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Statutory Protection for Farm Animals

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I. Introduction

This article will examine the effectiveness of present legislation, both state and federal, as it pertains to the protection of the welfare of animals used in agriculture. It will focus on existing statutes, the applicable regulations which have been promulgated under these statutes, and pertinent case law. One of the underlying premises of this article is that our society tolerates and even encourages the raising and slaughter of animals for food products. Equally important is the understanding that farm animals raised for food production are sentient and should be free from abuse and neglect in this process. The issue this article attempts to address is whether the welfare of those livestock animals is adequately protected under existing law.¹

During the past decade there has been a heated debate

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1. To some extent, there is a distinction between animal welfare and animal rights. Welfare reflects people's concern with the well-being of animals; i.e. that people should treat animals humanely and be required to do so. Animal rights goes further. This concept advocates that animals have basic rights - to be free from torture, abuse and perhaps even death. The scope or even the existence of "rights" in animals goes beyond the scope of this article. The authors examine whether the existing legal structure adequately protects animal welfare.

over the treatment of livestock and poultry in commercial enterprises.² Critics have focused their attention on what they refer to as "factory farming".³ The term has little to do with factories, however. It is intended to apply, in this article, to any commercial enterprise in which a large number of livestock are raised in an intense environment other than the animals' natural habitat solely for the purpose of producing food. Typically, this form of modern intensive production system involves the raising of animals in an enclosed, confined building where feeding, watering and waste disposal are conducted in an automated or semi-automated manner. The mere term "factory farming" is anathema to its critics.⁴ The vast majority of chickens, hogs, calves, and dairy cattle which are raised for food products in the United States are raised in intensive conditions.⁵ Critics of intensive production systems allege that it is needlessly cruel and abusive to the animals in question and it is morally repugnant.⁶ They charge that these systems are characterized by overcrowding, restricted movement, unnatural diets, painful branding and castration and cause stress and severe suffering in farm animals.⁷ At bottom, the critics believe that "factory farming" results in intensive confinement in which animals are thought of only as economic units without lives of their own.

2. Compare Comment, *Factory Farming: An Imminent Clash Between Animal Rights Activists and Agribusiness*, 7 B.C. Envtl. Aff. L. Rev. 423 (1979) with S. Curtis, *Animal Welfare Concerns in Modern Pork Production, An Animal Scientist's Analysis*, (Nov. 4, 1980) (as presented to the Animal Welfare Comm'n of the U.S. Animal Health Ass'n at Louisville, Kentucky on Nov. 4, 1980, available in printed form from the Nat'l Pork Producers Council, P.O. Box 10383, Des Moines, Ia. 50306).

3. Harrison, *Animals in Factory Farms*, in *Animals and Their Legal Rights* 69 (E. Leavitt 3d ed. 1978).

4. See Comment, *supra* note 2, at 425. The author details alleged cruelty suffered by animals raised in confinement. *Id.* at 425-34.

5. Council for Agriculture Science and Technology, Report No. 91, *Scientific Aspects of the Welfare of Food Animals*, 1-2 (Nov. 1981) [hereinafter cited as CAST Report].

6. Note, *The Rights of Non Human Animals and World Order: A Global Assessment*, 28 N.Y.L. Sch. L. Rev. 377 (1983). A common thread running through criticisms of intensive livestock production is the assumption that agricultural animals have "rights", although the legal or philosophical basis of those rights is not clear.

7. See Comment, *supra* note 2, at 425-33.

Advocates of intensive animal cultivation argue that it is the most efficient manner in which to raise meat and related food products.⁸ Animals in this environment readily exceed average egg production, milk production, and growth rates for their kind. The confinement allows the producer to assure that livestock are obtaining sufficient feed, water, and nutrients plus proper treatment if sickness occurs.⁹ It conserves land and reduces the need for employees in the already depleted manpower market in agriculture. The producers recognize that the well-being of animals, which cannot be achieved without careful attention to the welfare of animals, is an essential element of economic profitability. They also focus their attention on the "bottom line" analysis as well.¹⁰ They seek to maximize profitability (as does any commercial enterprise) by producing greater quantities and higher qualities of products for the market at lower prices, which enhances the welfare of the consumer.¹¹ They point out that housing, nutrition, and disease control have progressed immensely over the past twenty years as a result of intensive production.¹² The conditions of animals in production operations involving many animals are, however, not the same as the conditions that lead to the maximum welfare of the animals individually.¹³ Inevitably, this leads to a conflict between human welfare and animal welfare.

Supporters of the intensive animal production and live-

8. See Curtis, *supra* note 2, at 4-5.

9. G. Jackson, *The Animal Rights Issue*, Buckeye Farm News, July 1981, at 29. Animal rights activists are particularly critical of the use of slotted floors in pork production. However, pork producers defend this use as promoting a clean environment for the livestock thus reducing stress. *Id.*

10. Curtis, *supra* note 2, at 5.

11. One study of the commercial egg industry in the United States concluded that it would cost the industry, and thus the consumer, \$240,740,500 to convert from 4 to 3 hens per cage. King, Lasley, Holliman & Bray, *A Discussion of the Economic Significance to the Producer and the Consumer of Converting to Less Intensive Commercial Egg Production in the United States* (Aug. 1983) (submitted to Dr. Terry B. Kinney, Jr., Adm'r, Agric. Resources Serv., U.S. Dep't of Agriculture, Rm. 302 Admin. Bldg., Washington D.C. 20250).

12. Gordon, *Animal Welfare: An Issue to be Taken Seriously*, 23 Feed & Feeding Digest 3 (Nov. 24, 1981).

13. *Id.*

stock producers argue that three percent of the United States population feeds the other ninety-seven percent of the population, and the vast majority of consumers are generations removed from their farm roots and do not understand the nature of livestock production today.¹⁴ As the prices of supplies, feed, credit and related costs increase, producers have sought to cut their costs of production to meet consumer demand. Farm associations point out that consumers spend slightly more than sixteen percent of their income on food.¹⁵ Of that, about forty-five cents of each food dollar is spent on red meat, poultry and dairy products.¹⁶ Advocates of agricultural interests argue that it is "factory farming" that has allowed the farmer to meet this very clear consumer demand for reasonably priced food of uniform quality and ample supply.¹⁷

The conflict between animal welfare and human welfare has led to an emotionally charged debate, with critics characterizing livestock producers as cruel, inhumane and insensitive to the welfare of their animals.¹⁸ Typically, livestock producers are grouped together under the pejorative term "powerful agribusiness corporations", without distinction between small and medium-sized producers which may still be family owned.¹⁹ Producers see themselves under siege by uninformed "suburbanites" whom they labor to feed. They resent "animal welfarists" whose only exposure to animal life, they claim,

14. *Id.* at 1. The author distinguishes between "Animal Rights Advocates" whom he suggests are vegetarians whose goal is to put an end to meat consumption and "Animal Welfare Activists" whom he suggests do not quarrel with the rights of humans to eat meat, but are concerned that the rearing and slaughtering be humane.

15. *Farm Animals, No One Has Greater Concern For the Care of Farm Animals than the Farmer Who Raises Them*, American Farm Bureau Federation Monograph No. INF78159M (19___) [hereinafter cited as Monograph].

16. *Id.*

17. *Id.* Farm interests assert that it was consumer demand for meat protein that led to the development of a new and more efficient network of livestock production. "Barnyard animals" could not meet the demand.

18. For the broadest condemnation of the system, see generally Comment, *supra* note 2. "Factory farming, characterized by overcrowding, restricted movement, unnatural diets and unanesthetized surgical procedures . . . results in severe suffering for the farm animal." *Id.* at 424 (citations omitted).

19. *Id.* at 424.

might be the family pet.²⁰ They suspect that the ulterior motive of the welfarist is to convert the United States into a nation of vegetarians. The facts at issue become obscured.

Given the conflicting factual claims,²¹ as well as conflicting values,²² the question we, as lawyers, must ask is: where, in the legal framework, do current "factory farming" practices lie? Underlying this question is a more difficult question: at what point do human values give way to animal values?²³

The traditional legal process is well suited to addressing these questions and formulating solutions. The law is not static, and, as values change, the law is capable of adapting to those changes.²⁴ With respect to the conflicting factual claims

20. Cowie, *A Call for Understanding*, *The Ohio Farmer*, Sept. 19, 1981, at 33.

When a suburbanite whose experience with animals is limited to taking his overweight pooch out for an evening stroll points an accusing finger, the farmer is indignant. After all, the city dweller has washed his hands of rural dirt and raising food. . . .

Having chosen not to burden themselves with producing the food that keeps them alive, they run them around and give the farmer instructions on how to produce it. No wonder we resent animal welfarists. This is how we see them.

Id. at 33.

21. Some believe that federal law provides greater protection to animals than to humans. See *Union County Jail Inmates v. Dibuono*, 718 F.2d 1247 (3d Cir. 1983) (Gibbons, J., dissenting). Judge Gibbons noted that the standards of confinement upheld for pre-trial detainees "considering we are dealing with the treatment of human beings, compare unfavorably with the standards mandated in federal law for the treatment of animals." *Id.* at 1248.

22. *Compare Note*, *supra* note 6, at 389-90 ("The consumption of meat is, after the uses of tobacco and alcohol 'the greatest single cause of mortality in the United States.' Meat eating has been shown to be a contributing cause of Atherosclerosis . . . cancer of the colon and breast, kidney disorders. . . .") with *Monograph, supra* note 15 ("[T]he nutrient value of animal products is indisputable. Complete protein—the kind with sufficient quantities of the eight amino acids—is found only in animal products. The human body cannot manufacture these eight animal acids, so they must be supplied through proper diet.").

23. For a very critical examination of the criteria that have been postulated to support the concept of animal rights see Liddell, *The Consistency from Marginal Cases Argument for Animal Rights: A Critical Examination*, 15 V.U.W.L. Rev. 147 (1985).

24. See *State v. Kaneakue*, 594 P.2d 590 (Haw. Ct. App. 1979) where the court upheld a conviction for violation of a cruelty to animals statute wherein the charge was cock fighting. The court held cock fighting to be "cruel" within the meaning of the statute. *Compare State v. Buford*, 65 N.M. 51, 331 P.2d 1110 (1958) which interpreting a similar statute held that cock fighting did not constitute cruelty to animals.

of harm to the animals, the traditional method of fact finding through evidentiary hearings can sort out the truth. Both sides claim to have studies supporting their positions. Testimony before a fact finder could lay to rest those fallacious claims based on emotion, rather than fact. This article will examine the legal development in this area to show how the law has reacted to the issue of animal welfare in the past, and how current law deals with farm animals.

II. Early Law

A. *The Common Law*

The common law treated animals essentially as chattels or property of the owner.²⁵ The law did not concern itself with the welfare of the animals, and the owner was free to treat the animals as he wished in the absence of a statute or a public display constituting a nuisance.²⁶ As property, domestic animals were afforded some protection. A domestic animal could not be abused by anyone not its owner, because this would lessen the value of the property and make the abuser liable to the owner for damages.²⁷ However, the common law did not perceive animals as having rights in themselves and therefore did not protect animals from the infliction of unnecessary pain.²⁸ Undoubtedly, this attitude reflected the moral and philosophical values of early Western tradition which recognized human superiority and viewed animal life as necessary to support human life.²⁹ The prevailing Judeo-Christian ethic

In addition, it should be noted that Hawaii also had a statute which made it illegal to manage or maintain a place for a cockfight while New Mexico did not have such a statute.

25. See Comment, *Toward Legal Rights for Animals*, 4 *Env'tl. Aff. L. Rev.* 205, 209 (1975). The author reviews in detail the early legal concepts of animals in the western world.

26. *Id.*

27. *Id.*

28. *State v. Bruner*, 111 Ind. 98, 99, 12 N.E. 103, 104 (1887).

29. Early western philosophy rejected any kind of moral duty toward animals because they had no capacity to reason. Aristotle held that animals, like slaves, were articles of property, and that animals existed for the sake of man. Aristotle, *Animals and Slavery*, in *Animals Rights and Human Obligations* 109-10 (T. Regan & P. Singer eds. 1976). See also, Comment, *supra* note 26, at 206-09.

certainly reinforced the view that animals occupied a lower station than did humans.³⁰ There is some indication that this view is giving way to changing values as there is now limited judicial support for the concept that animals are more than property.³¹

B. *Early Statutes*

The first anti-cruelty statute in what was to be the United States was enacted by the Massachusetts Bay Colony in the early seventeenth century.³² The statute proscribed cruelty toward animals kept for man's use. In the early nineteenth century, other states enacted statutes aimed at curbing animal abuse, even by owners.³³ These statutes departed from the common law concept of animals as property and recognized some degree of feeling in the animal.³⁴ The early anti-cruelty statutes have been criticized because their rational underpinning was a human interest, rather than an animal interest; i.e., the legislation reflected the sentiment that cruelty to animals was offensive to human morality and that we as a society should not be subjected to those who would be cruel to animals.³⁵ The critics believe that when the underpinning of a statute is a human interest, then in determining if there is a violation, "almost any human interest will outweigh an animal interest."³⁶ In determining the validity of this criticism, one must return to the seminal question of when do animal interests give way to human interests.

30. And God said let us make man in an image after our likeness—and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over any creeping thing that creeps upon the earth.

Genesis 1:26 (King James)

31. *Corso v. Crawford Dog and Cat Hosp., Inc.*, 97 Misc.2d 530, 531, 415 N.Y.S.2d 182, 183 (1979).

32. See Comment, *supra* note 26, at 212.

33. *Id.*

34. *Id.*

35. *Id.* at 213.

36. *Id.*

III. Modern Legislation

A. Federal Legislation

Federal legislation addresses three areas of animal welfare: (1) the transportation of animals; (2) the slaughtering of animals; and (3) the welfare of animals used for experimental purposes. In 1906, in response to public concern over the welfare of livestock being transported great distances on rail cars, Congress passed the Live Stock Transportation Act (LST), designed to ensure that animals received water and were rested during transport.³⁷ The LST requires that animals cannot be kept in transport for a period longer than twenty-eight consecutive hours without unloading in a humane manner into properly equipped pens for rest, water, and feeding.³⁸ The LST provides for fines in the event of violations reported by the Secretary of Agriculture.³⁹ The LST has been criticized because it was passed prior to the advent of motor transportation and, therefore, arguably does not apply to livestock transported in trucks.⁴⁰ However, the language would seem to apply to any "common carrier, other than by water"⁴¹ so that the argument could be made that motorized transportation would be included within its purview.

The second area addressed by federal legislation is that of the slaughtering of animals. In 1958, Congress passed the Humane Slaughter Act (HSA), which in its declaration of policy states:

The Congress finds that the use of humane methods in the slaughtering of livestock prevents needless suffering; results in safer and better working conditions for the persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering

37. Act of June 29, 1906, ch. 3594, 34 Stat. 607 (codified at 45 U.S.C. §§ 71-74 (1982)). This Act is known by a variety of common names such as the Live Stock Transportation Act (LST), the Cruelty to Animals Act, the Twenty-Eight Hour Act and the Food and Rest Law.

38. *Id.* § 71.

39. *Id.* §§ 73, 74.

40. See Comment, *supra* note 26, at 220.

41. 45 U.S.C. § 71 (1982).

operations; and produces other benefits for producers, processors and consumers which tend to expedite an orderly flow of livestock⁴²

The HSA prescribes humane methods of slaughtering and handling of livestock.⁴³ In order to enforce the policy of the HSA, it provides that the agencies of the federal government shall not procure meat from slaughter houses which do not comply with its provisions.⁴⁴ The effectiveness of the prohibition has been criticized because it is alleged that only the large slaughter houses sell to the government, and they comprise eighty percent of those in business.⁴⁵ The remaining twenty percent are not affected. Whether these percentages are valid today, after consolidation in the industry, is not clear.⁴⁶ Some states have adopted Humane Slaughter Acts which are modeled after the federal statute.⁴⁷

By express terms, the HSA holds that slaughtering in accordance with the ritualistic requirements of the Jewish faith is deemed to be humane as well.⁴⁸ The Act provides that nothing within it shall abridge in any way the rights or religious freedom of any person or group.⁴⁹ The constitutionality of the exception for religious ritual slaughter has been upheld.⁵⁰

42. Act of Aug. 27, 1958, Pub. L. No. 85-765, 72 Stat. 862, as amended by Humane Methods of Slaughter Act of 1978, Pub. L. No. 95-455, 92 Stat. 1009 (codified in 7 U.S.C. §§ 1901-1906 (1982)).

43. 7 U.S.C.A. § 1902 (West 1973 & Supp. 1986).

44. 7 U.S.C. § 1903 (1982) (repealed) (effective date of repeal one year after October 10, 1978 but applicable for another 18 months for hardship cases).

45. Comment, *supra* note 26, at 221.

46. *Id.*

47. See, e.g., Ariz. Rev. Stat. Ann. §§ 24-601 to 24-615 (West 1983); Conn. Gen. Stat. Ann. § 22-272a (West 1985); Fla. Stat. Ann. §§ 828.24-828.26 (West 1976 & Supp. 1986); Ill. Ann. Stat. ch. 8, §§ 229.51-229.58 (Smith-Hurd 1975 & Supp. 1986); Kan. Stat. Ann. §§ 47-1401 to 47-1405 (1981); Mich. Comp. Laws Ann. §§ 287.551-287.582 (West 1979); Ohio Rev. Code. Ann. §§ 945.01- 945.99 (Page 1968 & Supp. 1985); Or. Rev. Stat. §§ 603.010-603.992 (1983); R.I. Gen. Laws §§ 4-17-1 to 4-17-7 (1976 & Supp.1986); Wash. Rev. Code §§ 16.50.100 to 16.50.900 (West Supp. 1986); W.Va. Code §§ 19-2E-1 to 19-2E-7 (1984).

48. 7 U.S.C.A. § 1902(b) (West 1973 & Supp. 1986).

49. 7 U.S.C. § 1906 (1982).

50. *Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974) *aff'd. mem.*, 419 U.S. 806 (1974).

The third act passed by Congress is the Federal Animal Welfare Act (AWA).⁵¹ The AWA is directed towards animals used for research or experimental purposes, and it calls for the registration of research facilities using animals⁵² and for the licensing of dealers who supply animals.⁵³ It does not include within its purview, however, animals raised for food production.⁵⁴

B. State Statutes

1. Overview

The balance of the protection afforded to livestock raised for food production falls within state statutes. Every state has an anti-cruelty statute in some form although they vary in degree and comprehensiveness. Advocates of animal rights condemn these statutes as being inadequate in affording the protection that they believe is required for the animals.⁵⁵ The balance of this article will examine the state statutes to determine their effectiveness in light of the charges made by those espousing animal rights. The examination will concentrate on the specific charges of cruelty leveled at commercial livestock breeders to determine whether the breeders are susceptible to determination, and where warranted, prosecution under state statutes. As many of the charges are matters of factual dis-

51. The Animal Welfare Act (AWA) is administered by the United States Department of Agriculture. The statute was first passed in 1966. Laboratory Animal Welfare Act, Pub. L. No. 89-544, 80 Stat. 350 (1966). The Act was amended in 1970, Animal Welfare Act of 1970, Pub. L. No. 91-579, 84 Stat. 1560, and again in 1976, Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, 90 Stat. 417. Further amendments to the AWA were passed by the 99th Congress as part of the Food Security Act of 1985 and became effective on December 24, 1986. Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (codified as amended at 7 U.S.C. §§ 2131-2157 (Supp. III 1985)).

52. *Id.* § 2136.

53. *Id.* § 2133.

54. *Id.* § 2132(g).

55. See Comment, *supra* note 26, at 226 ("The statutes still fail to define the crucial term 'animal' and 'cruelty'. In short anti-cruelty statutes are still inadequate."); Note, *supra* note 2, at 437 ("However an analysis of this body of legislation demonstrates that these [state] statutes provide virtually no real protection for the modern farm animal.").

pute, they are treated only as allegations and not as settled facts.

Animal suffering can be divided into three categories: abuse, neglect, and deprivation. Abuse consists of maltreatment, i.e., beating, torture, overwork and what can only be described as psychotic treatment of living beings.⁵⁶ Nearly every state anti-cruelty statute prohibits this behavior. Neglect consists of the failure to take those steps necessary to insure the health of animals, i.e., denying confined animals adequate food, water and air space.⁵⁷ Once again, all or nearly all state statutes specifically prohibit this form of neglect. Indeed, insofar as livestock producers are concerned, this behavior is in direct conflict with their own economic interests as it wastes their investment. The more difficult category of suffering is deprivation, which may be defined as denying an animal other aspects of its environment less vital than food, water and air, but which to some degree affect its welfare.⁵⁸ The most common forms of deprivation alleged by animal welfare advocates are caging egg laying hens in excessively dense levels; the practice of using artificial illumination during nightfall for hens; trimming beaks; and confining gestating and farrowing sows to stalls which causes undue stress.

It is in the area of deprivation that severe differences of opinion lie between advocates of agricultural interests and proponents of animal welfare. Practitioners of animal husbandry argue that dense confinement of hens increases production and reduces costs; that trimming beaks prevents cannibalism; and that confining farrowing hogs prevents the piglets from being crushed by their mother.⁵⁹ Most of the state statutes, on their faces, do not address specific areas of deprivation. However, all of them are suited to a determination on a case by case basis, by applying relevant community standards and values as to what constitutes criminal deprivation with respect to farm animals.

56. CAST Report, *supra* note 5, at 11. See also Curtis, *supra* note 2, at 5.

57. *Id.*

58. *Id.*

59. Cast Report, *supra* note 5, at 4-6.

2. *Comprehensive Statutes*

The most comprehensive state statutes affording animal protection are those enacted by Minnesota⁶⁰ and North Dakota.⁶¹ The North Dakota Humane Treatment of Animal Statute defines animals to include every living animal except humans.⁶² The statute defines cruelty to include every "act, omission or neglect whereby *unnecessary* or *unjustifiable* pain, suffering or death shall be caused or permitted"⁶³ (emphasis added). The statute requires that animals be provided with the necessary food, water and shelter, and prohibits animals from being kept in any enclosure without exercise or wholesome change of air.⁶⁴ Furthermore, there is a prohibition against cruelty in the transportation of animals.⁶⁵ This statute applies to all animals, as defined, without exception. Violation of the statute constitutes a misdemeanor⁶⁶ and enforcement of the statute is vested in any sheriff, police officer, licensed veterinarian or investigator employed by the State Livestock Sanitary Board.⁶⁷

The Minnesota Prevention of Cruelty Act would appear to meet many of the charges made against commercial livestock production. The Act proscribes every "act, omission or neglect whereby unnecessary or unjustifiable pain, suffering or death shall be caused or permitted" to animals.⁶⁸ The statute requires that animals that are kept in enclosures shall be provided with wholesome exercise, a change of air and the necessary food, water or shelter.⁶⁹ The Act specifically gives standing to any person who has reason to believe that an act of cruelty has taken place and enables them to apply to a court

60. Minn. Stat. Ann. §§ 343.20-343.36 (West 1972 & Supp. 1986) (renumbered in the supplement).

61. N.D. Cent. Code §§ 36-21.1-.01 to 36-21.1-12 (1980).

62. *Id.* § 36-21.1-01(1).

63. *Id.* § 36-21.1-01(3).

64. *Id.* § 36-21.1-02(2)-(3).

65. *Id.* § 36-21.1-03.

66. *Id.* § 36-21.1-11.

67. *Id.* § 36-21.1-06.

68. Minn. Stat. Ann. § 343.20 (West 1972 & Supp. 1986).

69. *Id.* §§ 343.21(2)-(4).

of competent jurisdiction for a warrant and an investigation.⁷⁰ If the court is satisfied that probable cause exists, it shall issue a search warrant to a competent officer. The expense of the investigation is borne by the party violating the statute.⁷¹ The Act provides that any animal being maintained in violation of its terms will be taken into custody by the officer executing the warrant. Once again, the broad reach of the Minnesota statute, attained through both its definitions and the power vested in private citizens, appears to afford protection to livestock in production. Neither this statute nor the North Dakota statute attempts to define every form of cruelty possible.

As under any statute, questions remain: what constitutes sufficient exercise, what constitutes sufficient change of air, what is "unnecessary or unjustified" pain? But these are questions to which the legal process is suited to answer. As applied to intensive livestock production, if a hog, poultry or veal producer was challenged, he would have the opportunity of presenting evidence as to the necessity of the treatment and the welfare of the animal.⁷² Conversely, the prosecution would produce its evidence of what constitutes cruelty, and a fact finder, preferably a jury applying relevant community standards, would decide the facts. What the statutes permit is a case by case examination of the definition applying contemporary standards.⁷³

3. *Protective Statutes*

A second category of statutes, while not addressing all of the specific issues which have been raised with respect to concentrated husbandry methods, do provide a more specific measure of protection than most of the other state statutes.

70. *Id.* § 343.22.

71. *Id.* § 343.23.

72. N.D. Cent. Code § 36-21.1-02 (1980).

73. *Cf. State v. Klammer*, 230 Minn. 272, 41 N.W.2d 450 (1950) (discussing the evidence necessary to sustain a conviction of the owner of horses for depriving the animals of the necessary food, water, and shelter).

Connecticut, in its general anti-cruelty to animals statute,⁷⁴ requires that impounded or confined animals be provided with "proper care" and that they be supplied with "wholesome air, food and water" as well as shelter. The specific requirement of "wholesome air" is somewhat uncommon,⁷⁵ and would appear to be directed at the more intensive husbandry practices which call for the indoor confinement of animals. However, the word "wholesome" is not defined and it is not clear whether it is to be determined with reference to humans or to animals.

The Connecticut statute should also be viewed in the light of an additional statute⁷⁶ which deals expressly with "intensive poultry farming,"⁷⁷ which is defined as poultry farming involving more than twenty thousand fowl.⁷⁸ The sole concern of this statute is controlling the spread of diseases, both in farming and in the importation of birds.⁷⁹ This scheme, which evolved between 1975 and 1984,⁸⁰ includes provisions for the seizure and destruction of diseased flocks⁸¹ and helps to protect the value of flocks to their owners. The absence of any provisions regarding the treatment of the fowl themselves can be viewed as an acceptance by the Connecticut legislature of intensive poultry farming as an appropriate activity, so that such methods do not per se violate the anti-cruelty to animals statute. Instead, a case by case review of particular methods is required.

Maine defines the word "animal" as "every living sentient

74. Conn. Gen. Stat. Ann. §§ 53-247 to 53-253 (West 1985).

75. See Nev. Rev. Stat. § 574.120(1) (1985); N.Y. Agric. & Mkts. Law § 356 (McKinney Supp. 1986). These two states impose the requirement that "wholesome air" must be provided for when animals are confined or impounded.

76. Conn. Gen. Stat. Ann. §§ 22-322 to 22-326(c) (West 1985 & Supp. 1986).

77. Similar statutes exist in some other states with respect to feedlots, which often have as their principal concern pollution control. See, e.g., Okla. Stat. Ann. tit. 2, §§ 9-201, -210 (West 1973 & Supp. 1987); Tenn. Code. Ann. § 44-18-103 (Supp. 1986).

78. Conn. Gen. Stat. Ann. § 22-323a(a) (West 1985).

79. *Id.* § 22-322.

80. 1975 Conn. Acts ch. 232, 1981 Conn. Acts ch. 231, 1984 Conn. Acts ch. 2, 231, 260, 309.

81. Conn. Gen. Stat. Ann. § 22-324 (West 1985 & Supp. 1986).

creature.”⁸² It forbids an owner from depriving an animal of “necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions.”⁸³ A similar law in Massachusetts requires a “sanitary environment.”⁸⁴ These statutes have left it to courts and juries to develop what care is “necessary”⁸⁵ or what constitutes “humanely clean conditions” or a “sanitary environment.”⁸⁶

Texas also extends certain additional protection to animals, not only requiring that they be provided with “necessary food, care, or shelter”⁸⁷ but also making it a crime when a person “transports or confines an animal in a cruel manner.”⁸⁸ Although the principal concern of the statute is cruelty in transportation, it appears that it may also apply to concentrated husbandry methods, where animals are confined to pens or cages. Again, the statute leaves the decision of whether a particular practice is cruel or not to juries and courts.⁸⁹

4. *Protective Statutes Excluding Farm Animals*

A third category of statutes expressly excludes farm animals from provisions extending additional protection to animals generally. Some states, such as Vermont,⁹⁰ have adopted a state version of the federal Animal Welfare Act,⁹¹ which,

82. Me. Rev. Stat. Ann. tit. 17-A, § 510(2) (West 1983).

83. *Id.* § 510(1)(C).

84. Mass. Gen. Laws Ann. ch. 272, § 77 (West 1984).

85. See, e.g., *State v. Tasker*, 469 A.2d 1254 (Me. 1984) (defendant intentionally or recklessly deprived two ponies of necessary medical attention); *State v. Jordan*, 126 Me. 115, 136 A. 483 (1927) (whether an owner was guilty of unnecessarily failing to provide cows with proper food was a question for the jury).

86. See, e.g., *Commonwealth v. Curry*, 150 Mass. 509, 23 N.E. 212 (1890) (discussing evidence required for failure to provide proper food, drink and protection).

87. Tex. Penal Code Ann. § 42.11(a)(2) (Vernon Supp. 1986).

88. *Id.* § 42.11(a)(4).

89. See *State v. McGuinnis*, 541 S.W.2d 431 (Tex. Crim. App. 1976). The court held that “[t]he jury should have been instructed on the definition of torture of an animal and . . . permitted to determine whether the acts described in the circumstances of [a] case show the torture of an animal” under § 42.11 of the Texas Penal Code. *Id.* at 432.

90. Vt. Stat. Ann. tit. 20, §§ 3901-3912 (Supp. 1986).

91. 7 U.S.C. §§ 2131-2157 (Supp. III 1985).

like the federal statute, excludes farm animals from its coverage.⁹²

Wisconsin provides an example of such a statutory scheme. Its statute not only requires that animals be provided with proper food and water,⁹³ but also sets specific standards for indoor and outdoor shelter, including ventilation, space, temperature and sanitation standards.⁹⁴ For indoor facilities, the temperature must be "compatible with the health of the animal"⁹⁵ and there must be adequate ventilation.⁹⁶ Outdoor facilities must provide shelter from sunlight and inclement weather.⁹⁷ Both types of facilities must allow the animal sufficient space for "adequate freedom of movement"⁹⁸ and be cleaned periodically "so as to minimize health hazards."⁹⁹ Enforcement is by application to the local circuit for a search warrant, to be issued upon a finding of probable cause.¹⁰⁰ Further enforcement and prosecution appears to be left to the local district attorney.¹⁰¹

This statute plainly would provide many of the protections which the animal rights advocates claim should be provided for animals. However, the Wisconsin statute specifically states that "[i]n the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located."¹⁰²

A similar scheme exists in Washington, where a 1901 statute¹⁰³ prohibits anyone with custody of an animal from "in-

92. Vt. Stat. Ann. tit. 20, § 3901(4) (Supp. 1986); 7 U.S.C. § 2132(g) (Supp. III 1985).

93. Wis. Stat. Ann. § 948.13 (West 1982 & Supp. 1986).

94. *Id.* § 948.14.

95. *Id.* § 948.14(1)(a).

96. *Id.* § 948.14(1)(b).

97. *Id.* § 948.14(2).

98. *Id.* § 948.14(3)(b).

99. *Id.* § 948.14(4).

100. *Id.* § 948.16.

101. *Id.* § 948.18.

102. *Id.* § 948.14.

103. 1901 Wash. Laws ch. 146, § 4.

flict[ing] unnecessary suffering or pain upon the same, or unnecessarily fail[ing] to provide the same with proper food, drink, air, light, space, shelter or protection from the weather."¹⁰⁴ This statute applies to all animals, without exception.¹⁰⁵

Violation of the Washington statute is a misdemeanor, and prosecutions may be brought by any member of an incorporated humane society.¹⁰⁶ Such members, upon approval by the trustees of the society and a judge, also may be empowered to make arrests.¹⁰⁷

Washington's statute, as enacted in 1901, applied to all animals without exception and effectively remained unchanged until 1982. Then, while leaving those provisions intact,¹⁰⁸ the Washington legislature enacted an additional section stating that "[n]othing in this chapter applies to accepted husbandry practices used in the commercial raising and slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events."¹⁰⁹ The 1982 statute, creating an express exception to a law which had remained unchanged for over eighty years, indicates a consideration of this issue by the Washington legislature and a policy decision that animals used in concentrated husbandry methods are not to have such protections extended to them. Minimally, this recent amendment reflects a policy that livestock animals are not accorded the same scope of protection as domestic pets. "Why?," one may ask rhetorically. The answer must lie in a judgment that human values (food) prevail over animal values.

The Wisconsin and Washington statutes do not state what husbandry practices are considered to be "normal" or "accepted." This would appear to create an issue of fact to be resolved at trial. Both the prosecution and defense at such a trial may be required to present expert testimony and survey

104. Wash. Rev. Code Ann. § 16.52.070 (West Supp. 1986).

105. Wash. Rev. Code Ann. § 16.52.010 (West 1962).

106. *Id.* § 16.52.040.

107. Wash. Rev. Code Ann. § 16.52.030 (West Supp. 1986).

108. 1982 Wash. Laws ch. 114.

109. Wash. Rev. Code Ann. § 16.52.185 (West Supp. 1986).

evidence of whether the husbandry methods in issue are "normal." Furthermore, in Wisconsin, if a particular method is new to the particular county, it might not qualify for this exception, although generally accepted elsewhere.¹¹⁰

Similar statutory schemes exist in other states, although they do not provide as much detail in connection with the requirements for animals. Kansas requires that animals be provided with "food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health and well being of such kind of animal,"¹¹¹ but then excepts from this requirement "normal or accepted practices of animal husbandry," among other activities.¹¹²

Missouri requires that animals receive "adequate care,"¹¹³ which it defines as "normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter and health care. . . ."¹¹⁴ However, "normal or accepted practices of animal husbandry" are listed as an exception.¹¹⁵

Pennsylvania requires that animals not be deprived of "necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter," but states that this does not apply "to activity undertaken in normal agricultural operation."¹¹⁶ As in Wisconsin and Washington, the determination of what is "normal agricultural operation"¹¹⁷ in Pennsylvania and "normal or accepted practices of animal husbandry" in Kansas¹¹⁸ and Missouri¹¹⁹ appears to be a question of fact for determination by a jury or a court. Therefore, in a trial under these statutes, local standards of "normal agricultural practice" would be at issue.

In contrast, Ohio requires that animals "other than cattle, poultry or fowl, swine, sheep, or goats," which are kept in an

110. Wis. Stat. Ann. § 948.14 (West 1982 & Supp. 1986).

111. Kan. Stat. Ann. § 21-4310(1)(C) (1980).

112. *Id.* § 21-4310(2).

113. Mo. Ann. Stat. §§ 578.005(1), .009(1), .012 (5) (Vernon Supp. 1986).

114. *Id.* § 578.005(1).

115. *Id.* § 578.007(8).

116. 18 Pa. Cons. Stat. Ann. § 5511(c) (Purdon Supp.1986).

117. *Id.*

118. Kan. Stat. Ann. § 21-4310(2)(f) (1980).

119. Mo. Rev. Stat. § 578.007(8) (Vernon Supp. 1986).

enclosure, be permitted "wholesome exercise and change of air."¹²⁰ Thus, under Ohio law, denial of exercise and air to the listed animals does not violate the law, even if it is contrary to all "accepted" or "normal" husbandry practices. A comparison of this statute to other such statutes shows that the statutes of Kansas,¹²¹ Missouri,¹²² Pennsylvania,¹²³ Washington¹²⁴ and Wisconsin,¹²⁵ do extend additional protection to commercial animals, which are based on standards of human activity. This is in contrast to states previously considered, such as Minnesota,¹²⁶ North Dakota,¹²⁷ Connecticut,¹²⁸ Maine,¹²⁹ Massachusetts¹³⁰ and Texas,¹³¹ where the protections are based upon standards of animal activity.

Also of interest is a Maryland statute which makes it a criminal offense for any person "having the custody of an animal either as owner or otherwise" to inflict "suffering or pain on the animal" or fail "to provide the animal with nutritional food, veterinary care, proper air, space or shelter or protection from the weather."¹³² Like the Wisconsin and Washington statutes, this would appear to extend many of the protections which are in dispute to all animals. Maryland is also similar to Wisconsin and Washington in that it places restrictions on the application of its statute, so that "[c]ustomary and normal veterinary and agricultural husbandry practices including but not limited to dehorning, castration, docking tails and limit feeding are not covered by the provisions of this section."¹³³ Again, as with the Kansas, Mis-

120. Ohio Rev. Code Ann. § 959.13(A)(4) (Page Supp. 1985).

121. Kan. Stat. Ann. § 21-4310(2)(f) (1980).

122. Mo. Rev. Stat. § 578.007(8) (Vernon Supp. 1986).

123. 18 Pa. Cons. Stat. Ann. § 5511(d)-(h) (Purdon Supp. 1986).

124. Wash. Rev. Code Ann. § 16.52.185 (West Supp. 1986).

125. Wis. Stat. Ann. § 948.14 (West 1982 & Supp. 1986).

126. Minn. Stat. Ann. § 343.21 (West 1972 & Supp. 1986).

127. N.D. Cent. Code § 36-21.1-02 (1980).

128. Conn. Gen. Stat. Ann. § 53-247 (West 1985).

129. Me. Rev. Stat. Ann. tit. 17-A, § 510(1)(C) (West 1983).

130. Mass. Gen. Laws ch. 272, § 77 (West 1984).

131. Tex. Penal Code Ann. §§ 42.11(a)(2) and (4) (Vernon Supp. 1986).

132. Md. Ann. Code art. 27, § 59(3) (Supp. 1986).

133. *Id.* § 59.

souri, Pennsylvania, Washington and Wisconsin statutes,¹³⁴ the determination of what is a "customary and normal" husbandry practice appears to be a question of fact to be resolved at trial.

The examples of exceptions listed in the Maryland statute support an argument that the exception applies only to direct practices which physically alter or disfigure animals, and that the statute was not intended to withdraw from commercial animals the protections of proper air, space or shelter, regardless of normal agricultural husbandry practices. This argument receives support from the next sentence in the statute, which states that "[i]n the case of activities in which physical pain may unavoidably be caused to animals . . . cruelty shall mean a failure to employ the most humane method reasonably available."¹³⁵ It could be argued that any agricultural husbandry method which is not the most humane method available for the purpose of raising animals violates this section.

5. *General Protection Statutes*

The fourth category of statutes are the most common. These consist of states which have laws applicable to all animals, including farm animals, and which prohibit cruelty to animals in general terms.¹³⁶ One of these is the New York statute, which prohibits individuals from depriving animals of necessary food or water or engaging in acts of cruelty towards animals.¹³⁷ This statute is applicable to all species, including

134. See *supra* notes 101-105.

135. Md. Ann. Code art. 27, § 59 (Supp. 1986).

136. Ala. Code § 13A-11-14 (1982); Alaska Stat. § 11.61.150(a) (1983); Ariz. Rev. Stat. Ann. § 13-2910(a) (1978 & Supp. 1986); Ark. Stat. Ann. § 41-2918 (1985); Cal. Penal Code § 597 (West Supp. 1986); N.M. Stat. Ann. § 30-18-1 (1978 & Supp. 1986); N.Y. Agric. & Mkts. Law § 353 (McKinney 1972 & Supp. 1986); N.C. Gen. Stat. § 14-360 (1981 & Supp. 1985); Okla. Stat. Ann. tit. 21, § 1685 (West 1983 & Supp. 1985-1988); R.I. Gen. Laws § 4-1-2 (1976 & Supp. 1985); S.C. Code Ann. §§ 47-1-40, -50 (Law. Co-op. 1977); S.D. Codified Laws Ann. § 40-1-2 (Law. Co-op. 1985); Tenn. Code Ann. § 39-3-104 (1982 & Supp. 1985); Utah Code Ann. § 76-9-301 (1978); Vt. Stat. Ann. tit. 13, § 403 (1984 & Supp. 1986); Va. Code § 29-213.91; W.Va. Code § 61-8-19 (1984 & Supp. 1986); Wyo. Stat. § 6-3-203 (1977 & Supp. 1985-1986).

137. N.Y. Agric. & Mkts. Law § 353 (McKinney Supp. 1986).

farm animals.¹³⁸

Many states have an additional provision in their statutes which require that animals be provided with proper shelter.¹³⁹ These statutes do not require that animals confined in shelters be provided with fresh air, specific amounts of space, exercise or particular standards of cleanliness. The protections extended in these statutes are to those animals which would otherwise be left outside in harsh or inclement weather where they might die from exposure.

These general protection statutes do not define what constitutes cruelty to animals. This has been left to evolution in the case law.¹⁴⁰ These statutes afford courts and juries the opportunity to reflect contemporary and evolving community values regarding cruelty to animals. General protection statutes do not have provisions which prevent the application of the statutes to particular husbandry methods. If such laws are not being so applied, one could view this as being a reflection upon community values and standards; that is, the consensus of the community and the courts is that such activities do not constitute cruelty to animals.

6. *General Protection Statutes With Farm Animal Exceptions*

The fifth category of statutes is closely related to the fourth category. Like the others, they are general statutes, prohibiting cruelty to animals. However, states in this category have added express provisions in their laws which give an exemption from the statutes to animals raised in husbandry.

138. *Id.* § 350(1).

139. *E.g.*, N.J. Rev. Stat. § 4:22-17(c) (1973).

140. *See* *People v. O'Rourke*, 83 Misc.2d 175, 369 N.Y.S.2d 335 (1975) (causing a limp horse to continue to work by pulling a hansom cab, the court found that this constituted cruelty to the animal); *New Jersey Soc'y for the Prevention of Cruelty to Animals v. Bd. of Educ. of City of East Orange*, 91 N.J. Super. 81, 219 A.2d 200 (1966), *aff'd*, 49 N.J. 15, 227 A.2d 506 (1967) (the court stated that cruelty to animals as defined by the statute is an unjustifiable infliction of pain, thus the State Department of Health could authorize scientific experimentation by high school students which involved pain to animals as long as it was not unnecessary and aided in the learning experience).

For example, Indiana, after prohibiting such acts as animal fights and the like, defines animal cruelty to animals as an act where one "recklessly, knowingly or intentionally abandons or neglects the animal."¹⁴¹ but expressly excludes "acceptable farm management practices."¹⁴² It should be noted that this exception was added by a 1985 amendment,¹⁴³ thereby evidencing the present intent of the Indiana legislature in this matter. Again, what constitutes "acceptable farm management practices" is an issue of fact for juries and the courts.

A similar statutory scheme exists in Illinois, which defines the term "animal" to mean "every living creature, domestic or wild, but does not include man."¹⁴⁴ Owners are required to provide food, water, shelter, veterinary care and "humane care and treatment."¹⁴⁵ The issue of what is required as "humane care and treatment" would be an issue of fact for juries and the courts. However, the Illinois statutory scheme expressly excludes from coverage "normal, good husbandry practices utilized by any person in the production of food, companion or work animals."¹⁴⁶ As with Indiana, and other states such as Kansas,¹⁴⁷ Missouri,¹⁴⁸ Pennsylvania,¹⁴⁹ Washington¹⁵⁰ and Wisconsin,¹⁵¹ this creates two threshold issues in any prosecution of concentrated husbandry methods. The first is establishing what are "normal, good husbandry practices." The second is what is "humane care and treatment."

Also of interest is the Louisiana statute, as redrafted in 1982.¹⁵² This statute makes it a criminal offense for a person to intentionally or with criminal negligence deprive an animal of "proper food, proper drink, proper shelter or proper veteri-

141. Ind. Code Ann. § 35-46-3-2(b) (Burns Supp. 1986).

142. *Id.* § 35-46-3-2(f)(5).

143. 1985 Ind. Acts ch. 326.

144. Ill. Ann. Stat. ch. 8, § 702.01 (Smith-Hurd 1975).

145. *Id.* § 703.

146. *Id.* § 713 (Smith-Hurd Supp. 1986).

147. See *supra* notes 91-92 and accompanying text.

148. See *supra* notes 93-95 and accompanying text.

149. See *supra* note 96 and accompanying text.

150. See *supra* notes 83-89 and accompanying text.

151. See *supra* notes 74-82 and accompanying text.

152. 1982 La. Acts ch. 432.

nary care,"¹⁵³ as those terms are defined in the statute.¹⁵⁴ This Louisiana law contains an exception only for "herding of domestic animals" and not all animal husbandry practices.¹⁵⁵ It is not clear what activities fall within the meaning of "herding". Finally, the statute also states that "[f]or purposes of this Section, fowl shall not be defined as animals."¹⁵⁶ This effectively removes fowl, domestic and wild, from protection under the cruelty to animals statute. This exception did not exist in the prior version of the statute¹⁵⁷ and no reason is known for this unusual exception. The Louisiana statute, like the Indiana law,¹⁵⁸ shows that the current standards (as manifested by legislative intent) are to reduce the legal protection granted to animals, at least in particular circumstances.

Another recent statement of legislative policy was made in Oregon which revised its law in 1985.¹⁵⁹ Under this new statute, offenses were divided into animal abuse and animal neglect, each in the first and second degree.¹⁶⁰ However, "any practice of good animal husbandry" does not violate the animal abuse statutes.¹⁶¹ As in other states, "good animal husbandry" is defined in general terms as "accepted practices of veterinary medicine or animal husbandry," and includes dehorning, docking and neutering.¹⁶² Husbandry operations still must comply with the animal neglect sections, which require that an animal be given "minimum care"¹⁶³ which is further defined as "care sufficient to preserve the health and well-being of an animal."¹⁶⁴ This includes food, water and veterinary care,¹⁶⁵ but the requirements for shelter, cleanliness,

153. La. Rev. Stat. Ann. § 14:102.1(A)(3) (West 1986) (citation omitted).

154. *Id.* § 14:102.

155. *Id.* § 14:102.1(C).

156. *Id.* § 14:102.1(D).

157. *Id.* § 14:102.1.

158. See *supra* notes 120-22 and accompanying text.

159. 1985 Or. Laws ch. 662.

160. Or. Rev. Stat. §§ 167.315-16.330 (1985).

161. *Id.* §§ 167.315(2), 167.320(2).

162. *Id.* § 167.310(1)(b).

163. *Id.* §§ 167.325(1), 167.330(1)(a).

164. *Id.* § 167.310(2).

165. *Id.* § 167.310(2)(a),(b), (d).

temperature and exercise space are restricted to "pet or domestic animals"¹⁶⁶ which are defined as "other than livestock or poultry."¹⁶⁷ Therefore, the Oregon legislature has expressly declined to extend these additional protections to animals used for commercial purposes. However, what constitutes the "well-being of an animal" is an issue which remains to be determined by juries and courts on a case by case basis. Finally, the statutes add an express exemption from both the animal abuse and the animal neglect laws for "commercially grown poultry" absent "gross neglect."¹⁶⁸ This would appear to remove, in effect, all protections of fowl used in concentrated operations, regardless of whether the practices used are "accepted" or not, or whether they are abusive or neglectful.

The Oregon statute, like the Louisiana, Indiana and Illinois statutes, reflect recent consideration of the issue of animal welfare by state legislatures. In each case, the state legislature has chosen to adopt statutes which expressly excluded farm and/or commercial animals from coverage. These statutes apply equally to concentrated husbandry methods as well as to other husbandry methods. This evidences a consensus that additional protections have not been extended to food animals.

7. *Other Pertinent Statutory Provisions*

A number of states have considered whether the slaughter of animals for use as food may constitute cruelty to animals, even when in apparent conformity with the Federal Humane Slaughter of Livestock Act¹⁶⁹ and the related federal regulations¹⁷⁰ governing such slaughtering. States such as Delaware,¹⁷¹ Georgia,¹⁷² Kentucky,¹⁷³ Nevada,¹⁷⁴ Washington,¹⁷⁵

166. *Id.* § 167.310(2)(c), (e).

167. *Id.* § 167.310(1)(d).

168. *Id.* § 167.335.

169. 7 U.S.C. §§ 1901-1906 (1982).

170. 9 C.F.R. §§ 313.1-313.90 (1986).

171. Del. Code Ann. tit. 11, § 1325 (1979 & Supp. 1986).

172. Ga. Code Ann. § 16-12-4 (1984).

173. Ky. Rev. Stat. § 525.130(2)(b) (1985).

174. Nev. Rev. Stat. § 574.200(3) (1985).

175. Wash. Rev. Code Ann. § 16.52.180 (West 1962).

and Wisconsin¹⁷⁶ have specific statutory exemptions removing the killing of food animals from their general anti-cruelty laws.

Finally, statutes of other states raise different points of varying interest. Although Alabama outlaws cruelty to animals in general terms,¹⁷⁷ it requires public school students to receive at least twenty minutes of instruction weekly in "kindness, justice and humane protection of birds and animals and the important place they occupy in the economy of nature."¹⁷⁸ Some states have laws prohibiting the vivisection of animals in schools and otherwise regulating the use of animals in schools.¹⁷⁹ New Mexico prohibits the separation of the offspring of livestock from the mother except for dairy cows.¹⁸⁰ Oklahoma requires that "a bailee of living animals must provide them with suitable food and shelter, and treat them kindly."¹⁸¹ What this means is unclear. Texas¹⁸² and Connecticut¹⁸³ place particular restrictions on cages for fowls, but these do not appear to be inconsistent with concentrated production methods. West Virginia prohibits the killing of calves less than four weeks old.¹⁸⁴

V. Conclusion

As long as debate continues regarding what constitutes proper care in the raising of livestock and poultry, there can be no unanimity of opinion that can successfully be embodied in a legal code. It is not accurate, however, to say that our legal framework does not provide protection to animals raised in intensive livestock and poultry facilities. The open question is what degree of protection is needed. Certainly, the compre-

176. Wis. Stat. Ann. § 948.015 (West 1982 & Supp. 1986).

177. Ala. Code § 13A-11-14 (1982).

178. Ala. Code § 16-40-4 (1977).

179. N.H. Rev. Stat. Ann. § 644.8(c) (1986).

180. N.M. Stat. Ann. § 30-18-5(D) (1984).

181. Okla. Stat. Ann. tit. 15, § 454 (West 1966).

182. Tex. Civ. Stat. Ann. art. 181 (Vernon 1969) (emphasis added).

183. Conn. Gen. Stat. Ann. § 53-249 (West 1985).

184. W. Va. Code § 16-7-6 (1985).

hensive statutes of North Dakota and Minnesota provide a general guarantee of the animal's welfare. To a lesser extent, the protective statutes of Connecticut, Texas and Maine also provide a framework in which one could seek to test the welfare of animals. Even those statutes which exclude "normally accepted husbandry" practices proscribe treatment that deviates from what would be considered "acceptable" practices. As a consensus emerges, these questions will be resolved.

If anything is demonstrated by the present statutory schemes, it is that specific complaints of animal rights advocates have not been addressed by the legislatures. Indeed, if one looks at the recent amendments in Wisconsin and elsewhere, one can infer a recent legislative intent to reject the application of animal right theories to farm animals. However, nearly all of the statutes are sufficiently broad to proscribe treatment of farm animals which, by consensus, is deemed cruel.

Nature shows that not all species accept the inviolability of animal life. Species in their natural habitats are predatory and carnivorous. Therefore, the natural order of existence appears to accept and contemplate such behavior. Man is such a species.

Some current philosophers assert that the universe derives from a single source and that all matter has some degree of sentience and consciousness, and that the difference between one species or order and another is merely one of degree.¹⁸⁵ Under this view, if species other than man are to be considered to have inherent rights, then the issue becomes how to set a limit on the species and orders possessing such rights. If there are no limits, then all plant life, and other major sources of sustenance for man and animal life, have rights. Mainly, if man and animals are to continue to exist, then plants may not have an inherent right to protected existence.

As we have seen from the current debate over animal welfare, we, as a society, have not come to an agreement on either the existence or the extent of animal rights. The majority

185. See T. Regan & P. Singer, *Animal Rights and Human Obligations* 148-62 (1976).

view, however, as reflected in statutes and case law, appears to ascribe few, if any, such rights.