



**FRIENDS, FOOD OR FIBER: COMPARING THE LEGAL
FRAMEWORKS PROTECTING FARMED ANIMALS IN THE
UNITED STATES AND THE REPUBLIC OF IRELAND**

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I. INTRODUCTION

While the abolishment of factory farming and dismantling of the meat industry would be the best course of action ethically, environmentally, and for human health, many ameliorative measures could be implemented quickly to reduce animal suffering. The Republic of Ireland—although its system is itself imperfect—demonstrates the practicability of stricter animal laws and throws the failures of the American system into even starker relief.

Humanity has a long and involved history of meat consumption that extends all the way back to the days of early man.¹ In the millennia since, meat has served as a luxury, a status symbol, and a signifier of power or masculinity.² The cultural importance we place on meat has bred a massive and growing industry of animal agriculture.³ Although up until the nineteenth century frequent meat-eating, in Western countries at least, was restricted to the privileged classes,⁴ in the years since, meat

1. See Ann Gibbons, *The Evolution of Diet*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.com/foodfeatures/evolution-of-diet/> (last visited Apr. 5, 2020).

2. See, e.g., Ole Fischer, *Masculinity and Meat Consumption—Historical Approaches to a Current Health Issue*, 50 MEDIZINHISTORISCHES J. 42, 42 (2015); Hamish J. Love & Danielle Sulikowski, *Of Meat and Men: Sex Differences in Implicit and Explicit Attitudes Toward Meat*, 9 FRONTIERS PSYCHOL. 559, 559 (2018); Paul Rozin et al., *Is Meat Male? A Quantitative Multimethod Framework to Establish Metaphoric Relationships*, 39 J. CONSUMER RES. 629, 631 (2012) (noting “[t]he male-meat linkage has been noted by a number of scholars in the social sciences”); Yasmin Noone, *What Your Meat-Eating Habits Say About Your Desired Social Class*, SBS (Sept. 18, 2018, 3:06 PM), <https://www.sbs.com.au/food/article/2018/09/18/what-eating-meat-says-about-your-social-class>.

3. See, e.g., Phillip Thornton, *Livestock Production: Recent Trends, Future Prospects*, 365 PHIL. TRANSACTIONS ROYAL SOC'Y B: BIOLOGICAL SCI. 2853, 2853 (2010).

4. Vincent J. Knapp, *The Democratization of Meat and Protein in Late Eighteenth— and Nineteenth—Century Europe*, 59 HISTORIAN 541, 542 (1997) (“Prior to 1800, meat consumption in Europe was mainly a matter of privilege. The aristocracy and the upper

has become a staple in households of all socioeconomic situations,⁵ and parts of the world that traditionally ate mostly plant-based diets have started to rely increasingly on meat and dairy.⁶ To keep up with increased demand, the industry has turned away from traditional methods of raising livestock and utilized intensive farming methods like concentrated animal feeding operations (“CAFOs”) and hatcheries to increase yields while lowering production costs.⁷ Despite the ubiquity and general acceptance of its product, animal agriculture externalizes massive costs in the form of harm to its workers and neighbors,⁸ risks to the health of consumers,⁹ damage to the environment globally,¹⁰ and,

middle class . . . were clearly meat eaters, but the masses were for the most part without meat. . . . Serving large quantities of meat became a status symbol.”)

5. See generally Angie Clonan et al., *Socioeconomic and Demographic Drivers of Red and Processed Meat Consumption: Implications for Health and Environmental Sustainability*, 75 PROC. NUTRITION SOC. 367, 367 (2016) (suggesting that in the developed world the old trend has inverted, and there is actually a “social gradient” in which poorer individuals consume more red and processed meat); Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America*, PEW (Apr. 29, 2008), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/phg/content_level_pages/reports/pcfifapfinalpdf.pdf [hereinafter Pew Commission, *Putting Meat on the Table*].

6. See Gibbons, *supra* note 1 (“[A] diet that revolves around meat and dairy . . . [is] on the rise throughout the developing world . . .”).

7. Hannah Ritchie & Max Roser, *Meat and Seafood Production and Consumption*, OUR WORLD IN DATA (Aug. 2017), <https://ourworldindata.org/meat-and-seafood-production-consumption> (explaining that global meat production has more than quadrupled in the last fifty years and the industry continues to grow); see also Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 5–6. In 2017, production increased by 1.25% and is projected to increase by an additional 15% by 2027. *OECD-FAO Agricultural Outlook 2018-2027*, FAO, http://www.fao.org/3/i9166e/i9166e_Chapter6_Meat.pdf (last visited Apr. 5, 2020).

8. “[A]nimal agricultural facilities, particularly slaughterhouses, are dangerous environments for workers . . . three times more dangerous than the average American factory.” Sonia Weil, *Big-Ag Exceptionalism: Ending the Special Protection of the Agricultural Industry*, 10 DREXEL L. REV. 183, 194 (2017). Also, people living in close proximity to industrialized animal enterprises risk depleted aquifers, contaminated groundwater, unpleasant smells, and runoff. Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 3.

9. “[T]he same techniques that have increased the productivity of animal agriculture have also contributed to public health concerns associated with [intensive food animal production].” Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 19. Animal agriculture can compromise human health by introducing zoonotic pathogens that persist through meat processing and into consumer products, that are transmitted directly to workers, or that contaminate groundwater through runoff. *Id.* at 11. Of note, 64% of documented human pathogens are zoonotic. *Id.* at 13.

10. The Food and Agriculture Organization (“FAO”) of the United Nations calls animal agriculture “one of the top two or three most significant contributors to the most serious environmental problems.” FAO, *Executive Summary* to LIVESTOCK’S LONG SHADOW: ENVIRONMENTAL ISSUES AND OPTIONS xx (2006). Not only does animal agriculture cause soil erosion and the acidification of land and water, it also contributes to climate change.

most significantly to this discussion, large-scale, long-term agony for the animals whose deaths are the bread and butter of the industry.

A. *Why Do Farmed Animals Need Protection Laws?*

Intensive agriculture methods render the lives of the billions of animals raised and slaughtered each year staggeringly grim. Take, for example, chickens, which comprise more than 90% of land animals slaughtered globally for food.¹¹ For the last half century, farmers and the poultry industry have bred chickens for either eggs or meat.¹² By optimizing species for one of the two, farmers have produced hens capable of laying up to 350 eggs every year and broiler chickens that reach slaughter weight just four weeks after they are born.¹³ It is a common practice in the industry to “cull” the male chicks born from the egg-laying species by putting them through a grinder to be used as animal feed.¹⁴ Approximately seven billion day-old male layer chicks are culled every

Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 25. A “special report on climate change and land by the Intergovernmental Panel on Climate Change (IPCC) describes plant-based diets as a major opportunity for mitigating and adapting to climate change – and includes a policy recommendation to reduce meat consumption.” Quirin Schiermeier, *Eat Less Meat: UN Climate-Change Report Calls For Change to Human Diet*, NATURE (Aug. 8, 2019), <https://www.nature.com/articles/d41586-019-02409-7>. One major reason for this is land use. Land used for any type of agriculture is less available to function as a carbon sink. *See id.* Compared to other types of farming, rearing animals takes up lots of space. *See Ritchie & Roser, supra* note 7. Furthermore, meat is an inherently inefficient way to feed people. *See id.* To produce meat for human consumption, farmers must first produce the food supply for these animals, a task which requires labor, water, and space. *See id.* The industry must then devote additional labor, water, and space to raising the animals themselves. *See id.* This intermediate step does not occur with perfect efficiency, however; one calorie in as food for a farmed animal does not equal one calorie out after the animal is dead. *Id.* Scientists and farmers refer to the “feed conversion ratio” to compare how many calories a farmer must feed an animal to get a certain number of calories from them after they are slaughtered. *Id.* From an energy perspective, farmed animals essentially serve as space-taking, water-drinking, labor-requiring middlemen who take an input of grain and output carbon emissions and a product capable of feeding at least several times fewer people than the raw materials would feed. *See Weil, supra* note 8, at 191–93.

11. *See* Alex Thornton, *This is How Many Animals We Eat Each Year*, WORLD ECON. F. (Feb. 8, 2019), <https://www.weforum.org/agenda/2019/02/chart-of-the-day-this-is-how-many-animals-we-eat-each-year/>.

12. Elisabeth Braw, *The Short, Brutal Life of Male Chickens*, ALJAZEERA AM. (Feb. 20, 2015, 5:00 AM), <http://america.aljazeera.com/articles/2015/2/20/the-short-brutal-life-of-male-chickens.html>.

13. *Id.*

14. Maryn McKenna, *By 2020, Male Chicks May Avoid Death By Grinder*, NAT'L GEOGRAPHIC (June 13, 2016), <https://www.nationalgeographic.com/people-and-culture/food/the-plate/2016/06/by-2020—male-chicks-could-avoid-death-by-grinder> (demonstrating that culling can be done by electrocution and gassing as well as grinding).

year.¹⁵ The female chicks of the egg-laying strain go on to produce so many eggs that the eggshells leech calcium from their bones and leave them prone to fractures.¹⁶ Broiler chickens—due to selective breeding,¹⁷ antibiotics,¹⁸ and growth hormones¹⁹—gain weight so quickly that many develop health problems: 90% of broiler chickens have problems walking,²⁰ and many have life-threatening deformities, such as breasts so disproportionately large that they damage the chicken's organs.²¹ These animals have instincts to take dust baths, make nests, and form complex social structures, but their living conditions prevent them from doing any of these things.²² Because so many birds are kept together, the animals cannot establish a pecking order, and instead peck one another compulsively.²³ The tight quarters prevent pecking victims from getting away, causing serious injury.²⁴ To manage this behavior, the industry partially amputates the animals' beaks so pecking causes less damage.²⁵

But chickens do not have a monopoly on suffering in intensive farming systems. Worldwide, 1.4 billion pigs are slaughtered annually.²⁶ Left to their own devices, pigs live in small groups, foraging for fruits and flowers, cooling off in mud wallows, and creating nests to sleep in;²⁷ but

15. M-E Krautwald-Junghanns et al., *Current Approaches to Avoid the Culling of Day-Old Male Chicks in the Layer Industry, with Special Reference to Spectroscopic Methods*, 97 *POULTRY SCI.* 749, 755 (2018).

16. Braw, *supra* note 12.

17. *Id.*

18. Larissa Wilson, *Ag-Gag Laws: A Shift in the Wrong Direction for Animal Welfare on Farms*, 44 *GOLDEN GATE U. L. REV.* 311, 314 (2014).

19. E.B. Ibitoye et al., *Gut Health and Serum Growth Hormone Levels of Broiler Chickens Fed Dietary Chitin and Chitosan from Cricket and Shrimp*, 98 *POULTRY SCI.* 745, 745 (2018).

20. S.C. Kestin et al., *Prevalence of Leg Weakness in Broiler Chickens and Its Relationship with Genotype*, 131 *VETERINARIAN REC.* 190, 190 (1992).

21. Dorothy Sluszka, *Animal Farm: The E.U.'s Move Towards Progress and the U.S.'s Slide Towards Dystopia in Farm Animal Welfare*, 24 *CARDOZO J. INT'L & COMP. L.* 423, 438 (2016).

22. Veronica Hirsch, *Detailed Discussions of Legal Protections of the Domestic Chicken in the United States and Europe*, *ANIMAL LEGAL & HISTORICAL CTR.* (2003), <https://www.animallaw.info/article/detailed-discussion-legal-protections-domestic-chicken-united-states-and-europe>.

23. *Id.*

24. *See id.*

25. Beak trimming involves using a hot blade to remove between one and two-thirds of a chick's beak without anesthesia. The procedure is believed to be painful and affects the animal's ability to eat, groom, and even perceive temperature. BRUCE A. WAGMAN & MATTHEW LIEBMAN, *A WORLDVIEW OF ANIMAL LAW* 67 (2011).

26. *Pigs*, *COMPASSION IN WORLD FARMING*, <https://www.ciwf.org.uk/farm-animals/pigs/> (last visited Apr. 5, 2020).

27. *Id.*; *see also Pig Welfare*, *COMPASSION IN WORLD FARMING*, <https://www.ciwf.org.uk/>

most farmed pigs will be kept in intensive systems and slaughtered without ever having been outside.²⁸ A pregnant sow may spend her entire sixteen-week pregnancy in a metal crate on a concrete or slatted floor, too narrow for her to turn around.²⁹ Oftentimes, the physical discomfort of being unable to move and the pathological boredom of being without social interaction or environmental stimulation will drive sows to bite the bars of their enclosures in frustration.³⁰ Conditions are also poor for their offspring; piglets may be kept in concrete sheds without bedding, their teeth clipped or ground down, and their tails amputated, all without anesthetic.³¹ Most male piglets are also castrated with no pain relief.³²

Cattle have a range of experiences within the animal agriculture industry. Some beef cattle spend most of their lives grazing outdoors and are only brought inside to be fattened shortly before slaughter.³³ Others spend their entire lives in crowded indoor systems.³⁴

In many ways, cows raised for dairy have it worse than those raised for beef. Most dairy cows live exclusively in indoor systems and, as a result, they are at an increased risk of lameness from the concrete flooring.³⁵ They are also at an increased risk for a painful infection of the udders called mastitis.³⁶ The cows' own bodies are often another source of discomfort. The Holstein-Friesian, the most common type of dairy cow in both the United States and Ireland, has been bred to produce seven times as much milk as she would need to feed a single calf.³⁷ The weight of that milk in a cow's udders can force her legs into an uncomfortable

farm-animals/pigs/pig-welfare/ (last visited Apr. 5, 2020) ("Pigs are naturally curious animals who spend much time exploring their environment . . .").

28. *Pigs*, *supra* note 26; see also TIMOTHY ROBINSON ET AL., FAO, GLOBAL LIVESTOCK PRODUCTION SYSTEMS 43, <http://www.fao.org/3/i2414e/i2414e05.pdf>.

29. *Pig Welfare*, *supra* note 27. These crates are called sow stalls or gestation crates. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Cows*, COMPASSION IN WORLD FARMING, <https://www.ciwf.org.uk/farm-animals/cows/> (last visited Apr. 5, 2020).

34. *About Dairy Cows*, COMPASSION IN WORLD FARMING, <https://www.ciwf.com/farm-animals/cows/dairy-cows/> (last visited Apr. 2, 2020).

35. *Welfare Issues for Dairy Cows*, COMPASSION IN WORLD FARMING, <https://www.ciwf.com/farmed-animals/cows/dairy-cows/welfare-issues/> (last visited Apr. 5, 2020).

36. Among dairy cows housed indoors, the infection is so common that in a herd of 100 cattle, "there could be as many as 70 cases of mastitis every year on average." See *id.*

37. *About Dairy Cows*, *supra* note 34; Sean Cummins, *Is It Time Irish Dairy Farmers Moved away from Black and White Cows?*, AGRILAND (July 22, 2017), <https://www.agriland.ie/farming-news/is-it-time-irish-dairy-farmers-moved-away-from-black-and-white-cows/>.

position that risks making her permanently lame.³⁸ Shortly after giving birth, dairy cows are separated from their calves, causing severe distress to both.³⁹ To maximize her milk production, the mother is usually inseminated again less than three months later.⁴⁰ Although they naturally have a life-span of twenty years or more, high production dairy cows are typically culled at less than three years old when their milk production slows.⁴¹ The calves are typically not well suited for beef production, so many are shot at birth and others are auctioned off and exported as veal calves.⁴²

Sheep raised in the animal agriculture industry may be subjected to several forms of mutilation. Lambs commonly have their tails docked, which is done with a knife, hot iron, or a tight ring around the animal's tail.⁴³ Many male lambs are also castrated without anesthetic.⁴⁴ Sheep raised for Merino wool are commonly subjected to mulesing, a procedure in which sections of skin around their tails are flayed, without anesthetic.⁴⁵

Farmed rabbits, whether raised for fur or meat, almost always spend their lives in "small, barren cages where their natural behaviour is severely restricted."⁴⁶ They have so little space in these cages that they cannot adopt many natural postures or execute a single hop.⁴⁷ Being so restricted can cause problems for their physical health, including weakened bones,⁴⁸ infectious diseases,⁴⁹ and sores on their footpads and hocks,⁵⁰ but it can also have mental health ramifications in the form of stereotypies.⁵¹ Stereotypies are repetitive, seemingly purposeless

38. *Welfare Issues for Dairy Cows*, *supra* note 35.

39. *Dairy Cows*, COMPASSION IN WORLD FARMING, <https://www.ciwf.org.uk/farm-animals/cows/dairy-cows/> (last visited Apr. 2, 2020).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Welfare Issues for Sheep*, COMPASSION IN WORLD FARMING, <https://www.ciwf.com/farm-animals/sheep/welfare-issues/> (last visited Apr. 5, 2020).

44. *Id.*

45. *Id.*

46. *Rabbits*, COMPASSION IN WORLD FARMING, <https://www.ciwf.org.uk/farm-animals/rabbits/> (last visited Apr. 5, 2020). Although perhaps not a species as associated with farming in the United States as chickens, cows, pigs, or sheep, more than a billion rabbits are slaughtered globally every year. *Id.*

47. *Rabbit Welfare*, COMPASSION IN WORLD FARMING, <https://www.ciwf.org.uk/farm-animals/rabbits/rabbit-welfare/> (last visited Apr. 5, 2020).

48. *Id.*

49. Directorate-General for Internal Policies, *Animal Welfare in the European Union* 50 (Jan. 2017) [hereinafter *Animal Welfare in the EU Study*].

50. *Rabbit Welfare*, *supra* note 47.

51. *Animal Welfare in the EU Study*, *supra* note 49.

behaviors that can be “caused by the animal’s repeated attempts to adapt to its environment.”⁵² Caged rabbits have no outlet for natural behaviors like digging or foraging and as a result exhibit stereotypies like over grooming and gnawing on the bars of their cages.⁵³ Female rabbits have been bred to carry larger and larger litters, which put their little bodies under huge strain and “can lead to loss of body condition, metabolic diseases, and [increased risk] of spinal deformities.”⁵⁴ These breeding animals typically die or are culled at less than a year old.⁵⁵ Among rabbits raised for meat, 15% to 30% do not live long enough to be slaughtered at eight to twelve weeks old.⁵⁶ When a rabbit does survive long enough to be slaughtered, it is first hung upside down to be stunned, which can be painful and disorienting.⁵⁷ Frequently, the animal is then stunned incorrectly and killed while fully conscious.⁵⁸

These hellish conditions have developed because, like other sectors of an industrial economy, animal agriculture seeks to minimize production costs by becoming more efficient.⁵⁹ To do so, companies reduce the space allotted to each animal, the number of staff who attend to their needs, the quality of their food, and the appointments of their shelter.⁶⁰ The animals themselves are maximized for profit, selectively bred and fed hormones to ensure they get as big as science can make them in as little time as possible.⁶¹ Animal wellbeing is fundamentally at odds with the

52. Xavier Manteca & M. Salas, *Stereotypies as Animal Welfare Indicators*, ZAWEC, (Oct. 2015), <https://www.zawec.org/en/fact-sheets/44-stereotypies-as-animal-welfare-indicators>. Examples of stereotypies include pacing, biting objects, and excessive grooming that causes hair loss or skin conditions. *Id.* Animals resort to these behaviors “to control [their] motivational state by increasing sensory input in monotonous surroundings.” D. M. Broom, *Stereotypies as Animal Welfare Indicators*, 23 CURRENT TOPICS VETERINARY MED. & ANIMAL SCI. 81 (1983).

53. *Rabbit Welfare*, *supra* note 47.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 5 (“This trend [in the animal agriculture industry] toward consolidation, simplification, and specialization is consistent with many sectors of the American industrial economy.”).

60. *Id.* (“The current trend in animal agriculture is to grow more in less space, use cost-efficient feed, and replace labor with technology to the extent possible.”).

61. Intensive farming facilities use selective breeding, hormones, antibiotics and other antimicrobials to “induce rapid growth.” *Id.* at 6. In addition to causing suffering to the animals, these practices pose serious risks to humans. *See id.* Selective breeding alone poses “a global threat to food security.” *Id.* Overuse of antibiotics, however, presents an even bigger problem. CTR. FOR DISEASE CONTROL AND PREVENTION, ANTIBIOTIC RESISTANCE AND NARMS SURVEILLANCE, <https://www.cdc.gov/narms/faq.html> (last visited Apr. 5, 2020). “Antibiotic resistance is one of the world’s most pressing public health problems.” *Id.*

agricultural industry's economic interests. The industry's trends towards consolidation and vertical integration render the farmers who actually implement prescribed farming techniques powerless to object to such measures.⁶² Formal legal protections are necessary to prevent economic incentive from driving these businesses towards the worst kinds of abuse. Unfortunately, animal agriculture has a powerful lobby, and just as the animals' furred or feathered bodies are vulnerable to slaughterhouse machinery, animals' legal status is vulnerable to the political machinations of the big agriculture industry.⁶³

B. Why Compare the United States and Ireland?

Both the United States and Ireland have national identities that are bound up in animal agriculture.⁶⁴ The Republic of Ireland has an international reputation for high animal welfare standards,⁶⁵ a

As of 2017, approximately 80% of antibiotics consumed in the United States were taken by livestock "to make them grow more quickly or as a cheap alternative to keeping them healthy." Giorgia Guglielmi, *Are Antibiotics Turning Livestock Into Superbug Factories?*, SCIENCE (Sept. 28, 2017, 2:00 PM), <https://www.sciencemag.org/news/2017/09/are-antibiotics-turning-livestock-superbug-factories>. Overuse of these drugs could give rise to "bacteria that can't be treated with modern medicine . . ." *Id.* However, the rate of antibiotic use in animal agriculture is still increasing. *Id.*

62. See Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 6 ("Because the integrators are few in number and control much if not all of the market, the grower often has little market power . . ."). For example, the Pew Commission explains:

[Most broiler chickens in the United States] are produced under contract arrangements with [companies who] control almost every aspect of production—they own the breeder flocks, hatcheries, chickens, feed mills, processing plants, and marketing arrangements. Contract growers produce the chickens from hatchlings to marketable size . . . using equipment that meets the specifications of the integrator. The producer owns or leases the land and the facilities . . . and the integrator owns the chickens and feed. Growers are also responsible for [waste disposal] as well as for the taxes, utilities, and insurance.

Id. at 42. See generally CHRISTOPHER LEONARD, *THE MEAT RACKET: THE SECRET TAKEOVER OF AMERICA'S FOOD BUSINESS* (2014); Aman Singh, *Choice at the Supermarket: Is Our Food System the Perfect Oligopoly?*, FORBES (Aug. 6, 2012, 6:16 PM), <https://www.forbes.com/site/s/csr/2012/08/06/choice-at-the-supermarket-is-our-food-system-the-perfect-oligopoly/#37cc9330334e> (stating that "market power is consolidated in the hands of a few multinational corporations" which erodes the control farmers have over the industry).

63. Steve Johnson, *The Politics of Meat*, PBS FRONTLINE: MODERN MEAT, <https://www.pbs.org/wgbh/pages/frontline/shows/meat/politics/> (last visited Apr. 5, 2020).

64. Catherine Devitt et al., *Challenges and Solutions to Supporting Farm Animal Welfare in Ireland: Responding to the Human Element*, DEP'T OF AGRIC., FOOD AND THE MARINE 5, <https://www.agriculture.gov.ie/media/migration/publications/2018/ChallengesSolutionsSupportingFarmAnimalWelfareIreland210618.pdf> (last visited Apr. 5, 2020) ("Agriculture plays an important social, cultural and economic role in Ireland.").

65. Ciaran Moran, *Ireland's Reputation for Highest Food Standards Recognised by US*, AGRILAND (Feb. 12, 2015, 7:00 AM), <https://www.agriland.ie/farming-news/irelands->

reputation consistent with the country's iconic green grazing land and widely exported dairy products.⁶⁶ In 2017, 34% of Irish agri-food exports were dairy products.⁶⁷ Ireland is the seventh largest milk producer in the European Union, and dairy exports were valued at just over 4.6 billion Euro in 2017.⁶⁸ Ireland is also the fifth largest net beef exporter in the world and the fourth largest sheep meat exporter.⁶⁹ As part of the European Union, the Republic of Ireland is subject to EU Directives, but the country also has national laws pertaining to farmed animals.⁷⁰

The United States also attaches particular cultural significance to meat eating and animal agriculture. In the Gilded Age, “[m]eat and potatoes became the paragon of the American exceptionalist ideal, a diet that workers deserved and defended.”⁷¹ The United States was “the birthplace for intensive animal agriculture,”⁷² and meat production is still the largest segment of the country's agricultural business.⁷³ The industry has “flirt[ed] with a slide into a monopoly since 1919,”⁷⁴ at which point just five companies processed two-thirds of the nation's meat.⁷⁵ A century later, consolidation has only gotten worse; just four companies

reputation-highest-food-standards-recognised-us/; see also *Meat & Livestock*, ENTERPRISE IR., <https://www.enterprise-ireland.com/en/Start-a-Business-in-Ireland/Food-Investment-from-Outside-Ireland/Key-Sectors/Meat-and-Livestock/> (last visited Apr. 5, 2020) (describing why Irish beef “is increasingly serving the needs of higher-value and premium retail and food service clients in Europe and around the world”).

66. See *Dairy and Ingredients*, ENTERPRISE IR., <https://www.enterprise-ireland.com/en/Start-a-Business-in-Ireland/Food-Investment-from-Outside-Ireland/Key-Sectors/Dairy-and-Ingredients/> (last visited Apr. 5, 2020).

67. Calculated by value. See Michael Creed, *Annual Review and Outlook for Agriculture, Food and the Marine 2018*, DEP'T OF AGRIC., FOOD AND THE MARINE 44 (2018), <https://www.agriculture.gov.ie/media/migration/publications/2018/AnnualReviewandOutlook2018310818.pdf>.

68. *Id.* at 44–45.

69. *Id.* at 48, 53.

70. See *infra* Part III, p. 16.

71. E. MELANIE DUPUIS, DANGEROUS DIGESTION: THE POLITICS OF AMERICAN DIETARY ADVICE 72 (2015).

72. The swine “disassembly line” was said to have inspired Henry Ford. Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 5.

73. *The United States Meat Industry at a Glance*, N. AM. MEAT INST., <https://www.meat institute.org/index.php?ht=d/sp/i/47465/pid/47465> (last visited Apr. 5, 2020).

74. FED. TRADE COMM'N, REPORT OF THE FEDERAL TRADE COMMISSION ON THE MEAT PACKING INDUSTRY 31 (1919).

75. Elanor Starmer, *Hogging the Market: How Powerful Meat Packers are Changing our Food System and What We can do About it*, THE AGRIBUSINESS ACCOUNTABILITY INITIATIVE 1–2, <https://s3.amazonaws.com/catholicruralife/wp-content/uploads/Hogging-the-Market.pdf> (last visited Apr. 5, 2020).

now process 80% of the nation's beef.⁷⁶ Despite this, the United States government provides the meat and dairy industries, both directly and indirectly, with massive subsidies each year.⁷⁷ The United States Department of Agriculture ("USDA") estimates that the average American ate a record 222.2 pounds of red meat and poultry in 2018.⁷⁸

II. UNITED STATES

A. Federal Laws

1. Animal Welfare Act

At the federal level, farmed animals in the United States have almost no legal protections. The main piece of federal legislation governing the humane treatment of animals is the Animal Welfare Act ("AWA") and it categorically excludes "farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber."⁷⁹ This exclusion is not merely unhelpful; in one sentence, the AWA robs 98% of (non-wild) animals of their status as such and reduces them to merely "food or fiber."⁸⁰ The act's very existence may also give Americans a false impression that animals ensnared in the intensive farming systems funded by their purchases have some level of welfare federally guaranteed.⁸¹

76. Joe Fassler, *A New Lawsuit Accuses the "Big Four" Beef Packers of Conspiring to Fix Cattle Prices*, COUNTER (Apr. 23, 2019), <https://thecounter.org/meatpacker-price-fixing-class-action-lawsuit-cattlemen-tyson-jbs-cargill-national-beef/23>.

77. Ethics Insiders, *Should Governments Subsidize the Meat and Dairy Industries?*, MEDIUM (Dec. 19, 2016), <https://medium.com/@laletur/should-governments-subsidy-the-meat-and-dairy-industries-6ce59e68d26>.

78. Megan Durisin & Shruti Date Singh, *Americans' Meat Consumption Set to Hit a Record in 2018*, SEATTLE TIMES (Jan. 2, 2018, 8:52 PM), <https://www.seattletimes.com/business/americans-meat-consumption-set-to-hit-a-record-in-2018/>. "Americans eat more meat per person than any other society on the planet, and part of the reason for that is its apparent low cost." Pew Commission, *Putting Meat on the Table*, *supra* note 5, at 47.

79. Animal Welfare Act, 7 U.S.C.A. § 2132(g) (West 2014).

80. "The AWA's exemption for farmed animals means that the AWA applies to less than 2% of the animals in the U.S." Justin Marceau, *How the Animal Welfare Act Harms Animals*, 69 HASTINGS L.J. 925, 930 n.14 (2018). Of the remaining 2% of animals, 99% are mice, rats, and birds—which are also excluded from the AWA's definition of "animal." *Id.* Justin Marceau points out that the AWA considers a dead dog an animal, but not a live pig raised for meat; but if that same pig is used for research, the law transforms it into an animal again. *Id.* at 942. He argues that, through its exemptions, the AWA "has legitimized a vast system of animal mistreatment . . . and it has facilitated the hijacking of the concept of 'welfare' by the industries and the researchers that are regulated by the AWA." *Id.* at 928.

81. See Marceau, *supra* note 80, at 939–40.

2. Humane Methods of Slaughter Act

Another piece of federal legislation pertaining to the treatment of animals is the Humane Methods of Slaughter Act. The Humane Methods of Slaughter Act of 1958 (“1958 HMSA”) gave two definitions of humane slaughter.⁸² The first required that 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.”⁸³ The second was that slaughter be performed “in accordance with 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 with a sharp instrument.”⁸⁴ Only slaughterhouses in compliance with these definitions would be able to sell meat to the federal government.⁸⁵ In 1978, the Humane Methods of Slaughter Act of 1978 (“HMSA”) incorporated most of the 1958 HMSA into the Federal Meat Inspection Act (“FMIA”), which gave the USDA the power to inspect and sanction non-compliant plants.⁸⁶

Several factors limit the effectiveness of the HMSA as a tool to ameliorate animal suffering. The first is evident from the Act’s very name; it only even purports to protect animals during their final moments.⁸⁷ It does not touch the conditions of farms where animals spend most of their lives.⁸⁸ Additionally, the HMSA only gives the USDA authority to sanction the inhumane slaughter of certain species; poultry is not among them.⁸⁹ Poultry accounts for approximately 98% of land animals slaughtered in the United States,⁹⁰ therefore less than 2% of land animals raised for food are within the scope of the Humane Methods

82. Humane Methods of Slaughter Act of 1958, Pub. L. No. 85-765, § 2(a), 72 Stat. 862, 862 (1958).

83. *Id.*

84. *Id.* § 2(b).

85. *Id.* § 3.

86. See Humane Methods of Livestock Slaughter Act, 7 U.S.C. 48 §§ 1901–1907 (2019).

87. See *id.* § 1901.

88. See *id.* §§ 1901–1907.

89. *At Slaughter*, ANIMAL WELFARE INST., <https://awionline.org/content/farm-animals-at-slaughter> (last visited Apr. 5, 2020); HUMANE SOC’Y OF THE U.S., AN HSUS REPORT: THE WELFARE OF ANIMALS IN THE EGG INDUSTRY 8, <https://www.humanesociety.org/sites/default/files/docs/hsus-report-welfare-egg-industry.pdf> (last visited Apr. 5, 2020).

90. Bruce Friedrich, *Ritual Slaughter, Federal Preemption, and Protection for Poultry: What Legislative History Tells Us About USDA Enforcement of the Humane Slaughter Act*, 24 ANIMAL L. 137, 137 (2018).

of Slaughter Act.⁹¹ Much of what happens to birds at slaughter would violate the HMSA if those animals were covered by the act.⁹²

The 2% of animals covered by the HMSA is further narrowed by the USDA's interpretation that all ritual slaughter is exempt from oversight of any kind. In 2003, the USDA briefly instructed inspectors overseeing ritual slaughter to intervene if an animal "struggles or bellows for an extended period of time or otherwise exhibits consciousness" after its throat is cut or if the slaughter "includes throat sawing, hacking, or multiple slicing of the neck."⁹³ Shortly thereafter, in response to political pressure, the agency changed course, instructing personnel "not to interfere *in any manner*" with ritual slaughter.⁹⁴ Religious sanction has not provided a guarantee of humane treatment in the past; the year after the USDA announced its new non-interference policy, video footage from a kosher plant was released in which workers used a hook to pull out a cow's trachea before dumping the animal on the floor where it spent the final minutes of its life trying to bellow without a windpipe and stand while slipping in blood and becoming tangled in its own esophagus.⁹⁵ In response, representatives from the leading certifier of kosher products, the Orthodox Union, stated that the video did not depict a violation of kosher law.⁹⁶

91. *See id.* Rabbits are also not covered. *At Slaughter, supra* note 89. In 2005, the Farm Bill amended the Federal Meat Inspections Act to pertain to "any additional species of livestock that the Secretary considers appropriate." 21 U.S.C.A. § 601(w)(3) (West 2019). However, the "USDA has not yet promulgated a single regulation to protect another species with this authority." Friedrich, *supra* note 90, at 145. Poultry slaughter is governed federally by the Poultry Products Inspection Act, which is aimed at protecting consumer health. 21 U.S.C.A. § 451 (West 2019). Any impact on animal welfare is incidental.

92. Far from being rendered insensible to pain in a single blow, most birds are hastily shackled, have their heads dragged through an electrified bath, have their throats sliced open, and are dumped into scalding water. ANIMAL WELFARE INST., THE WELFARE OF BIRDS AT SLAUGHTER IN THE UNITED STATES 2 (2017), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Welfare-of-Birds-at-Slaughter-Update.pdf> [hereinafter BIRDS AT SLAUGHTER]. Many remain conscious throughout the experience and die by drowning in the scald tank. *See id.* at 2, 10. In 2016, the USDA-approved line speed for chicken slaughter was between 140 and 175 animals per minute, or between 2.5 and 3 birds per second. Marceau, *supra* note 80, at 935. Because the line speed is so rapid, workers may struggle to keep up, resorting to increasingly forceful or haphazard handling of the animals. *See BIRDS AT SLAUGHTER, supra* note 92.

93. Friedrich, *supra* note 90, at 149 (citing FSIS DIRECTIVE 6900.2, rev. 1, Humane Handling and Slaughter of Livestock 1 (U.S.D.A. 2003), <https://web.archive.org/web/20040727111736/http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/6900.2Rev1.pdf> [https://perma.cc/T4XL-Q8BP] (accessed Jan. 19, 2018)).

94. *Id.*

95. AARON S. GROSS, THE QUESTION OF THE ANIMAL AND RELIGION: THEORETICAL STAKES, PRACTICAL IMPLICATIONS 2 (2015).

96. "[T]he leadership of all of America's halakhic forms of Judaism—Modern Orthodoxy, Haredi Orthodoxy, and the Conservative movement—have, since the

In addition to not covering poultry and exempting all ritual slaughter, the HMSA also preempts state law that would offer animals greater protection. In *National Meat Association v. Harris*, the Supreme Court considered a California law that sought to strengthen protections for nonambulatory animals.⁹⁷ Because the HMSA was incorporated into the FMIA, the Supreme Court unanimously found that the FMIA's preemption clause "prevents a State from imposing any additional or different—even if non-conflicting—requirements that fall within the scope of [the HMSA] and concern a slaughterhouse's facilities or operations."⁹⁸

Enforcement of what meager protections the HMSA does offer also leaves a lot to be desired. Inspectors fail to enforce the law consistently, likely because they lack clear guidelines and sufficient training.⁹⁹ When surveyed, "inspectors at half of the plants did not correctly answer basic facts about signs of sensibility," indicating that the very personnel charged with enforcing humane slaughter laws were unable to tell whether, at various points during slaughter, the animal was able to feel what was happening.¹⁰⁰ Ultimately, the HMSA, far from being an effective tool to protect farmed animals, provides inadequate protections to a small minority of animal sufferers and, by its very existence, hampers states' ability to provide more effective protections.

3. Twenty-Eight Hour Law

Finally, the Twenty-Eight Hour Law, or the Livestock Transportation Act, purports to protect animals while they are in

AgriProcessors event, emphasized publicly that any degree of cruelty, no matter how egregious, has no impact on the kosher status of the meat," GROSS, *supra* note 95, at 34. The plant's supervising Rabbi even described the videos as "testimony that [kosher slaughter at the plant] is being done right." Donald G. McNeil Jr., *Videotapes Show Grisly Scenes at Kosher Slaughterhouse*, N.Y. TIMES (Nov. 30, 2004), <http://www.nytimes.com/2004/11/30/national/30cnd-kosh.html>. However, this does not reflect the views of many within the community, and the outrage that followed the release of this video prompted change in AgriProcessors' management. GROSS, *supra* note 95, at 41.

97. *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 455 (2012) (defining nonambulatory animals as those that cannot walk). Federal regulations prohibit dragging nonambulatory animals, except on "equipment suitable for such purposes" while they are conscious. 9 C.F.R. 313.2(d)(3) (2019) "Stunned animals may, however, be dragged." 9 C.F.R. 313.2(d)(2) (2019).

98. *Nat'l Meat Ass'n*, 565 U.S. at 459–60; *see also* 21 U.S.C.A. § 678 (West 1967).

99. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-203, HIGHLIGHTS: REPORT TO CONGRESSIONAL REQUESTERS, HUMANE METHODS OF SLAUGHTER ACT ACTIONS ARE NEEDED TO STRENGTHEN ENFORCEMENT (2010).

100. *Id.*

interstate transit.¹⁰¹ The law provides that a rail, express, or common carrier transporting animals between states “may not confine animals in a vehicle or vessel for more than twenty-eight consecutive hours without unloading the animals for feeding, water, and rest.”¹⁰² Without running afoul of this law, carriers can transport cows in the back of a truck with standing room only, no food, and no water, for longer than a calendar day.¹⁰³ The twenty-eight hour period excludes any time spent loading and unloading the animals and may be extended to thirty-six hours upon the owner’s request.¹⁰⁴ The Twenty-Eight Hour Law does not set restrictions on how long animals can be confined if they “are transported in a vehicle or vessel in which [they] have food, water, space, and an opportunity for rest.”¹⁰⁵ The law does not apply to chickens at all,¹⁰⁶ and violations result in a civil penalty of just \$100 to \$500.¹⁰⁷ The law is also poorly enforced; in 2006, the USDA suggested that responsibility for enforcing the Twenty-Eight Hour Law had been shifted from the USDA to the United States Department of Justice more than a decade previously, and neither agency reported any investigation or prosecution under the law during that time.¹⁰⁸ The Animal Welfare Institute points out that because neither the USDA nor the Department of Justice has a mechanism for monitoring animals transported by truck, “for all intents and purposes, there is no federal transport law in the United States.”¹⁰⁹

4. Animal Enterprise Terrorism Act

While there is a dearth of federal legislation protecting animals from the animal agriculture industry, legislation protecting the industry from its critics abounds. In the 1970s, corporations responded to the

101. 49 U.S.C.A. § 80502 (1994).

102. *Id.* § 80502(a)(1).

103. *See id.*

104. *Id.* § 80502(a)(2)–(3).

105. *Id.* § 80502(c).

106. Veronica Hirsch, *Detailed Discussions of Legal Protections of the Domestic Chicken in the United States and Europe*, ANIMAL LEGAL & HIST. CTR. (2003), <https://www.animallaw.info/article/detailed-discussion-legal-protections-domestic-chicken-united-states-and-europe>.

107. Penalties under this act seem to be per shipment of animals, not per individual. *United States v. Boston & A.R. Co.*, 15 F. 209, 210 (Mass. Dist. Ct. 1883) (holding that owners had only committed one offense, and therefore only incurred one penalty, when a train full of cattle were confined in violation of the Twenty-Eight Hour Act’s predecessor).

108. ANIMAL WELFARE INST., LEGAL PROTECTIONS FOR FARM ANIMALS DURING TRANSPORT 3, <https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/F A-LegalProtectionsDuringTransport-081910-1282577406-document-23621.pdf> (last visited Apr. 5, 2020).

109. *Id.*

burgeoning animal rights movement by lobbying Congress to “legally quarantin[e]” the movement.¹¹⁰ The term “ecoterrorism” would be coined by libertarian activist Ron Arnold in 1983,¹¹¹ marking a departure from the then-prevailing characterization of environmental and animal rights activists as tree-hugging hippies and instead framing them as dangerous radicals.¹¹² Groups like the Animal Liberation Front, which advanced their ideology by committing property crimes¹¹³—and the rest of the movement by association—were suddenly described as terrorists.¹¹⁴ In 1992, the animal industry’s newfound posture as the victim was legitimized when the Animal Enterprise Protection Act (“AEPA”) was passed into federal law.¹¹⁵ The AEPA criminalized “intentionally caus[ing] physical disruption to the functioning of an animal enterprise” by “stealing, damaging, or causing the loss of, any property (including animals or records)” resulting in more than \$10,000 of “economic damage,” or conspiring to do so.¹¹⁶ “Economic damage” includes lost profits, and in addition to a fine and/or a prison sentence of up to one year, the AEPA provides for restitution for “the loss of food production or farm income reasonably attributable to the offense.”¹¹⁷

But the animal agriculture industry did not rest when the AEPA was passed. Terrorism rhetoric was an incredibly effective way for the industry to brand its opponents, especially in post-9/11 America,¹¹⁸ and

110. Jason Del Gandio & Anthony J. Nocella II, *Introduction in THE TERRORIZATION OF DISSENT: CORPORATE REPRESSION, LEGAL CORRUPTION AND THE ANIMAL ENTERPRISE TERRORISM ACT* xx (Jason Del Gandio & Antony J. Nocella II eds. 2014) [hereinafter *Introduction in THE TERRORIZATION OF DISSENT*]

111. Kate Yoder, *Zinke Blames ‘Environmental Terrorists’ for Wildfires. What the Hell Does That Mean?*, GRIST (Aug. 20, 2018), <https://grist.org/article/zinke-blames-environmental-terrorists-for-wildfires-what-the-hell-does-that-mean/>.

112. *See id.*

113. *Id.*

114. *See Eco-Terrorism and Lawlessness on the Nat’l Forests: Oversight Hearing Before the Subcomm. on Forests and Forest Health of the H. Comm. on Resources*, 107th Cong. 49–54 (2002) (statement of James F. Jarboe, Domestic Terrorism Section Chief, Counterterrorism Division, F.B.I.). On February 12, 2002, Domestic Terrorism Section Chief of the FBI, James F. Jarboe spoke before the House Resources Committee about the threat of ecoterrorism and had to explain that “one of the most active extremist elements in the United States,” the Animal Liberation Front, adheres to an “operational philosophy [that] discourages acts that harm ‘any animal, human and nonhuman.’” *Id.* at 50. He went on to give examples of their terrorist activity that included “attack[ing] commercial fishing operations by cutting drift nets” and releasing mink into the wild. *Id.*

115. *See* Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, 106 Stat. 928.

116. *Id.* § 2(a)(2).

117. *Id.* § 2(c)(2).

118. Will Potter, *Preface to THE TERRORIZATION OF DISSENT: CORPORATE REPRESSION, LEGAL CORRUPTION AND THE ANIMAL ENTERPRISE TERRORISM ACT*, at xv, xviii (Jason Del

by 2005, a top FBI official was calling the “eco-terrorism, animal-rights movement” the “No. 1 domestic terrorism threat” to the United States.¹¹⁹ In 2006, the Animal Enterprise Terrorism Act (“AETA”) was proposed as an expansion of the AEPA.¹²⁰ It passed in the Senate “in the middle of the night, with no discussion or debate” and it passed in the House when “[o]nly [1%] of lawmakers were in the room for the vote.”¹²¹ Kevin Johnson, who was convicted under the AETA and spent three years in prison for releasing mink from a fur farm, describes the act as “a piece of designer legislation written and paid for by the agriculture and pharmaceutical industries . . . [which] federalizes non-violent property crime and punishes it as terrorism.”¹²²

The AETA outlaws intentionally damaging “any real or personal property (including animals or records) used by an animal enterprise” or used by any person or entity *with a connection* to an animal enterprise, or causing someone to reasonably fear death or serious injury for the purpose of interfering with the operations of an animal enterprise.¹²³ Violations of this law that result in less than \$10,000 of economic damage and do not cause bodily injury or fear of bodily harm to anyone are subject to a one-year prison sentence.¹²⁴ Violations that result in between \$10,000 and \$100,000 of economic damage or cause someone to fear serious bodily injury are subject to a five-year prison sentence.¹²⁵ Damage exceeding \$100,000 or violations that result in substantial bodily injury

Gandio & Antony J. Nocella II eds., Lantern Books 2014) [hereinafter *Preface to THE TERRORIZATION OF DISSENT*].

119. Henry Schuster, *Domestic Terror: Who's Most Dangerous?*, CNN (Aug. 24, 2005, 2:14 PM), <http://www.cnn.com/2005/US/08/24/schuster.column/>.

120. THE TERRORIZATION OF DISSENT: CORPORATE REPRESSION, LEGAL CORRUPTION AND THE ANIMAL ENTERPRISE TERRORISM ACT 888 (Jason Del Gandio & Antony J. Nocella II eds. 2014).

121. *Id.* at 890–91.

122. Kevin Johnson, *I Released 2,000 Minks from a Fur Farm. Now I'm a Convicted Terrorist*, GUARDIAN (Nov. 15, 2017, 2:00 AM), <https://www.theguardian.com/commentisfree/2017/nov/15/i-released-2000-minks-fur-farm-convicted-terrorist>. While holding that the AETA was not violative of the First Amendment, the Seventh Circuit clarified that four teenagers who had recently broken into a shed and bludgeoned nine hundred chickens to death with a golf club could not be charged under the AETA because the teenagers “killed the chickens for no reason.” *United States v. Johnson*, 875 F.3d 360, 371 (7th Cir. 2017). Releasing animals unharmed with the intention of damaging an animal business is prohibited by the AETA; brutalizing and killing those same animals without regard for the effect on the animal business is not. *See id.*

123. Animal Enterprise Terrorism Act, Pub. L. No. 109-374, 120 Stat. 2652 (2006) (codified as amended at 18 U.S.C. § 43 (2018)). The codified version eliminates the word “terrorism”; however, the public law title remains the same. *Compare* 120 Stat. 2652, *with* 18 U.S.C.A. § 43 (West 2006).

124. 18 U.S.C.A. § 43(b)(1)(A)–(B).

125. *Id.* § 43(b)(2)(A)–(B).

are subject to a ten-year sentence.¹²⁶ Restitution for a violation of this act is calculated based on “the loss of food production or farm income reasonably attributable to the offense and . . . any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.”¹²⁷

The AETA purports to protect animal enterprises against a variety of activities that were already illegal; new legislation was not necessary to criminalize trespass, property damage, arson, theft, vandalism, harassment, or assault.¹²⁸ Additionally, the broad language of the AETA “could be used to wrap up a wide range of activities that threaten corporate profits”¹²⁹ Although the economic impact of “lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise” is excepted from the AETA’s definition of “economic damage,” the act attaches dizzying punishments to undercover investigation and whistleblowing, making such disclosures dangerous and unlikely.¹³⁰ Furthermore, even if a charge under the AETA is ultimately unsuccessful, animal activists or whistleblowers may fear the stigma of being called a “terrorist” and give these forms of activism and speech a wide berth.¹³¹

B. *State Laws*

Because federal law offers farmed animals so few protections, they are largely at the mercy of state law. The level of protection offered varies widely between states. In the interest of brevity, this note will not go through the laws of all fifty states. Instead, it will sample a handful, chosen according to the Animal Legal Defense Fund’s annual rankings to represent the entire spectrum of legal protections for animals offered at the state level: Illinois, Massachusetts, New Jersey, North Dakota, Utah, Kentucky, and Iowa.¹³²

126. *Id.* § 43(b)(3)(A)–(B).

127. *Id.* § 43(c)(2)–(3).

128. See *Introduction in THE TERRORIZATION OF DISSENT*, *supra* note 110, at xv–xxiv, xix–xxiv; *Preface to THE TERRORIZATION OF DISSENT*, *supra* note 118, at xv–xviii.

129. Will Potter, *Sentinel Species: The Criminalization of Animal Rights Activists As “Terrorists,” and What It Means for Civil Liberties in Trump’s America*, 95 *DENV. L. REV.* 877, 889 (2018).

130. *Preface to THE TERRORIZATION OF DISSENT*, *supra* note 118, at xv–xvi.

131. See *id.*

132. *Animal Protection U.S. State Laws Rankings Report: 2019, Comparing Overall Strength and Comprehensiveness*, AM. LEGAL DEF. FUND (2020), <https://aldf.org/wp-content/uploads/2020/02/2019-Animal-Protection-US-State-Laws-Rankings-Report.pdf>.

1. Illinois

According to the Animal Legal Defense Fund's annual ranking for 2019, Illinois has the best animal protection laws in the country.¹³³ Farmed animals are included in the definition of "animal" under the state's cruelty laws,¹³⁴ and felony penalties are available for animal cruelty and animal torture offenses, indicating that the state takes these crimes seriously.¹³⁵ Further evidence that the state takes these crimes seriously is that animal abuse is included in the state's cross-reporting laws.¹³⁶ Veterinarians who observe or treat a tortured animal also have a legal obligation to report the abuse.¹³⁷

Despite being the most protective state for animals in general, Illinois still has sweeping exceptions pertaining to farmed animals. The state's aggravated cruelty statute only applies to companion animals,¹³⁸ and animal torture specifically excludes any "alteration or destruction of any animal by any person for any legitimate purpose including, but not limited to: castration, . . . slaughtering, . . . tail docking, . . . and any other activity that may be lawfully done to an animal."¹³⁹ The entire Humane Care of Animals Act,¹⁴⁰ the umbrella under which the aforementioned offenses fall, will not prohibit "normal, good husbandry practices utilized by any person in the production of food . . ." ¹⁴¹ These explicit exceptions seem to acknowledge that these routine "husbandry practices" would otherwise qualify as torture.

2. Massachusetts

Ranked sixth in the nation for its animal protection laws,¹⁴² Massachusetts' anti-cruelty statute carries as many as seven years in

133. *Id.*

134. 510 ILL. COMP. STAT. ANN. 70/2.01 (West 2019) ("[E]very living creature, domestic or wild but does not include man.").

135. *See, e.g., id.* 70/3.01(d) ("A second or subsequent conviction for [animal cruelty] . . . is a class 4 felony."); *id.* 70/3.02(c) ("A person convicted of violating Section 3.02 [aggravated cruelty] is guilty of a Class 4 felony. A second or subsequent violation is a Class 3 felony."); *id.* 70/3.03(c) (Animal torture is "a class 3 felony" and "court[s] shall order the offender to undergo a psychological or psychiatric evaluation and to undergo treatment.").

136. *See* 325 ILL. COMP. STAT. ANN. 5/11.8 (West 2019).

137. *See* 510 ILL. COMP. STAT. ANN. 70/3.07 (West 2019).

138. *Id.* 70/3.02(a).

139. *Id.* 70/3.03(b)(3).

140. *See generally* 70/1-18.

141. *Id.* 70/13.

142. *Massachusetts, 2019 U.S. State Rankings for Animal Protection Laws*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings-massachusetts/> (last visited on Apr. 5, 2020).

state prison for a first offense and up to ten years for subsequent offenses.¹⁴³ Cruelty includes omissions as well as actions—neglecting to furnish animals with proper food, water, sanitary conditions, and protection from the weather are all punishable.¹⁴⁴ The cruelty statute is applicable to farmed animals but, like Illinois, it contains exceptions for animal husbandry practices.¹⁴⁵ Massachusetts’ anti-cruelty law also holds corporations responsible for the knowledge and acts of their agents,¹⁴⁶ something essential to prevent corporations from escaping liability for acts performed by individual employees pursuant to corporate policy. Veterinarians are mandatory reporters of animal cruelty.¹⁴⁷

Working against the successful enforcement of these laws is the lack of support given to humane agents—special state police who are empowered to make arrests for animal cruelty.¹⁴⁸ These agents are paid by the humane society that requested their appointment, not by the state.¹⁴⁹ Currently, Massachusetts only has “about [a] half-dozen [of these] officers.”¹⁵⁰ Massachusetts law also demonstrates some of the idiosyncrasies typical of state animal protections: killing an animal by drowning carries up to seven years in prison and/or a \$5,000 fine but killing an animal via decompression chamber only carries a \$100 fine.¹⁵¹

3. New Jersey

New Jersey is ranked number seventeen for its animal protection laws.¹⁵² Under New Jersey’s Prevention of Cruelty to Animals laws, “needlessly kill[ing] a living animal or creature,” directly or indirectly “inflict[ing] unnecessary cruelty upon a living animal,” failing “to provide [a] living animal or creature with necessary care,”¹⁵³ and carrying “a living animal . . . upon a vehicle or otherwise, in a cruel and inhumane

143. MASS. GEN. LAWS ANN. ch. 272, § 77 (West 2019).

144. *See id.*

145. *Id.* § 77C(e).

146. *Id.* § 79.

147. MASS. GEN. LAWS ANN. ch. 112 § 58B (West 2019).

148. MASS. GEN. LAWS ANN. ch. 22C § 57 (West 2019).

149. *Id.*

150. Cody Shepard, *The Mass. Police Officers Who Save Animals—and Prosecute Abusers*, ENTERPRISE (July 14, 2018, 3:02 PM), <https://www.enterpriseneews.com/news/20180714/mass-police-officers-who-save-animals—and-prosecute-abusers>.

151. Compare MASS. GEN. LAWS ANN. ch. 272 § 80E (West 2019), with § 80E1/2.

152. *New Jersey, 2018 U.S. State Rankings for Animal Protection Laws*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/2018-us-state-rankings-new-jersey/> (last visited on Apr. 6, 2020).

153. N.J. STAT. ANN. § 4:22–17 (West 2019).

manner” are all disorderly persons offenses.¹⁵⁴ “Purposely, knowingly, or recklessly . . . torment[ing], tortur[ing], maim[ing], hang[ing], poison[ing], unnecessarily or cruelly beat[ing], cruelly abus[ing], or needlessly mutilat[ing] a living animal” or, if it is a second offense, failing to provide an animal that one owns with necessary care is a crime of the fourth degree—escalated to the third degree if the animal dies or suffers serious bodily injury as a result.¹⁵⁵ In early 2018, the power to enforce humane laws was shifted from the New Jersey Society for the Prevention of Cruelty to Animals to County Prosecutors.¹⁵⁶ The shift requires all County Prosecutors’ offices to have a designated humane law enforcement officer.¹⁵⁷ “All 21 counties have already” complied.¹⁵⁸

While admirable in the foregoing respects, New Jersey’s Prevention of Cruelty to Animals Law has many provisions that only apply to companion animals, and none of the law’s provisions can be “construed to prohibit or interfere with . . . [t]he raising, keeping, care, treatment, marketing, and sale of domestic livestock”¹⁵⁹ In 2014, Governor Chris Christie vetoed legislation that would have prohibited the use of gestation crates for pigs.¹⁶⁰ Unlike Illinois and Massachusetts, New Jersey does not require veterinarians to report suspected animal cruelty.¹⁶¹

154. *Id.* § 4:22-18.

155. *Id.* § 4:22-17.

156. See Chris Swendeman, *Humane Law Enforcement Responsibility Shifts to Prosecutors*, OFF. OF THE MONMOUTH CTY. PROSECUTOR (Jan. 16, 2018), <https://mcponj.org/2018/01/16/humane-law-enforcement-responsibility-shifts-to-prosecutors/>.

157. *Id.*

158. Nancy E. Halpern, *Proposed Bills Would Change Effective Dates of Animal Cruelty Enforcement Provisions in New Jersey*, FOX ROTHSCHILD: ANIMAL L. UPDATE (June 21, 2018), <https://animallaw.foxrothschild.com/2018/06/21/proposed-bills-would-change-effective-dates-of-animal-cruelty-enforcement-provisions-in-new-jersey/>.

159. N.J. STAT. ANN. § 4:22-16 (West 2019). “In 1996, New Jersey became the first (and only) state to require its Department of Agriculture to write comprehensive standards for the ‘humane raising, keeping, care, treatment, marketing, and sale of domestic livestock.’ But the department’s proposed regulations were not issued until 2004, and animal protection groups immediately criticized them as endorsing the status quo Animal protection groups have filed suit against the state of New Jersey.” Pew Commission, *supra* note 5, at 38.

160. *New Jersey Governor Christie Kills Pig Gestation Crate Bill*, FARMPROGRESS (Dec. 8, 2014), <https://www.farmprogress.com/story-new-jersey-governor-christie-kills-pig-gestation-crate-bill-9-121261>.

161. See 510 ILL. COMP. STAT. ANN. 70/3.07 (West 2019); MASS. GEN. LAWS ch. 112 § 58B (West 2019).

4. North Dakota

Among the worst animal protection laws in the country can be found in North Dakota, which is ranked number forty-one.¹⁶² In North Dakota, neglect—defined as failure to provide: “[f]ood and water . . . sufficient to sustain the animal’s health,” protection from weather, and “[m]edical attention in the event of injury or illness”—is only a misdemeanor and “[a]ny usual and customary practice in . . . [t]he production of food, feed, fiber, or ornament, including all aspects of the livestock industry” is excepted.¹⁶³ Customary practices of the livestock industry are also exceptions to the animal cruelty statute, which otherwise would prevent “[b]reaking an animal’s bones; . . . [c]ausing the prolonged impairment of an animal’s health; . . . mutilating an animal; or . . . [p]hysically torturing an animal.”¹⁶⁴ But one unique feature weighs heavily in the calculation of North Dakota’s low ranking; North Dakota has an “ag-gag” law.¹⁶⁵

Ag-gag laws are the state analog to the federal AETA.¹⁶⁶ The term was coined in 2011 by *New York Times* journalist Mark Bittman for state legislation passed in response to lobbying by the animal agriculture industry.¹⁶⁷ These “[u]nique, industry-specific” laws decrease “the public’s access to information by criminalizing undercover investigations seeking to expose harmful practices, punishing whistleblowers, and curbing what the media and individuals can divulge about practices and products.”¹⁶⁸ Most of the actions criminalized by ag-gag legislation already had some sort of redress via public or private law.¹⁶⁹ Ag-gag laws prohibit entry onto the premises of an animal enterprise without permission of the owner¹⁷⁰ (already illegal as trespass),¹⁷¹ damaging the

162. *North Dakota, 2019 U.S. Animal Protection Laws Rankings*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/us-state-rankings-north-dakota/> (last visited Apr. 5, 2020).

163. N.D. CENT. CODE ANN. § 36-21.2-01 (West 2020).

164. § 36-21.2-03 (West 2020).

165. N.D. CENT. CODE ANN. § 12.1-21.1-02 (West 2020).

166. See Animal Enterprise Terrorism Act, 18 U.S.C.A. § 43 (West 2006) for more detail on AETA.

167. Mark Bittman, *Who Protects the Animals?*, N.Y. TIMES (Apr. 26, 2011, 9:29 PM), <https://opinionator.blogs.nytimes.com/2011/04/26/who-protects-the-animals/>; see also *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1195–98 (D. Utah 2017).

168. Weil, *supra* note 8, at 185–86.

169. See, e.g., *id.* at 220–25.

170. See, e.g., IOWA CODE ANN. § 717A.2(1)(c) (West 2019).

171. *Trespass*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining trespass as “[a]n unlawful act committed against the person or property of another; esp., wrongful entry on another’s real property”).

property of an animal enterprise¹⁷² (vandalism),¹⁷³ misrepresenting one's self on a job application to gain access to an animal enterprise¹⁷⁴ (fraud),¹⁷⁵ freeing animals¹⁷⁶ (larceny),¹⁷⁷ and using recording equipment inside an animal enterprise.¹⁷⁸ The overlap suggests that these laws do not serve a legitimate purpose; rather they aim to impoverish animal rights groups¹⁷⁹ and to chill free speech.¹⁸⁰ Undercover investigations have led to some of this nation's largest food recalls,¹⁸¹ slaughterhouse closures,¹⁸² and petitions.¹⁸³ In addition to covering up animal abuse, these laws also pose "a freedom of expression issue, a workers' rights issue, an environmental issue and a public health issue."¹⁸⁴

North Dakota's ag-gag statute criminalizes intentionally damaging or destroying property at an animal facility or "any enterprise conducted at the animal facility."¹⁸⁵ Depending upon the extent of the damage to the business, violations range from a class A misdemeanor to a class B

172. See, e.g., § 717A.2(1)(a).

173. *Vandalism*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining vandalism as "[w]illful or ignorant destruction of public or private property").

174. See UTAH CODE ANN. 1953 § 76-6-112(2)(c)(i) (West 2019) (subsequently held unconstitutional by *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1196 (D. Utah 2017)).

175. *Fraud*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining fraud as "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment").

176. See, e.g., IOWA CODE ANN. § 717A.2(1)(b) (West 2019).

177. *Larceny*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining larceny as "[t]he unlawful taking and carrying away of someone else's tangible personal property with the intent to deprive the possessor of it permanently").

178. UTAH CODE ANN. 1953 § 76-6-112(2)(a),(d) (West 2019).

179. Civil penalties for violations of ag-gag laws can be high. See IOWA CODE ANN. § 717A.2(2)(a)–(b) (West 2020). Iowa entitles successful plaintiffs to treble damages, attorney fees, and court costs. *Id.*

180. *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1196, 1200 (D. Utah 2017) (holding that Utah's ag-gag law violates plaintiffs' First Amendment rights).

181. See Lisa Stark et al., *Undercover Video Prompts Nation's Largest Beef Recall*, ABC NEWS (Feb. 9, 2009, 3:43 PM), <https://abcnews.go.com/GMA/story?id=4305151&page=1>.

182. In 2009, a video was sent to the USDA which showed slaughterhouse employees skinning and decapitating week-old veal calves while they were still conscious. As a result, the slaughterhouse's operating license was suspended. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-203, HUMANE METHODS OF SLAUGHTER ACT: ACTIONS ARE NEEDED TO STRENGTHEN ENFORCEMENT 1 (2010); see also *Westland/Hallmark Shuts Down Permanently*, ANIMAL LAW COAL. (Feb. 17, 2008), <https://animallawcoalition.com/westland-hallmark-shuts-down-permanently/>.

183. See Ari Solomon, *McDonald's Adopts Cage-Free Egg Policy Following Mercy for Animals Investigations*, MERCY FOR ANIMALS (Sept. 9, 2015), <https://mercyforanimals.org/mcdonalds-adopts-cage-free-egg-policy-following>.

184. Vienna Colucci, *Amnesty Makes It 60*, AMNESTY INT'L USA: HUM. RTS. NOW BLOG (May 24, 2013, 3:15 PM), <https://blog.amnestyusa.org/us/amnesty-makes-it-60/>.

185. N.D. CENT. CODE ANN. § 12.1-21.1-02 (West 2020).

felony.¹⁸⁶ It is a class B misdemeanor to use or try to use any sort of recording device inside an animal facility and a class C felony to release any animal.¹⁸⁷ The animal facility can also bring a civil action for any violation and recover “three times all actual and consequential damages and court costs and reasonable attorney fees.”¹⁸⁸

5. Utah

Utah is ranked forty-third.¹⁸⁹ Until 2017, Utah was also an ag-gag state.¹⁹⁰ The law, which criminalized “agricultural operation interference” like recording or gaining access to facilities under false pretenses,¹⁹¹ was held violative of the First Amendment.¹⁹² After Plaintiff Amy Meyer was charged under the law for standing on public property and filming a sick cow being moved around a slaughterhouse parking lot with a bulldozer,¹⁹³ she brought suit.¹⁹⁴ The District Court found that Utah’s ag-gag law implemented content-based restrictions on protected speech and the State’s argued interests were not sufficiently compelling to justify the encroachment.¹⁹⁵

Even without an ag-gag law in place, Utah’s protections for farmed animals are deficient. The state’s definition of “animal” does not include “livestock, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices or customary farming practices.”¹⁹⁶ This means that in Utah, if a farmed animal is being abused in a way that the rest of the industry accepts as standard, no matter how egregious those practices may be by the public’s (or indeed the animals’) standards, the victims of those practices do not even qualify as “animals” under the law.

186. *Id.* § 12.1-21.1-04.

187. *Id.*

188. *Id.* § 12.1-21.1-05.

189. *Animal Protection U.S. State Laws Rankings Report: 2019*, *supra* note 132, at 6.

190. Bill Chappell, *Judge Overturns Utah’s ‘Ag-Gag’ Ban on Undercover Filming at Farms*, NPR (July 8, 2017, 4:13 PM), <https://www.npr.org/sections/thetwo-way/2017/07/08/536186914/judge-overturns-utahs-ag-gag-ban-on-undercover-filming-at-farms>.

191. UTAH CODE ANN. § 76-6-112 (West 2019).

192. *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1211–13 (D. Utah 2017).

193. *Id.* at 1199.

194. *Id.*

195. *Id.* at 1209–13.

196. UTAH CODE ANN. § 76-9-301(1)(b)(ii)(C) (West 2019).

6. Kentucky

Ranking forty-seventh is Kentucky,¹⁹⁷ where nothing in the prohibition against cruelty “shall apply to the killing of animals . . . [i]ncident to the processing as food or for other commercial purposes.”¹⁹⁸ Additionally, veterinarians are *prohibited* from reporting suspected animal cruelty unless a court orders them to do so, they have been subpoenaed, or the owner has waived their right against such a disclosure.¹⁹⁹ For obvious reasons, an abusive owner is unlikely to waive confidentiality.

7. Iowa

Iowa, ranked forty-ninth,²⁰⁰ was the first state to effect ag-gag legislation.²⁰¹ “According to its sponsors, the bill’s purpose was ‘to crack down on activists who deliberately cast agricultural operations in a negative light . . .’”²⁰² It would safeguard against “‘subversive acts’ that could ‘bring down the industry,’ including acts committed by ‘extremist vegans.’”²⁰³ The law criminalized exercising “control over an animal facility . . . or an animal maintained at an animal facility” or entering an animal facility with the intent to “[d]isrupt operations.”²⁰⁴ Like Utah’s law, civil penalties for violating Iowa’s ag-gag law included treble damages, court costs and attorney fees.²⁰⁵ On February 15, 2019, the law was declared unconstitutional and enjoined in its entirety, but less than a month later, Iowa lawmakers approved Senate File 519 and a new, almost identical ag-gag law went into effect.²⁰⁶

197. *Animal Protection U.S. State Laws Rankings Report: 2019*, *supra* note 132, at 6.

198. KY. REV. STAT. ANN. § 525.130(2)(b) (West 2020).

199. *Id.* § 321.185(3).

200. *Animal Protection U.S. State Laws Rankings Report: 2019*, *supra* note 132, at 6.

201. *Herbert*, 263 F. Supp. 3d at 1198.

202. *Id.*

203. *Id.*

204. IOWA CODE ANN. § 717A.2(1)(b), (c)(1)(a) (West 2020).

205. *Animal Protection Laws of Iowa*, ANIMAL LEGAL DEF. FUND 50 (2018), <https://aldf.org/wp-content/uploads/2019/01/Animal-Protection-Laws-of-Iowa-2018.pdf> [hereinafter *Animal Protection Laws of Iowa*].

206. *Ag-Gag Laws: Timeline*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/ag-gag/> (last visited Apr. 5, 2020); see also Laura Belin, *Iowa Lawmakers Pass Another Unconstitutional “Ag Gag” Bill*, BLEEDING HEARTLAND (Mar. 13, 2019), <https://www.bleedingheartland.com/2019/03/13/iowa-lawmakers-pass-another-unconstitutional-ag-gag-bill/>. Iowa Representative Liz Bennett describes the new law as giving “the middle finger to free speech, consumer protection, food safety and animal welfare.” Jessica Corbett, *After Last Version Blocked, Iowa’s New Ag-Gag Bill ‘Gives Middle Finger to Free Speech, Consumer Protection, Food Safety, and Animal Welfare’*, COMMON DREAMS (Mar. 13, 2019), <https://www.commondreams.org/news/2019/03/13/after-last-version-blocked-iowas-new-ag>

Even aside from its whack-a-mole ag-gag laws, Iowa's animal protection laws leave a lot to be desired. In Iowa, livestock are not defined as "animals."²⁰⁷ While there is a separate law protecting livestock, it does not apply to any abuser targeting an animal that they own.²⁰⁸ Further, non-owners may permissibly cause livestock "pain and suffering," as long as the manner of infliction is consistent "with customary animal husbandry practices."²⁰⁹ Further still, even if a non-owner causes *more* pain and suffering than is consistent with animal husbandry practices, offenses against livestock are only misdemeanors.²¹⁰

8. State Laws: Conclusion

At both the state and federal level, United States animal protection laws include exceptions for practices that are accepted as standard for animal husbandry. This means that any practice accepted by the animal agriculture industry itself—the very individuals who have the most to gain from permissive standards—need not meet any independent measure of humaneness. To trust the industry to self-regulate against its own economic interests for the benefit of the animals is to ignore decades of evidence obtained by undercover investigations.²¹¹ And yet, invariably United States animal protection legislation contains these exceptions, allowing the worst abuses to be committed on the largest scale.²¹² When the animal activists began using undercover investigations to publicly

-gag-bill-gives-middle-finger-free-speech.

207. IOWA CODE ANN. § 717B.1(1)(a) (West 2020).

208. *Id.* § 717.1A.

209. *Id.* § 717.2(1)(c).

210. *Animal Protection Laws of Iowa*, *supra* note 205, at 2.

211. See, e.g., Sarah Von Alt, *14 Times MFA's Undercover Investigations Changed the World for Animals*, MERCY FOR ANIMALS (Aug. 26, 2014), <https://mercyforanimals.org/7-mfa-investigations-that-shook-us-to-our-core> (including: video of a 2009 hidden-camera investigation of Hy-Line Hatchery showing day-old chicks being thrown into a macerator alive; video of a 2010 investigation of Conklin Dairy Farm showing cows and calves being "beaten in the face with metal pipes, repeatedly stabbed with pitchforks, kicked, thrown, and punched"; discussion of a 2011 Sparboe Farms investigation documenting animals being thrown into plastic bags and left to suffocate and others—who were still laying eggs for human consumption—living in enclosures with dead and rotting animals; discussion of a 2011 investigation of Butterball documenting workers kicking and stomping on live turkeys; discussion of a 2013 investigation of Tyson Pork Group documenting workers killing piglets by hurling them head first onto the concrete floor and casually slicing off their tails; discussion of another 2013 investigation, this time of Wiese Brothers Farms, documenting workers dragging cows too sick to walk behind tractors and leaving animals with open wounds).

212. See *2020 U.S. Animal Kill Clock*, ANIMAL CLOCK, <https://animalclock.org/> (last visited Apr. 6, 2020) (counting the animals that have been killed for food this year in the U.S.).

shame corporations for their treatment of livestock, the industry responded by having special legislation passed to insulate their actions from public scrutiny.²¹³ The industry's massive expenditure of resources to pass these laws does not indicate that they intend to limit their "accepted animal husbandry practices" to those that consumers would find palatable.²¹⁴

II. REPUBLIC OF IRELAND

Just as the United States has a two-tiered system of animal protection laws (state and federal), farmed animals in Ireland are protected by both Irish law and the directives of the European Union. While nation states like Ireland are free to implement more protective legislation, the directives from the EU set out the "minimum standards" of treatment.²¹⁵

A. *EU Directives*

Animal protection law in the European Union is based upon the "Five Freedoms," a framework designed to balance the physical and mental wellbeing of animals with the "compromises necessary to safeguard and improve welfare within the proper constraints of an effective livestock industry."²¹⁶ The Five Freedoms include being "[f]ree[] from hunger and thirst, [f]ree[] from discomfort, [f]ree[] from pain, injury and disease, [f]ree[] to express normal behavior, and [f]ree[] from fear and distress."²¹⁷ This framework, particularly the priority of allowing animals to express their instinctive behavior, goes further than most United States laws.

The Lisbon Treaty, an international agreement which amended the constitutional basis of the EU,²¹⁸ offers another glimpse into the

213. See, e.g., *Preface to THE TERRORIZATION OF DISSENT*, *supra* note 118, at xv–xviii.

214. See Niv M. Sultan, *Where's the Beef? When Meat's in Trouble, Lobbying Expands*, OPENSECRETS (Mar. 30, 2017, 5:40 PM), <https://www.opensecrets.org/news/2017/03/wheres-the-beef-meat-lobby/>.

215. *Animal Welfare in Practice*, EUROPEAN COMM'N https://ec.europa.eu/food/animals/welfare/practice_en (last visited Apr. 6, 2020).

216. *Five Freedoms*, FARM ANIMAL WELFARE COUNCIL (Apr. 16, 2009), <https://webarchive.nationalarchives.gov.uk/20121010012427/http://www.fawc.org.uk/freedoms.htm>. The Five Freedoms originated in the Brambell Report of 1965, which "stated that farm animals should have freedom 'to stand up, lie down, turn around, groom themselves and stretch their limbs,' a list that is still sometimes referred to as Brambell's Five Freedoms." *Id.*

217. *Animal Welfare*, EUROPEAN COMM'N, https://ec.europa.eu/food/animals/welfare_en (last visited Apr. 5, 2020).

218. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 17, 2007, 2007 O.J. (C 306) (incorporating

European attitude towards farmed animals; it recognizes that they are sentient.²¹⁹ However, it also says that their welfare must be balanced with respect for the “religious rites, cultural traditions and regional heritage” of the EU’s member states.²²⁰

1. Council Directive 98/58/EC

In general, the EU’s directives are more specific than U.S. state laws. This specificity is advantageous for animals because it limits which “animal husbandry” practices can be accepted by the industry and excepted from welfare laws. The main directive pertaining to farmed animal protection, Council Directive 98/58, begins with the same type of broad language that many U.S. states adopt in their legislation.²²¹ It urges that owners should “take all *reasonable* steps to ensure the welfare of animals under their care and to ensure that those animals are not caused any *unnecessary* pain, suffering or injury.”²²² However, it also requires more definite and quantifiable action from owners. For example, the directive states that animals “must not be kept either in permanent darkness or without an appropriate period of rest from artificial lighting.”²²³ Equipment used to dispense food or water to the animals must not only provide adequate hydration and nutrition but must also be designed to prevent the “harmful effects of competition between the animals.”²²⁴ Sick or injured animals *must* be isolated in a place where they have “dry comfortable bedding.”²²⁵

In addition, the law considers not only animals’ physiological needs, but also their ethological ones and prioritizes animals’ freedom of movement.²²⁶ While enforcement is the responsibility of the member states, “veterinary experts from the Commission may . . . verify that the Member States are complying with the said requirements[and] make on-the-spot checks to ensure that the checks are carried out in accordance

Protocol on Protection and Welfare of Animals (1997) into Article 13 of the Treaty on the Functioning of the European Union).

219. *Id.* at tit. II, art. 5(b), ¶ 21.

220. Treaty on the Functioning of the European Union, 2007 O.J. (C 326) tit. I, art. 13.

221. *See* Council Directive 98/58, art. 43, 1998 O.J. (L 221) 23, 24 (EC).

222. *Id.* (emphasis added).

223. *Id.* at 26.

224. *Id.* at 27.

225. *Id.* at 26. Reports suggest that the directive could be further improved by prescribing a ratio of sick pens per number of animals that a farm must have. *See Directorate-General for Health and Food Safety Overview Report: Study Visits on Rearing Pigs with intact Tails*, at 2–5, COM (2016) DG(SANTE) 2016-8987-MR.

226. Council Directive 98/58, *supra* note 221, at 26.

with [Directive 98/58/EC].”²²⁷ Directive 98/58/EC is the only EU legislation protecting cattle, ducks, geese, and animals raised for fur.²²⁸

Unfortunately, according to a study by the EU Directorate-General for Internal Policies, Directive 98/58 “is not protecting animals throughout the EU and has led to few, if any, prosecutions.”²²⁹ This may be in part because the directive has been interpreted differently by various Member States. While some believe that the directive prohibits certain industry practices, “such as force-feeding for foie gras production, very restrictive housing and the breeding of genetic strains of animals such as broiler chickens, dairy cows and beef cattle,” others “have not interpreted the Directive as restricting any farming practices.”²³⁰

2. Minimum Standards for the Protection of Pigs

Other types of farmed animals have directives—in addition to Directive 98/58/EC—devoted to delineating minimum standards for their treatment in more detail. Council Directive 2008/120/EC (“Pig Directive”) pertains to pigs.²³¹ The Pig Directive notes that “[t]he welfare of pigs appears to be compromised by severe restrictions of space”²³² and that “[s]ows prefer to have social interactions with other pigs when provided with freedom of movement and environmental complexity.”²³³ It concludes that “[k]eeping sows in continuous close confinement should therefore be prohibited.”²³⁴ The directive also specifies the minimum amount of “unobstructed floor area” that must be available to pigs kept in a group and gives precise details as to how floors must be constructed to protect animals’ feet in various stages of development.²³⁵ These prescriptions are so detailed that they specify how many millimeters apart the slats of the flooring can be.²³⁶ The maximum volume level that animals can be exposed to is expressed in decibels and the minimum duration and brightness of light that animals must be exposed to daily is expressed in hours and lux respectively.²³⁷ Pigs kept in a group must all

227. *Id.* at 24.

228. *See Animal Welfare on the Farm*, EUROPEAN COMM’N, https://ec.europa.eu/food/animals/welfare/practice/farm/cattle_en (last visited Apr. 5, 2020).

229. *Animal Welfare in the EU Study*, *supra* note 49, at 27.

230. *Id.*

231. Council Directive 2008/120, art. 37, 2008 O.J. (L 47) 5, 6 (EC).

232. *Id.* at 5.

233. *Id.*

234. *Id.*

235. *Id.* at 6.

236. *Id.*

237. *Id.* at 10.

be able to lie down at the same time,²³⁸ and the animals must “have permanent access to a sufficient quantity of material to enable proper investigation and manipulation activities, such as straw, hay, wood, sawdust, mushroom compost, peat or a mixture of such.”²³⁹ When a pig must be kept in an individual pen (for medical reasons or because that animal was harming others), the pen must at least be long enough for the animal to turn around.²⁴⁰

Mutilations, like tail docking or tooth filing, “must [not] be carried out routinely.”²⁴¹ Further, before a mutilation can be carried out in any individual case, farmers must first attempt non-mutilative measures to achieve the same result: a reduction in tail biting.²⁴² A Commission Staff Working Document explains that tail biting is “a response to boredom, insufficient stimulation and frustration.”²⁴³ To reduce tail-biting, pigs should be supplied with “comfortable environmental conditions” and “appropriate enrichment materials” to “encourage the exploratory behaviour of pigs.”²⁴⁴ These recommendations seek to combat the cause of tail biting and other “aberrant behaviour,”²⁴⁵ instead of quickly lopping off whatever appendage could reduce the effect of the behavior. Contrary to a general industry assumption, keeping pigs with their tails intact carries some economic benefits for farmers because “low stress methods of farming” prevent the loss of animals, improve the reputation of the farming sector, and even increase food conversion rates.²⁴⁶ Unfortunately, the tail docking prohibition has not been successfully enforced, especially in Ireland.²⁴⁷ Ninety-five to 99% of Irish fattening pigs have their tails docked.²⁴⁸

However, EU legislation has been more successful at banning gestation crates for pregnant pigs, a system change with massive positive

238. *Id.*

239. *Id.*

240. *Id.* at 6.

241. *Id.* at 10.

242. *See id.*

243. *Commission Staff Working Document on Best Practices with a View to the Prevention of Routine Tail-Docking and the Provision of Enrichment Materials to Pigs*, at 3, COM (2016) 1345 final (Aug. 3, 2016).

244. Commission Recommendation 2016/336, 2016 O.J. (L 62) 20, 21 (EU).

245. *Id.*

246. European Commission Overview Report on Study Visits on Rearing Pigs with Intact Tails, at 17, COM (2016) DG(SANTE) 2016-8987.

247. *See id.* A 2014 study concluded that “high rates of non-compliance” with the routine tail-docking prohibition persisted in all EU member states except for Sweden and Finland. *Id.* Switzerland and Norway also avoid routine tail docking. *Id.*

248. *See* Kevin Forde, *Study Finds That 97% of Pigs in Ireland Have Tails Routinely Docked*, THAT’S FARMING (Nov. 11, 2018), <https://www.thatsfarming.com/news/tails-docked-pigs>.

implications for the animals' quality of life.²⁴⁹ Unlike restrictions on tail-docking, the gestation crate ban has been widely followed by member states.²⁵⁰ Places outside the EU, including nine U.S. states, have been inspired to pass similar bans.²⁵¹

3. Minimum Standards for the Protection of Calves

Calves also have a directive aimed specifically at their welfare. Council Directive 2008/119/EEC ("Calf Directive") describes calves as a "herd-living species" who "should be reared in groups," but it also sets out the minimum space that must be allotted for each animal housed in a group.²⁵² Calves are also entitled to "appropriate natural or artificial lighting" and if the lighting is artificial, "it must function for a period at least equivalent to the period of natural light normally available between 9 a.m. and 5 p.m."²⁵³ By phasing out the use of veal crates and inadequate nutrition for calves, the Calf Directive has had an "enormously" positive impact on the lives of young cows in the EU.²⁵⁴ Since it was passed in 1997, many non-EU countries have also stopped using veal crates and nutrient-poor diets.²⁵⁵

4. Minimum Standards for the Protection of Broiler Chickens and Laying Hens

Council Directive 2007/43/EC ("Broiler Directive") pertains to broiler chickens and sets a maximum stocking density to reduce overcrowding.²⁵⁶ Just over a quarter of EU poultry is produced at the highest permitted stocking density.²⁵⁷ The directive also sets specific requirements for lighting, litter, feeding, and ventilation.²⁵⁸ Council Directive 1999/74/EC ("Layer Directive") sets out minimum welfare standards for laying hens.²⁵⁹ Since 2012, the use of non-enriched cage systems (battery cages)

249. *Animal Welfare in the EU Study*, *supra* note 49, at 10, 31.

250. *Id.* at 31, 45.

251. *Id.* at 31.

252. Council Directive 2008/119, art. 37, 2008 O.J. (L 10) 7, 7 (EC). Calves are defined as cows up to six months old. *Id.* at 8.

253. *Id.* at 8, 10

254. *Animal Welfare in the EU Study*, *supra* note 49, at 31.

255. *Id.*

256. Council Directive 2007/43, art. 37, 2007 O.J. (L 182) 19, 20–21 (EC).

257. *Report from the Commission to the European Parliament and the Council on the Application of Directive 2007/43/EC and its Influence on the Welfare of Chickens Kept for Meat Production, as well as the Development of Welfare Indicators*, at 4, COM (2018) 181 final (Apr. 2018).

258. Council Directive 2007/43, *supra* note 256, at 24.

259. Council Directive 1999/74, art. 37, 1999 O.J. (L 203) 53–57 (EC).

has been prohibited,²⁶⁰ therefore all hens raised in the EU must “have a nest, perching space, litter to allow pecking and scratching and unrestricted access to a feed trough.”²⁶¹ Floors of an enclosure used to house these birds must be constructed “so as to support adequately each of the forward-facing claws of each foot.”²⁶² For hens raised together, rather than in individual cages, the directive also includes maximum stocking density requirements to prevent overcrowding.²⁶³

These two directives, both pertaining to chickens, demonstrate how much the effectiveness of EU farmed animal directives can vary; while the Layer Directive has greatly improved the lives of laying hens in the EU and “has had much influence around the world,” the Broiler Directive “has had a relatively small direct effect on broiler welfare.”²⁶⁴ Considering the severity of suffering and the number of animals affected, leg disorders and related medical problems among broiler chickens constitute the most serious animal welfare problem in the EU, despite protective legislation.²⁶⁵

5. Protection of Animals During Transport

Council Regulation EC 1/2005 (“Transport Regulation”) protects EU farmed animals during transport.²⁶⁶ It requires, among other things, that all arrangements be “made in advance to minimize the length of the journey,” that the animals be fit to travel, and that “the personnel handling [the] animals [be] trained . . . [to] carry out their tasks without using violence or any method likely to cause unnecessary fear, injury or suffering.”²⁶⁷ Transporters must comply with these rules even if the journey continues outside the EU.²⁶⁸ The Transport Regulation also “lays down efficient monitoring tools . . . for the specific checks to be carried out by officials.”²⁶⁹ This is in stark contrast to the equivalent United States law, the Twenty-Eight Hour Law, which effectively has no monitoring tools.²⁷⁰

260. *Id.* at 54–55.

261. *Animal Welfare on the Farm: Laying Hens*, EUROPEAN COMM’N, https://ec.europa.eu/food/animals/welfare/practice/farm/laying_hens_en (last visited Apr. 6, 2020).

262. Council Directive 1999/74, *supra* note 259, at 54.

263. *Animal Welfare on the Farm: Laying Hens*, *supra* note 261.

264. *Animal Welfare in the EU Study*, *supra* note 49, at 31.

265. *Id.* at 45, 47.

266. Council Regulation 1/2005, 2005 O.J. (L 3) 2 (EC).

267. *Id.* at 5–6.

268. Case C-424/13, *Zuchtvieh-Export GmbH v. Stadt Kempten*, 2015 E.C.R. 259.

269. *Animal Welfare in Practice: Animal Welfare During Transport*, EUROPEAN COMM’N, https://ec.europa.eu/food/animals/welfare/practice/transport_en (last visited Apr. 6, 2020).

270. See *supra* notes 101–09 and accompanying text.

As a result of the training required by this directive, “[t]he attitudes of those involved in the transport . . . industr[y] [are] now more oriented towards consideration of the welfare of the animals.”²⁷¹ However, the directive is undermined because enforcement checks are “not always properly carried out” by member states.²⁷² As a result, workers still frequently use force during loading and unloading.²⁷³

6. Protection of Animals at the Time of Slaughter

Council Regulation 1099/2009 pertains to animal slaughter.²⁷⁴ Unlike the regulation in the United States, this regulation has strict technical requirements, including minimum electrical voltages to prevent chickens from going into scald baths alive.²⁷⁵ The regulation requires that stunned animals be regularly monitored for “signs of unconsciousness” to ensure that they do not regain consciousness before slaughter.²⁷⁶ To perform this monitoring, each slaughterhouse “shall designate an animal welfare officer . . . to assist them in ensuring compliance with the rules laid down in this Regulation.”²⁷⁷ The animal welfare officer requirement is in addition to—not a replacement for—official inspection.²⁷⁸

While much more specific than the Humane Methods of Slaughter Act in the United States, Council Regulation 1099/2009 is not perfect.²⁷⁹ For example, it “does not ban the use of the waterbath stunner for poultry despite its welfare disadvantages.”²⁸⁰

271. *Animal Welfare in the EU Study*, *supra* note 49, at 45.

272. *Id.* at 44–45.

273. *Id.* at 45.

274. Council Regulation 1099/2009, 2009 O.J. (L 303) 1 (EC).

275. See *Animal Welfare in Practice: Slaughter & Stunning*, EUROPEAN COMM’N, https://ec.europa.eu/food/animals/welfare/practice/slaughter_en (last visited Apr. 6, 2020).

276. Council Regulation 1099/2009, 2009 O.J. (L 303) 1, 13 (EC).

277. *Id.*

278. See *id.*

279. See *Report from the Commission to the European Parliament and the Council on the Various Stunning Methods for Poultry*, at 2, COM (2013) 915 final (Dec. 19, 2013).

280. Chris Harris, *EU Regulation Change View on Stunning at Slaughter*, POULTRY SITE (July 3, 2013, 12:00 AM), <https://thepoultrysite.com/articles/eu-regulation-changes-view-on-stunning-at-slaughter>. Approximately 80% of broiler chickens slaughtered in the EU are stunned by waterbath. *Report from the Commission to the European Parliament and the Council on the Various Stunning Methods for Poultry*, *supra* note 279, at 2. Most of the remaining 20% are stunned via Controlled Atmosphere Stunning (“CAS”), or gas stunning. *Id.* The European Food Safety Authority found waterbath stunning to be 96% effective when done according to regulation voltages, but also noted that “slaughterhouse operators tend to lower the current because of meat quality concerns.” *Id.* at 4. “[W]aterbath is the cheapest stunning method and CAS the most expensive,” although the difference in costs is reduced for higher volume slaughterhouses. *Id.* at 7.

Overall, “[t]here are regional and national differences in the seriousness with which [EU] legislation is viewed by those involved in the animal production business.”²⁸¹ Unfortunately, the EU does not have enough staff to properly enforce all of its directives without support from member states.²⁸² The most easily enforceable EU welfare regulations are those pertaining to major housing systems “because they depend upon large manufacturers who are easily forced to change.”²⁸³ Other aspects of legislation require frequent checks at individual farms to ensure compliance.²⁸⁴ Enforcement is also better at slaughterhouses than at farms due to concomitant food safety concerns.²⁸⁵

While more directives are needed—and any system which permits animals to be raised en masse for the purpose of human consumption is necessarily violative of ideal standards of humane treatment—these directives ultimately have a positive impact on the animal agricultural industry in the European Union. “[T]here is evidence that the need to use antimicrobials . . . for treating common conditions has been substantially reduced, or avoided altogether, in those Member States which have a strong focus on welfare, health and hygiene issues.”²⁸⁶ Further, “overall, Member States and industry do not consider [implementation to have had] significant financial implications.”²⁸⁷ In fact, strong animal protective legislation “with effective enforcement improve[s] the image of the industry,” and may confer a commercial advantage on companies when they sell outside the EU.²⁸⁸

B. Ireland-Specific Law

In addition to EU directives, farmed animals in the Republic of Ireland are also protected by Irish law. The Animal Health and Welfare Act of 2013 (“AHWA”) is the primary piece of Irish legislation protecting animals.²⁸⁹

281. *Animal Welfare in the EU Study*, *supra* note 49, at 42.

282. *Id.* at 58.

283. *Id.* at 42.

284. *Id.*

285. *Id.* at 44.

286. *Report from the Commission to the European Parliament and the Council on the Application of Directive 2007/43/EC and its Influence on the Welfare of Chickens Kept for Meat Production, as Well as the Development of Welfare Indicators*, *supra* note 257, at 8.

287. *Id.* at 9. The only Member States that do report a significant financial impact from implementation of the Broiler Directive are the UK and the Netherlands. *Id.* The UK chose not to allow stocking at the highest densities permitted by the EU Directive. *Id.*

288. *Animal Welfare in the EU Study*, *supra* note 49, at 40.

289. Animal Health and Welfare Act 2013 (Act No. 15/2013) (Ir.), <http://www.irishstatutebook.ie/eli/2013/act/15/enacted/en/print.html>; Andrew Kelly, *The*

1. Animal Health and Welfare Act

Unlike the Animal Welfare Act in the United States, the AHWA specifically extends its protections to farmed animals.²⁹⁰ The Act starts from an ideal, inclusive definition of animal: “a member of the kingdom *animalae* other than a human being.”²⁹¹

Like many U.S. state laws, the AHWA limits its prohibition of harm to that which is “unnecessary.”²⁹² But unlike the United States, where this exception is so vague that the industry can cast its own economic benefit as a countervailing (and ultimately, overwhelming) consideration, the AHWA sets out guidelines to determine when suffering is unnecessary.²⁹³ Those considerations include: “whether the suffering could reasonably have been avoided . . . or reduced,” “whether the conduct which caused the suffering was in compliance” with the AHWA or another source of law, whether the actions were to “benefit[] the health and welfare of the animal” or to “protect[] a person [or] property,” and “whether the suffering was proportionate to the purpose of the conduct concerned.”²⁹⁴ The final consideration is “whether the conduct concerned was in all the circumstances that of a competent and humane person.”²⁹⁵

These “necessity” considerations are far from perfect. They employ many vague terms which are likely to be abused—could suffering *reasonably* have been avoided? Was the conduct, *in all the circumstances*, that of a competent and humane person? Protection of property is also listed as a potential justification for the infliction of suffering.²⁹⁶ Despite these shortcomings, these guidelines give animals some measure of protection from companies that would describe every dollar of profits as “necessity.”²⁹⁷ Companies do not have free reign to define the standards that they will be held to.

Animal Health and Welfare Act: one year on, ISPCA Caring for All Animals, https://www.ispca.ie/blog/detail/the_animal_health_and_welfare_act_one_year_on (last visited Apr. 6, 2020) (noting that the enactment of the Animal Health and Welfare Act “for the first time put a legal responsibility on the owner of any protected animal (including companion animals) to provide for the animals’ needs”).

290. Animal Health and Welfare Act 2013 (Act No. 15/ 2013) (Ir.), <http://www.irishstatutebook.ie/eli/2013/act/15/section/2/enacted/en/html> (“[F]arm animal’ means an animal . . . bred or kept for the production of food, wool, skin, fur or feathers.”).

291. *Id.*

292. *Id.* at pt. 3(12)(1)(a).

293. *Id.*

294. *Id.* at pt. 3(12)(4)(a)–(d).

295. *Id.* at pt. 3(12)(4)(e).

296. *Id.* at pt. 3(12)(4)(c)(ii).

297. *See id.* at pt. 3.

As defined by the AHWA, animal cruelty includes both actions and omissions that cause unnecessary suffering.²⁹⁸ “[N]eglect, or . . . reckless[ness], regarding the health or welfare of an animal” are both prohibited.²⁹⁹ Although exceptions for animal cruelty include “anything which occurs in the ordinary course of— (a) fishing, (b) lawfully hunting an animal, . . . or (c) lawfully coursing a hare,” the section does not expressly except actions which occur in the ordinary course of raising livestock.³⁰⁰ This would seem to indicate that all animal husbandry techniques must individually meet the humaneness standards set forth by the Act.³⁰¹ Medical procedures that involve “interference with, or the removal of, the sensitive tissue or the bone structure of the animal” are only permitted for veterinary treatment, unless they are otherwise “carried out in accordance with animal health and welfare regulations.”³⁰² Also, when they are permitted, the act requires that medical procedures only be performed with “the use of an appropriate anaesthetic or analgesic administered so as to prevent or relieve any pain during or arising from the operation or procedure.”³⁰³ At slaughter, an animal may be killed only “in such manner as to inflict as little suffering as possible in the circumstances.”³⁰⁴

When an authorized officer believes that “a contravention of [an animal welfare law, directive or regulation] may have taken place or may be taking place,” or that a person is not taking care of—or cannot take care of—an animal, or that “the conditions (*including the method of husbandry and the number of protected animals* on land or premises) under which a protected animal is kept . . . may give rise to injury or unnecessary suffering or other risk to the welfare of the animal,” the officer may serve a notice.³⁰⁵ That notice will require the person upon whom it is served to take a specified action, which may include providing veterinary treatment or moving the animal to different place.³⁰⁶ The notice may also require “that no more than a specified number (which may be zero) of protected animals” be kept on the premises, that “alterations or additions be made to land . . . machinery or equipment used in connection with an animal,” or that premises used for animals be

298. *Id.* at pt. 3(12)(1)(a).

299. *Id.* at pt. 3(12)(1)(b).

300. *Id.* at pt. 3(12)(11).

301. *See id.*

302. *Id.* at pt. 3(16)(1). Some medical procedures are expressly permitted elsewhere in the act, subject to additional conditions. *Id.*

303. *Id.* at pt. 3(17)(1).

304. *Id.* at pt. 3(23)(1).

305. *Id.* at pt. 8(42)(1)(a), (d) (emphasis added).

306. *Id.* at pt. 8(42)(3).

cleaned or disinfected.³⁰⁷ Any recipient of a notice who fails to comply with the requirements stated therein commits an offense.³⁰⁸ The officer who issued the notice may seize animals for noncompliance.³⁰⁹ Theoretically, under the AHWA, an officer may serve notice on a farmer for using any husbandry technique that causes suffering to an animal that does not meet the standard for necessity under the law, and, if that farmer fails to change their practices, the officer may remove animals from the farmer's care.³¹⁰ If fully enforced, this law could do more to protect farmed animals than any in the United States.

Under the AHWA, maximum penalties for cruelty, starving or poisoning, abandonment, performing prohibited operations, performing operations without anesthetic, failing to inspect life-sustaining animal husbandry equipment, failing to comply with welfare regulations while selling or destroying animals, failing to comply with a notice from a humane officer, or forging records required by the AHWA include a 250,000 Euro fine and/or up to five years in prison.³¹¹ Penalties for other offenses under the AHWA include a class A fine.³¹² Violators may also be disqualified from animal ownership in the future.³¹³

2. Enforcement

A significant obstacle to the protection of farmed animals in Ireland is enforcement. Dr. Andrew Kelly, the CEO of the Irish Society for the Prevention of Cruelty to Animals ("ISPCA") points out that, despite the EU directive to the contrary, the vast majority of Irish farmers are still tail docking pigs without anesthetic.³¹⁴ EU law allows tail docking if other methods have been tried and failed, but Irish veterinarians frequently sign off on the procedure before alternative methods—methods that do not involve cutting of soft tissue—have been attempted.³¹⁵ Dr. Kelly also reports that most Irish pigs are overcrowded, live in farrowing cages, and never see the outside.³¹⁶

307. *Id.* at pt. 8(42)(3)(g)-(m).

308. *Id.* at pt. 8(42)(9).

309. *Id.* at pt. 8(44)(1).

310. *See id.* at pt. 8(41)-(42).

311. *Id.* at pt. 10(52)(2)(b).

312. *Id.*

313. *Id.* at pt. 10(58)(1)(a).

314. Author's Personal Interview with Dr. Andrew Kelly, CEO, Irish Society for the Prevention of Cruelty to Animals (Nov. 22, 2018).

315. *Id.*

316. *Id.*

Another strain on Irish animal welfare standards has been an increase in dairy herd sizes.³¹⁷ Herd sizes increased by up to a third in 2017, due to an increased demand for powdered milk from China.³¹⁸ Ireland does not have enough trained dairy farmers, and as a result, farm owners are working increasingly long hours and animals are experiencing longer wait times to be milked.³¹⁹ Delays in milking can lead to mastitis.³²⁰ When herds grow too large, more dairy cows find themselves in slaughterhouses, and more calves, themselves a dairy byproduct, are exported to countries with less stringent animal welfare controls.³²¹

Quality of life for Irish cattle may also be a concern. Between 2017 and 2018, undercover researchers from a Dutch animal rights group, Wakker Dier, raised animal welfare concerns after visiting thirteen Irish farms.³²² Animals were kept indoors on “hard concrete grids” during the winter months.³²³ The researchers also alleged calves were being dehorned and castrated without any pain medication.³²⁴ Wakker Dier press officer Valeska Hovener stated that “Irish beef has an animal-friendly image of grazing cattle on green meadows. But that is in the summer. In winter, these animals can really have a rotten life.”³²⁵

The Agricultural Lobby is strong in Ireland, particularly the Irish Farmer Association, but its influence on legislation has yielded nothing comparable to American ag-gag laws.³²⁶ Laws and regulations pertaining to animal treatment are influenced by the Farm Animal Welfare Advisory Council, which publishes reports and opinions advising the Minister for the Department of Agriculture, Food and the Marine.³²⁷ Members of the Council include the ISPCA, the Irish Farmers Association, the Irish Creamery Milk Suppliers, and the Committee for

317. *Id.*

318. *Id.*

319. *Id.*; see also Devitt *supra* note 64 (noting the challenges posed by “[a]n increasingly ageing farming population, limited farm help and limited retirement opportunities”).

320. Interview with Dr. Andrew Kelly, *supra* note 314.

321. *Id.*; see also Aidan Fortune, *Irish Meat and Livestock Exports Grow in 2018*, GLOBALMEATNEWS (Jan. 10, 2019, 12:41 GMT), <https://www.globalmeatnews.com/Article/2019/01/10/Irish-meat-exports-hit-record-high>.

322. Ciaran Moran, *Animal Rights Group Uses Pretend Journalists in ‘Undercover Research’ on Irish Beef Farms*, FARMING INDEP. (Oct. 16, 2018, 6:34 AM), <https://www.independent.ie/business/farming/news/farming-news/animal-rights-group-use-s-pretend-journalists-in-undercover-research-on-irish-beef-farms-37422479.html>.

323. *Id.*

324. *Id.*

325. *Id.*

326. Interview with Dr. Andrew Kelly, *supra* note 314.

327. FARM ANIMAL WELFARE ADVISORY COUNCIL, <http://www.fawac.ie> (last visited Apr. 6, 2020).

Irish Livestock, Dealers, Exporters, Hauliers and Shippers.³²⁸ Of the eleven members of the Council, only two are welfare groups.³²⁹

IV. CONCLUSION

Ultimately, producing animal products on the scale that we do now will make effecting the type of idyllic conditions depicted on our milk cartons or bacon packaging impossible. Animal welfare laws, much like the images on those labels, function most effectively to make consumers more comfortable participating in an industry designed to transform sentient creatures from vulnerable newborns into car interiors or something on a plate.³³⁰

That said, although it stops short of making conditions truly comfortable, Ireland's statutory scheme offers animals a significantly better life than does the United States'. In the United States, federal welfare law covers so few animals, offers so little protection to the animals that it does cover, and is so poorly enforced as to be practically worthless.³³¹ State laws vary, but they consistently contain sweeping exceptions for even the cruelest industry practices.³³²

If the United States wants to do more than pay lip service to protecting farmed animals, the country must repeal legislation that insulates animal industries from public scrutiny and accountability at both the state and federal level. Then, the United States should emulate EU directives pertaining to housing systems and stocking densities. The amount of space, comfort, and environmental enrichment animals have in their living quarters drastically impacts the quality of their lives.³³³ The United States should also follow Ireland's lead by setting out factors to limit what constitutes "necessity" for the purpose of permitting the infliction of pain to animals. The types of pain that can be considered "reasonable" should also be carefully outlined by the law, not left to the industry to interpret and legitimize by consensus.

The United States and Ireland would both benefit from devoting more resources to enforcing existing animal protection laws and must

328. *Representative Groups*, FARM ANIMAL WELFARE ADVISORY COUNCIL, <http://www.fawac.ie/representativegroups/#d.en.56935> (last visited Apr. 6, 2020).

329. *See id.* (listing The Irish Society for the Prevention of Cruelty to Animals (ISPCA) and Wexford Society for the Prevention of Cruelty to Animals (WSPCA) as the only two welfare group members of the Council).

330. *See Marceau, supra* note 80, at 940–42.

331. *See Animal Welfare Act*, 7 U.S.C.A. § 2132(g) (West 2014).

332. *See supra* notes 79–214 and accompanying text.

333. *Animal Welfare in the EU Study, supra* note 49, at 31.

develop new legislation to limit the welfare ramifications of selective breeding.³³⁴

While these changes would improve quality of life for farmed animals, they would not eliminate the ethical problems inherent to raising animals for food or fiber. They also would not address many of the industry externalities borne by workers, neighbors, or the environment at large. Ultimately, the most effective way to tackle all of these problems would be to dismantle the system of industrialized agriculture in both countries and move towards plant-based diets and lifestyles.

334. *See id.* at 47.