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World Leader - At What Price? A Look at Lagging American Animal Protection Laws

Stephanie J. Engelsman

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“World Leader” — At What Price?

A Look at Lagging American Animal Protection Laws

BY STEPHANIE J. ENGELSMAN¹

The United States might have been the first to the moon and to Mars, but it is far behind the rest of the developed world when it comes to protecting species here on Earth. The United States affords the most innocent of citizens, the nonhuman animals, almost no protection from societal exploitation. It has been more than 100 years since President Abraham Lincoln allegedly declared, “I am in favour of animal rights as well as human rights. That is the way of the whole human being.” Yet in those 100 years, the United States has managed to pass a meager amount of animal protection laws, all of which protect only a minor percentage of the animals subjected to societal and industrial exploitation on a daily basis. This paper will begin in showing that the United States has done virtually nothing to ensure that all creatures are free from unnecessary pain and suffering. This paper will then explore what other developed countries have done towards protecting nonhuman animals in the same amount of time. This paper in no way suggests that any of the countries to be discussed have solved the problem of animal exploitation; however it does suggest that many of those countries have at least begun to make a legitimate and concerted effort towards protecting animals from human greed.

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I. INTRODUCTION

Much of the world is beginning to recognize that nonhuman animals are sentient creatures, deserving of respect and compassion based on that sentience. Sentience is defined as "capable of perception and feeling,"² and nonhuman animals ("animals") from the tiniest of mice to the greatest of apes have been known to exhibit many of the same emotions and responses that many incorrectly limit to human animals ("humans").³ The recognition that animals need protection from exploitation has led the world to begin creating animal protection statutes to ensure the humane treatment of all animals.

As a whole, the European Union is the world leader in animal protection legislation. However individual countries, such as Germany, Sweden, England, the Netherlands, and Israel, have taken further steps towards affording nonhumans the right to be free of some of the pain and injury inflicted upon them in the name of "industry standards." The United States, through essentially useless federal laws and regulations such as the Animal Welfare Act,⁴ the Humane Slaughter Act,⁵ the Twenty-Eight Hour Law,⁶ the Endangered Species Act,⁷ and through misleading state legislation and statutes such as the recently enacted New Jersey regulations for the humane treatment of domestic livestock,⁸ the Florida ban on gestation crates,⁹ and the recent California law outlawing *foie gras* production,¹⁰ has proven that it is far behind the rest of the developed world and not interested in ensuring that sentient animals are afforded protection at the hands of human exploitation.

2. OXFORD POCKET DICTIONARY (8th ed. 1992).

3. See, e.g., JEFFREY MOUSSAIEFF MASSON & SUSAN MCCARTHY, *WHEN ELEPHANTS WEEP: THE EMOTIONAL LIVES OF ANIMALS* (1995); see also KRISTIN VON KREISLER, *THE COMPASSION OF ANIMALS: TRUE STORIES OF ANIMAL COURAGE AND KINDNESS* (1997).

4. 7 U.S.C. §§ 2131-2159 (2000).

5. 7 U.S.C. § 1902 (2000).

6. 49 U.S.C. § 80502 (2000).

7. 16 U.S.C. §§ 1531-1544 (2000).

8. Humane Treatment of Domestic Livestock, N.J.ADMIN. CODE tit. 2:8-8.1 to 8.7 (2005).

9. FLA. CONST. art. X, § 21 (2002).

10. CAL. HEALTH & SAFETY CODE §§ 25980-25984 (West Supp. 2004).

II. UNITED STATES OF AMERICA

a. **Animal Welfare Act is Useless Because It Excludes 95 Percent of Animals Used in Research and the 10 Billion Animals Slaughtered Annually**

The Animal Welfare Act as it stands today does not work. It is under-regulated, under-supported, and excludes 95 percent of the animals used in U.S. research facilities.

In 1966, Congress enacted the Federal Laboratory Animal Welfare Act ("FLAWA") "to deal with the abuses that [had] developed as a result of the Nation's vast program of medical research."¹¹ In 1970, the Animal Welfare Act ("AWA") expanded coverage of the FLAWA, making the class of protected animals larger.¹² Additionally, the AWA regulated the use of animals for exhibition purposes, or as pets, in addition to their use for research purposes.¹³ Enacted in 1970 and amended in 1976, 1985, 1990, and most recently in 2002, the AWA was designed to improve conditions for "warm-blooded" laboratory animals in the United States.¹⁴ It is important to recognize that the AWA includes a farm-animal exemption,¹⁵ thus excluding the over 10 billion animals slaughtered annually in the United States from protection.¹⁶

On its face, aside from excluding farm animals who make up the largest group of animals exploited by the United States,¹⁷ the AWA seems rather all-encompassing, including any "live or dead dog, cat, monkey (nonhuman primate) mammal, guinea pig, hamster, rabbit, or such other warm-blooded animal . . . being used, or [that] is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet."¹⁸ However, due to the 2002

11. Joseph Mendelson, III, *Should Animals Have Standing? A Review of the Animal Welfare Act*, 24 B.C. ENVTL. AFF. L. REV. 795, 796 (1997).

12. 7 U.S.C. §§ 2131-2159 (2000).

13. *Id.* § 2131(1).

14. *Id.* § 2132(g).

15. *Id.*

16. Ten billion animals are used each year in the agricultural industry alone. This figure was reached by using the figures provided in the USDA Poultry Slaughter Summary and in the USDA Livestock Slaughter Summary. USDA, POULTRY SLAUGHTER 2002 ANNUAL SUMMARY (March 2003), at <http://usda.mannlib.cornell.edu/reports/nassr/poultry/ppy-bban/pslaan03.txt> [hereinafter USDA].

17. *Id.*

18. 7 U.S.C. § 2132(g).

Amendment led by Senator Jesse Helms, the AWA no longer covers birds, mice, or rats used in experiments.¹⁹

Contrary to the initial intent of Congress when the AWA was passed, birds, mice, and rats are no longer afforded the protection offered under the AWA, despite their being "warm-blooded laboratory animals."²⁰ In a letter to John McArdie, of the Alternatives Research & Development Foundation, Bob Dole, previous Senate Majority Leader, clearly stated his position on the exclusion of rats, mice, and birds from AWA protection; he "would hope the Bush administration and Members of the present Congress, some of whom stood with [him] in 1985 in advancing [his] amendments, will recognize that all the animals used in experimentation deserve the benefit of the modest requirements of the *Animal Welfare Act*."²¹

This gutting of the AWA has left it essentially useless. As it is a federal act, it only covers research facilities under federal jurisdiction. And now it only covers 5 percent of the animals used in those federal research facilities. The intent of Congress when it passed the AWA was to afford protection to the "warm-blooded laboratory animals" used in research facilities."²² That intent has now been thwarted, and the 95 percent of laboratory animals now have absolutely no law protecting them; humans can, and do, do with them as they please.

All in the name of money, the United States has failed in providing the most innocent and defenseless of creatures any protection against mutilation, burning, cutting, injecting, overdosing, dissection, and other horrors.

b. Humane Slaughter Act is Useless Because It Excludes Over 92 percent of Animals Slaughtered Annually

Another federal U.S. law that is essentially useless is the Humane Slaughter Act ("HSA").²³ Enacted in 1958, the HSA states that "[n]o method of slaughtering or handling in connection with

19. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002) (relevant section codified at 7 U.S.C. 2132(g)). This act single-handedly denied protection to 95 percent of the animals used in United States research facilities).

20. 7 U.S.C. § 2132(g).

21. Letter from Senator Bob Dole, to John McArdie, Director, Alternatives Research & Development Foundation (Mar. 19, 2001), <http://caat.jhsph.edu/issues/doleletter.htm>.

22. *Id.*

23. 7 U.S.C. § 1901-1907 (2000).

slaughtering shall be deemed to comply with the public policy of the United States unless it is humane.”²⁴ The HSA requires that “in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals [be] rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”²⁵ Despite the seemingly broad and inclusive language of the HSA, it does not cover over 90 percent of the 10 billion animals slaughtered in the agricultural industry annually.²⁶

Additionally, the HSA provides an exemption from the humane slaughter requirement for slaughter that follows “the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries.”²⁷ This too further limits the number of agricultural animals afforded protection under the HSA. Both the Jewish and Muslim religions demand that slaughter be carried out with a single cut to the throat, rather than the more widespread method of stunning with a bolt into the head before slaughter. The animals bleed to death while hanging upside down from one or both back legs, the bleeding process taking up to eight minutes.²⁸ At hundreds of ritual slaughterhouses, a chain is wrapped around one of the animal’s rear legs and the frightened, conscious animal is hoisted into the air, kicking and thrashing. Large animals, such as cattle, are particularly prone to torn ligaments and broken bones during the process. Temple Grandin, PhD, a revered livestock industry consultant who has been allowed to visit ritual slaughter plants wrote,

after visiting one plant in which five steers were hung up in a row to await slaughter, I had nightmares. The animals were hitting the walls and their bellowing could be heard in the parking lot. In some plants, the suspended animal’s head is restrained by a nosetong . . . [S]tretching of the neck by pulling on

24. *Id.* § 1901.

25. *Id.* § 1902(a).

26. This is because, through regulations imposed by the USDA, chickens and other poultry are not protected under the HSA. See *infra* notes 30-32 and accompanying text.

27. 7 U.S.C. § 1902(b) (2000).

28. BBC News, *Halal and Kosher Slaughter ‘Must End’*, at <http://news.bbc.co./1/hi/uk/2977086.stm> (last updated June 10, 2003).

the nose is painful. Suspension upside-down also causes great discomfort.²⁹

Finally, the phrase "and other livestock" in the HSA is a point of much dispute. The U.S. Department of Agriculture ("USDA") promulgated regulations implementing the Act,³⁰ but those provisions, adopted in 1979 and amended in 1994, neither discuss which animals are covered by the HSA nor interpret what the phrase "and other livestock" means practically. The phrase is defined in the USDA regulations implementing the federal Meat Inspection Act,³¹ and the term "livestock" includes only "[c]attle, sheep, swine, goat, horse, mule, or other equine."³² Section 301.2 further states that the definitions are applicable to "this subchapter," which includes the specific regulations concerning the HSA because they are codified in the same subchapter.³³

The implications of the Department's regulations are enormous. Chickens and other poultry make up over 92 percent of the 10 billion animals slaughtered in the United States each year.³⁴ However, as a result of the Department's regulations, all of them are slaughtered without first being "rendered insensible to pain." They are shackled, hung upside down, cut, immersed in boiling water, or otherwise slaughtered. Not only are chickens and other poultry exempt from the Animal Welfare Act during their lives, they are also afforded no protection in their deaths.

Attempts to amend the HSA were made in 1992,³⁵ 1993,³⁶ and 1995.³⁷ These bills sought to amend the 1957 Poultry Products Inspection Act to provide for the "humane" slaughter of poultry, similar to how the 1906 Meat Inspection Act was used as a basis for the coverage of "cattle, sheep, swine, goats, horses, mules, and other equines" under the 1958 Humane Methods of Slaughter Act. The bills sought to require that poultry be "rendered insensible to pain by electrical, chemical, or other means that is rapid and effective before or immediately after being

29. Earthsave, *Brutality: Main Crop of Factory Farms?*, at <http://www.earthsavest.org/news/ff.htm> (quoting Temple Grandin, PhD, *Is Kosher Slaughtering Inhumane?*, MOMENT, Feb. 1991) (last visited March 1, 2005).

30. 9 C.F.R. §§ 313.1-313.90 (2005).

31. 12 U.S.C. §§ 601-695 (2000).

32. 9 C.F.R. § 301.2 (2005).

33. *Id.*

34. USDA, *supra* notes 16-17 and accompanying text.

35. H.R. 4124, 102nd Cong. (1992).

36. H.R. 649, 103rd Cong. (1993).

37. H.R. 264, 105th Cong. (1995).

shackled or otherwise prepared for slaughter.”³⁸ However, all of these bills died in the House Agricultural Livestock Subcommittee to which they were referred. Sadly, affording sentient, intelligent beings some form of protection is a lesser priority than ensuring that those in the poultry industry become rich.

An example of why the amendments fail occurred on September 28, 1994. Representative Harold L. Volkmer (Missouri), Chairman of the House Agriculture Subcommittee on Livestock at the time, held a hearing on H.R. 649. Despite the fact that United Poultry Concerns, Animal Legal Defense Fund, and the Animal Welfare Institute presented oral and written testimony on behalf of H.R. 649 at the hearing, and offered accounts of inhumane chicken slaughter and why there is no ethical or financial reason to exclude poultry from the basic protection afforded to other animals slaughtered, Representative Volkmer joked about killing chickens while growing up on a farm and stated his opposition to the bill at the beginning of the hearing.³⁹

To this day, in the United States, there is no federal law or regulation requiring that poultry be slaughtered humanely. The same poultry that are not protected under the AWA while in the poultry factory farms⁴⁰ and are not protected under the Twenty-Eight Hour Law while in transport,⁴¹ are now also not covered under the HSA. They are afforded absolutely no protection at any point in their miserable lifetimes in the agricultural industry. Just as with mice, rats, and birds, humans can do with poultry as they please.

Each year, the United States uses over 10 billion animals in the agricultural industry just to ensure that U.S. and world citizens can satisfy their unnecessary desire for the taste of flesh.⁴²

38. See, e.g., H.R. 649, 103rd Cong. (1993) (for an example of what the bills sought to require).

39. See UNITED POULTRY CONCERNS, THE NEED FOR LEGISLATION AND ELIMINATION OF ELECTRICAL IMMOBILIZATION, <http://www.upc-online.org/slaughter/report.html> (last accessed Sept. 22, 2005).

40. See discussion *supra* Part II(a).

41. See discussion *supra* Part II(c).

42. This figure was reached by adding the figures provided in the USDA Poultry Slaughter Summary to the figures provided in the USDA Livestock Slaughter Summary. This figure does not include the many animals who do make it to the slaughter facilities because they die while in the factory farms or in the transport trucks. USDA, POULTRY SLAUGHTER 2002 ANNUAL SUMMARY (March 2003), at <http://usda.mannlib.cornell.edu/reports/nassr/poultry/ppy-bban/pslaan03.txt>; USDA, LIVESTOCK SLAUGHTER 2002 SUMMARY, (March 2003), at <http://usda.mannlib.cornell.edu/reports/nassr/livestock/pls-bban/lisan0303.txt>.

Over 40 billion agricultural animals are raised and slaughtered in the world annually.⁴³ However, despite this use, during their final hours of existence, larger animals, such as cows, horses, and pigs, are afforded virtually no protection inside the slaughterhouses. Chickens and other poultry are afforded absolutely no protection. The HSA only protects the small percentage of non-poultry slaughtered at federal, non-ritual slaughterhouses; animals slaughtered at state slaughter facilities, or at ritual slaughterhouses, are not covered. And, if Congress continues to have its way, this is not likely to change.

c. Twenty-Eight Hour Law Is Useless Because It Does Not Afford Any Real Protection to Animals in the Agricultural Industry

The Twenty-Eight Hour Law was enacted over 120 years ago, in 1877, with no understanding whatsoever of whether twenty-eight consecutive hours was an appropriate time limit for the withholding of food or water.⁴⁴ The time period has remained unchanged since enactment.

Modern scientific research shows that transport for twenty-eight hours without unloading for food and water is far too long.⁴⁵ With respect to cattle, scientific research shows that after about fourteen hours of transport, cattle need rest, food, and water.⁴⁶ The scientific research also indicates that, for young calves, transport should be kept as short as possible.⁴⁷ Transport of calves under two weeks of age is prohibited.⁴⁸ Scientific research shows that fourteen hours is the maximum humane limit without food, water and rest; but that nine hours is a much better time limit, with eleven hours of rest immediately thereafter.⁴⁹

It is clear that twenty-eight hours cannot be objectively viewed as humane. However, the federal statute allows animals

43. FOOD & AGRIC. ORG. OF THE U.N., at <http://www.fao.org> (last visited Apr. 19, 2005); see also UNITED POULTRY CONCERNS, STATISTICS: GLOBAL FARMED ANIMAL SLAUGHTER, at http://www.upc_online.org/slaughter/92704stats.htm (last visited Apr. 19, 2005).

44. 49 U.S.C. § 80502 (2000).

45. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Intensively Kept Pigs (adopted Sept. 30, 1997), available at http://www.europa.eu.int/comm/food/fs/sc/oldcomm4/out17_en.pdf.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

to be confined for thirty-six hours when the owner or person having custody requests an extension, without requiring any reason for such extension.⁵⁰ Further, with respect to sheep, the statute allows that sheep be confined for an additional eight hours, totaling forty-four hours, if the transport ends at night-time.⁵¹

Sadly, though, the discussion above is essentially useless because the USDA has determined that the Twenty-Eight Hour Law and its regulations "were written to apply only to transfer by a railcar . . . [and that] the Twenty-Eight Hour Law does not apply to transport by trucks."⁵² Therefore, the majority of animals transported in the United States annually are protected by no statute and can be confined for an indefinite period of time.

Once again, the United States has failed at providing innocent, sentient creatures with even the smallest amount of protection during one of the most stressful times of their lives. Animals are transported through any and all weather conditions without protection from the elements, and without adequate food, water, and space to be comfortable, or rest.

d. Endangered Species Act Under Attack by the Bush Administration

The Endangered Species Act ("ESA") was passed in 1973 in response to what was recognized as a crisis of extinction in which numerous plants and animals were being lost "as a consequence of economic growth and development untempered by adequate concern and conservation."⁵³ The crisis of extinction is viewed as one of the gravest threats to human welfare and the global environment.⁵⁴ The current rate of extinction is estimated by scientists to be 100 to 1,000 times the natural level, with over 500 species becoming extinct within the United States alone in the past 200 years.⁵⁵

50. 49 U.S.C. § 80502(a)(2)(B) (2000).

51. *Id.* § 80502(a)(2).

52. Tuberculosis, Brucellosis, and Paratuberculosis in Cattle and Bison; Identification Requirements, 60 Fed. Reg. 48,362, 48,365 (Sept. 19, 1995) (to be codified at 9 C.F.R. pts 50, 51, 77, 78, 80).

53. The Endangered Species Act of 1973, 16 U.S.C. § 1531(a)(1) (2000).

54. See Press Release, U.S. Council on Environmental Quality and U.S. Department of State, The Global 2000 Report to the President; EPA, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (Sept. 26, 1990), available at <http://www.epa.gov/history/topics/risk/01.htm>.

55. Patrick Parenteau, *Rearranging the Deck Chairs: Endangered Species Act Reforms in an Era of Mass Extinction*, 22 WM. & MARY ENVTL. L. & POL'Y REV. 227, 235-36 (1998).

The U.S. Supreme Court has described the ESA as the "most comprehensive legislation for the preservation of endangered species ever enacted by any nation."⁵⁶ The purpose behind the ESA is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species."⁵⁷ The Supreme Court has held that the ESA reflects "an explicit congressional decision to afford first priority to the declared national policy of saving endangered species."⁵⁸

Under the ESA, a species may be listed as endangered or threatened. An endangered species is one that is in danger of extinction throughout all or a significant portion of its range, other than species of insects that the Secretary determines are "pests."⁵⁹ A threatened species is any species which is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range.⁶⁰ There are specific factors that the Secretary⁶¹ must consider with regard to the listing of a specific species, including: "(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; [and] (E) other natural or manmade factors affecting its continued existence."⁶² Section 1533(a)(3) requires the Secretary to designate critical habitat simultaneously with the listing of a species as either threatened or endangered.⁶³

Despite the fact that species are disappearing at an alarming rate, under the Bush administration to date, no species has been listed at the initiative of the Secretary of the Interior or the Secretary of the Department of Commerce. Since taking office in 2001, the Bush administration has worked systematically to undermine the Endangered Species Act,⁶⁴ employing a wide variety of tactics

56. *Babbitt v. Sweet Home Chapter of Cmty. for a Greater Or.*, 515 U.S. 687, 698 (1995) (quoting *TVA v. Hill*, 437 U.S. 153, 180 (1978)).

57. Endangered Species Act of 1973, 16 U.S.C. § 1531(b) (2000).

58. *TVA*, 437 U.S. at 185.

59. 16 U.S.C. § 1532(16) (2000).

60. *Id.* § 1532(20).

61. Refers either to the Secretary of the Interior or the Secretary of the Department of Commerce, depending on which department has authority.

62. 16 U.S.C. § 1533(a)(1).

63. *Id.* § 1533(a)(3)(A)(i).

64. WILLIAM SNAPE III ET AL., DEFENDERS OF WILDLIFE, SABOTAGING THE ENDANGERED SPECIES ACT: HOW THE BUSH ADMINISTRATION USES THE JUDICIAL SYSTEM TO

to circumvent the clear language of the law and to skew its function in favor of corporate special interests.⁶⁵

Additionally, in an attempt to undermine the ESA, Congress has dramatically restricted the amount of funding available for the Department of the Interior to fulfill its ESA listing and critical habitat obligations. In light of this, many conservative legislators and administration appointees now proclaim that the ESA is broken and must be eliminated or substantially changed.⁶⁶

While the ESA still stands in force and effect, the Bush administration is the first to declare that a species faced with extinction should not be listed under the ESA because it is not significant. The Bush administration fails to realize that "[t]he one process now going on that will take millions of years to correct is the loss of genetic and species diversity by the destruction of natural habitats" and that "[t]his is the folly [for which] our descendants are least likely to forgive us."⁶⁷ The Puget Sound Orca,⁶⁸ the Lower Kootenai Burbot,⁶⁹ and the Washington ground

UNDERMINE WILDLIFE PROTECTIONS (Fall 2003) [hereinafter DEFENDERS OF WILDLIFE, SABOTAGING THE ENDANGERED SPECIES ACT], at <http://www.defenders.org/wildlife/esa/report/report.pdf>.

65. *Id.*

66. See Press Release, Fish & Wildlife Svcs., Endangered Species Act "Broken"—Flood of Litigation Over Critical Habitat Hinders Species Conservation (May 28, 2003), at http://www.waterchat.com/News/Environment/03/Q2/env_030529-03.htm.

67. EDWARD O. WILSON, *BIOPHILIA* 121 (1984).

68. [E]xtinction of Southern Resident killer whales might not result in a gap in the range of the taxon. In addition, other Resident or Offshore animals could re-colonize the current range of Southern Residents should that population be extirpated. Although it is plausible that the loss of Southern Resident killer whales could result in few, if any, killer whales in parts of Puget Sound for an extended period, killer whales would occupy their existing range from the Bering Sea through British Columbia. Furthermore, Transient and Offshore pods would continue to occupy other areas within the Pacific Ocean. NMFS, therefore, concluded that the potential gap that could result in the loss of Southern Residents would not be considered "significant" to the species.

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List Southern Resident Killer Whales as Threatened or Endangered Under the Endangered Species Act, 60 Fed. Reg. 44,133, 44,137 (July 7, 2002) (to be codified at 50 C.F.R. pts. 223, 224).

69. Loss of the lower Kootenai River burbot, as compared to burbot throughout the remainder of the nearctic region, would mean the loss of less than 1 percent of the entire range of the taxon. . . . On the basis of the above information, we conclude that loss of the lower Kootenai River burbot would not represent a significant gap in the range of the taxon.

Endangered and Threatened Wildlife and Plants; 12-month Finding for a Petition To List the Lower Kootenai River Burbot (*Lota lota*—) as Threatened or Endangered, 68 Fed. Reg. 11,574, 11,578 (March 11, 2003).

squirrel⁷⁰ have all been effectively written off by the Bush administration in accordance with its conclusions that these species are not significant. Additionally, "in response to industry lawsuits, the Bush administration has agreed to revoke critical habitat designations for twenty-nine listed threatened or endangered species."⁷¹

The most recent proposal by the Bush administration will redefine the term "enhance the survival" of the species to allow the Fish & Wildlife Service to issue permits for activities that are illegal under the law as it now stands, including the direct killing of endangered species.⁷² This rule change will allow an individual or company to obtain a permit to import and export endangered species; in exchange, the individual or group will simply have to make a contribution to a conservation program of its choice.⁷³ There are no standards for what constitutes a "conservation program," and no mechanism in place to verify the conservation program is beneficial, or even that the contribution goes towards conservation.⁷⁴

The ESA is seen throughout the world as a landmark piece of legislation, however, in just four years, the survival of many of the species in the United States has been placed at risk. Again, the United States shows how it is not willing to keep up with the rest of the world when it comes to protecting animals, even those at risk of being exterminated.

70. Collectively, the loss of all of the Washington populations would represent a serious reduction in the species range. However serious such a hypothetical reduction might be, we do not have information currently that demonstrates this consideration would meet the DPS policy's requirement of significance to the taxon (subspecies) as a whole, since there is only limited information on the potential biological and ecological significance for Washington in terms of range of the subspecies.

Endangered and Threatened Wildlife and Plants; Status Review and 12-Month Finding for a Petition To List the Washington Population of the Western Gray Squirrel, 68 Fed. Reg. 34,628, 34,637 (June 10, 2003).

71. DEFENDERS OF WILDLIFE, SABOTAGING THE ENDANGERED SPECIES ACT, *supra* note 64.

72. Draft Policy for Enhancement-of-Survival Permits for Foreign Species Listed Under the Endangered Species Act, 68 Fed. Reg. 49,512, 49,514 (Aug. 18, 2003).

73. *Id.* at 49,518.

74. *Id.* at 49,513.

e. Few Individual States Have Done Much to Afford Protection to Animals

The majority of states within the United States have done little to afford animals within their borders the protection they deserve. A select few states have moved at least slightly towards affording farm animals protection. However, even those progressive states have problems. While state anti-cruelty laws are slightly better than federal animal protection laws, they still leave much to be desired. This topic is extremely broad, and this paper is not an appropriate venue for a complete discussion on state anti-cruelty laws. Therefore, only the details most relevant will be discussed at this point.⁷⁵

Most state anti-cruelty statutes have numerous exclusions from the statutes. The most common exclusions include exclusions for research animals,⁷⁶ wildlife,⁷⁷ veterinary practices,⁷⁸ zoos,⁷⁹ pest control,⁸⁰ and rodeos.⁸¹ Other miscellaneous exclusions include Maine's exemption for killing one's own dogs and cats on one's own property,⁸² Kansas' exemption for killing dogs threatening one's livestock or property,⁸³ and Idaho's exemption for certain animal-training methods.⁸⁴

However, the most significant exclusions, because of the numbers of animals affected, are the exclusions of farm animals and for slaughter practices. Eighteen states exempt the practice of slaughtering animals for food,⁸⁵ with only some states specifying that a humane method of slaughtering must be used. Thirty states provide an exemption for routine animal husbandry practices, such as branding, castrating, and dehorning.⁸⁶ Further, Iowa and Utah exclude livestock from the definition of "animal"

75. For a complete discussion on state anti-cruelty laws, see Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 78 (1999).

76. See, e.g., NEB. REV. STAT. § 28-1013(3) (1995); CAL. Penal Code § 599(c) (West 1999).

77. See, e.g., ALASKA STAT. § 11.61.140(c)(4) (Michie 2004); N.J. STAT. ANN. § 4:22-16(c) (West 1998).

78. See, e.g., COLO. REV. STAT. ANN. § 18-9-201.5 (West 2004).

79. See, e.g., MICH. COMP. LAWS § 750.50 (2004).

80. See, e.g., HAW. REV. STAT. § 711-1109(1)(b) (1993); WASH. REV. CODE § 16.52.190(3) (1992 & Supp. 2005).

81. See, e.g., MO. REV. STAT. § 578.007(5) (2003).

82. ME. REV. STAT. ANN. tit. 7, § 4011.1-A.B (West 2002).

83. KAN. STAT. ANN. § 47-646 (2000).

84. IDAHO CODE § 25-3514(9) (Michie 2000).

85. Frasch, *supra* note 75, at 78.

86. *Id.* at 77.

entirely, thus rendering livestock exempt from any protection under the cruelty statutes.⁸⁷

There are a few examples of states that have adopted laws and regulations to protect farm animals from cruel treatment, but most allow for routine industry practices such as debeaking and tail docking, and most are like the Federal Humane Slaughter Act and exclude chickens from protection. California's state humane slaughter act *does* apply to chickens; the state's Food & Agricultural Code requires that chickens be rendered insensible to pain by various means that are rapid and effective before they are slaughtered.⁸⁸ However, "spent hens," defined as "older chicken hens which are considered too unproductive to retain as egg-layers,"⁸⁹ are specifically exempt from this provision, and from the regulations respecting the humane slaughter of poultry adopted by the Department of Food & Agriculture. This exemption was put to the test in February 2003, when two egg-laying factory farms used wood-chippers to destroy 30,000 live, egg-laying, "spent," unwanted hens.⁹⁰ The San Diego County District Attorney's Office declined to prosecute because it ruled that the ranches did not violate California's anti-cruelty laws because they did not act with malicious intent and had followed the advice of a veterinarian.⁹¹ This drove home the fact that the destruction of spent hens is not subject to the requirements of Section 19501.

In 2002, Floridians voted to ban the use of gestation crates to house pregnant sows.⁹² This makes it unlawful "to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy . . . in such a way that she is prevented from turning around freely."⁹³ However, this law fails pregnant sows in many ways. First, the law does not take effect until December 2008.⁹⁴ Additionally, the law does not apply "during the prebirthing period," which is defined as the "seven day period prior to a pig's expected date of giving birth"; thus all pigs in Florida may be housed in

87. IOWA CODE ANN. § 717B.1(a)(a) (West 2003); UTAH CODE ANN. § 76-9-301(11)(b)(ii) (2003).

88. CAL. CODE REGS. tit. 3, § 1245.2(b) (1994).

89. *Id.*

90. THE HUMANE SOCIETY OF THE UNITED STATES, DA DECLINES TO FILE CHARGES IN CALIFORNIA WOOD CHIPPER CASE (Apr. 17, 2003), at <http://hsus.org/ace/18892>.

91. *Id.*

92. FLA. CONST. art. X § 21 (2002).

93. *Id.*

94. *Id.*

gestation crates prior to giving birth.⁹⁵ Finally, “turning around freely” is ambiguously defined to require only that the pig can turn around “without having to touch any side of the pig’s enclosure.”⁹⁶ While the Florida law is a great start towards outlawing the inhumane use of gestation crates, it did not go far enough to prevent cruelty towards pregnant sows.

Lastly, California recently passed a law that bans the force-feeding of ducks and geese in the production of *foie gras*.⁹⁷ The law also bans the sale of products when made from force-fed birds.⁹⁸ This law follows suit of other countries that have already banned the production of *foie gras*, including Israel, Germany, the United Kingdom, Switzerland, and most provinces in Austria. Senate President Pro Tem John Burton authored the bill because he felt that “[c]ramming food down a duck’s throat to make a gourmet item knows as *foie gras* is not only unnecessary, it’s inhumane.”⁹⁹ However, Senate Bill 1520 fails in at least one respect; it does not take effect until 2012. Approximately 20,000 birds are raised and slaughtered in California each year by the only *foie gras* producer outside the state of New York. Senate Bill 1520 has given Sonoma Foie Gras eight years to make the production of this delicatessen more humane. Compare this to other recent California bills that took effect immediately. Assembly Bill 34 makes it illegal to “conduct[] or attempt[] to conduct” a transaction “with specific intent to promote . . . criminal activity” and took effect immediately because it was an “urgency statute necessary for immediate preservation of public peace, health or safety;”¹⁰⁰ Assembly Bill 82 took effect immediately and raised homeowner’s property tax exemption from \$7,000 to \$32,000 of the full value of

95. *Id.*

96. *Id.*

97. CAL. HEALTH & SAFETY CODE §§ 25980-25984 (Deering 2005).

Foie gras is produced by force feeding ducks or geese large amounts of food so that their livers swell up to ten times normal size. A pipe is showed down the bird’s esophagus and food is forced into the stomach. The process is repeated two or three times daily for two to three weeks until the birds develop fatty liver disease. The birds are then slaughtered to produce *foie gras*.

Press Release, No Foie Gras.org, Schwarzenegger Terminates Form of Animal Cruelty (Sept. 29, 2004), at http://nofoiegras.org/FS_cabill_PR2.htm.

98. CAL. HEALTH & SAFETY CODE §§ 25980-25984 (Deering 2005).

99. AVAR, *Schwarzenegger Terminates Form of Animal Cruelty* (Sept. 30, 2004), at http://sfbay.indymedia.org/news/2004/09/1697076_comment.php.

100. A.B. 34, 2003-2004 Leg., Reg. Sess. (Cal. 2004).

the dwelling.¹⁰¹ Unfortunately, when animal welfare issues are pitted against industry economics, the animals still lose.

The problem of protecting animals from human exploitation is no longer just a federal issue in the United States; it runs much deeper and is a state issue as well. The United States continues to prove that it is incapable of recognizing the inherent worth of the billions of animals used and abused each year at human hands by continually denying them protection. This is not only a problem of the past, but as discussed below, continues to be a problem in proposed rules and regulations.¹⁰²

f. Recently Enacted New Jersey Regulations for the "Humane" Treatment of Domestic Livestock Endorse the Most Cruel of Industry Practices

A perfect example of how the United States still does not recognize the importance of protecting animals from the inhumane practices of the various industries is the recently enacted New Jersey State Regulations on the Humane Treatment of Domestic Livestock.¹⁰³ In 1996, in response to the widespread consensus that farm animal reform is much needed, the New Jersey Legislature directed the New Jersey Department of Agriculture ("NJDA") to "develop and adopt" both "standards for the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock," and "rules and regulations governing the enforcement of those standards."¹⁰⁴ The Legislature mandated that these regulations be completed "within six months,"¹⁰⁵ and surprisingly included "poultry" and "fowl" within the definition of "domestic livestock."¹⁰⁶ The NJDA had a monumental chance to ensure protection to the millions of animals used in New Jersey livestock each year.

It took the NJDA over six *years* to complete the task of writing standards for the "*humane* raising, keeping, care, treatment, marketing, and sale of domestic livestock."¹⁰⁷ Sadly, the proposed and, indeed, final regulations did nothing more than propose and

101. A.B. 82, 2003-2004 Leg., Reg. Sess. (Cal. 2003).

102. See *infra* Part II(f) (for a discussion on the recently proposed New Jersey regulations for the humane treatment of domestic livestock).

103. Humane Treatment of Domestic Livestock, N.J. ADMIN. CODE tit. 2:8-1 through 2:8-87 (2004).

104. N.J. STAT. ANN. 4:22-16.1(a) (West 1998).

105. *Id.*

106. *Id.* § 4:22-16.1(c).

107. *Id.* § 4:22-16.1(a) (emphasis added).

enact the already imposed industry standards that are anything but humane. The New Jersey proposed regulations classified as *humane* the use of veal crates,¹⁰⁸ forced molting of egg-laying hens,¹⁰⁹ beak-trimming,¹¹⁰ toe trimming,¹¹¹ gestation crates,¹¹² castration without anesthetic,¹¹³ and tail docking.¹¹⁴ The regulations rely on the archaic Twenty-Eight Hour Law and initially lacked language requiring that downed animals be humanely euthanized or provided with veterinary care in order to restore them to an ambulatory state.¹¹⁵ Sadly, the New Jersey legislature provided that, "there shall exist a presumption that the raising, keeping, care, treatment, marketing, and sale of domestic livestock in accordance with the standards developed and adopted . . . shall not constitute a violation of any provision . . . involving alleged cruelty to, or inhumane care or treatment of domestic livestock."¹¹⁶

The public notice and comment period closed July 4, 2003 without any real promise that the completed regulations would in fact impose standards for the "*humane* raising, keeping, care, treatment, marketing, and sale of domestic livestock."¹¹⁷ The NJDA received more than 6,500 comments regarding the rules.¹¹⁸ As a result of these comments, the NJDA determined that certain amendments were necessary to clarify several aspects of the rules.¹¹⁹ Yet, despite extensive comments from animal welfare organizations and individuals concerned with the humane treatment of animals,¹²⁰ the NJDA's final regulation did nothing to

108. Humane Treatment of Domestic Livestock, 35 N.J. Reg. 1873(a) § 2.4(h) (proposed May 5, 2003) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-2.4(h) (2005)).

109. *Id.* § 4.2(c)(3) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-4.2(c)(3) (2005)).

110. *Id.* § 4.7(e) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-4.7(e) (2005)).

111. *Id.* § 4.7(f) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-4.7(f) (2005)).

112. *Id.* § 7.4(b)(1) (providing that crates for pigs, "[b]e of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, and move its head freely.") (Codified at N.J. ADMIN. CODE tit. 2 § 2:8-7.4(b)(1)(2005)).

113. *Id.* § 7.6(d) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-7.6(d) (2005)).

114. Humane Treatment of Domestic Livestock, 35 N.J. Reg. 1873(a) § 7.6(d) (proposed May 5, 2003) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-7.6(d) (2005)).

115. *Id.* §§ 2.7(a)(2)-(3) (codified at N.J. ADMIN. CODE tit. 2 § 2:8-2.7(a)(2)-(3) (2005)).

116. N.J. STAT. ANN. § 4:22-16.1(b)(2) (West 1998).

117. *Id.* (emphasis added).

118. Humane Treatment of Domestic Livestock, 36 N.J. Reg. 2586, 2587 (June 7, 2004).

119. *Id.*

120. See, e.g., Farm Sanctuary's written comments, at <http://www.farmsanctuary.com>. Additionally, the author is personally aware of the submission of more than 100 pages of written material and four boxes of exhibits.

make treatment more humane; in fact, the regulations make permissible treatment crueler.¹²¹ The NJDA had a monumental chance to create legislation recognizing that sentient, intelligent farm animals are in as much, if not more, need of protection as companion animals. However, the agency failed in its attempt to adhere to the clear congressional requirement that *humane* standards be created.

Sadly, the opinion of the NJDA is no different from that of the USDA and the U.S. government. However, in this case, rather than merely writing laws that are under-funded, under-regulated, and ambiguous,¹²² the NJDA tried to couch as humane the most inhumane of industry practices. Individual states and the U.S. government must recognize the inherent worth of nonhuman animals, just as much of the developed world has already done.

III. EUROPEAN UNION

European Union ("EU")¹²³ law contains a wide range of legislative provisions designed to protect nonhuman animals involved in the agricultural, medical testing, and cosmetic testing industries. A legally binding Protocol recognizes animals as "sentient beings" and requires the EU and its Member States to pay "full regard to the welfare requirements of animals" when formulating and implementing their policies in certain key areas.¹²³ EU law has already prohibited some of the worst aspects of animal exploitation, including veal crates¹²⁴ as of 2007,¹²⁵ conventional bat-

121. See, e.g., N.J. ADMIN. CODE tit. 2 § 2:8-2.2(b)(4)(iii) (2004) (permitting beef cattle with a BSC score of less than 2.0 to go to slaughter).

122. Presently, the European Union is comprised of twenty-five Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Republic of Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom. See Europa, the portal site of the EU, at http://europa.eu.int/index_en.htm (last visited Mar. 8, 2005).

123. The Treaty of Amsterdam, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Protocol on the Protection and Welfare of Animals, Oct. 2, 1997, art. 8(2) O.J. (C 340) 1. For a discussion of this particular section of the Treaty, see Eurogroup for Animal Welfare, *The EU Constitutional Treaty: Implications for Animal Welfare* (Feb. 2005), at [http://www.eurogroupanimalwelfare.org/pdf/briefingconstitutionFeb\).pdf](http://www.eurogroupanimalwelfare.org/pdf/briefingconstitutionFeb).pdf).

124. "The veal calf's permanent home is a veal crate, a wooden restraining device that is so small (22 inches by 54 inches) that the calves cannot turn around. Designed to prevent movement (exercise), the crate does its job of atrophying the calves' muscles, thus producing tender 'gourmet' veal." WORLD ANIMAL FOUNDATION, VEAL, at <http://worldanimalfoundation.homestead.com/WAFVeal.html> (last accessed May 3, 2005).

tery cages for egg-laying hens¹²⁶ as of 2012,¹²⁷ and sow gestation crates¹²⁸ as of 2013.¹²⁹

a. Treatment of Pigs Under EU Law

EU law pertaining to pigs is codified in Council Directive 91/630/EEC and lays down Minimum Standards for the Protection of Pigs ("Pigs Directive").¹³⁰ This was amended by Council Directive 2001/88/EC¹³¹ and also by Commission Directive 2001/93/EC.¹³² The key points of this EU Directive are the prohibition against the tethering of sows¹³³ and the use of gestation crates,¹³⁴ both of which are recognized as among the most inhumane aspects of modern-day livestock production.

EU law requires that "[a]ll pigs reared in groups or stalls must be inspected by the owner or the person responsible for the animals at least once a day" to ensure that any pig that "appears to be ill or injured" can be "treated appropriately without delay."¹³⁵ EU law also requires that accommodations for pigs be

125. Council Directive 91/629/EEC, *amended by* Council Directive 97/2/EC, 1997 O.J. (L25) 24-25 and Commission Decision 97/182/EC, 1997 O.J. (L76) 30-31 [hereinafter "Calves Directive"].

126. Egg-laying hens are typically housed in confinement buildings where up to 100,000 birds are crammed into a single warehouse in staked rows of wire cages called battery cages. About 98 percent of the 237 million laying hens in the United States are raised in cages, with nearly 75 percent of them living in a cage since day one. Despite the fact that a hen's wingspan is 30 to 32 inches, up to six hens are typically crowded into a 16-inch-wide cage. It is impossible for them to stretch their wings, walk, and sometimes reach their food. Gone crazy from lack of stimulation, battery-cage hens suffer severe feather loss, bruises, contusions, and abrasions. They are de-beaked, which involves cutting through the bone, cartilage, and other delicate soft tissue with a hot iron, in order to prevent cannibalism caused by over-crowding. This is done without anesthesia. *See, e.g.,* ANIMAL AID, FROM SHELL TO HELL: THE MODERN EGG INDUSTRY (May 2005), at <http://www.animalaid.org.uk/farming/shell.htm>.

127. Council Directive 1999/74/EC, art. 5(2), 1999 O.J. (L203) 53-57 [hereinafter "Hens Directive"].

128. The term "sow gestation crates" refers here to crates that are so narrow the sow cannot even turn round. She is confined in the crate throughout her sixteen-and-a-half-week pregnancy—and for pregnancy after pregnancy, i.e., for most of her adult life. She must lie continually on her side while she nurses her young until they are taken away.

129. Council Directive 91/630/EEC, art. 3(9), 1991 O.J. (L 340) 4 [hereinafter "Pigs Directive"]; Commission Directive 2001/93/EC, 2001 O.J. (L 316) 36-38.

130. *Id.*

131. Council Directive 2001/88/EC, 2001 O.J. (L 316) 1-4.

132. Commission Directive 2001/93/EC, 2001 O.J. (L 316) 36-38.

133. Pigs Directive, *supra* note 129, art. 3(2).

134. *Id.* art. 3(4).

135. *Id.*

constructed in such a way that allows the animals to "have access to a lying area physically and thermally comfortable as well as adequately drained and clean which will allow all the animals to lie at the same time, rest and get up normally, [and] see other pigs."¹³⁶ Additionally, the floor the pigs live on "must be smooth but not slippery so as to prevent injury to the pigs and so designed, constructed and maintained so as not to cause injury or suffering to pigs."¹³⁷ EU law further requires that "insulation, heating and ventilation of the building must ensure that air circulation, dust level, temperature, relative humidity and gas concentrations are kept within limits which are not harmful to the pigs."¹³⁸ Pigs must be provided with "manipulable material"¹³⁹ such as hay to satisfy routine behaviors, in light of evidence that boredom can lead pigs to harm themselves or other animals.

The European Commission's Scientific Veterinary Committee ("SVC")¹⁴⁰ recommends "[h]ousing systems for growing and finishing pigs should facilitate separation of functional areas (feeding, resting and dunging areas), or prevent direct contact with feces in the resting area. They should account for the needs of pigs to investigate and manipulate materials and minimize competition."¹⁴¹

Perhaps the most important aspect of the EU law is the prohibition against the use of gestation crates and tethers.¹⁴² EU law recognizes that "[s]ows prefer to have social interactions with other pigs" and requires that "[i]n the week before the expected farrowing time sows and gilts must be given suitable nesting material in sufficient quantity."¹⁴³ This is far ahead of American legislation where only Florida has managed to outlaw the use of

136. *Id.*

137. *Id.*

138. *Id.*

139. Pigs Directive, *supra* note 129, at art. 3(4).

140. The SVC consists of independent scientists and veterinary experts. The SVC reports draw together and analyze a large number of scientific papers and provide a full review of the scientific literature in certain fields. In 1997 the SVC was replaced by the Scientific Committee on Animal Health and Animal Welfare (SCAHAW). See SCIENTIFIC COMMITTEE ON ANIMAL HEALTH AND ANIMAL WELFARE ("SCAHAW"), FOOD SAFETY: FROM THE FARM TO THE FORK, at http://europa.eu.int/comm/food/fs/sc/scah/outcome_en.html (last visited Sept. 30, 2005). In 2003 the SCAHAW was replaced by the scientific Panel on Animal Health and Welfare, which has been established by the new European Food Safety Authority to provide scientific opinions.

141. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Intensively Kept Pigs (adopted Sept. 30, 1997), available at http://www.europa.eu.int/comm/food/fs/sc/oldcomm4/out17_en.pdf.

142. Pigs Directive, *supra* note 129.

143. *Id.*

gestation crates,¹⁴⁴ and no state has yet accepted the need to provide suitable nesting material.

With regards to the transportation of pigs, EU law states that:

[l]oading and unloading are the activities during which injuries and stress are most likely to occur. Noise and harassment during loading should be avoided as should the use of excessive force. Pigs must be treated calmly and gently in order to keep the inevitable unrest and agitation within limits, and in order to protect the animals from unnecessary pain, distress and injury. Electric goads or instruments based on the electric shock principle should not be used. The use of hand-held loading board is strongly recommended.¹⁴⁵

The EU recognizes that the maximum time for which pigs should be transported is eight hours, as after eight hours of travel, pigs will have a strong need for food and water.¹⁴⁶ In addition, the EU recognizes that “[p]igs are very susceptible to heat stress” and that because “pigs are particularly susceptible to water deprivation, frequent or continuous access to water is advisable” because “[a]n adult pig may drink up to ten litres [sic] of water per day.”¹⁴⁷ While still not perfect, this law is far ahead of the American law on transportation that allows pigs to go anywhere from twenty-eight to forty-eight hours without food, water, or rest.¹⁴⁸ The EU law pertaining to transportation is just another example of how American law fails to protect the animals society uses and abuses.

The EU has determined that failure to provide adequate veterinary care to an animal is cruel, inhumane and illegal. EU law requires that “[a]ny pig which appears to be ill or injured must be treated appropriately without delay. It should be possible, wherever necessary, to isolate sick or injured pigs in adequate accom-

144. FLA. CONST. art. X, § 21 (2002).

145. Counsel of Europe, Committee of Ministers, Recommendation No. R (88) 15 of the Committee of Ministers to Member States on the Transport of Pigs (adopted Sept. 22, 1988), Eur. Consult. Assoc., 419th Sess., Doc. No. Rec (88)/15E (1988), available at <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=698164&SecMode=1&Admin=0&Usage=4&IntranetImage=44787>.

146. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Intensively Kept Pigs, *supra* note 45.

147. Counsel of Europe, Committee of Ministers, Recommendation No. R (88) 15, *supra* note 145.

148. 49 U.S.C. § 80502 (2000); see also *supra* Part II(c) (for a discussion on the U.S. Twenty-Eight Hour Law).

modation with dry, comfortable bedding."¹⁴⁹ Further, EU law requires that "[v]eterinary advice must be obtained as soon as possible for pigs which are not responding to the stock-keeper's care."¹⁵⁰ While most American states have anti-cruelty laws that make withholding veterinary care to an animal a crime, many of those same states exempt farm animals from protection under the anti-cruelty laws. Therefore, there is no real American law requiring that farm animals be given appropriate veterinary care, and certainly none that extends past state borders.

EU law is very clear that "[t]ooth-clipping and tooth grinding are likely to cause immediate pain and some prolonged pain," and recommends that "efforts should be made to avoid the necessity for either."¹⁵¹ The EU also recognizes that "[e]ar-tagging and ear-notching may be painful to pigs," that "[n]ose-ringing is painful as well as affects sensitive tissues of the pigs," and that "[t]hose practices are detrimental to the welfare of pigs, especially when carried out by incompetent and inexperienced persons."¹⁵² Further, "[t]ail docking is likely to be painful when it is carried out and it has been demonstrated that in a proportion of animals it leads to neuroma formation and hence to prolonged pain."¹⁵³ Therefore, EU law recommends that "problems of injury following tail-biting should be solved by improved management rather than tail docking."¹⁵⁴ Finally, since castration "causes prolonged pain" EU law mandates that "castration . . . may be carried out only under anesthetic by a veterinarian or a person qualified."¹⁵⁵ EU law does permit tail docking and reduction of teeth, but never as routine measures, and only where there "is evidence that injuries to sows' teats or to other pigs' ears or tails have occurred."¹⁵⁶ However, "[b]efore carrying out these procedures, other measures shall be taken to prevent tail biting and other vices taking into account environment and stocking densities."¹⁵⁷ Where EU law recognizes the need to understand and prevent why pigs are mutilating each other before taking drastic measures of docking ears and tails,

149. Council Directive 91/630/EEC, annex, 1991 O.J. (L 630) 1, 6.

150. *Id.*

151. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Intensively Kept Pigs, *supra* note 45.

152. *Id.*

153. *Id.*

154. *Id.*

155. Pigs Directive, *supra* note 129.

156. *Id.*

157. *Id.*

these practices are still permitted, and even professed as being humane,¹⁵⁸ in the United States. These practices are regulated by what is standard in the industry, without care for what is humane to the animals.

American law pertaining to the use and treatment of pigs in the agricultural industry is far behind that of the EU. This is not to say that EU law is a perfect model; but EU law at least prohibits, or is in the process of prohibiting, the most egregious of industry practices. As the world's leader in production and slaughter of animals for food, the United States must amend its regulations to protect pigs from the horrors of everyday industry practices.

b. Treatment of Egg-Laying Hens Under EU Law

EU law pertaining to egg-laying hens is contained in Council Directive 1999/74/EC entitled Minimum Standards for the Protection of Laying Hens ("Hens Directive").¹⁵⁹

The term "battery cage" refers to a cage that usually contains anywhere from five to eleven hens and is too small for the hens to stretch their wings, stand up, or carry out their most natural behaviors such as laying their eggs in a nest, pecking and scratching at the ground, and dust-bathing. EU law prohibits existing battery cages by January 1, 2012 and no new battery cages may be used as of January 1, 2003.¹⁶⁰ In 1996, the SVC concluded that "current battery cage systems provide a barren environment for the birds" and "[i]t is clear that because of its small size and its barrenness, the battery cage as used at present has inherent severe disadvantages for the welfare of hens."¹⁶¹

While the prohibition of battery cages is an important protection for egg-laying hens, the Directive permits the use of "enriched" cages. "Enriched cages" require each hen to have more room than in traditional battery cages, with perches, suitable claw-shortening devices, and litter so that hens can peck and scratch. However, these requirements are still too meager to en-

158. N.J. ADMIN. CODE tit. 2 § 2:8-7.6(d) (2004) (classifying this practice under the state's humane treatment of livestock provisions).

159. Hens Directive, *supra* note 127.

160. *Id.*

161. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Laying Hens 109 (Oct. 30, 1996), available at http://europa.eu.int/comm/food/fs/sc/oldcomm4/out33_en.pdf.

able hens to engage in natural behaviors.¹⁶² In recognition of this fact, Germany has prohibited "enriched" cages as of 2012.¹⁶³

Regardless of how inappropriate "enriched cages" are, the use of them is still far ahead of anything the United States has done. The only regulations pertaining to battery cages occurred when industry leaders, such as McDonald's and Burger King required certain things from their suppliers.¹⁶⁴ The USDA and Congress have still done nothing to mandate more humane treatment of poultry through laws and regulations.

European Union law requires that poultry "should be offered water until loading commences, but food may be withdrawn shortly before loading."¹⁶⁵ Additionally, "[a] record of the feeding and watering times should accompany the animals throughout the journey."¹⁶⁶ EU law also requires that "[o]nly birds which are fit for the intended journey shall be subjected to [] transportation" and that "[i]n the case of end-of-lay hens, particular account should be taken of the problems of bone fragility which can lead to fractures."¹⁶⁷

In light of the fact that American law does not protect poultry under the Humane Slaughter Act, the Twenty-Eight Hour law, or any other federal statute, there is not much that needs to be said here. The United States is clearly lacking in its regulation protecting the over-nine billion poultry it exploits each year.

c. Treatment of Calves Under EU Law

EU law pertaining to the treatment of calves is contained in Council Directive 91/629/EEC entitled Minimum Standards for the Protection of Calves.¹⁶⁸ It has been amended by Council Directive 97/2/EC¹⁶⁹ and by Commission Decision 97/182/EC,¹⁷⁰

162. Karen Davis, PhD, United Poultry Concerns, *Knowing More about Natural Poultry Behavior Can lead to Better Care* (Jan. 30, 2004), at <http://upc-online.org/Welfare/behavior.htm>.

163. United Poultry Concerns, *Germany Moves Independently to Ban Battery Cages for Hens* (Winter 2001), at http://www.upc-online.org/winter2001/germany_ban.html.

164. See *infra* Part VI.

165. Counsel of Europe, Committee of Ministers, Recommendation No. R (88) 15, *supra* note 145.

166. *Id.*

167. *Id.*

168. Council Directive 91/629/EEC, 1991 O.J. (L 340) 28-32.

169. Council Directive 97/2/EC, 1997 O.J. (L 25) 24-25.

170. Commission Decision 97/182/EC, 1997 O.J. (L 76) 30-31.

which amends the Annex to the 1991 Directive ("Calves Directive").

The most important part of the Calves Directive is that it prohibits the veal crate system.¹⁷¹ The veal crate system has two main characteristics. First, the calf, taken from his mother at just a few days of age, is kept tethered in a solid wooden crate for approximately eighteen weeks. The crate is so narrow that the calf is unable to turn around, properly groom himself, or even lie down comfortably. Second, in order to produce the "white meat" prized by gourmets and desired by consumers, the calf is fed an extremely unhealthy, iron- and roughage-deficient diet in order to keep the calf anemic and meat white and tender. Not surprisingly, the veal crate system, along with sow gestation crates and battery cages for egg-laying hens, is considered one of the most inhumane aspects of modern-day factory farming. EU law mandates that new veal crates are prohibited after January 1, 1998, and existing veal crates must be completely phased out by December 31, 2006.¹⁷²

The EU Calves Directive provides that calves over eight weeks of age must be kept in groups, unless a veterinarian certifies that an animal's health or behavior requires that he be isolated for treatment purposes.¹⁷³ Further, even when a calf is confined to an individual pen, he cannot be kept in a traditional veal crate because the Directive states that:

the width of any individual pen for a calf shall be at least equal to the height of the calf at the withers, measured in the standing position, and the length shall be at least equal to the body length of the calf, measured from the tip of the nose to the caudal edge of the tuber ischii, multiplied by 1.1.¹⁷⁴

The Directive recognizes calves as a "herd-living species" and that "they should be reared in groups."¹⁷⁵ The SVC concluded that confining and/or tethering calves in crates is inhumane. Among its conclusions, the SVC stated "[t]he welfare of calves is very poor when they are kept in small individual pens with insufficient room for comfortable lying, no direct social contact and no bedding or other material to manipulate" and "[t]ethering always causes

171. Calves Directive, *supra* note 125, art. 1, annex pts. 8, 11.

172. *Id.* art. 1.

173. *Id.*

174. *Id.*

175. *Id.* at recital.

problems for calves."¹⁷⁶ The SVC further concluded that "[e]very calf should be able to groom itself properly, turn around, stand up and lie down normally and lie with its legs stretched out if it wishes to do so."¹⁷⁷ As a result of these conclusions, the tethering of calves has been prohibited since January 1, 1998.¹⁷⁸

To combat the industry norm of keeping calves on an iron- and roughage-deficient diet, as of January 1, 1998, EU law requires that (1) every calf over two weeks of age be provided with a minimum daily ration of fibrous food, and (2) calves' food shall contain sufficient iron to ensure an average blood hemoglobin level of at least 4.5 milliliters per liter.¹⁷⁹

Once again, the United States is far behind the EU in regards to regulations pertaining to veal crates. Organizations with calves' best interests at heart have repeatedly tried to push legislation prohibiting the use of veal crates in various states.¹⁸⁰ However, this legislation has failed each and every time. Even worse is the fact that not only has this legislation failed, recently enacted regulations purporting to ensure "the humane treatment of livestock" *include* the use of veal crates as the humane way to raise veal calves.¹⁸¹ The United States is, again, far behind the EU in recognizing that calves, and all animals in the agricultural industry, must be protected from cruel and inhumane practices.

d. Treatment of Animals Used in Cosmetic Testing Under EU Law

Unlike the United States, which has recently amended the AWA to exclude rats, mice, and birds from protection in all forms of animal testing,¹⁸² the EU has a very different outlook on the use of these same animals in cosmetic testing. In November 2002, the EU passed a Europe-wide ban on the use of animals to test

176. European Commission: Scientific Veterinary Committee, Animal Welfare Section, Report on the Welfare of Calves (Nov. 9, 1995), *available at* http://europa.eu.int/comm/food/fs/sc/oldcomm4/out35_en.pdf.

177. *Id.*

178. *Id.*

179. Calves Directive, *supra* note 125, art. 1, annex pt. 11.

180. Farm Sanctuary has tried on numerous occasions to push legislation outlawing veal crates in New Jersey and California. *See generally*, Farm Sanctuary, at <http://www.farmsanctuary.org> (last accessed Sept. 30, 2005).

181. N.J. ADMIN. CODE tit. 2 § 2:8-2.4(h) (2004).

182. Farm Security and Rural Investment Act of 2002, Pub. Law No. 107-171, 116 Stat. 134 (2002) (relevant section codified at 7 U.S.C. 2132(g)).

cosmetics.¹⁸³ The European Parliament and European Union governments agreed upon the ban.¹⁸⁴ The EU directive will force cosmetics manufacturers to stop testing new products on animals within six years, while at the same time banning the marketing of new cosmetic goods which were tested on animals.¹⁸⁵ Before this, only the UK, Austria, and the Netherlands had imposed bans on cosmetic testing on animals.¹⁸⁶ The United States has proven that it is far behind the EU in its treatment of farm animals, and in its treatment of animals used in the cosmetic testing industry. The United States must learn to recognize the inherent worth of animals and take necessary steps to prevent the unnecessary and painful suffering that continues daily in U.S. laboratories. Rather than excluding 95 percent of the animals used in U.S. research facilities,¹⁸⁷ the United States must follow the EU lead, and extend further protection to animals used in vivisection.

IV. INDIVIDUAL COUNTRIES WITHIN THE EUROPEAN UNION

Certain countries within the European Union have gone even further than the EU provisions set forth to protect nonhuman animals involved in the agricultural, medical testing, and cosmetic testing industries. While these countries have not completely succeeded at protecting animals, they have done far more than the United States and that is worth commending.

a. Animal Protection Laws in Germany¹⁸⁸

By adding the words "and the animals" to its Constitution, Germany became the first country in the EU,¹⁸⁹ and the second on the European continent,¹⁹⁰ to guarantee the highest level of legal

183. Ambrose Evans-Pritchard, *EU agrees animal testing ban for cosmetics*, THE DAILY TELEGRAPH, Nov. 8, 2002, available at <http://millennium-debate.org/tel8nov022.htm>; see also Avril Stephens, *Animal rights slam EU testing ban*, CNN, Nov. 7, 2002, at <http://edition.cnn.com/2002/WORLD/europe/11/07/eu.cosmetics/>.

184. *Id.*

185. *Id.*

186. See Stephens, *supra* note 183.

187. See *supra* Part II(a).

188. For an in-depth analysis of Germany's legal scheme for protecting animals, see Kate M. Natrass, Comment, ". . . Und Die Tiere" Constitutional Protection for Germany's Animals, 10 ANIMAL L. 283 (2004).

189. GRUNDGESETZ[GG] [Constitution] art. 20a (F.R.G.).

190. BV 1992 § 24. In 1992, Switzerland recognized the importance of animals in its Constitution. However, this development had virtually no international impact and receives little attention outside Switzerland.

protection to nonhuman animals. The recent addition to the German Constitution confers a long-standing belief that animal welfare is secure in Germany, as compared to countries such as the United States where laws vary drastically from animal to animal.¹⁹¹

Prior to adding "and the animals" to the German Constitution, the German Animal Protection Law ("*Tierschutzgesetz*") was considered among the strongest in the world. The law begins by declaring an intent to "protect the life and well-being of animals as fellow creatures."¹⁹² In addition, the German civil code (*Bürgerlichen Gesetzbuch*) was expanded in 1990 to recognize that "[a]nimals are not things. They are protected by special laws in that laws pertaining to physical objects apply to them only so far as there is no special regulation concerning them,"¹⁹³ maintaining the ethical basis of the 1933 law for "protecting animals on the basis of humans' responsibility for the animals in their care."¹⁹⁴ Although this sentence was met with skepticism and called an "emotional declaration,"¹⁹⁵ it was neither the first nor the last of such phrases; there is a previous Austrian law of the same character,¹⁹⁶ and Switzerland followed Germany's lead in creating a similar declaration in its national constitution.¹⁹⁷ The German law became even stronger in 2002 when Germany added "and the animals" ("und die Tiere") to its Constitution, providing the highest level of federal protection to animals.¹⁹⁸

The *Tierschutzgesetz* applies to all animals, vertebrates and invertebrates, without exception, although there seems to be agreement that greater consideration should be given to "higher"

191. See Animal Welfare Act, 7 U.S.C. § 2132(g) (2000) (regulating primarily commercial and research enterprises. Within the narrow group of animals covered, the law does not afford protection to rats, birds, and mice.). See also Farm Security and Rural Investment Act of 2002, Pub. Law No. 107-71, 116 Stat. 134 (relevant section codified at 7 U.S.C. 2132(g)) (This act single-handedly denied protection to 95 percent of the animals used in U.S. research facilities).

192. Art. 1 *Tierschutzgesetz*.

193. *Bürgerlichen Gesetzbuch* § 90a (BGB).

194. Art. 1 *Reichtierschutzgesetz* (1933).

195. R. Krieger, *Kurzer Überblick über das deutsche Tierschutzrecht* (2002) (presented at the International Symposium for the Symbiotic Relationship between Humans and Animals, Kyoto/Tokyo).

196. ABGB, art. 285, implemented July 1, 1988.

197. BV 1992 § 24, available at <http://www.admin.ch/ch/itl/rs/1/c101ENG.pdf> Switzerland was the first country to acknowledge the interests of animals within its national constitution. However, this accomplishment had virtually no international impact and still receives little attention outside the Swiss borders.

198. GRUNDGESETZ[GG] [Constitution] art. 20a (F.R.G.).

species.¹⁹⁹ The most noteworthy feature of the *Tierschutzgesetz* is the fundamental requirement that “[n]obody may injure or cause the suffering of an animal without sound reason.”²⁰⁰ Subsequently, the *Tierschutzgesetz* bans the docking of tails of dogs, except for medical reasons or for hounds,²⁰¹ and prohibits specific mutilation-type animal husbandry practices in certain farm animals.²⁰² These laws have been challenged, most recently on the basis that the right to crop ears and tails of canines violates the constitutional freedom to practice one’s profession; but the German government upheld the law on the basis that preventing unnecessary suffering is a legitimate goal when the customs of a profession require removal of a naturally developed body part.²⁰³

Further, it is illegal to kill a vertebrate animal without sound reason.²⁰⁴ While the term “sound reason” leaves much room for debate as to its meaning, the ambiguity, which was intentionally included to leave the interpretation open to developments in research, knowledge, and attitude of society, has yet to lead to a discussion of the term in courts. Justifications for killing a vertebrate animal include, but are not limited to, the killing for food production, risks to human health or for the health of their animals, extermination of pests or poisonous animals, and hunting.

Despite this strong language of the *Tierschutzgesetz*, many animal advocates believed that the ever-growing demands of consumers made the laws less effective in practice than intended. Therefore, beginning in late 1980, a movement began within the animal protection community to strengthen the *Tierschutzgesetz*. Widely supported as a tool for accomplishing this was a proposal to include animal protection in the German Constitution. Animals would thus be granted the highest federal legal status and be equal to other constitutionally protected rights.²⁰⁵

199. Bundesrat document 14/758: Proposal to change the Constitution.

200. Art 1, *Tierschutzgesetz*.

201. Art 6, *Tierschutzgesetz*. Amputations or removal of organs or tissues of any animal, whether partly or in total, are prohibited. While exceptions allow such procedures with the approval of a veterinarian, docking for aesthetic reasons is considered unacceptable.

202. Art. 5, *Tierschutzgesetz*.

203. 1 BvR 875/99 (1999).

204. Art. 17 Nr., 1 *Tierschutzgesetz*.

205. German Animal Protection League (*Deutscher Tierschutzbund*), *Tierschutz ins Grundgesetz – Langer Atem führt zum Erfolg – Konsequente Umsetzung angemahnt – Verbandsklagerecht für Tierschutzorganisationen nächstes Etappenziel* (May 17, 2002), at <http://www.tierschutzbund.de/aktuell/presse/index.htm>.

It took more than twenty years before the different parties of the government could agree on an appropriate addition to the Constitution,²⁰⁶ and eleven of the sixteen German states took matters into their own hands by adding a *Staatszielbestimmung* to their state constitutions between 1992 and 2001.²⁰⁷

Despite the length of time it took to amend the German Constitution, on May 15, 2002, the Bundestag²⁰⁸ voted 542 to 19 in favor of the proposal to add the words "and the animals" ("*und die Tiere*") to Article 20a of the German Constitution.²⁰⁹ This was closely followed by a vote in the German Bundesrat²¹⁰ in which fifteen of the sixteen states approved the amendment. The constitutional amendment became effective August 1, 2002.

Once again, the United States is far behind the rest of the world in animal protection statutes. With this monumental movement to include animal protection in the German constitution, Germany took a huge step forward. Compare this to the monumental step the United States took in the same year (2002): It excluded 95 percent of the animals used in research facilities from any form of federal protection.²¹¹

b. Animal Protection Laws in Sweden

The Swedish Board of Agriculture, after consultation with the Swedish National Board for Laboratory Animals, "recently exempted all great apes and nine species of Gibbons from research procedures as part of a new set of regulations pertaining to the use of animals in research";²¹² the new rule became effective June 2003. Great apes include chimpanzees, bonobos, gorillas, orang-

206. Proposals for a constitutional amendment included: "Animals will be protected within the framework of the current laws" (FDP); "Animals will be held in appropriate containment facilities, protected from destruction of their habitats as well as from preventable pain and suffering. Animal experimentation is only permitted when it is imperative for the development and health of humans" (PDS); and "Animals will be treated as fellow creatures. They will be protected from inappropriate containment, avoidable suffering, and in their natural habitats" (SPD/Greens).

207. The following states incorporated a *Staatsziel Tierschutz* into their State Constitution (*Landesverfassung*): Brandenburg (1992), Saxony (1993), Thuring (1993), Berlin (1995), Niedersachsen (1997), Bremen (1997), Bavaria (1998), Saarland (1999), Rheinland-Pfalz (2000), Nordrhein-Westfalen (2001), Baden-Wurtemberg (2001).

208. Parliamentary house that represents the German people through directly elected delegates from political parties.

209. 374 votes were necessary to reach the requisite two-thirds majority.

210. Parliamentary house which represents the individual German states.

211. See discussion *supra* Part II(a).

212. The Humane Society of the United States, *Sweden Bans the Use of Great Apes and Gibbons for Research* (Apr. 10, 2003), at <http://www.hsus.org/ace/18916>.

utans, and human beings. Gibbons comprise various species of smaller apes.

While Sweden does not currently use any great apes or gibbons in research, "the decision marks an important shift in official policy, since it implicitly recognizes the individual moral worth of primates."²¹³ With this legislation, Sweden joined a small, but growing, list of countries, including Great Britain, Japan, New Zealand, and the Netherlands, that have banned the use of great apes in biomedical research.²¹⁴

The Board introduced other limitations, including limitations on the duration of experiments and rules for when animals should be killed.²¹⁵ However, it is only great apes and gibbons that truly benefit from the new directions because the legitimacy of using other animals remains unchallenged, even though other animals are equally able to feel pain.

There are currently 1,200 chimpanzees housed in U.S. research facilities. These animals share more than 98 percent DNA.²¹⁶ Yet, the United States still does not follow the lead of Sweden, Great Britain, Japan, New Zealand, and the Netherlands. U.S. research facilities are consistently violating the Animal Welfare Act by subjecting the great apes they use to torturous experiments and terrible living situations.²¹⁷ Moreover, while the Clinton Administration signed the Chimp Protection Act²¹⁸ in 2000, sending "retired" great apes to sanctuaries, this law does not do enough because it allows research facilities to take the animals out of their sanctuary and put them back in the hellish conditions at any time.²¹⁹

c. Animal Protection Laws in Switzerland, England, the Netherlands, and Israel

Certain noteworthy events have happened in Switzerland, England, the Netherlands, and Israel within the last twelve years that warrant discussing. All of the events mean greater protec-

213. Per-Anders Svärd, *Sweden Bans Experiments on Great Apes* (Apr. 9, 2003), at <http://www.djurensratt.org/articles/article.asp?id=615>.

214. See The Humane Society of the United States, *supra* note 212.

215. See Svärd, *supra* note 213.

216. IN DEFENSE OF ANIMALS, CHIMPANZEE RESEARCH FACTS, at <http://www.idausa.org/facts/chimpresearch.html> (last visited Mar. 29, 2005).

217. *Id.*

218. Chimpanzee Health Improvement, Maintenance, and Protection Act, Pub. Law No. 106-551, 114 Stat. 2752 (codified at 42 U.S.C. § 287a-3a).

219. *Id.* 42 U.S.C. § 287a-3a(d)(3)(A)(i)-(ii).

tion for animals and a societal shift towards recognizing that animals are not for humans to use and abuse at will.

In 1992, Switzerland did something unheard of: It recognized the inherent worth of animals in its constitution.²²⁰ Simultaneously, Switzerland banned the use of battery cages,²²¹ with Swiss law requiring that groups of forty or more Swiss hens "must have access to perches and nest boxes and a minimum of 120 square inches of wire-grid floor space each."²²² Despite this epic move towards protecting nonhuman animals by being the first country to acknowledge the interests of animals within its national constitution, the accomplishment had virtually no international impact and still receives little attention outside the Swiss borders.²²³ Regardless of the lack of international attention, Switzerland still recognized the inherent worth of animals by granting them the highest level of protection. The United States is far behind many countries, and Switzerland is an example of what the United States should strive for.

While not at the level of providing constitutional protection to animals, British law requires that livestock, including poultry, must be rendered instantaneously insensible to pain until death supervenes.²²⁴ As discussed above at Part II(b), this is far ahead of the United States because the current U.S. Federal Humane Slaughter Act does not include poultry, and the over-nine billion poultry slaughtered each year in the United States are completely without protection. Additionally, England banned the use of battery cages back in 1992.²²⁵ As stated above, at Part III(b), the United States still has not even begun discussions about phasing out battery cages, and the only industry members to even suggest more humane sizes of battery cages were the industry giants such as McDonald's and Burger King. There has been no successful state or federal legislation to ensure that egg-laying chickens do not have to live in tiny battery cages.

220. BV 1992 § 24.

221. A PRIMER ON ANIMAL RIGHTS: LEADING EXPERTS WRITE ABOUT ANIMAL CRUELTY & EXPLOITATION 194 (Kim W. Stallwood ed., Lantern Books 2002) [hereinafter "PRIMER ON ANIMAL RIGHTS"].

222. *Id.*

223. Despite receiving little international attention, the Swiss laws are generally regarded as successful by animal protectionists in their respective countries. See GIERI BOLLINGER, *EUROPAEISCHES TIERSCHUTZRECHT* (Schultness Juristische Median 2000).

224. PRIMER ON ANIMAL RIGHTS, *supra* note 221, at 193.

225. *Id.* at 194.

As mentioned briefly in the discussion above at Part III(d), the Netherlands has made significant headway in its recognition that animals need to be protected. The Netherlands has outlawed both the testing of cosmetics on animals and the use of great apes in all research laboratories.²²⁶ Its close neighbor, Austria, was among the first European countries to grant protection to animals.²²⁷

The final country worth discussing is Israel. In a monumental two-to-one decision in August 2003, the Supreme Court of Israel voted that force-feeding geese to make *foie gras* is cruel and the practice should be banned, or more humane regulations governing it should be written.²²⁸ That said, the court also stated that the practice of force-feeding animals is in itself inhumane and it could not see how revised regulations could make it humane.²²⁹ The change was scheduled to take effect in 2005 in order to allow farmers time to adjust.²³⁰ The court also made reference to other inhumane farming practices, including the treatment of veal calves and the process of forced molting of poultry.²³¹

Force-feeding of geese consists of restraining the animals, inserting a metal pipe down their throats, and pumping seven pounds of corn mush into their stomachs thrice daily "until their livers become enlarged and fatty."²³² The massive amount of food pumped into their stomachs "often caus[es] a rupture of the bird's stomach or esophagus, leading to a very slow and agonizing death."²³³ Roughly 700,000 geese and 100,000 ducks are force-fed in Israeli breeding farms each year.²³⁴ After France, Israel is among the largest producers of *foie gras*.²³⁵ The production of *foie gras* has already "been banned in Germany, Poland, Austria,

226. See Evans-Pritchard and Stephens, *supra* note 183, and Svärd, *supra* note 213; and accompanying text.

227. See ABGB, art. 285, implemented July 1, 1988.

228. Moshe Benishty & 31 Colleagues, C.A. 9232/01, "Noah" v. Attorney General, Minister of Agriculture, Egg and Poultry Board (Aug. 2003), translation available at <http://www.chai-online.org/foiegras.pdf>.

229. *Id.*

230. *Id.*

231. *Id.* at 6.

232. This is the equivalent of force-feeding sixteen pounds of pasta into a person. CHAI-ONLINE, FOIE GRAS—SUPREME COURT GIVES VERDICT, FORCE-FEEDING OF GEESE IS INHUMANE, at <http://www.chai-online.org/foiegras2.htm> (last accessed Mar. 1, 2005).

233. CHAI-ONLINE, DUCKS AND GEESE: USE AND ABUSE, at http://www.chai-online.org/foisgras6.htm#ducks_geese (last accessed Mar. 1, 2005).

234. *Id.*

235. *Id.*

Switzerland, the Scandinavian countries, the Czech Republic, [and] UK."²³⁶ In the most horrible of scenarios, the same geese that are hung upside down to go through the "ripping" process for down production "are also force-fed to produce *foie gras*."²³⁷

"In a natural setting, geese congregate in flocks and form family groups, mating for life."²³⁸ "They . . . protect their young from predators";²³⁹ take turns watching over young who are unable to fly; migrate great distances; "have a lifespan of 20–25 years. They have a strong affection for others in their flock, and they will try to help a goose who is sick, wounded, or shot."²⁴⁰ Israel is the most recent country to recognize that animals must be treated humanely and that the production of *foie gras* in no way allows for any of the natural needs of geese.

These countries put the United States to shame with the enormous steps forward they have taken towards protecting the most innocent of society. In comparison, the United States continues to permit the production of *foie gras*,²⁴¹ the use of battery cages, and many other inhumane industry practices.

V. TAIWAN

Taiwanese Animal Protection Law is a model for the United States to follow. The law recognizes the need to "respect the lives of animals and to protect animals."²⁴² The definition of "animal" is one of the most generous, and includes "a dog, a cat and a vertebrate that is fed or kept by people."²⁴³ It includes "the economic animal, the experimental animal, a pet and other kinds of animals."²⁴⁴ The "feeder," or owner of the animal or person who keeps the animal,²⁴⁵ is required to "provide adequate food and water and sufficient space of activities of the animal."²⁴⁶ The "feeder" shall "also pay attention to the safe living environment,

236. *Id.*

237. *Id.*

238. CHAI-ONLINE, DUCKS AND GEESE: USE AND ABUSE, at http://www.chai-online.org/foisgras6.htm#ducks_geese (last accessed Mar. 1, 2005).

239. *Id.*

240. *Id.*

241. California, having recently banned the force-feeding of ducks and geese for the production of *foie gras*, is the exception. See *supra* Part II(e).

242. Ch. I art. 1, Animal Protection Law, Taiwan (1998), available at <http://www.animallaw.info/nonus/statutes/sttaap11998.htm> (last visited Mar. 14, 2005).

243. *Id.* ch. I art. 3.

244. *Id.*

245. *Id.*

246. *Id.* ch. II art. 5.

shelter, ventilation, lighting, temperature, cleaning and other appropriate care to prevent the animal from unnecessary harassment, mistreatment or hurt.”²⁴⁷ The law requires that, while transporting an animal, “its food, water, excrement, environment, and safety shall be well taken care of” and that “it shall be prevented from being frightened or hurt.”²⁴⁸ Taiwanese law also prohibits any animal fights, any animal race or contest for the purpose of gambling directly or indirectly, and any act that “violates good social custom.”²⁴⁹

Perhaps the most compelling portion of the Taiwanese law is the chapter on animals used in experiments.²⁵⁰ All “dog[s], cat[s] and [] vertebrate[s] . . . fed or kept by people”²⁵¹ are included under this chapter. This is much more inclusive than the U.S. protections. As discussed above, the AWA excludes mice, rats, and birds from protection.²⁵² Taiwanese law further requires that the “number of animals used in scientific application shall be reduced to a minimum” and that the “application shall be done in a way that afflicts the least pain or hurt on the animals.”²⁵³ The law also requires that the animals shall be examined immediately upon completion of the scientific application,²⁵⁴ and that if “parts of their limbs or organs have been lost, or they continue to suffer the pain that affect[s] their living quality, they shall be put to death in a least painful way.”²⁵⁵

While the Taiwanese law in no way prohibits the exploitation of animals, it at least recognizes the need to reduce pain and suffering and, in the realm of experimentation, to reduce the number of animals used in research all together. This is a huge step in the right direction, and the United States must follow suit because it is no longer necessary and appropriate to use animals in scientific experiments because the pain and suffering inflicted upon those animals far outweighs any benefits potentially incurred.

247. *Id.*

248. Ch. II art. 9, Animal Protection Law, Taiwan (1998), available at <http://www.animallaw.info/nonus/statutes/sttaap11998.htm> (last visited Mar. 14, 2005).

249. *Id.* ch. III, art. 10.

250. *Id.* ch. III, art. 15.

251. *Id.* ch. I, art. 3.

252. See discussion *supra* Part II(a) (for a discussion on the AWA).

253. Ch. III, art. 15, Animal Protection Law, Taiwan, 1998 available at <http://www.animallaw.info/nonus/statutes/sttaap11998.htm> (last visited Mar. 14, 2005).

254. *Id.* at ch. III, art. 17.

255. *Id.*

VI. UNITED STATES BEHIND INDUSTRY GIANTS IN AFFORDING ANIMALS PROTECTION FROM INHUMANE PRACTICES

Surprisingly, in certain areas of animal use, it is the industry giants leading the way with improved animal welfare and handling standards. Between Wild Oats, Burger King, KFC, Wendy's, and McDonald's, battery cages, forced molting and the use of non-ambulatory animals have been banned.²⁵⁶

Far ahead of the rest of the food retail industry, on May 31, 2005, Wild Oats announced its decision to avoid the sale of eggs from caged birds in all of its seventy-five Wild Oats Natural Marketplaces, located in twenty-three states.²⁵⁷ Wild Oats is one of the nation's largest natural foods retail chains and sold 1.6 million cartons of eggs in 2004.²⁵⁸ This is a tremendous step in the right direction and forces egg production facilities to afford chickens some protection. However, even though these chickens are not confined to cages, until there are regulations granting all birds constant access to sunlight, nesting materials, and enough space to flap their wings, there is still much room for improvement.

On June 28, 2001, Burger King Corporation adopted new guidelines and audits for the humane handling of food animals and petitioned the USDA to fully and actively enforce the federal Humane Slaughter Act.²⁵⁹ Burger King is now encouraging producers to employ alternative, more humane, methods of handling gestating sows.²⁶⁰ Burger King discourages the practices of branding and wattling of cattle, as well as the severe ear-notching of cattle.²⁶¹ Should branding be absolutely necessary, Burger King states that it should be done only once and never on the face

256. See BURGER KING CORP., 2003 BKC ANIMAL HANDLING POLICY, at http://www.bk.com/CompanyInfo/public_policies/2003.aspx (last visited Mar. 1, 2005); WENDY'S, WENDY'S ANIMAL WELFARE PROGRAM FACT SHEET, <http://www.wendys.com/w-6-3-1.shtml> (last visited Apr. 21, 2004); McDONALD'S, McDONALD'S USA LAYING HENS GUIDELINES, at <http://www.mcdonalds.com/usa/good/products/hen.html> (last visited Mar. 14, 2004).

257. Press Release, Humane Society of the United States, Wild Oats Gives Chickens Something to Crow About: No More Cages (May 31, 2005), available at http://www.hsus.org/press_and_publications/press_releases/wild_oats_gives_chickens_something_to_crow_about_no_more_cages.html.

258. *Id.*

259. BURGER KING CORP., 2003 BKC ANIMAL HANDLING POLICY, at http://www.bk.com/CompanyInfo/public_policies/2003.aspx (last accessed Mar. 1, 2005).

260. *Id.*

261. BURGER KING CORP., STATUS OF ANIMAL HANDLING PRACTICES, at http://www.bk.com/CompanyInfo/public_policies/status.aspx (last accessed Mar. 10, 2005).

of the animal.²⁶² Burger King also prohibits its beef suppliers from using meat from non-ambulatory cattle, cattle afflicted with advanced ocular neoplasia, or extremely emaciated cattle.²⁶³ For poultry, Burger King mandates a minimum of 75-square inches of usable floor space per laying hen, requires at least two water-drinkers per cage to ensure a constant supply of water, and requires that cages have conveyor feed systems to ensure continuous access to fresh feed for the birds.²⁶⁴ Additionally, birds must be able to stand fully upright on the entire cage floor space.²⁶⁵ Burger King “discourages the practice of beak trimming” and bans forced molting.²⁶⁶ While these requirements from Burger King are important and improve the lives of millions of animals, they are still far too weak and allow for painful, cruel procedures to occur on a daily basis.

Wendy’s prohibits the practice of withholding feed to laying hens to induce molting, and requires that each hen have a minimum of “72 square inches of space per bird.”²⁶⁷ During transport, birds must have “sufficient space in transport cages to allow comfortable movement while providing stability, security, and thermal protection during transport.”²⁶⁸ Wendy’s requires that “any animal unable to move normally due to illness or injury cannot be loaded for transport,” and that animals must have “sufficient area to allow freedom of comfortable movement while providing stability and security during transport.”²⁶⁹ Additionally, Wendy’s requires that cattle held for more than twenty-four hours must be fed and that animals must be held after “unloading for a minimum of one hour for proper rest.”²⁷⁰ Wendy’s also has specific requirements for the treatment of pigs.²⁷¹ During transport, pigs must have “sufficient area to allow comfortable movement, while providing stability and security.”²⁷² As with cattle, if pigs are to be held more than twenty-four hours, “they must be fed,” and animals must be held for a “minimum of two hours for proper rest

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. STATUS OF ANIMAL HANDLING PRACTICES, *supra* note 259.

267. WENDY’S, WENDY’S ANIMAL WELFARE PROGRAM FACT SHEET, at <http://www.wendys.com/w-6-3-1.shtml> (last visited Apr. 21, 2005).

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

after unloading."²⁷³ The holding pen must allow "freedom of movement to the animals."²⁷⁴ Similar to the requirements Burger King has, these requirements do only so much to protect the animals used by Wendy's. These requirements must be made much stricter in order to fully protect all animals.

McDonald's reports on its website that it "does not support the improperly controlled practice of 'beak trimming' as it violates our guiding principles for animal welfare."²⁷⁵ McDonald's has, in fact, promulgated Animal Welfare Guidelines.²⁷⁶ McDonald's does not "support the withdrawal of food or water to facilitate induced molting," and requires that each bird have "72 square inches of room and four inches of feeder space."²⁷⁷ McDonald's was also to have phased out, by the end of 2004, the use of antibiotics, for the purpose of growth promotion, that belong to classes of compounds approved for use in human medicine.²⁷⁸ Again, while improvements in the right direction, McDonald's must require much more of its producers before it can say it looks out for the animals' wellbeing.

Finally, KFC prohibits suppliers from de-beaking any poultry that will be sold in its restaurants.²⁷⁹ Transport crates must not be "over-filled and enough space must be provided to allow all birds to lie down."²⁸⁰ "Stunning equipment should be maintained to confirm that birds are insensible prior to slaughter, and the time between stunning and slaughter must be limited to minimize any likelihood that a bird may regain consciousness prior to slaughter."²⁸¹ Just like the requirements of its competitors, KFC's requirements are a step in the right direction, but still leave much room for improvement. KFC and other industry giants must continue to raise the bar of animal protection to ensure that all animals used by their food production units are not brutalized.

Whether or not these requirements are adequate and whether or not they are even enforced is not within the scope of this pa-

273. WENDY'S ANIMAL WELFARE PROGRAM, *supra* note 267.

274. *Id.*

275. McDONALD'S, McDONALD'S USA LAYING HENS GUIDELINES, at <http://www.mcdonalds.com/usa/good/products/hen.html> (last accessed Mar. 14, 2005).

276. *Id.*

277. *Id.*

278. McDONALD'S, McDONALD'S USA PRODUCT RESPONSIBILITY, at <http://www.mcdonalds.com/usa/good/products.html> (last accessed Mar. 14, 2005).

279. KFC, ANIMAL WELFARE GUIDELINES, at http://www.kfc.com/about/animalwelfare_guidelines.htm (last accessed Mar. 14, 2005).

280. *Id.*

281. *Id.*

per.²⁸² Regardless, it is extremely important to recognize that the U.S. government is not only behind the developed countries of this world as far as animal protection is concerned, but it is also behind the giant industry corporations using the animals.

VII. CONCLUSION

Over the last several years, government officials, scientists, humane organizations, and livestock-industry leaders have become increasingly aware of the need to reform inhumane practices occurring in the various industries. In 2001, Senator Robert Byrd spoke on the floor of the United States Senate, stating:

Our inhumane treatment of livestock is becoming widespread and more and more barbaric. Six hundred pound hogs . . . raised in 2 foot wide metal cages called gestation crates, in which the poor beasts are unable to turn around or lie down in natural positions Veal calves are confined to dark wooden crates so small that they are prevented from lying down or scratching themselves. These creatures feel; they know pain. They suffer pain just as we humans suffer pain. Egg laying hens are confined to battery cages They are reduced to an egg laying machine Barbaric treatment of helpless, defenseless creatures must not be tolerated even if these animals are being raised for food – and even more so, more so. Such insensitivity is insidious and can spread and is dangerous. Life must be respected and dealt with humanely in a civilized society.²⁸³

However, despite this recent recognition by one in the U.S. Senate, the United States is still far behind in enacting animal protection legislation. To this day, billions of animals suffer annually at the hands of human beings in the agricultural industry alone. They are confined, starved, branded, castrated, beaten, and skinned alive only to put dinner on our plates. Their millions of brothers and sisters in the cosmetic and medical testing industries are poisoned, burned, blinded, infected and left alone in their misery so that we can obtain make-up and cures to the ailments we bring upon ourselves through unhealthy diets, lack of exercise, over-medication and stressful lifestyles. Anyone who has spent

282. See PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA), at <http://www.peta.org> (last accessed Apr. 12, 2005) (for information on the validity and appropriateness of these self-imposed regulations, and on PETA's "WickedWendy's," "MurderKing," "McCruelty," and "KFC Cruelty" campaigns).

283. 147 CONG. REC. S27,310-12 (daily ed. July 9, 2001) (statement of Sen. Robert Byrd).

any amount of time with a nonhuman animal knows that they, like we human-animals, are capable of feeling emotions and pain. Yet, despite the widely recognized fact that nonhuman animals are sentient creatures, nothing is being done to protect them. In fact, in recent years, American legislation has gone backwards: The AWA no longer protects birds, rats and mice; the HSA does not protect over 92 percent of the animals slaughtered annually; the Twenty-Eight Hour Law offers virtually no protection to animals in being transported; and the ESA is under attack by the Bush Administration in an attempt to weaken it and reduce the protection it offers. Additionally, state statutes aimed at protecting one species of farm animals do not take effect for years or they leave gaping loopholes open for industry exploitation.

In an age where humans are becoming more aware of the need to protect animals, spending more than \$18 billion annually on American companion animal veterinary care alone,²⁸⁴ the non-human animals who are not fortunate enough to have a personal connection with humans continue to suffer endlessly and silently. The United States needs to get its act in gear and recognize that Gandhi was correct when he said, "the greatness of a nation and its moral progress can be judged by the way its animals are treated."²⁸⁵

284. See, e.g., Gail Buckner, *Know What You Get in Your Pet Insurance Policy*, FoxNews.com, Nov. 22, 2004, at <http://www.moneytalks.org> (last visited Sept. 30, 2005).

285. Mahatma Gandhi, *The Story of My Experiments with Truth*, available at <http://www.nalanda.nitc.ac.in/resources/english/etext-project/Biography/gandhi/part3.chapter18.html> (last accessed Apr. 26, 2005).