS ACTIVISTS AND AGRIBUSINESS

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## I. INTRODUCTION

Although the animal rights movement is relatively old<sup>1</sup> it has, until recently, been largely unpublicized and unsupported. Indeed, the notion of rights for animals, both legal and nonlegal,<sup>2</sup> remains an unfamiliar concept to many people. Nevertheless, the animal rights movement is gaining momentum. Those people concerned with the plight of animals are publishing books<sup>3</sup> and articles,<sup>4</sup> instituting court actions,<sup>5</sup> drafting model statutes,<sup>6</sup> and lobbying for the enactment of legislative reforms.<sup>7</sup> In short, they are establishing a foundation for effectuating a fundamental change in our relationship with animals.

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<sup>1</sup> See generally G. CARSON, *MEN, BEASTS, AND GODS* (1972).

<sup>2</sup> Rights for animals emanate from a variety of sources. Some believe that humans have a moral obligation to recognize animal rights. See, e.g., S. CLARK, *THE MORAL STATUS OF ANIMALS* (1977). Others feel that our legal system should include legal rights for animals. See, e.g., Burr, *Toward Legal Rights for Animals* 4 ENV. AFF. 205 (1975). This article assumes an acceptance of the notion of rights for animals, be it legal or philosophical. A discussion of the merits of that position is beyond the scope of this article.

<sup>3</sup> See, e.g., J. MCCOY, *IN DEFENSE OF ANIMALS* (1978); S. CLARK, *THE MORAL STATUS OF ANIMALS* (1977); P. SINGER, *ANIMAL LIBERATION* (1975); C. STONE, *SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS* (1972).

<sup>4</sup> See, e.g., Dichter, *Legal Rights for Animals*, 7 B.C. ENV. AFF. L. REV. 147 (1979); Tischler, *Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats*, 14 SAN DIEGO L. REV. 484 (1977).

<sup>5</sup> See, e.g., *Jones v. Beame*, 56 App. Div.2d 778, 392 N.Y.S.2d 444 (1977).

<sup>6</sup> See, e.g., Committee For Humane Legislation, Inc., *Model State Animal Protection Statutes* (undated) and Burr, *supra* note 2, at 232.

<sup>7</sup> See, e.g., the efforts of the Society For Animal Protection Legislation, P.O. Box 3719, Georgetown Station, Washington, D.C. 20007.

Contemporaneous with this heightened interest in animal rights stands the trend toward industrialization of animal husbandry in the food industry. The small farmer living an idyllic, pastoral life has become virtually nonexistent, being displaced by large conglomerates that conduct their farm operations like any other business.<sup>8</sup> These industrialized farming techniques are commonly referred to as "intensive farming" and "factory farming."<sup>9</sup> Although the phrases, "intensive farming" and "factory farming" are oftentimes used interchangeably,<sup>10</sup> the two are, in fact, quite different. Intensive farming involves increasing productivity through better management and breeding techniques but without significantly changing the pattern of life the animals lead.<sup>11</sup> Conversely, factory farming alters the pattern of the animal's life and results in undue physical pain and mental suffering.<sup>12</sup>

Until recently, animal welfare groups have avoided the controversial factory farming issue, focusing instead on more conventional issues such as pet overpopulation, abandonment or individual instances of animal cruelty.<sup>13</sup> This reluctance to deal with the plight of factory farm animals is now fading. The older and established humane societies, as well as a host of smaller and more radical groups, are confronting controversial issues and publicly campaigning against factory farming.<sup>14</sup> A clash between these animal rights activists and the powerful agribusiness corporations appears unavoidable.

This article examines those factors which contribute to the likelihood of such a confrontation, and offers strategies of reform for use by animal interest groups. The first part of the article describes many of the abuses that animals experience in factory farming prior to their transportation to market and slaughter. The second section

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<sup>8</sup> Approximately 1,000 small farmers go out of business each week. J. HIGHTOWER, *EAT YOUR HEART OUT* 155 (1975).

<sup>9</sup> Harrison, *Animals in Factory Farms*, ANIMAL WELFARE INST. INFORMATION REPORT 2, col.1 (June, 1977) [hereinafter cited as AWI REPORT].

<sup>10</sup> See, e.g., M. HUTCHINGS, *MAN'S DOMINION* 96 (1970).

<sup>11</sup> Harrison, *On Factory Farming*, in *ANIMALS, MEN AND MORALS* 14 (Stanley & Rosalind Godlovitch eds. 1970).

<sup>12</sup> See Section II, *infra*.

<sup>13</sup> See, e.g., C. STEVENS, *LABORATORY ANIMAL WELFARE, ANIMALS AND THEIR LEGAL RIGHTS* 55-58 (1970).

<sup>14</sup> For example, the Humane Society of the United States (HSUS) recently published a report entitled *HSUS Intensifies Campaign to Eliminate Cruelty on 'Factory Farms.'* A copy of the report can be obtained from HSUS National Headquarters located at 2100 L. St., N.W., Washington, D.C. 20037.

presents a survey and critique of the federal and state legislation which protects these animals, emphasizing what little protection is, in fact, given to farm animals. The next section canvasses foreign laws as potential models for reform. The article concludes with several proposed strategies for change.

## II. LIFE ON THE FARM

Factory farming,<sup>15</sup> characterized by overcrowding, restricted movement, unnatural diets and unanesthetized surgical procedures utilizes intensive farming procedures in such a way that results in severe suffering for the farm animal. The poultry industry uses factory farming techniques in nearly every phase of poultry production and, consequently, most vividly illustrates the abuses of factory farming. However, factory farming occurs in the raising of all farm animals—hogs, calves, dairy cows, cattle, and so forth. This section presents several examples of factory farming techniques and the cruelties they impose on farm animals.

### A. Chickens

Two types of chickens are raised in factory farming systems: laying hens, which are grown for egg production but which are also subsequently used in soups, stews and pot pies; and broiler/table chickens, which are raised solely for consumption.<sup>16</sup> The methods of producing laying hens and broiler chickens share some, but not all, of the same features.<sup>17</sup>

Both broiler production and laying hen production begin at the primary breeder, a laboratory that develops the genetically different strains of chickens.<sup>18</sup> Broiler birds are bred to gain weight rapidly and have good body conformation, while laying hens are bred to lay thick shelled eggs with thick yellow yolks.<sup>19</sup>

The multiplier hatcher,<sup>20</sup> the second stage in the production of

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<sup>15</sup> This section purports only to acquaint the reader with the suffering of animals on factory farms. For a more thorough study, see R. HARRISON, *ANIMAL MACHINES* (1964) and P. SINGER, *supra* note 3. Two new books on factory farming are scheduled for publication in the fall of 1979, one by Michael Fox and another by James Mason. Much of the information in this section is based on Mr. Mason's manuscript.

<sup>16</sup> P. SINGER, *supra* note 3, at 100.

<sup>17</sup> Thomsen, *The Poultry and Egg Industry*, 41 REPORT TO HUMANITARIANS 1 (1977).

<sup>18</sup> J. Mason, *Animal Factories* (unpublished manuscript).

<sup>19</sup> Thomsen, *supra* note 17, at 4.

<sup>20</sup> J. Mason, *supra* note 18, at 19.

both types of birds, consists of large sheds containing ten to fourteen thousand chickens called breeders.<sup>21</sup> The breeders, a third strain of chicken, lay fertile eggs which hatch into laying or broiler chicks.<sup>22</sup> Breeders are used solely to sustain the population of laying hens and broiler chickens and, unlike the two other strains of chicken, are not retailed to the consumer. If the hatchery breeds laying hens, workers separate out and eliminate the male chicks at hatching<sup>23</sup> because they cannot lay eggs and thus lose their economic usefulness. These male chicks are either dumped alive into trash bags and left to suffocate or are drowned.<sup>24</sup> The dead chicks are then used in the manufacture of various animal feeds.<sup>25</sup>

The third phase of production entails the use of breeding farms<sup>26</sup> where the chicks are kept until maturity. The grower uses artificial lighting for unnaturally long or short periods of time in order to produce certain behavior in the birds. In broiler breeding farms, bright lights encourage the chicks to start feeding, while dimmed lights reduce the stress caused by overcrowding as the birds mature and increase in size.<sup>27</sup> In laying hen breeding farms, just the reverse occurs. Laying hens are kept in darkness or near darkness until they are ready to lay eggs, normally a period of approximately twenty weeks. Later, when the birds begin to lay eggs the lights are turned on, thereby conditioning the hens to lay eggs whenever the lights are on. Each week the lights are left on for progressively longer periods of time until, after forty weeks, they are on for seventeen hours per day. This lengthening of the bird's "day" increases egg-laying productivity and generates greater profits.<sup>28</sup> Such a regimen, however, takes its toll. While chickens raised under natural conditions can lay eggs for as long as twenty years, laying hens subject to these artifi-

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<sup>21</sup> *Id.*

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

<sup>23</sup> The modernization of the process used to separate the male chicks illustrates how intensive farming, unlike factory farming, can benefit the animal. The procedure formerly used was known as "vent sexing." Under this procedure, males were separated from females by examining the chicks' "vents" or anuses. *Id.* at 20. This process has been replaced in intensive farms by feather and color sexing. This procedure relies on sex-linked feather and color traits to produce visible marks on the birds to distinguish males from females. *Id.*

<sup>24</sup> Thomsen, *supra* note 17, at 5.

<sup>25</sup> J. Mason, *supra* note 18, at 20.

<sup>26</sup> *Id.* at 24.

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

<sup>28</sup> *Id.* at 22.

cial conditions exhaust their laying capacity after only one or two years.<sup>29</sup>

After the breeding farm, broiling chickens are shipped to growing farms and placed in broiler sheds, while the laying hens are sent to laying farms and placed in battery cages.<sup>30</sup> These birds spend the rest their lives in these surroundings and, under these conditions, encounter most of their suffering.

From ten to fifty thousand broilers live on the floor of each broiler shed.<sup>31</sup> Life in the broiler shed is completely automated in order to enhance the bird's growth. No natural light enters the shed; instead, an automatic mechanism adjusts artificial light depending on the need, either brightening the light to induce the birds to eat, or dimming it to reduce the effects of overcrowding. Hoppers suspended from the roof automatically dispense food and water. By the time the chicken is ready for slaughter, the overcrowding in the shed is so severe that only half a square foot of floor space remains for each bird, creating a high level of stress that manifests itself in outbreaks of fighting and cannibalism.<sup>32</sup> If a sudden change occurs in the shed because of a variation in the lighting or the entry of human intruders, the chickens panic and rush to one corner of the shed, piling on top of each other and suffocating those on the bottom.<sup>33</sup>

The most logical solution to these problems would, of course, entail relief from the crowded conditions. Such a solution, however, is less economical than the present growing techniques and therefore unacceptable to agribusiness.<sup>34</sup> In fact, growers use solutions that create even more suffering for the poultry. As a way of controlling the cannibalism that results from overcrowding, for example, farmers routinely include drugs in the chicken feed.<sup>35</sup> In addition, they

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<sup>29</sup> *Id.*

<sup>30</sup> There are several reasons why broilers are not raised in cages, including the fact that chickens raised in cages develop sores which reduce their value, and that the labor needed to remove the chickens from their cages increases costs. There has been an increasing trend, however, to use cages for broilers as well because many more caged chickens can be put in one building. The labor problem has been solved through cages which are transported directly to the slaughterhouse. UNIVERSITY OF DELAWARE AGRICULTURAL EXPERIMENT STATION, (Newark, Delaware), PROGRESS REPORT, (April-September, 1970).

<sup>31</sup> Cook, *How Chicken on Sunday Became an Anyday Treat*, THE 1975 YEARBOOK OF AGRICULTURE 125; P. SINGER, *supra* note 3, at 101.

<sup>32</sup> P. SINGER, *supra* note 3, at 101-02.

<sup>33</sup> This phenomenon is called the "piling" effect. *Id.* at 105.

<sup>34</sup> J. Mason, *supra* note 18, at 136.

<sup>35</sup> According to the United States Department of Agriculture:

remove the chickens' main defense weapon, the beaks. De-beaking is an extremely painful process, accomplished either with a guillotine-type device that chops off the beak,<sup>36</sup> or with a hot knife machine that burns it off.<sup>37</sup>

Laying hens live under even greater conditions of stress than broilers. The battery cages are even more crowded than broiler sheds, ranging in size from one to four and a half cubic feet, and in occupancy from four chickens in the smaller cages to nine chickens in the larger ones.<sup>38</sup> Cage life creates great physical discomfort for the animal. Cage floors are made of wire and while this facilitates cleaning, it runs counter to the instinctual need of hens to scratch dirt. Since this instinctual scratching also operates to wear down their nails, chickens confined in wire cages often grow toenails so long that they become entangled with the cage and are "literally grown fast to the cage."<sup>39</sup> Cage life also produces a condition known as "cage layer fatigue,"<sup>40</sup> symptomized by "brittle bones, inability to stand, and a pale, washed out appearance."<sup>41</sup> In addition, "breast blisters, foot pad lesions, feather follicle infection and feather loss all are commonly suffered by caged hens."<sup>42</sup> Studies show a ten to fifteen percent death rate among chickens raised under these conditions.<sup>43</sup> Some of these deaths result from fighting and cannibalism, and, as a result, growers subject laying hens to de-beaking, although the longer lifespan of laying hens means that the operation must often be performed twice.

Growers rationalize the use of battery cages by citing their alleged

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A constant problem in broiler production is stress. Stress includes such things as extremes in temperature, disease, crowding and poor management. One or more of these is almost invariably present in broiler production, and stress slows growth in the broiler . . . [S]tress is overcome by adding antibiotics to the broiler's feed. Feed manufacturers now routinely include antibiotics in broiler foods, and broilers grow faster than ever.

Cook, *supra* note 31, at 130.

<sup>36</sup> P. SINGER, *supra* note 3, at 105.

<sup>37</sup> J. Mason, *supra* note 18, at 4.

<sup>38</sup> The dimensions of battery cages vary from cages as small as 12 cubic inches to cages 18 inches wide by 24 inches long by 18 inches high. An area of 20 inches by 18 inches is the equivalent to a single page of The New York Times. Using this guideline, the crowding in cages translates to an average of seven to eight chickens spending their entire lives on a single page of The New York Times. P. SINGER, *supra* note 3, at 113.

<sup>39</sup> *Id.* at 111, quoting from the Poultry Tribune, February, 1974.

<sup>40</sup> J. MASON, FACTORY FARMING 5 (1976).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Ostrender & Young, *Effects of Density on Caged Layers*, 3 NEW YORK FOOD AND LIFE SCIENCES 6 (1970).

necessity for maintaining a reasonable price for eggs.<sup>44</sup> More humanely designed cages do exist, however, and they are just as efficient as battery cages. These alternative cages, about one cubic meter in size, have two tiers. The lower level contains nestboxes in which the birds lay their eggs and the second level contains perches, food and water. A six-month study that compared the new cage with the traditional battery cage found not only that egg production remained equivalent,<sup>45</sup> but also that the birds in the new experimental cages showed less pecking, pushing, and other problems caused by stress.<sup>46</sup> Unfortunately, without the impetus of legal compulsion, farmers have displayed no willingness to use these cages.

The chicken's suffering does not terminate at the farm. Broilers are loaded into trucks in a variety of inhumane ways: some farmers still catch birds by hand, others use bulldozer-like devices to force the birds into the trucks;<sup>47</sup> and, in Europe, a vacuum machine has been developed which actually sucks the birds through a large hose into waiting crates.<sup>48</sup> Laying hens receive somewhat better treatment: growers transport them to market in their cages. The slaughter of both laying hens and broilers, however, is unnecessarily brutal: the birds are unloaded from the trucks and hung upside down on a conveyor belt as they await slaughter.<sup>49</sup>

Factory farm operations have become widespread in the poultry industry with ninety-eight percent of all broilers raised by such systems.<sup>50</sup> Yet these factory farm operations are by no means exclusive to the poultry industry. Agribusinesses are utilizing similar confinement systems in the production of larger farm animals such as hogs, calves, and cattle.

### B. Hogs

In recent years, hog farming has developed "total confinement" systems<sup>51</sup> which range from a two-phase breeding/growing system to

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<sup>44</sup> J. Mason, *supra* note 18, at 137.

<sup>45</sup> Bareham, *A Comparison of the Behavior and Production of Laying Hens In a New and Conventional Battery Cage*, ANIMALS & FOOD PRODUCTION (1977).

<sup>46</sup> *Id.*

<sup>47</sup> Cook, *supra* note 31, at 131.

<sup>48</sup> P. SINGER, *supra* note 3, at 106.

<sup>49</sup> Thomsen, *supra* note 17, at 6.

<sup>50</sup> J. Mason, *supra* note 18, at 27.

<sup>51</sup> It was estimated at a Swine Facilities Symposium conducted in Des Moines, Iowa, in 1975, that, by 1985, 70 percent of all hogs raised in the corn belt states would be grown in confinement systems. FARM JOURNAL 33 (December, 1975); NATIONAL HOG FARMER 5 (August, 1975).

more elaborate multiphase operations. In the breeding phase, the pregnant sow generally remains in an individual stall until about a week before she is ready to give birth.<sup>52</sup> She is then moved to a farrowing stall where she gives birth and nurses her piglets for about a week. In order to restrict the sow's movement, the breeding and farrowing pens are kept quite small; typically, the pens permit the animal to stand up and lie down, but prohibit the sow from turning around. Many farms have begun to use iron frame devices known as "iron maidens"<sup>53</sup> which prevent the sow from moving at all. In effect, she becomes a "living reproduction machine."

The United States Department of Agriculture supports the use of farrowing pens as a safety device, reasoning that the young piglet would have "little chance of surviving if its 500 pound mother accidentally rolled over it."<sup>54</sup> However, the Department fails to recognize that the sow's confinement to such a small area is the true cause of such a danger. Moreover, the piglet which the Department seeks to protect in fact suffers abuse just like its mother: within a day or two of birth, the young piglet has its ears notched, its teeth clipped, its tail docked and, if male, is castrated as well.<sup>55</sup>

In a two-phase system the farmer transfers the piglets when they are five or six weeks old to a "finishing" pen where they are fattened for the next thirteen to fifteen weeks before being sent to market. In a multiphase system, the pig first goes through a nursery phase<sup>56</sup> before being sent to the finishing pen.

Although they vary in size, finishing pens allow no more than six square feet per pig.<sup>57</sup> While some pens are outdoors and have cement floors, the more modern ones are indoors and have either slatted floors or sloping concrete floors to facilitate cleaning.<sup>58</sup> Such floors, besides being quite uncomfortable, also damage the hogs' feet and legs since they are unsuited for such hard surfaces.<sup>59</sup> Hogs raised in

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<sup>52</sup> J. Mason, *supra* note 18, at 32; P. SINGER, *supra* note 3, at 125.

<sup>53</sup> P. SINGER, *supra* note 3, at 125.

<sup>54</sup> Steyn, *Streamlining the Hog, An Abused Individual*, THE 1975 YEARBOOK OF AGRICULTURE 136 (1975).

<sup>55</sup> J. Mason, *supra* note 18, at 33.

<sup>56</sup> The nursery phase allows the farmer to re-breed the sow immediately after birth. Within a day or two after birth, farmers separate the piglets from the mother sow and place them in individual cages. A mechanical feeder travels back and forth on rails in front of these cages dispensing a liquid diet to the newly born. In other systems, the pigs are placed in slatted-floor pens containing about 25 piglets in an eight or ten foot square area. *Id.* at 34.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> P. SINGER, *supra* note 3, at 122.



dirt pens, on the other hand, show only minor physical damage.<sup>60</sup>

Although the overcrowding of hogs does not reach as severe a level as that of chickens, it is high enough to produce stressful behavior. For example, the hogs bite each other's tails, a phenomenon the farmers have tried to control with chemical food additives<sup>61</sup> and tail-docking. Stress also manifests itself as a physical condition known as the "porcine stress syndrome,"<sup>62</sup> noticeable by such symptoms as "rigidity, blotchy skin, panting, anxiety, and often sudden death."<sup>63</sup>

Hogs possess high degrees of intelligence, remarkably similar to those of dogs.<sup>64</sup> If farmers raised dogs in the same manner in which they raise hogs, prosecutions for cruelty to animals would surely result. Yet no such prosecutions are imminent for pork producers. On the contrary, the government endorses current growing techniques and, in fact, actively supports research to develop systems which would "offer the potential for greatly increased animal capacity in confinement facilities."<sup>65</sup>

### C. Calves

Veal production has earned its reputation as being "the most morally repugnant" factory farm operation, "comparable only with barbarities like the force-feeding of geese through a funnel that produces the deformed livers made into paté de foie gras."<sup>66</sup> The origins of the veal industry lie in dairy farming, where a farmer would slaughter unwanted bull calves, prior to weaning, for use by his own family.<sup>67</sup> Veal's pink color and extremely tender quality made its sale to consumers quite attractive, although each young calf had insufficient meat to make such efforts profitable. However, the demand for veal spurred the development of a system that fattened the calf but simultaneously maintained its premature condition by denying the calf any exercise, maintaining it in semi-darkness and providing a diet designed to make it anemic.<sup>68</sup>

<sup>60</sup> J. Mason, *supra* note 18, at 92.

<sup>61</sup> *Id.* at 121-27.

<sup>62</sup> P. SINGER, *supra* note 3, at 120 n.38.

<sup>63</sup> *Id.*

<sup>64</sup> J. Mason, *supra* note 18, at 26.

<sup>65</sup> U.S. DEP'T OF AGRICULTURE, LIVESTOCK AND VETERINARY SCIENCES ANNUAL REPORT OF THE NATIONAL RESEARCH PROGRAMS 83 (1976).

<sup>66</sup> P. SINGER *supra* note 3, at 127.

<sup>67</sup> *Id.*

<sup>68</sup> Goodman, *Veal Calves and Factory Farming*, REPORT TO HUMANITARIANS 3 (1978). The University of Massachusetts reports that "the health of the veal can best be described as

In modern husbandry systems, the calf spends its entire life alone in a tiny stall in which it can neither turn around nor lie down. Instead, the calf must lie in an uncomfortable hunched position on either a cement or slatted floor.<sup>69</sup> No straw is provided for cushioning because straw contains iron which, if ingested, would cure the anemia necessary to create veal's pinkish tone.<sup>70</sup> In addition, the separation of the calf from its mother causes psychological harm.<sup>71</sup> The cumulative effect of these conditions creates great stress, making the calf susceptible to salmonella, diarrhea and other infections.<sup>72</sup> To prevent these diseases farmers ordinarily add antibiotics and other drugs to the calf's feed.<sup>73</sup>

Animal welfare groups have been researching more humane alternatives for veal production without impairing the quality of the meat.<sup>74</sup> One system would permit the calves to exercise, sit on straw and be fed milk through teats on automatic milk machines.<sup>75</sup> Unfortunately, farmers have not as yet demonstrated any willingness to utilize these alternative production systems.

#### D. Dairy Cows

The plight of the veal calf's dairy cow mother is little better than that of her offspring. Only a few small dairy farms conform to the traditional pastoral scene, permitting their cows to graze in outdoor pastures during good weather. Large agribusinesses implementing total confinement systems are rapidly displacing these small farms. Dairy operations use two kinds of confinement systems: "freestall" holding barns and "tie-stall" holding barns. In freestall holding barns, the cows can move throughout a limited area within the barn, although they must walk on slippery, slatted floors.<sup>76</sup> In tie-stall

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weak, anemic and susceptible to disease." COOPERATION EXTENSION SERVICE, UNIVERSITY OF MASSACHUSETTS, RAISING VEAL CALVES, No. 106.

<sup>69</sup> P. SINGER, *supra* note 3, at 130.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 130. Mason noted in his visits to calf barns that the calves would attempt to "suckle a finger, hand or part of our clothing. The farmer explained that they always do this because, 'they want their mothers, I guess.'" J. Mason, *supra* note 18, at 43.

<sup>72</sup> J. MASON, FACTORY FARMING 14 (1976).

<sup>73</sup> M. HUTCHINGS, MAN'S DOMINION 98 (1970).

<sup>74</sup> An English organization, the Universities Federation for Animal Welfare, has been the most active group in the field. They can be contacted at 8 Hamilton Close, Potters Bar, Herts, England EN6 3 Q D.

<sup>75</sup> AWI REPORT, *supra* note 9, at 3.

<sup>76</sup> J. Mason, *supra* note 18, at 40.

holding barns, a tether confines the cow within a narrow stall.<sup>77</sup> No reports have yet been published about the effect of these systems, although it is likely that the same problems associated with stress in other animals exist in the case of dairy cows.

### *E. Cattle*

Ironically, while those who become vegetarians because they abhor the treatment of animals tend to eliminate "red-meat" from their diets first, cattle, as compared with other farm animals, endure the least severe treatment. The high cost of grain makes it more profitable to graze cattle on open fields during their first two years of life.<sup>78</sup> Nevertheless, beef production does not lack its share of abuses; indeed, cattlemen have begun to adopt many of the procedures utilized in the production of other animals. The most notable changes in cattle raising have occurred in the feed lot, where cattle are placed for fattening for their final six months before slaughter. Although feed lots in general still consist of open, outdoor lots, an unfortunate trend has begun toward total confinement buildings.<sup>79</sup> While the space allocations are not as inadequate in these indoor lots as in other confinement systems,<sup>80</sup> their floors are often inches deep in a soupy manure mixture which densely cakes the animals' coats.

Cattle must endure other abuses such as hot iron branding<sup>81</sup> and castration. The castration process has been described as follows:

The procedure is to pin the animal down, take a knife and slit the scrotum, exposing the testicles. You then grab each testicle in turn and pull on it, breaking the cord that attaches it; on older animals it may be necessary to cut the cord.<sup>82</sup>

Cattlemen rationalize this procedure by stating that steers gain weight more rapidly than bulls; in actuality castration simply makes them put on more fat.<sup>83</sup>

In sum, factory farming is enormously abusive. Chickens, hogs, calves and cattle are all forced to live under abnormal, stressful

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<sup>77</sup> *Id.*

<sup>78</sup> E. LAPPÉ, *FOOD FIRST* (1977).

<sup>79</sup> J. Mason, *supra* note 18, at 46.

<sup>80</sup> An average of 20 square feet is allotted for each animal. *Id.* at 46.

<sup>81</sup> Nebraska, for example, requires that all cattle be branded by a hot iron. NEB. REV. STAT. § 54.101-.01 (1978 Supp.).

<sup>82</sup> P. SINGER, *supra* note 3, at 152.

<sup>83</sup> *Id.*

conditions. Agribusiness, concerned solely with ensuring that its final market goods are not injured, is unsympathetic to the plight of farm animals. Thus, the life of a farm animal does not resemble the lazy, serene existence described in story books; instead it is a horror for which we as consumers must bear the ultimate responsibility.

### III. LEGISLATION

Legislators approach the problem of animal protection through criminal anti-cruelty statutes and regulatory statutes. Anti-cruelty statutes seek to curb individual instances of cruelty to animals. Regulatory statutes, on the other hand, address specific animal-related activities, such as hunting, selling, and trapping, and, in some instances, seek to protect a species from extinction. An examination of federal and state legislation demonstrates that none of the abuses occasioned by the factory farming of animals are presently illegal or regulated. The law has apparently ignored factory-farmed animals.

#### A. Federal Legislation

Regulatory statutes provide the main source of federal protection for animals. Some legislation seeks to conserve the existing stocks of a given species,<sup>84</sup> while other legislation protects an animal after it has left the farm.<sup>85</sup> No statute, however, regulates farm animal treatment during the rearing process.

The Bureau of Animal Industry in the Department of Agriculture was originally responsible for the protection of farm animals. Established in 1884, a stated purpose of the Bureau was "to investigate and report upon the condition of the domestic animals and live poultry in the United States, *their protection and use*, and also inquire into and report on the causes of contagious, infectious and communicable diseases . . . ."<sup>86</sup> However, the Bureau's role in investigating and reporting upon the protection and use of farm ani-

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<sup>84</sup> E.g., the Horse Protection Act, 15 U.S.C. §§ 1821 *et seq.* (1976); the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (1976); and the Marine Mammal Protection Act, 16 U.S.C. §§ 1361 *et seq.* (1976).

<sup>85</sup> Two statutes, the Twenty-Eight Hour Law, 45 U.S.C. §§ 71 *et seq.* (1976) (prohibiting the shipping of an animal on a railroad for more than twenty-eight hours without food, water and rest); and the Humane Slaughter Act, 7 U.S.C. §§ 1901 *et seq.* (1976) provide some regulation and protection after the animal has left the farm.

<sup>86</sup> 7 U.S.C. § 391 (1976) (emphasis added).

imals appears to have been discarded in the transfer of the Bureau's research function to the Agricultural Research Service in 1947.<sup>87</sup> The Agricultural Research Service's reports indicate no concern for the humane treatment of farm animals. Rather, their research is solely aimed toward the "efficient production of safe, high quality protein."<sup>88</sup> The only other federal regulatory legislation which is even remotely concerned with the conditions of farm animals is the National Agricultural Research, Extension and Teaching Policy Act of 1977.<sup>89</sup> This Act was enacted by Congress to coordinate national agricultural research. Although the Act includes a section on animal health<sup>90</sup> it fails to mention any concern for the humane treatment of animals.<sup>91</sup> Thus, no federal regulatory programs exist to control the abuses inflicted upon farm animals.

Moreover, no federal anti-cruelty statute exists to fill the void. The Animal Welfare Act of 1970<sup>92</sup> provides, *inter alia*, for the humane marking and identification of animals,<sup>93</sup> humane standards with respect to handling<sup>94</sup> and housing,<sup>95</sup> and investigations and inspections of animal conditions by the Secretary of Agriculture.<sup>96</sup> However, the Act expressly excludes farm animals from its coverage.<sup>97</sup> The legislative history of the Act gives no explanation for the exclusion of farm animals, although it probably stems from the fact that the 1970 Act was an amendment to the Laboratory Animal Welfare Act<sup>98</sup> and thus farm animals were outside the scope of Congressional concern at the time.

Although no federal legislation specifically protects farm animals,

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<sup>87</sup> 5 U.S.C. app. Reorg. Plan of 1947, no. 1, Part III (1976).

<sup>88</sup> U.S. DEP'T OF AGRICULTURE, LIVESTOCK AND VETERINARY SCIENCES ANNUAL REPORT OF NATIONAL RESEARCH PROGRAMS i (1976).

<sup>89</sup> 7 U.S.C.S. §§ 3102 *et seq.* (1979).

<sup>90</sup> 7 U.S.C.S. §§ 3191-3201 (1979).

<sup>91</sup> A stated purpose of the Act is "to promote the general welfare through the improved health and productivity of domestic livestock, poultry, aquatic animals, and other income producing animals . . . to minimize livestock and poultry losses due to transportation and handling . . . and . . . to improve animal health." 7 U.S.C.S. § 3191 (1979). Although this purpose may benefit animals indirectly, economic concerns are clearly the motivating force.

<sup>92</sup> 7 U.S.C. §§ 2131 *et seq.* (1976).

<sup>93</sup> *Id.* § 2141.

<sup>94</sup> *Id.* § 2143.

<sup>95</sup> *Id.* § 2131.

<sup>96</sup> *Id.* § 2146.

<sup>97</sup> *Id.* § 2132(g). The Act defines an animal as "any live or dead dog, cat, monkey . . . but such term excludes . . . farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber . . . ." *Id.*

<sup>98</sup> Pub. L. No. 89-544, 80 Stat. 350 (1966).

Congress has not altogether avoided the issue. A bill before the last few sessions of Congress proposed the establishment of a commission to study the treatment of animals in intensive farming.<sup>99</sup> The commission would consist of eleven members, five members representing animal welfare and humane societies, five representing medical schools, veterinary medicine, and animal husbandry, and one possessing administrative or judicial ability. The scope of the commission's investigatory functions would not be limited solely to farm animals, but would also include laboratory research experimentations, domestic pet growth rates and the effectiveness of existing laws. In addition, the commission would also "evaluate and recommend practiced and economical alternatives to present husbandry methods and evaluate the effectiveness of public and private programs with respect to the development of such alternatives."<sup>100</sup>

The identification of economic alternatives is particularly important to animal welfare reform. While ample evidence exists concerning the current treatment of animals in factory farm systems, less data is available about alternative procedures. Certainly, a government report suggesting practical alternatives to factory farming would bolster the animal rights movement. Unfortunately, the proposed bill which would establish such a commission has never reached the floor of either house of Congress.<sup>101</sup> Thus, at the present time, no federal law offers any protection for farm animals; consequently, state statutes present the only possible source of protection.

### *B. State Legislation*

Although a few state statutes regulate the treatment of animals generally,<sup>102</sup> none specifically regulate the treatment of farm animals. This leaves state anti-cruelty laws as the only source of state protection for farm animals. While the first anti-cruelty statute appeared in 1638,<sup>103</sup> such laws did not become widespread until the

<sup>99</sup> See, e.g., H.R. 1112, 94th Cong., 1st Sess. (1976).

<sup>100</sup> H.R. 10522 § 2b, 95th Cong., 2d Sess. (1978).

<sup>101</sup> Letter from Congressman Robert Drinan to author (October 13, 1978).

<sup>102</sup> See, e.g., Colorado Nongame and Endangered Species Act, COLO. REV. STAT. § 33-8-101 (1973).

<sup>103</sup> In 1638, the General Court of Massachusetts adopted a general legal code entitled "The Bodies of Liberties." The ninety-second section provided: "No man shall exercise any tyranny or crueltie towards any brute creature which are usuallie kept for men's use." E. LEAVITT, *ANIMALS AND THEIR LEGAL RIGHTS* 3 (1970). However, this law was far ahead of its time. It

mid-19th century.<sup>104</sup> Today, virtually every state has an anti-cruelty statute.<sup>105</sup> However, an analysis of this body of legislation demonstrates that these statutes provide virtually no real protection for the modern farm animal.

## 1. Construction

### a. *Definition of Animal*

The threshold issue posed by state anti-cruelty statutes concerns whether farm animals are included within their scope. Obviously, if they are excluded, such statutes can have no beneficial effect on the raising of farm animals.

Most state statutes define animals in very broad terms, similar to Florida's definition of animal as "every living dumb creature."<sup>106</sup> While in theory such broad definitions would seem to encompass intensively farmed animals, judges have used this vagueness as a basis for refusing enforcement and as a means of circumventing the

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wasn't until nearly 200 years later that normally progressive England passed its first anti-cruelty statute. G. CARSON, *MEN, BEASTS, AND GODS* 116 (1972).

<sup>104</sup> See E. LEAVITT, *supra* note 103, at 71, for a chart indicating the chronological enactment of anti-cruelty laws in the various states.

<sup>105</sup> The typical anti-cruelty law provides:

Cruelty to animals. Any person who overdrives, drives when overloaded, overworks, tortures, deprives of necessary sustenance, mutilates or cruelly beats or kills or unjustifiably injures any animal, or who, having impounded or confined any animal, fails to give such animal proper care or neglects to cage or restrain any such animal from doing injury to itself or to another animal or fails to supply any such animal with wholesome air, food and water, or unjustifiably administers any poisonous or noxious drug or substance to any domestic animal or unjustifiably exposes any such drug or substance, with intent that the same shall be taken by an animal, or causes it to be done, or, having charge or custody of any animal, inflicts cruelty upon it or fails to provide it with proper food, drink or protection from the weather or abandons it or carries it or causes it to be carried in a cruel manner, or sets on foot, instigates, promotes or carries on or performs any act as assistant, umpire or principal in, or is a witness of, or in any way aids in or engages in the furtherance of, any fight between cocks or other birds, dogs or other animals, premeditated by any person owning, or having custody of, such birds or animals, or fights with or baits, harasses or worries any animal for the purpose of making it perform for amusement, diversion or exhibition, shall be fined not more than two hundred and fifty dollars or imprisoned not more than one year or both.

CONN. GEN. STAT. § 53-247 (1979).

<sup>106</sup> FLA. STAT. § 828.02 (1976). In South Carolina, animal is defined to include "all brute creatures." S.C. CODE § 47-1-10 (1976); in North Carolina, animal is defined as "every useful living creature." N.C. GEN. STAT. § 19A-1 (1978); in Nebraska, animal is limited to those "enumerated as domesticated animals." NEB. REV. STAT. § 28-553 (1978 Supp.) See E. LEAVITT, *supra* note 103, at 22, for a table indicating kinds of animals protected under the different state anti-cruelty laws (distinguishing by states that define animals as "any animal," "owned animals," and "domestic animals.").

statute.<sup>107</sup> In one case involving a cruelty prosecution for cockfighting,<sup>108</sup> the court held that birds were not within the purview of a statute which prohibited the wounding of "an animal,"<sup>109</sup> noting that, although birds are, biologically speaking, animals, there was no clear legislative intent to include them within the statute. To hold otherwise, the court stated, would "render [the statute] vague, indefinite and uncertain and therefore in violation of the due process clause. . . ."<sup>110</sup>

In some states, the anti-cruelty statutes specifically exclude farm animals. For example, in Georgia the anti-cruelty statute provides that "this section does not apply to the killing of animals raised for the purpose of providing food."<sup>111</sup> In other states, farm animals, although not specifically excluded from protection, are indirectly excluded by provisions limiting the application of the statute. For example, the Illinois Humane Care for Animals Act<sup>112</sup> excludes from its prohibitions "normal, good husbandry practices utilized by any person in the production of food. . . ."<sup>113</sup> Although there are no published court opinions interpreting "good husbandry practices," it seems very doubtful that intensive farming procedures developed by state agriculture research stations<sup>114</sup> and endorsed by professional farming associations would be considered poor husbandry practices.<sup>115</sup>

#### *b. Definition of Cruelty*

The second issue of statutory construction concerns the definition of cruelty. Cruelty is typically defined as "every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or

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<sup>107</sup> Friend, *Animal Cruelty Laws: The Case For Reform*, 8 U. RICH. L. REV. 201 (1973).

<sup>108</sup> *State v. Stockton*, 85 Ariz. 153, 333 P.2d 735 (1958).

<sup>109</sup> ARIZ. REV. STAT. § 13-951 (1976).

<sup>110</sup> *State v. Stockton*, 85 Ariz. 153, 155, 333 P.2d 735, 736 (1958). *Accord*, *State ex rel. Miller v. Cloibourne*, 211 Kan. 264, 505 P.2d 732 (1973).

<sup>111</sup> GA. CODE ANN. § 26-280 (1974).

<sup>112</sup> ILL. ANN. STAT. ch. 8, § 702.01 (Smith-Hurd 1975). Unlike the Federal Animals Welfare Act which excludes farm animals by definition, this act includes all animals other than man.

<sup>113</sup> *Id.* § 713.

<sup>114</sup> For an insight into the contributions of state agriculture experiment stations, see U.S. DEPT OF AGRICULTURE, *THE 1975 YEARBOOK OF AGRICULTURE* (1975).

<sup>115</sup> There is precedent in English law for a court rejecting a customary farming practice. In *Waters v. Braithwaite*, 30 Times L. 107 (Div. Ct.) (Eng. 1913), the court held that a practice of keeping cows unmilked to show prospective buyers that the cows were good milkers was cruel regardless of whether the custom was similarly practiced by all farmers in the country.



death shall be caused or permitted."<sup>116</sup> The crucial portion of this definition is the phrase "unnecessary or unjustifiable," since it makes the success of an anti-cruelty prosecution depend upon a showing that the contested factory farm practices are indeed unnecessary.

The case law provides little clarification as to what acts are unnecessary or unjustifiable. However, those cases that do address the issue of the necessity of abusive farm techniques, although they are quite old and do not involve factory farming,<sup>117</sup> nevertheless do offer a few tentative interpretations. In general, some benefit must result to either the animal or to the community to justify painful farm procedures. Factory farming, by definition, provides no benefit to the animal; therefore the issue turns on whether an economic savings to the farmer is a benefit to the community. The cases split on this issue.<sup>118</sup>

Whether factory farm techniques are indeed unnecessary or unjustifiable has created a controversial and emotionally charged debate raising economic and moral considerations. Proponents of factory farming assert that the price of food would be astronomical if factory farm systems were banned.<sup>119</sup> The history of industrialization and mass production results in an almost automatic, although unjustified acceptance of this premise by the general public. Yet strong arguments support the conclusion that factory farming is unnecessary and unjustifiable. First, the major costs of food production occur after the animal is slaughtered, with packaging, ship-

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<sup>116</sup> See, e.g., N.D. CENT. CODE § 36-21.1-01 (1976).

<sup>117</sup> In *People ex rel. Freel v. Downs*, 136 N.Y.S. 440, 26 N.Y. Crim. 327 (Mag. Ct. 1917), a case involving the cruel transport of turtles, the court noted that the pain inflicted upon animals used for food consumption is "justifiable and necessary;" but, in *State v. Critchter*, 4 Ohio Dec. 481, 11 Ohio Dec. Report 782, 29 WL Bulls (1892), the court upheld a cruelty conviction for the painful dehorning of cattle. The court noted that either the animal or the community must benefit to justify painful suffering but rejected the argument that an economic savings to the farmer benefitted the community. In *Davis v. Society for Prevention of Cruelty*, 16 Abb. Pr. (n.s.) 73 (N.Y. 1874) the court dissolved an injunction which had enjoined the ASPCA from interfering with a slaughterhouse. The court held that the issue was not whether the mode of slaughtering was "the best and most expedient, but whether . . . 'wanton acts of cruelty are allowed and practiced.'" *Id.* at 78.

<sup>118</sup> Compare *People ex rel. Freel v. Downs*, 136 N.Y.S. 440, 26 N.Y. Crim. 327 (Mag. Ct. 1917) with *State v. Critchter*, 4 Ohio Dec. 481, 11 Ohio Dec. Report 782, 29 WL Bulls (1892).

<sup>119</sup> Defenders of factory farming also rationalize factory farming as a cure for the world food shortage. M. HUTCHINGS, *MAN'S DOMINION* 98 (1970). However, animal protein is a very inefficient source of protein; it is much more effective to use plant protein directly rather than converting it into animal protein. See LAPPÉ, *DIET FOR A SMALL PLANET* (1975) and LAPPÉ, *FOOD FIRST* (1977).

ping, and marketing representing two-thirds of the retail cost.<sup>120</sup> Savings in the growing of animals thus have a minimal impact on the actual cost to the consumer. Second, no definitive proof exists that the abusive factory farmer insures any savings at all in the raising of animals. In fact, one study of egg production found that the stress produced by the overcrowded conditions to which chickens are subject actually decreased the net income per bird!<sup>121</sup> Third, efficient humane alternatives are available if factory farmers were willing to modify their systems; no such inclination is evident. Chicken farmers have, for example, failed to utilize the improved cage for laying hens.<sup>122</sup> Finally, apart from these economic aspects, the moral question remains concerning the extent to which increased profits justify accompanying animal abuse.

Convincing a court that an abusive practice is unnecessary solves only a threshold issue. A second problem exists in those states that define cruelty as the unnecessary infliction of *physical* pain, suffering, or death.<sup>123</sup> Factory farming not only entails instances of physical abuse, but also includes the infliction of mental abuse, such as the stress level in broiling sheds or the separation of the calf from its mother. If this issue ever arose in litigation, agribusiness interests would probably argue that the cruelty statutes are limited to physical abuse and that the law should not recognize an animal's "feelings." On the other hand, animal welfare groups would be likely to maintain that the statute creates a distinction between pain and suffering, with pain relating to physical pain and suffering correlating with mental suffering. Even though some judicial precedent does exist for legal recognition of an animal's "feelings,"<sup>124</sup> no reported cases have resulted in convictions under the cruelty statutes for causing emotional or mental deprivation. Thus, the question whether the mental abuse inflicted upon an animal comes within the definition of "cruel," remains open.

Moreover, even demonstrating that a particular farming activity

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<sup>120</sup> J. HIGHTOWER, *EAT YOUR HEART OUT — HOW FOOD PROFITEERS VICTIMIZE THE CONSUMER* 53 (1975).

<sup>121</sup> Crober, *Social and Economic Aspects of Commerical Poultry Production*, *ANIMALS & FOOD PRODUCTION* 27 (1977).

<sup>122</sup> See text at note 45, *supra*.

<sup>123</sup> See, e.g., *LA. REV. STAT. ANN.* § 14:102 (West 1969) (emphasis added).

<sup>124</sup> See *Hunt v. State*, 3 Ind. App. 383, 385, 29 N.E. 933, 934 (1892), where the court noted that "to justify a conviction there must be a . . . disregard of the rights and feelings of the brute creation." See also *Stephens v. State*, 65 Miss. 329, 3 So. 458 (1888), and *State v. Karstendiek*, 49 La. Ann. 1621, 22 So. 845 (1897).

is unnecessary and that non-physical abuse falls within the statute may be insufficient to support a cruelty conviction. Many anti-cruelty statutes are too specific in delineating what acts are prohibited, containing long lists of particular proscribed acts.<sup>125</sup> Supporters insist that such statutes are easier for courts to interpret and enforce.<sup>126</sup> Courts, however, tend to interpret such lists quite narrowly.<sup>127</sup> Therefore, although these statutes may be useful in attacking ordinary forms of cruelty, they lack the flexibility necessary for application to factory farm practices which are ordinarily not included among the statute's proscription. On the other hand, statutes which are overly broad in their prohibitions present other difficult enforcement problems.<sup>128</sup> In either event, the factory farm animal remains defenseless.

Excessive specificity or excessive generality do not present the only legislative deficiencies of anti-cruelty statutes. State statutes simply fail, either narrowly or broadly, to proscribe specific factory farm abuses. For example, all anti-cruelty statutes fail to include overcrowding of farm animals as a forbidden activity. Although one case<sup>129</sup> resulted in a successful prosecution for overcrowding under a broad anti-cruelty statute, the case involved dogs, not farm animals. A court most likely would decline to extend such a precedent to the overcrowding of farm animals in the absence of specific statutory prescriptions, especially since the two situations are distinguishable on the basis of economic necessity. No economic necessity exists to keep dogs in an overcrowded condition, while agribusiness may arguably present evidence of such a necessity in factory farming. Moreover, since the dogs in the above case died from the overcrowded conditions, there was a much stronger presumption of cru-

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<sup>125</sup> For example, Maine defines cruelty as acts of any person who:

cruelly overdrives, overloads, or overworks, who torments, tortures, maims, wounds or deprives of necessary sustenance, or who cruelly beats, mutilates or kills any horse or other animal or causes the same to be done, or having the charge or custody thereof, as owner or otherwise, unnecessarily fails to provide such animal with proper food, drink, shelter and protection from the weather . . . .

ME. REV. STAT. tit. 17, 1091 (1964).

<sup>126</sup> See Burr, *supra* note 2, at 215.

<sup>127</sup> *Id.*

<sup>128</sup> Broad statutes leave a large amount of discretion to the judge and jury. This might prove to benefit animal welfare interests when the judge and jury are sympathetic; however, any such advantage vanishes whenever a judge or jury that is unsympathetic to the plight of animals handles the case. See, e.g., *State v. Buford*, 65 N.M. 51, 331 P.2d 1110 (1958). See also Annot., *Cruelty to Animals*, 82 A.L.R.2d 794 (1962).

<sup>129</sup> *McClosky v. State*, 222 Ind. 514, 53 N.E.2d 1012 (1944).

elty than would exist under merely stressful conditions. In reality, life under the stressful conditions of factory farming produces more severe results for the animal than death.<sup>130</sup> Nevertheless, prosecutions based on the overcrowding of farm animals, absent a statutory prohibition of overcrowding, seem unlikely.

Even if a statute purports to proscribe a given factory farming abuse, adequate enforcement<sup>131</sup> is often lacking. For example, some state statutes seem to make certain factory farm practices illegal by requiring that exercise be provided for confined animals.<sup>132</sup> Factory farming practices in the poultry, beef, veal, and pork industries thus could all be challenged under such provisions. Unfortunately, no attempt to make use of these statutes in prosecuting factory farmers has ever been made.

Another example of inadequate enforcement of anti-cruelty laws concerns the neglect of injured animals under factory farming procedures. Since such farming procedures permit one person to maintain thousands of animals,<sup>133</sup> injured or dead animals invariably go unnoticed for long periods of time. Some statutes specifically proscribe such neglect of sick, or disabled animals. For example, one such statute penalizes the owner of an animal if "any maimed, sick, infirm, or disabled animal shall fail to receive proper food or shelter from said owner or person in charge of the same for more than five consecutive hours. . . ."<sup>134</sup> In interpreting this provision, courts must determine whether shelter will be limited to protection from the weather or whether it also encompasses protection from other animals due to such behavior as chicken cannibalism or hog tailbiting. A very limited interpretation might limit shelter only to protection from the weather. However, if the purpose of the regulation is to help an injured animal to recuperate, then shelter from other

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<sup>130</sup> Although a dead animal appears gruesome, it can feel no pain, whereas those animals living under conditions described in Section II, *supra*, most certainly do.

<sup>131</sup> See text at Section III (B)(2), *infra*, for a discussion of the enforcement structure of anti-cruelty laws. The enforcement problem referred to here does not lie so much in enforcement mechanisms, but in the absence of any enforcement attempts whatsoever.

<sup>132</sup> Minnesota's anti-cruelty statute provides that "no person shall keep any cow or other animal in any enclosure without wholesome exercise and change of air." MINN. STAT. ANN. § 346.21(3) (1972). See also OHIO REV. CODE ANN. § 959.13(A) (Baldwin 1978) and FLA. STAT. § 828.13 (1976). Kansas has a similar provision. KAN. STAT. § 21-4310(d) (1974); however, farm animals are excluded from that provision. *Id.* § 21-4310(f).

<sup>133</sup> The United States Department of Agriculture reports that "using a modern feeding system for broilers, one man can take care of 60,000 to 75,000 broilers." U.S. DEP'T OF AGRICULTURE, THE 1970 YEARBOOK OF AGRICULTURE xxxiii (1970).

<sup>134</sup> D.C. CODE § 22-811 (1967).

animals would be equally as important as shelter from the weather. No evidence yet exists indicating which interpretation courts will follow. Moreover, due to the lax enforcement of the neglect statute, it now appears unlikely a court will ever be forced to make such a determination.

In sum, the construction of state anti-cruelty statutes illustrates how ineffective they have been in stopping factory farm abuses. In the first instance, such statutes might specifically exclude farm animals from the definition of "animal." Second, the legal definition of "cruelty" requires a showing both that the abusive practices are "unnecessary or unjustifiable" and, in those statutes which delineate what acts are cruel, that the activity is one of a number of enumerated abuses. Yet, even where a particular statute impliedly proscribes certain factory farming abuses, enforcement procedures against the violators create another serious obstacle.

## 2. Enforcement

Enforcement of anti-cruelty laws operates through either public or private programs. Public enforcement ranges from enforcement by police departments<sup>135</sup> to enforcement by specialized administrative agencies.<sup>136</sup> Private enforcement programs grant police powers to local humane societies and allow court actions by private citizens.<sup>137</sup> Most state enforcement programs primarily rely on criminal prosecutions,<sup>138</sup> although private civil actions also are sometimes involved.<sup>139</sup> While the impotence of these several enforcement programs ultimately results from the substantive deficiency of the laws to be enforced, the weak enforcement structure itself is instrumental.

Many states do not assign responsibility for enforcement of the anti-cruelty statutes to any particular agency, relying instead, on the local police or sheriff. Since this approach has failed to adequately prevent conventional animal cruelty offenses,<sup>140</sup> it seems

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<sup>135</sup> If the statute does not specifically assign responsibility for enforcement of the anti-cruelty law, the local police department will enforce the statutes under its general authority to enforce criminal laws.

<sup>136</sup> See, e.g., COLO. REV. STAT. § 35-42-102 (1978).

<sup>137</sup> See, e.g., FLA. STAT. § 828.03 (1976).

<sup>138</sup> For example, enforcement in Connecticut relies solely on criminal prosecutions. CONN. GEN. STAT. § 53-247 (1979).

<sup>139</sup> See, e.g., N.C. GEN. STAT. §§ 19A-1 *et seq.* (1978).

<sup>140</sup> Friend, *supra* note 107, at 216.

equally inadequate for preventing intensive farming abuses. Due to the increased incidence of other types of crimes, police officials simply are not equipped with the resources necessary to actively enforce animal protection statutes, but only respond to warrants sworn out by others.<sup>141</sup>

Another public enforcement scheme places statutory responsibility under the state departments of agriculture.<sup>142</sup> However, such an approach does not effectively protect factory farm animals. State departments of agriculture, often staffed by farmers, usually sympathize with farming interests.<sup>143</sup> Consequently, such departments are naturally antagonistic toward attempts to regulate modern farm procedures. In addition, even if a department did want to regulate intensive farm practices, it might lack the necessary legal tools. For example, one state statute provides a department with the limited power to formulate rules and regulations for preventing the inhumane treatment of animals used in the operation of "creameries, butter and cheese factories. . ."<sup>144</sup> but not for other farming enterprises;<sup>145</sup> the agency thus could not make regulations to generally protect farm animals even if it was politically persuaded to do so. Therefore, the basically ineffective anti-cruelty statutes severely limit the enforcement powers of state agricultural agencies.

Other states have created specialized bureaus of animal protection to perform such duties as "secur[ing] the enforcement of the law for the prevention of the wrongs to animals; aid[ing] agents in the enforcement of the laws for the prevention of wrongs to animals; and promot[ing] the growth of education and sentiment favorable to the protection of animals."<sup>146</sup> Such an independent bureau could be more effective in protecting farm animals, although the influence of politics and agribusiness might also restrict its effectiveness in arresting factory farm abuses.<sup>147</sup>

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<sup>141</sup> *Id.* at 217.

<sup>142</sup> For example, Utah provides that "the department (of agriculture) shall enforce the law of this state relating to the inhumane and cruel treatment of livestock." UTAH CODE ANN. § 4-1-14 (1974).

<sup>143</sup> The enabling statute of the Massachusetts Department of Agriculture, for example, requires that four out of the seven members of the Board of Agriculture be farmers. MASS. GEN. LAWS ANN. ch. 20, § 1.

<sup>144</sup> UTAH CODE ANN. § 4-1-15 (1974).

<sup>145</sup> *Id.*

<sup>146</sup> COLO. REV. STAT. § 35-42-102 (1973).

<sup>147</sup> Agribusiness is politically well-connected. For example, former Secretary of Agriculture Earl Butz served on the board of Ralston-Purina prior to becoming Secretary of Agriculture.

Private enforcement programs which grant police powers to local humane societies (SPCAs)<sup>148</sup> present more viable prospects for successfully challenging factory farm methods. Unlike state departments of agriculture or bureaus of animal protection, SPCAs are not indifferent to the plight of animals. Indeed, they exist solely to protect animals. The general trend of increasing interest in the abuses of factory farming should spur those SPCAs with police powers to more forcefully attack this problem.

Unfortunately, local SPCAs have generally avoided controversial areas like factory farming,<sup>149</sup> abdicating the responsibilities of enforcement to concerned private citizens. However, since cruelty to animals constitutes a criminal act, enforcement at the behest of private citizens remains a virtually futile gesture. Because a private citizen cannot make arrests unless the offense is committed in his presence,<sup>150</sup> such citizens' arrests for animal cruelty seldom, if ever, occur. Normally, private citizens contact the local police or SPCA and file a complaint, shifting enforcement responsibility back upon the very institutions whose inaction prompted the private citizen to act. Under some statutes, if the complainant receives an inadequate response from these institutions, he may petition a magistrate to issue a search warrant authorizing the appropriate officer to investigate.<sup>151</sup> This procedure vests a large amount of discretion in the magistrate, who may be hesitant to issue such an order. Moreover, the private citizen must undertake so much affirmative action that it is likely that few would actually persevere to the conclusion.

These obstacles to effective criminal enforcement by private citizens become less important with the availability of civil actions. One state statute embodies a relatively progressive enforcement scheme which does provide such a cause of action.<sup>152</sup> The statute states that an action may be commenced by any "real party in interest as plaintiff,"<sup>153</sup> with "real party" being defined to include

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Similarly, former Undersecretary of Agriculture Phil Campbell is a consultant for Goldkist, one of the South's largest broiler integrators and former Assistant Secretary of Agriculture Richard Lying is now President of the American Meat Institute. J. MASON, *supra* note 18, at 40.

<sup>148</sup> See, e.g., FLA. STAT. § 828.03 (1976).

<sup>149</sup> See, e.g., C. STEVENS, LABORATORY ANIMAL WELFARE, ANIMALS AND THEIR LEGAL RIGHTS 55-58 (1970).

<sup>150</sup> WHARTON'S CRIM. PROCEDURE § 63 (12th ed. 1974).

<sup>151</sup> See, e.g., MICH. STAT. ANN. § 28.163 (1978).

<sup>152</sup> N.C. GEN. STAT. §§ 19A-1 *et seq.* (1978).

<sup>153</sup> *Id.* § 19A-2.

"any 'person' . . . even though such person does not have a possessory or ownership right in an animal. . . ." <sup>154</sup> Moreover, the statute provides for the issuance of preliminary and permanent injunctions by the superior court against the owner of an abused animal. <sup>155</sup> However, no one has taken advantage of this private enforcement scheme. This lack of enforcement becomes even more discouraging when one realizes that this type of statute represents the exception among state legislation. Most statutes create problems of standing to sue which generally preclude citizens from bringing private causes of action. <sup>156</sup>

In sum, none of these various enforcement plans can adequately implement cruelty statutes to protect animals from the brutality of factory farming. Traditional police protection is inadequate because of the priorities placed on other crimes. State departments of agriculture and state bureaus of animal protection remain ineffective due to the traditional agribusiness influence over those groups. Humane societies, although the logical choice to enforce anti-cruelty statutes, have historically avoided such controversial issues. Of course, the private citizen may act, but traditional notions of standing and the current nonrecognition of legal rights for animals generally renders the private citizen powerless as well.

Moreover, even if there were effective enforcement agencies, our country lacks workable anti-cruelty laws for them to enforce. At the federal level, some regulatory statutes protect non-farm animals, but none protect farm animals. State anti-cruelty statutes offer little more protection, since they too are not intended, constructed or enforced to protect farm animals.

Fortunately, the bleak legal status of farm animals in the United States does not prevail throughout the world. Whereas the United States has just begun to recognize the injustice of factory farming, other countries have actively attacked the problem through legislative reform and governmental commissions. Although the vast size of agribusiness in the United States makes reform in this country particularly difficult, much of the activity in foreign countries offers an excellent model for reform.

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.* §§ 19A-3; 19A-4.

<sup>156</sup> The complex standing issues are beyond the scope of this article. For a thorough discussion see C. STONE, *SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS* (1974), also appearing in its entirety in 45 S. CAL. L. REV. 450 (1972); Dichter, *Legal Rights of Animals*, 7 B.C. ENV. AFF. L. REV. 147 (1979); and Burr, *supra* note 2.



## IV. MODELS OF REFORM: FOREIGN APPROACHES

In 1965, in response to the public outcry which followed the publication of a book depicting the deplorable condition of farm animals,<sup>157</sup> England conducted perhaps the largest government investigation into the abuses of intensive farming. A committee consisting of experts in veterinary science, animal husbandry and agriculture compiled a report at the conclusion of the investigation<sup>158</sup> which not only reported on the treatment of animals in intensive farm operations, but also proposed reforms. The committee's proposals included such recommendations as: (1) minimum space allowances for chickens and a prohibition of debeaking; (2) minimum space allowances for pigs and a prohibition of routine taildocking; (3) prohibition of the confinement of sows; (4) freedom of movement and a diet of iron and roughage for calves; and (5) a general demand for better stockmanship.<sup>159</sup> Although these proposals did lead to "Codes of Practice" being issued by the Minister of Agriculture, many animal welfare activists have criticized the Codes as adopting too few of the suggestions of the Committee report and for watering down those which were adopted.<sup>160</sup> For example, the Codes sharply reduce the space allowances for poultry, permit debeaking, allow slotted floors for cattle and continue the abusive practices of the veal trade.<sup>161</sup> The most widespread criticism of the Codes is that they are merely government recommendations and do not have the force of law.<sup>162</sup> Nevertheless, they do represent an important breakthrough in government regulation of intensive farming.

Other countries have been more effective in enacting reform legislation. In 1976, the French legislature enacted a Law on the Protection of Nature<sup>163</sup> which, among other things, permits the State Council to take measures in order to protect domestic animals from maltreatment and the "sufferings resulting from manipulations inherent in the various rearing methods and methods of transport and slaughter."<sup>164</sup>

<sup>157</sup> R. HARRISON, *ANIMAL MACHINES* (1964).

<sup>158</sup> Command Paper 2836 (London: Her Majesty's Stationery Office 1965) [hereinafter cited as Branbell Report].

<sup>159</sup> *Id.* For a detailed account of the report, see P. SINGER, *supra* note 3, at 139-52.

<sup>160</sup> *Id.* at 150.

<sup>161</sup> Agriculture (Miscellaneous Provisions) Act of 1968, § 3(4).

<sup>162</sup> See, e.g., Harrison, *On Factory Farming*, in *ANIMALS, MEN AND MORALS* 18 (Stanley & Rosalind Godlovitch eds. 1971).

<sup>163</sup> (1976) J.O. No. 76629.

<sup>164</sup> *Id.*

By referendum vote in December, 1978, an overwhelming majority of the Swiss electorate accepted a new federal law that (1) requires the Federal Council to (a) regulate minimum size and construction requirements of animal enclosures, (b) set standards for the keeping of piglets in battery cages, and (c) limit the keeping of farm animals in total darkness; (2) prohibits the keeping of calves on grid floors; (3) prohibits the keeping of poultry in battery cages; and (4) requires that surgical procedures on animals be done by a veterinarian under general or local anesthesia.<sup>165</sup> Although this provides an excellent framework, the actual effectiveness of the law depends on the detailed regulations which are currently being prepared by the federal veterinary office.<sup>166</sup>

In West Germany, the German Animal Protection Act of 1972<sup>167</sup> provides that:

Any person who is keeping an animal or who is looking after it:

(1) shall give the animal adequate food and care suitable for its species; and he shall provide accommodation *which takes account of its natural behavior*;

(2) shall not permanently so restrict the needs of an animal of that species for movement and exercise that the animal is exposed to avoidable pain, suffering or injury.<sup>168</sup>

The Act's importance results from the fact that it is the first piece of legislation to explicitly recognize behavioral distress.<sup>169</sup> West German law also authorizes the Minister of Food, Forestry and Agriculture to regulate tetherings, cage size, feeding equipment, lighting, temperature, ventilation and care and supervision by the farmer.<sup>170</sup>

In Denmark, the caging of laying hens has been banned since 1950.<sup>171</sup> Moreover, Danish law forbids force-feeding, castration of poultry and tethering so as to cause discomfort or pain. The laws of Norway and Luxembourg contain similar clauses.<sup>172</sup> Also, the 1965 Animal Welfare Act of Luxembourg prohibits "the housing of do-

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<sup>165</sup> Letter from Claude M. Beck to the author (January 7, 1979). A copy of the referendum is on file at the Boston College Environmental Affairs Law Review Office.

<sup>166</sup> *Id.*

<sup>167</sup> Law of 24 July 1972, BGBL 1. (p) 1277, cited in Taylor, *Animal Welfare Legislation in Europe*, ANIMALS AND THE LAW 33 (1975).

<sup>168</sup> *Id.* (emphasis added).

<sup>169</sup> AWI REPORT, *supra* note 9, at 3. Recognizing an animal's mental suffering in addition to its physical pain is fundamental to the whole notion of animal rights.

<sup>170</sup> J. MASON, *supra* note 18, at 98-99.

<sup>171</sup> *Id.*

<sup>172</sup> AWI REPORT, *supra* note 9, at 3.

mestic . . . animals . . . in such a manner that they suffer from the lack of space in the stall or enclosure in which they are kept or from inadequate ventilation, lighting or protection from the elements."<sup>173</sup>

In Sweden, the Swedish Animal Protection Act of 1944<sup>174</sup> provides that "animals shall be treated well and as far as possible protected from suffering. The . . . animal housing shall provide adequate space and shall be maintained at a satisfactory level of cleanliness."<sup>175</sup> In addition, the law sets minimum space requirements for calves, hogs and chickens, and forbids the transport of calves under two weeks of age.

European countries<sup>176</sup> have led the factory farm reform movement, but such reform is more easily accomplished in these smaller nations. Europeans traditionally have had a more humane regard for animals than Americans.<sup>177</sup> Moreover, agribusiness in Europe has not attained as great an influence in decision making.<sup>178</sup> In light of the different situation in America, reform in the United States must be very well planned for it to be successful.

#### V. STRATEGIES FOR CHANGE: A THREE PRONG ATTACK

The preceding sections of this article have demonstrated that intensive husbandry systems abuse farm animals and that the existing anti-cruelty statutes are an ineffective means of protection. This section addresses those steps which can be taken to improve the existing situation.

<sup>173</sup> Law of 26 Feb. 1965 of the Protection of Animals, Memorial 1965, p. 193.

<sup>174</sup> AWI REPORT, *supra* note 9, at 3.

<sup>175</sup> *Id.*

<sup>176</sup> In addition to legislation passed by individual countries, the Council of Europe (which includes all the countries in the European Economic Community (EEC) as well as Austria, Cyprus, Greece, Iceland, Norway, Sweden, Switzerland and Turkey) published in 1976 the European Convention for the Protection of Animals Kept for Farming Purposes. Article 4 of that Convention is particularly noteworthy. It provides:

1. The freedom of movement appropriate to an animal, having regard to its species and in accordance with established experience and scientific knowledge, shall not be restricted in such manner as to cause it unnecessary suffering or injury.
2. Where an animal is continuously or regularly tethered or confined, it shall be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge.

COUNCIL OF EUROPE, EXPLANATORY REPORT ON THE EUROPEAN CONVENTION ON THE PROTECTION OF ANIMALS KEPT FOR FARMING PURPOSES 12 (1976).

<sup>177</sup> For example, European countries have pioneered animal welfare legislation since the inception of the humane movement in the mid-nineteenth century. *See generally* G. CARSON, MEN, BEASTS, AND GODS (1972).

<sup>178</sup> Telephone interview with Nancy Payton, Legislative Assistant, Massachusetts Society for the Prevention of Cruelty to Animals (April 18, 1979).

A three part approach to the problem is helpful. The first part of this approach consists of a model statute which creates an administrative bureau to regulate factory farming since criminal anti-cruelty statutes alone cannot adequately regulate an entire industry. Unfortunately, the present political climate is not receptive to the enactment of such legislation. The second part addresses those actions which animal rights groups can take to create a politically sympathetic mood for the future. This involves educating the consumer and identifying alternative husbandry techniques. The third part suggests that, during the interim, animal rights activists should institute court actions challenging factory farm practices.

*A. The Future: Increased Regulation of Intensive Farming*

Animals would be better protected by regulatory statutes than by criminal anti-cruelty laws. The Committee for Humane Legislation has drafted a model statute which would create a "State Department of Animal Protection."<sup>179</sup> Such an agency would have "jurisdiction over all matters relating to the preservation and protection of animal life."<sup>180</sup> Although writers have applauded this plan as providing an excellent administrative framework within which to attack problems,<sup>181</sup> the proposed statute does not specifically address the problem of intensive farming. Therefore, the author proposes an alternative Model Act (see Appendix). The Model Act would create a Bureau of Farm Animal Protection whose duties would include: (1) investigation of the treatment of farm animals; (2) research into more humane alternative farming methods; (3) promulgation of rules and regulations for the protection of farm animals; and (4) enforcement of such rules and regulations. This Model Act either could be combined with the plan suggested by the Committee for Humane Legislation<sup>182</sup> or could be enacted independently. Moreover, either the states or Congress could enact the Act. Because of the national expanse of agribusiness, the program would be more effective at the federal level, but animal protection histori-

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<sup>179</sup> Committee for Humane Legislation, Inc., Model State Animal Protection Statutes (undated). Copies are available from the Committee for Humane Legislation, Inc., 11 West 60th Street, New York, N.Y. 10023.

<sup>180</sup> *Id.*

<sup>181</sup> See, e.g. Burr, *supra* note 2, at 232.

<sup>182</sup> The Bureau of Farm Animal Protection could be a subdivision of the State Department of Animal Protection proposed by the Committee for Humane Legislation.

cally has been a matter of state concern,<sup>183</sup> and local governments can more easily resolve enforcement problems. Ideally, of course, the statute would become both a federal and state law.

The Model Act begins with a statement of public policy that recognizes the concept of legal rights for animals and the abuses of factory farming.<sup>184</sup> Subsequent sections establish a Bureau of Farm Animal Protection which is supervised and controlled by a Board of Farm Animal Protection consisting of members representing the interests of animal welfare societies, veterinary medicine and animal husbandry.<sup>185</sup> The Board has the powers and duties to (1) investigate the treatment of farm animals;<sup>186</sup> (2) conduct research and develop alternative farming methods;<sup>187</sup> (3) analyze the merits of the contention that factory farming is essential to the economy;<sup>188</sup> (4) publish annual reports of its investigations and research;<sup>189</sup> and (5) establish rules and regulations to protect animals from pain and suffering.<sup>190</sup> The Act also establishes the position of Director as the executive and administrative head of the Bureau.<sup>191</sup> The Director (1) issues licenses;<sup>192</sup> (2) inspects and reports on the treatment of farm animals;<sup>193</sup> (3) investigates all allegations of animal mistreatment; (4) issues cease and desist orders to persons engaging in activities likely to result in irreversible or irreparable damage to an animal;<sup>195</sup> and (5) petitions for custody of an animal to protect it from neglect or cruelty.<sup>196</sup> In addition to criminal penalties,<sup>197</sup> the Act authorizes private actions to be brought on behalf of the injured animal.<sup>198</sup> In the event that civil damages are awarded, the judge may order the

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<sup>183</sup> *Geer v. Connecticut*, 161 U.S. 519 (1896).

<sup>184</sup> See Model Farm Animal Protection Act § 101 at Appendix, *infra*.

<sup>185</sup> *Id.* § 103.

<sup>186</sup> *Id.* § 105(a).

<sup>187</sup> *Id.* § 105(b).

<sup>188</sup> *Id.* § 105(c).

<sup>189</sup> *Id.* § 105(d).

<sup>190</sup> *Id.* § 105(e). The Act specifically mandates (1) the prohibition of the keeping of any animal without the opportunity for exercise; (2) the prohibition of any environment that produces an inordinate amount of stress; (3) the prohibition of painful surgical procedures; and (4) a licensing system for all farms. *Id.*

<sup>191</sup> *Id.* §§ 106, 107.

<sup>192</sup> *Id.* § 107(a).

<sup>193</sup> *Id.* § 107(b).

<sup>194</sup> *Id.* § 107(c).

<sup>195</sup> *Id.* § 107(d).

<sup>196</sup> *Id.* § 107(e).

<sup>197</sup> *Id.* § 108.

<sup>198</sup> *Id.* § 109.

award to be used either for the rehabilitation of the injured animal, for research into more humane farming practices or for both.<sup>199</sup>

Admittedly, no political realist could believe that this proposed statute would be enacted today. Therefore, animal rights groups must formulate presently viable strategies for reform. Such activists must seek to create a congenial political climate; and in the interim, should challenge the most atrocious factory farm methods through civil and criminal court actions, and through civil disobedience if necessary.

### *B. Planning for the Future: Creating a Political Base*

The self-interest of agribusiness is not the sole cause for the paltry protections of farm animals. Consumer ignorance of the manner in which animals are raised in food production shares equal responsibility for this sad situation. Therefore, reform will only result from the education of the public who, as consumers and voters, are the generators of legislative change. One author has suggested that Americans will remain apathetic as long as the abused animal tastes good,<sup>200</sup> but this view overlooks the tradition of American responsiveness to publicized animal cruelty. For example, the publication of a 1966 *Life* magazine article about the sale of stolen animals to medical research laboratories<sup>201</sup> spurred more mail to Congress than the issues of civil rights and Vietnam, and more mail to *Life* than any other article in the history of the magazine.<sup>202</sup> This vigorous outcry reveals an unmistakable sensitivity to the plight of animals which animal rights groups could draw upon to effectuate legislative reforms.

Consumer education is made more difficult, however, because agribusiness spends huge sums to advertise the pastoral myth of farm animal life. For example, industry supplies children with coloring books which "depict cows in a cozy barn, one after one in a row"<sup>203</sup> and chickens, "dressed in hats and aprons in a nice clean house with lots of fresh air."<sup>204</sup> The National Livestock and Meat Board, an industry lobby, distributes filmstrips, pamphlets, charts

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<sup>199</sup> *Id.*

<sup>200</sup> Friend, *supra* note 107, at 209.

<sup>201</sup> Wayman & Stan, *Concentration Camps for Dogs*, *LIFE*, February 4, 1966.

<sup>202</sup> E. LEAVITT, *supra* note 103, at 49.

<sup>203</sup> J. MASON, *supra* note 18, at 22, quoting from *THE DAIRY COW AND HER MARVELOUS MILK* (1976).

<sup>204</sup> *Id.*, quoting *THE CHICKEN AND THE INCREDIBLE EDIBLE EGG* (1975).

and other classroom materials across the country.<sup>205</sup> These programs, combined with such usual media influences as cartoons, movies and novels, instill false deeply-ingrained notions about farm life. Consumer education programs must combat these misconceptions and expose the actual abuses of farm practices. One such consumer program is already being planned. The Humane Education Center is currently being constructed on a farm in Massachusetts by the Massachusetts SPCA and will have exhibits demonstrating the true life on the factory farm.<sup>206</sup>

A necessary second step in creating a useful political base entails developing and promoting practical alternatives to factory farming.<sup>207</sup> Although Americans might sympathize with animals, they are not yet willing to adopt a vegetarian lifestyle. Concern about rising food costs persists and will fuel the debate over the economic necessity of factory farming. Practical alternatives to the factory farm would surely demonstrate that abusive husbandry procedures are not necessary, and would also help to dispel the public's inaccurate perceptions of the lives of farm animals.<sup>208</sup> Most importantly, the alternative procedures would benefit animals that would otherwise suffer terrible abuse.

### *C. The Present: Using Courts to Challenge Abuse*

Although a fundamental change cannot occur in the absence of massive legislative action, animal activists must continue to judicially challenge animal abuse while concurrently working for statutory changes. Private citizens must undertake private civil actions and must pressure District Attorneys and SPCAs to criminally prosecute offenders of anti-cruelty laws. If prosecutors do not respond to such pressure and prosecute violators on their own initiative, citizens should obtain court orders requiring them to do so. Although the success of such actions appears doubtful, they nevertheless would at least publicize the abuse of farm animals. Perhaps more importantly, these challenges could force courts to reinterpret

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<sup>205</sup> *Id.*

<sup>206</sup> Telephone interview with Nancy Payton, Legislative Assistant, Massachusetts Society for the Prevention of Cruelty to Animals (March 5, 1979).

<sup>207</sup> See, e.g., the efforts of Universities Federation for Animal Welfare, 8 Hamilton-Close, Potters Bar, Herts, England and the Farm and Food Society, 4 Willfield Way, London NW 11 7XT.

<sup>208</sup> Marketing food products advertised as humanely raised should spur consumers to inquire into the treatment of animals in products not so advertised.

state anti-cruelty statutes.

Another judicial approach to enforce anti-cruelty statutes would permit courts to utilize equitable remedies as well as traditional legal sanctions,<sup>209</sup> so that the violation of a criminal statute would provide a basis for injunctive relief against the wrongdoer. Such equitable relief was unsuccessfully sought in a New York case<sup>210</sup> where an individual requested injunctive relief against state officials for allegedly cruel pre-slaughter handling of animals. The court dismissed the suit, holding that the plaintiff had no standing because he had not demonstrated any "personal or property rights of his at stake."<sup>211</sup> Nevertheless, later New York cases relaxed the standing requirement and suggested that equitable suits remain possible. In the landmark decision of *Boryszewski v. Brydges*,<sup>212</sup> the New York Court of Appeals expanded standing to permit suits where "the failure to accord . . . standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action."<sup>213</sup> The ultimate effect of *Boryszewski* remains uncertain. In *Jones v. Beame*,<sup>214</sup> various individuals and animal rights organizations sued the City of New York requesting a declaratory judgment that the city was operating its zoos in violation of the state anti-cruelty law and seeking an injunction to (1) restrain the sale of animals from city zoos; (2) close city zoos; and (3) transfer all animals to the Bronx Zoo.<sup>215</sup> The lower court rejected the city's claim that the plaintiffs had no standing and that a criminal allegation does not support the imposition of a civil remedy, using *Boryszewski* to hold that "'statutes which on their face provide penal actions also imply a private right of action.'" <sup>216</sup> The Appellate Division reversed, holding that the plaintiffs lacked standing because the suit interposed the courts into the management of public enterprises.<sup>217</sup> However, the court noted that, "while plaintiffs do not have standing to maintain their action for declaratory judgment, they may be able to seek

<sup>209</sup> Burr, *supra* note 2, at 229.

<sup>210</sup> Walz v. Baum, 42 App. Div. 2d 643 (N.Y. 1973).

<sup>211</sup> *Id.* at 644.

<sup>212</sup> 37 N.Y.2d 361 (1975) (granting standing to a taxpayer in his suit attacking the constitutionality of a state legislative and executive retirement plan).

<sup>213</sup> *Id.* at 364.

<sup>214</sup> 86 Misc.2d 832 (1976), *rev'd* 56 App. Div. 2d 778 (N.Y. 1977), *aff'd* 45 N.Y.2d 402 (1978).

<sup>215</sup> *Id.* at 834. The Bronx Zoo is a private zoo operated by the New York Zoological Society.

<sup>216</sup> *Id.* at 835, *quoting* *Boryszewski v. Brydges*, 37 N.Y.2d 361 (1975), *quoting* *Barnes v. Peat*, 69 Misc.2d 1068, 1070 (1972).

<sup>217</sup> *Jones v. Beame*, 56 App. Div. 2d 778, 779 (N.Y. 1977).



enforcement of the criminal sanction for violation of the [state anti-cruelty] law."<sup>218</sup> The Court of Appeals affirmed the Appellate Division,<sup>219</sup> although their decision focused on the political question issue rather than on the issue of standing.<sup>220</sup> Thus, although the plaintiffs were not successful in this particular case, they were not discounted as plaintiffs altogether. The Appellate Division, without any disagreement by the Court of Appeals, preserved their option to seek an injunction against violation of the anti-cruelty laws.

Civil disobedience has emerged as another weapon with which to protest animal abuse. A clandestine radical group in England known as the Animal Liberation Front (ALF) has made the most widespread use of this form of protest.<sup>221</sup> The ALF attacks all forms of animal abuse through direct, and sometimes violent action, such as raiding kennels, releasing animals from fur farms and research laboratories, wrecking circus tents and ruining the offices of breeders of laboratory animals.<sup>222</sup> The group attacks factory farming by rescuing abused farm animals and burning empty buildings.<sup>223</sup> In February, 1978, five ALF members were tried and acquitted on charges of stealing twelve chickens from a poultry farm.<sup>224</sup> Their acquittal resulted largely from a showing that the animals were severely overcrowded according to the standards established in the Welfare Codes.

The Greenpeace Foundation, probably the best-known American group to use civil disobedience tactics, seeks to halt whale and seal hunts by physically placing its members between the hunters and the hunted.<sup>225</sup> Although no group has yet undertaken such direct action against American factory farms, this activity likely will occur as anger about factory farm abuse heightens.

In summary, this section has offered a three prong approach to solving the abuses of factory farming: (1) a future phase, containing

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<sup>218</sup> *Id.*

<sup>219</sup> *Jones v. Beame*, 45 N.Y.2d 402 (1978).

<sup>220</sup> *Id.* at 452. "[I]f anyone has standing to litigate these issues, plaintiffs do. The difficulty is not, however, whether plaintiffs are the wrong ones to present and litigate the issues; the point is that the courts are the wrong forum for the resolution of these disputes." *Id.*

<sup>221</sup> For a general description of ALF activities, see *New Musical Express*, November 12, 1977, at 13 *et seq.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *JOURNAL OF COMPASSION IN WORLD FARMING SOCIETY*, Ag. No. 48 (1978).

<sup>225</sup> To contact the Greenpeace Foundation, write to Greenpeace Foundation, 240 Fort Mason, San Francisco, California 94123.

major legislative programs to regulate all intensive farming; (2) a planning phase, propounding consumer education and practical alternatives to factory farming as means of creating the climate to enact legislative reforms; and (3) the present phase, consisting of court actions and, if necessary, civil disobedience to challenge factory farm abuse.

## VI. CONCLUSION

The magnitude of animal abuse is overwhelming, and our legal system, both conceptually and structurally, fails to offer any protection. The problem of factory farming illustrates this dilemma. The first part of this article describes many of the abuses inflicted upon animals in factory farming prior to their transportation to market and slaughter. Sadly, an even greater use of such factory farm methods seems likely in the future. The survey of federal and state legislation in the second part of the article demonstrates that no meaningful legal protections exist to counteract this trend. However, a small but growing animal rights movement has established itself and has already won successes in such areas as regulation of animal slaughter,<sup>226</sup> wildlife conservation<sup>227</sup> and marine animal protection.<sup>228</sup> Yet the power and wealth of agribusiness interests present formidable opponents. Indeed, nothing short of a well-planned, well-coordinated effort stands any chance of success.

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<sup>226</sup> See, e.g., The Humane Slaughter Act, 7 U.S.C. §§ 1901 *et seq.* (1976).

<sup>227</sup> See, e.g., The Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (1976).

<sup>228</sup> See, e.g., The Marine Mammal Protection Act, 16 U.S.C. §§ 1361 *et seq.* (1976).

## APPENDIX

## MODEL FARM ANIMAL PROTECTION Act

**101. Statement of Public Policy**

All living sentient creatures are entitled to respect, protection and the minimum requirements for a healthy life such as shelter, a nutritious diet, proper medical care, opportunity for exercise and periods of rest. The legislature finds that modern farming procedures have caused severe physical and mental suffering to animals raised for food and fur production. While some of these procedures are essential to food production, others cause unjustifiable pain and suffering. The legislature finds that such infliction of unjustifiable pain and suffering corrupts the public morality and ignores the respect that these animals deserve.

Therefore, it is the policy of the [State of . . . . .]  
[United States of America] to prohibit farming practices which cause unjustifiable pain and suffering and to conduct research to enhance the quality of life for all animals. The provisions of this Act are to be liberally construed to insure the implementation of policies announced in this section.

**COMMENT:**

This section recognizes the concept of legal rights for animals and recognizes the abuses of factory farming. The second paragraph indicates that research for a more humane farming method is an essential complement to government regulation. The last sentence is adapted from another model statute.<sup>229</sup> It is designed to prevent the frustration of the aims of the Act by narrow judicial interpretation.

**102. Definitions**

As used in this Act unless otherwise required by context or specifically stated:

- (a) "Animal" means any living creature other than man.
- (b) "Board" means the Board of Farm Animal Protection.
- (c) "Bureau" means the Bureau of Farm Animal Protection.
- (d) "Director" means the Director of the Bureau of Farm Animal Protection.

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<sup>229</sup> Burr, *supra* note 2, at 233.

(e) "Farm Animal" means any animal used in the production of food, fiber, or fur.

(f) "Person" means any natural person, corporation, partnership, firm, association or other legal entity, whether for profit or otherwise.

### **103. Bureau; Board**

There shall be in the [State Department . . . ] [Department of Agriculture] a Bureau of Farm Animal Protection. The Bureau shall be under the supervision and control of a Board of Farm Animal Protection consisting of nine members to be appointed by the [Governor], [President], with the advice and consent of . . . . . Three members of the Board will be representatives of animal welfare and humane societies. Three members of the Board will be representatives of veterinary medicine. Three members of the Board will be representatives of animal husbandry. The [Governor] [President] shall initially appoint one member of the various representative groups for the respective terms of one, three and five years. Thereafter all appointments by the [Governor] [President], except those made to fill a vacancy in an unexpired term, shall be for five years, but no member who has served for a full term shall be eligible for reappointment.

#### **COMMENT:**

This section establishes the Bureau of Farm Animal Protection and the Board of Farm Animal Protection which supervises the Bureau. The Act intentionally makes the Bureau somewhat autonomous. This is a reaction to a history of close connections between State Boards of Agriculture and agribusiness interests.

### **104. Removal from the Board**

Members of the Board may be removed for cause by the governor, with the advice and consent of the . . . . . for inefficiency, neglect of duty, misconduct in office, or other just cause. A board member shall be entitled to appear and be represented by counsel at a public hearing prior to his or her removal.

### **105. Powers and Duties of the Board**

a. The Board shall investigate the treatment and condition of farm animals.

b. The Board shall conduct research and develop alternatives to farming practices which cause discomfort, pain or suffering to farm animals.

c. The Board shall analyze and report on the economic savings realized by the consumer, if any, from the utilization of modern farm techniques.

d. The Board shall annually publish a summary of its investigations conducted under paragraphs a, b, and c of this section along with its recommendations for change. A copy of this report shall be submitted to the [legislature] [Congress], [Governor] [President], and [list other desired agencies]. Copies shall also be made available for public distribution.

e. The Board shall make rules and regulations protecting animals from pain and suffering and encouraging the implementation of more humane farm procedures. These rules and regulations shall include, but shall not be limited to:

1. The prohibition of the keeping of any animal without the opportunity for exercise;
2. the prohibition of the keeping of any animal in an environment which produces an inordinate amount of stress;
3. the prohibition of painful surgical procedures without the use of a properly administered anesthesia; and
4. provisions for a licensing system for all farms. Such system shall include, but shall not be limited to, the following requirements:
  - i. all farms shall be inspected prior to the issuance of a license.
  - ii. farms shall thereafter be inspected at least once a year.
  - iii. minimum requirements shall be provided to insure a healthy life for every farm animal. These requirements shall include, but not be limited to:
    - a. proper space allowances;
    - b. proper nutrition;
    - c. proper care and treatment of animals; and
    - d. proper medical care.

f. The Board may enter into contracts with any person, firm, corporation or association to handle things necessary or convenient in carrying out the functions, powers and duties of the Bureau. However, it shall not enter into a contract with any such firm or person who has a financial or commercial interest in any activity to be regulated or prohibited by this Act.

**106. Director**

The [Governor] [President], with the advice and consent of the . . . . . shall appoint a Director from a panel of not less than three names submitted by the Board. No person shall be appointed Director who has a financial or commercial interest in any activity to be regulated or prohibited by this Act.

**107. Powers and Duties of Director**

The Director shall be the executive and administrative head of the Bureau. In addition, the Director shall:

- a. issue licenses in accordance with the procedures promulgated by the Board;
- b. inspect and report to the Board on the treatment of animals in commercial farming;
- c. investigate all complaints and allegations of unfair treatment of animals;
- d. issue in writing, without prior hearing, a cease and desist order to any person if the Commission has reason to believe that that person is causing, engaging in or maintaining any condition or activity which, in the Director's judgment, will result in or is likely to result in irreversible or irreparable damage to an animal or its environment, and it appears prejudicial to the interests of the [State] [United States] to delay action until an opportunity for a hearing can be provided. The order shall direct such person to discontinue, abate or alleviate such condition, activity or violation. A hearing shall be provided with \_\_\_\_ days to allow the person to show that such condition, activity or violation does not exist; and
- e. file a petition for custody of an animal whenever it becomes necessary to protect the animal from neglect or cruelty. The court shall order the animal committed to the Bureau if it finds that the welfare of the animal so requires. Animals committed to the Bureau may be sold or euthanized, or kept in the custody of the Bureau, as the Director determines.

**COMMENT:**

Subsection d was adopted in part from the Model State Animal Protection Act proposed by the Committee for Humane Legislation. That subsection, along with subsection e, are essential to protect abused animals from the delays of the judicial process. It is anticipated that the cease and desist order rather than the petition for

custody will be used almost exclusively. Nevertheless, the power to petition for custody is included as an alternative remedy when cease and desist orders are inadequate.

#### **108. Penalties**

Violation of this Act or any rule or regulation promulgated by the Board is a misdemeanor punishable by a fine of not more than \$. . . . . or by imprisonment for not more than one year, or both.

#### **109. Private Right of Enforcement**

In addition to criminal sanctions resulting from enforcement of the Act by the Director, any person may bring an action on behalf of an injured animal for any violation of this act or violation of any rules and regulations promulgated by the Board. Such action may seek civil damages as well as declaratory or injunctive relief. When civil damages are awarded, the judge may order the monies to be used either for the rehabilitation of the injured animal, or for research into more humane farming practices, or for both.