

The Deplorable Standard of Living Faced by Farmed Animals in America's Meat Industry and How to Improve Conditions by Eliminating the Corporate Farm

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INTRODUCTION

It's a *Jungle* out there. After Upton Sinclair's landmark 1906 book, *The Jungle*, exposed the poor sanitation and deception of the meat industry, lawmakers took note. Revolutionary statutes were created that theoretically protected American meat consumers and meat industry workers. Since this was in the early 1900s and technology has improved exponentially since then, the U.S. meat supply should be among the safest and most sanitary in the world. Unfortunately, this is not the case today and unsuspecting Americans and other consumers are ingesting meat that can more properly be labeled a biohazard. In fact, the meat industry has taken steps backwards and now consumers are more at risk than ever for pathogen poisoning or even the human form of mad cow disease. When it comes to meat consumption, one union official with twenty-four years of experience in the meatpacking industry states that "[w]hat the public sees is fancy labels."<sup>1</sup>

Sinclair's book described the slaughterhouse as a world where workers relieve themselves on the slaughterhouse floor which is where meat falls, and the meat then gets put back on the conveyor belt.<sup>2</sup> Meat with rats in it was also commonplace.<sup>3</sup> Furthermore, the smell of rotten meat was disguised by the use of Borax on the meat.<sup>4</sup> This kind of contamination unbelievably continues today.<sup>5</sup> A Perdue chicken meatpacking plant worker gave Congressional testimony of her experience as a worker,

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<sup>1</sup> See Gail Eisnitz, *Slaughterhouse 63* (1997).

<sup>2</sup> See generally Upton Sinclair, *The Jungle* (1906).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See generally Gail Eisnitz, *Slaughterhouse* (1997).

calling the plant “filthy.”<sup>6</sup> She stated that “[t]he floors are covered with grease, fat, sand, and roaches. Bugs are up and down the sides of the walls. Some of the flying roaches were huge, up to four and five inches long...there are flies all around.”<sup>7</sup> As in Sinclair’s time, she stated “[t]he company won’t allow workers to leave the line when they have to go to the bathroom...sometimes they have to relieve themselves on the floor.”<sup>8</sup> Another Perdue worker corroborated this story and added that “I’ve seen birds fall on the floor and the foremen tell workers to put them back on the line without washing...I’ve seen birds with cancerous tumors come through regularly, sometimes all day long.”<sup>9</sup>

Even while this contamination continues, corporations today resist the government’s efforts to institute microbial testing mechanisms that can help assure a safer food supply.<sup>10</sup> Safety again has taken a backseat to corporate profits and greed. History is doomed to repeat itself at the expense of those who consume any of the U.S. meat supply.

Also since Sinclair’s book, animal cruelty statutes have become more broadly accepted. Statutes such as these were promulgated in Sinclair’s time but were not frequently used. Animals should be more protected than ever against intentional infliction of unnecessary pain, but again this is not the case today. In many influential animal cruelty statutes such as state anti-cruelty statutes and the Animal Welfare Act, livestock is exempted from protection. The agriculture industry gets a legal pass in their treatment of animals. The result of this is that animals used in the food supply which are raised on factory farms (mostly cows, pigs, and chickens) are subject to unrelenting

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<sup>6</sup> *Id.* at 172.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 173.

<sup>10</sup> See Eric Schlosser, *Fast Food Nation* (2001).

cruelty. This cruelty is fueled by mass producing factory farms which process millions of animals a day for slaughter and often do not have the time to abide by humane slaughter statutes because of self imposed output requirements.<sup>11</sup> This is coupled with lax enforcement by the United States Department of Agriculture (USDA) inspectors who distance themselves from the slaughterhouse floor so that the pain and suffering of factory farmed animals goes unnoticed.<sup>12</sup>

## SAFETY CONCERNS RELATED TO THE MEAT INDUSTRY

### *E-COLI*

Most Americans give little or no thought to the origin of the food they consume. Many think food is safe because it is regulated by the USDA.<sup>13</sup> Yet as the continuation of e-coli infections show, this is not the case. As of 2003, “foodborne illness continues to sicken an estimated 76 million, hospitalize 325,000, and kill 5,000 Americans each year.”<sup>14</sup>

E-coli and Salmonella can be found in the intestines of healthy livestock, but poor sanitation causes these pathogens to “contaminate meat during sloppy high-speed slaughter....”<sup>15</sup> There are machines in slaughterhouses that rip out the intestines of animals, spilling fecal material containing e-coli and other pathogens onto meat intended for consumption.<sup>16</sup> Before, animals contaminated with fecal material had to be condemned (not put into the food supply) but the USDA now considers feces a “cosmetic

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<sup>11</sup> See Eisnitz at 24.

<sup>12</sup> *Id.*

<sup>13</sup> See generally Marion Nestle, *Safe Food* (2004). E-coli is currently tested under the Hazard Analysis and Critical Control Point system where testing is done for pathogens at certain control points. *Id.* at 86. The system is criticized because of its testing only at certain points, while countries such as Sweden and the Netherlands control pathogens more effectively by testing at all production points, even the farm. *Id.* at 113.

<sup>14</sup> See [http://www.safetables.org/pdf/STOP\\_report.pdf](http://www.safetables.org/pdf/STOP_report.pdf).

<sup>15</sup> See Eisnitz at 38.

<sup>16</sup> *Id.* at 167.

blemish,” allowing workers to rinse it off and further process it for consumption.<sup>17</sup>

Cross-contamination is especially likely since the meat that goes into one hamburger could be from over 100 different animals.<sup>18</sup>

An especially egregious example of food poisoning occurred in the 1980s. At that time, the U.S. government bought ¼ of the ground beef used for USDA’s school lunch program from one company, Cattle King Packing Company.<sup>19</sup> An investigation found the meatpacking plant to be overrun with rats and cockroaches and the company frequently “...hid diseased cattle from inspectors, and mixed rotten meat that had been returned by customers into packages of hamburger meat.”<sup>20</sup> Furthermore, when a plant in Texas that supplied 45% of school lunch beef was tested, a 47% salmonella contamination rate among all the ground beef was discovered.<sup>21</sup> Salmonella causes 1.4 million illnesses annually and its presence is indicative of fecal matter contamination.<sup>22</sup> Even for some time after this discovery, the USDA remarkably still bought the meat.<sup>23</sup> If school children with low immunity are given this kind of priority by the government, the outlook for the average American meat consumer is grim.

Safe Tables Our Priority (S.T.O.P.) is a non-profit organization that serves as advocates for food safety in regards to meat. They especially advocate for children since children’s immune systems are not yet fully developed and therefore children are especially vulnerable to contamination and pathogens in meat that has not been cooked or

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 159.

<sup>19</sup> *See* Schlosser at 218.

<sup>20</sup> *Id.*

<sup>21</sup> *See* Schlosser at 219.

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

<sup>23</sup> *Id.*

handled properly.<sup>24</sup> In fact, 16,000 students fell ill from tainted school meat throughout the 1990s and 300 instances of foodborne poisoning were reported in schools.<sup>25</sup> E-coli poisoning is very dangerous and can cause death. One woman recounts her 6 year old son Alex's battle with e-coli:

I watched my child die a brutal death, I watched in horror as his life hemorrhaged away in a hospital bathroom. I stood by helplessly while bowl after bowl of blood and mucus gushed from his little body, I listened to his screams and then the eerie silence that followed as toxins that had started in his intestines moved to his brain. I sat with my only child as I watched doctors frantically shove a hose into his side to re-inflate his collapsed lung, as brain shunts were drilled into his head to relieve the tremendous pressure. Then I watched as his brain waves flattened.<sup>26</sup>

Pathogens such as e-coli are found in the digestive systems of farm animals.<sup>27</sup> E-coli poisonings such as those reported above occur because of poor sanitation at farms where animals are raised. In the above instance, the poisoning occurred from e-coli tainted feces in a hamburger that Alex had eaten. To alleviate the problem of pathogens in meat, S.T.O.P. calls for "changes in the way livestock is raised."<sup>28</sup> S.T.O.P states that the food system is becoming increasingly contaminated due to the rise of factory farms in the 1990s.<sup>29</sup>

### *MAD COW DISEASE*

Another way that the American meat industry presents dangers to the public is the recent advent of Mad Cow Disease or Bovine Spongiform Encephalopathy (BSE) which is a "brain wasting" disease.<sup>30</sup> Mad Cow Disease can be transmitted to humans with the

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<sup>24</sup> Available at <http://www.safetables.org>

<sup>25</sup> Available at [http://www.safetables.org/pdf/STOP\\_report.pdf](http://www.safetables.org/pdf/STOP_report.pdf).

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

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 24.

<sup>30</sup> See Susanne Aberback-Marolda, *The Law and Transmissible Spongiform Encephalopathies: The Case for Precautionary Measures*, 15 Pace Int'l L. Rev. 1 (Spring 2003).

human form of the disease, a variant of Creutzfeldt-Jakob Disease (vCJD).<sup>31</sup> Symptoms in humans include loss of motor skills, depression, and mood swings, causing death to the victim within thirteen months because no known cure exists.<sup>32</sup> However, the disease has an incubation period that could span the course of several years or even decades so that these negative effects do not present themselves immediately.<sup>33</sup> Since the advent of Mad Cow in Europe in 1995, 136 Europeans have died from eating tainted beef.<sup>34</sup> In a 2001 press release, the U.S. government stated “there is no evidence that BSE is in this country” and “the chances of it occurring here are slim.”<sup>35</sup> Unfortunately, the government was wrong and the first mad cow case in the United States appeared in 2003. Even though the cow was from Canada, the USDA inexplicably intends to reopen American borders to the importation of Canadian meat.<sup>36</sup> It has even been recently reported that 42,000 pounds of beef that should have been banned by the U.S.’s Mad Cow guidelines was imported from Canada anyway.<sup>37</sup> Canadian beef was banned by the U.S. after the May 2003 discovery of Mad Cow Disease in Canada, but these 42,000

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<sup>31</sup> *Id.* at 2. See also Ken Midkiff, *The Meat You Eat: How Corporate Farming has Endangered America’s Food Supply* xiii (2004).

<sup>32</sup> See Amy Mosel, *What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production*, 27 Dayton L. Rev. 133, n.204 (2001). Symptoms also include “blindness, inability to talk, derangement, dementia, and ‘raving madness.’” Midkiff at xvii.

<sup>33</sup> See Midkiff at xiv. Midkiff estimates that if vCJD was contracted by anyone from the May 2003 Canadian outbreak, it could present itself anytime between now and 2043. *Id.* The disease could take up to 40 years to incubate. See Midkiff at xvi.

<sup>34</sup> See Aberback-Mardola at 2.

<sup>35</sup> See Kerri Machado, *Unfit for Human Consumption: Why American Beef is Making Us Sick*, 13 Alb. L.J. Sci. & Tech. 810, 811 (2003).

<sup>36</sup> Available at

[http://news.yahoo.com/news?tmpl=story&u=/nm/20050202/wl\\_canada\\_nm/canada\\_madcow\\_congress\\_col\\_2](http://news.yahoo.com/news?tmpl=story&u=/nm/20050202/wl_canada_nm/canada_madcow_congress_col_2), see also <http://www.cnn.com/2005/HEALTH/conditions/02/17/mad.cow.reut/index.html>. The USDA plans to allow imports of more Canadian beef on March 7, 2005. *Id.* The U.S. even plans on accepting Canadian live cattle under 30 months of age. *Id.*

<sup>37</sup> Available at <http://www.cnn.com/2005/HEALTH/conditions/02/17/mad.cow.reut/index.html>.

pounds slipped through the cracks due to “lax oversight by the U.S. Agriculture Department.”<sup>38</sup>

Even after the Mad Cow scare, food safety is still not a priority to the government. Union workers report that banned cow parts are still being put into the U.S. food supply.<sup>39</sup> There is a ban on cattle parts from cattle older than 30 months such as the brain, spinal cord, and skull which are high risk transmitters of Mad Cow Disease.<sup>40</sup> Yet, as of December 2004, these items are being put into the food production chain without any objection by the USDA, thereby putting American meat consumers even more at risk.<sup>41</sup> The USDA is required to inspect “downer” cattle because they are at high risk for Mad Cow Disease.<sup>42</sup> A meatpacking plant supervisor states “...the USDA is supposed to check the animals and mark on the ticket if any cattle are suspect. I’ve seen [USDA] inspectors walk in and sign half a day’s worth of tickets without even looking at the animals, then go off and have a cup of coffee.”<sup>43</sup> With the advent of diseases such as Mad Cow which was a problem that only other nations dealt with before, it is apparent that the meat industry needs to make safety a priority rather than worsening their quality control and continuing their greed and desire for profit.

Mad Cow Disease occurs because of what livestock are fed in today’s factory farm. The disease is thought to have begun in the 1986 in the United Kingdom as a result

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<sup>38</sup> *Id.*

<sup>39</sup> Available at <http://www.msnbc.com/id/6738982> (Dec. 20, 2004).

<sup>40</sup> *Id.* Cows older than 30 months old and their body parts such as skulls, spinal cords, and lower intestines are thought to be at highest risk for transmitting Mad Cow to humans, and these parts were banned from the food supply by the USDA in January 2004. *Id.*

<sup>41</sup> *Id.* Even though USDA has issued the ban, they are not following up to ensure that these parts are not allowed into the food supply. *Id.*

<sup>42</sup> See Eisnitz at 46. See also Ken Midkiff, *The Meat You Eat: How Corporate Farming has Endangered America’s Food Supply* xiii (2004). A “downer” cattle is “an animal sick and diseased to the point where she ‘stays down’ because she can’t rise to a standing position.” See Midkiff at xiii.

<sup>43</sup> *Id.*

of “feed made with meat and bone meal” which was later banned by the European Union.<sup>44</sup> Cows are naturally herbivores and when farming was done by family farms, cows were fed grain.<sup>45</sup> Now with mass production factory farms, it is much cheaper to feed cows the remains of other cows, which may be tainted in order to increase the weight of livestock at a faster rate.<sup>46</sup> This practice is called “animal cannibalism” and can be described as “feeding ruminants back to ruminants.”<sup>47</sup> The disease is transmitted by damaged prions, or infected proteins, in the cows that are rendered and these deformed prions are then eaten by healthy cows through cheap feed.<sup>48</sup> Sweden stopped the spread of Mad Cow Disease in its country by banning “animal cannibalism,” refusing to import feed that has been contaminated, and stopping the practice of factory farming.<sup>49</sup> Recently, a bill has been introduced by Senator Maria Cantwell to ban high risk material in animal feed; the bill is called the Animal Feed Protection Act of 2005.<sup>50</sup>

## FACTORY FARMS AND THEIR CONTRIBUTION TO AN UNSAFE MEAT

### SUPPLY

Just as in Upton Sinclair’s time, many of the problems seen in the meat industry today are due to major consolidations within the meat industry and the pressure to produce the most meat at the lowest price. Between 1979 and 1998, there has been a loss of 300,000 family farms.<sup>51</sup> There has been a movement away from the small factory

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<sup>44</sup> Available at [http://news.yahoo.com/news?tmpl=story&u=/nm/20050128/hl\\_nm/madcow\\_eu\\_dc](http://news.yahoo.com/news?tmpl=story&u=/nm/20050128/hl_nm/madcow_eu_dc)

<sup>45</sup> See Machado at 808.

<sup>46</sup> See Aberbach-Marolda at 2.

<sup>47</sup> *Id.* A ruminant is an animal with more than one stomach. See Midkiff at xvii.

<sup>48</sup> *Id.* at 5. See Also Midkiff at xv. “Scientists...stated that muscle tissue could in fact be responsible for transmitted the folded proteins, called prions, that cause mad cow disease (by making other proteins fold) and that other species susceptible to the disease, such as humans, would be placed at risk by eating this muscle tissue.” Midkiff at xv.

<sup>49</sup> *Id.* at 19.

<sup>50</sup> Available at <http://www.msnbc.msn.com/id/6866344>

<sup>51</sup> Available at <http://www.hfa.org/factory/index.html>.

farmer with a manageable supply of livestock to mass producing corporations with line speed pressures and concern over profit and saving money rather than sustainable agriculture. These mass producing corporate farms are commonly known as factory farms or Concentrated Animal Feeding Operations (CAFOs).<sup>52</sup> Here, “hundreds to thousands of animals are confined in as little space as possible. They stand and sleep in puddles of manure, and the bacteria in this manure can be readily spread to other animals, into their digestive tracts and onto their hides.”<sup>53</sup> Because there are so many animals packed into such a tight space for the duration of their lives, factory farms use antibiotics as a matter of course even on animals that are not sick.<sup>54</sup> By consuming this meat, humans are ingesting these antibiotics which can cause “superbugs” or resistance to antibiotics when they are medically needed.<sup>55</sup>

The ways CAFOs differ from traditional family farms is that small family farms raise lower numbers of animals, and they allow the animals to go outside into the sunlight to receive necessary Vitamin D since family farms practice sustainable agriculture.<sup>56</sup> With sustainable agriculture as found on small farms, it is preferable for the animals to remain outdoors because their manure fertilizes the soil for crop production.<sup>57</sup> CAFOs use more technology and require animals to remain indoors on concrete floors.<sup>58</sup> The animals do not need to go outside to feed because they are fed by machines and their waste does not fertilize the land as in sustainable, family farmed agriculture because slots

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<sup>52</sup> Available at [http://www.safetables.org/pdf/STOP\\_Report.pdf](http://www.safetables.org/pdf/STOP_Report.pdf) at 24.

<sup>53</sup> *Id.*

<sup>54</sup> Available at <http://www.sierraclub.org/factoryfarms/antibiotics>

<sup>55</sup> *Id.*

<sup>56</sup> See Steven J. Haverkamp, *Note: Are Moderate Animal Welfare Laws and a Sustainable Agriculture Economy Mutually Exclusive? Laws, Moral Implications, and Recommendations*, 46 Drake L. Rev. 645, 653 (1998).

<sup>57</sup> See Betsy Tao, *A Stitch in Time: Addressing the Environmental, Health, and Animal Welfare Effects of China's Expanding Meat Industry*, 15 Geo. Int'l Env'tl. L. Rev. 321, 323 (2003).

<sup>58</sup> See Haverkamp at 654.

in the concrete floors filter waste and dump it in huge lagoons which can be an environmental disaster waiting to happen in the case of a flood for instance.<sup>59</sup> CAFOs produce a staggering 2.7 trillion pounds of animal waste per year.<sup>60</sup> This waste has “polluted 35,000 miles of rivers in 22 states and contaminated groundwater in 17 states.”<sup>61</sup> CAFOs externalize these costs and “in the United States, raising animals for food consumes a third of the nation’s energy and half of all water used.”<sup>62</sup>

Even though CAFOs tightly pack many animals together, thereby increasing the chances for infectious disease, and do not offer the animals a chance to ever go outside, there can be some human benefits to CAFOs. One of the greatest benefits is an inexpensive, abundant food supply caused from the benefits of economies of scale that CAFOs can realize.<sup>63</sup> For example, three percent of America’s hog farms produce over fifty percent of pork.<sup>64</sup> This high supply of cheap meat is beneficial in a low-carbohydrate, Adkins diet driven society as can be seen in the United States today. Perhaps the price of meat is so cheap because supply is too high. Meat is continually pushed on consumers through extensive marketing campaigns (“Beef: It’s What’s for Dinner”) to the point where consumers ingest more protein than even the USDA recommends.<sup>65</sup>

Since CAFOs slaughter so many animals in a technologically advanced way, CAFOs can function as an assembly line for turning animals into food. None of the animals’ basic needs are met such as an opportunity for socialization and spending time

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<sup>59</sup> *Id.*

<sup>60</sup> Available at <http://www.sierraclub.org/factoryfarms>

<sup>61</sup> *Id.*

<sup>62</sup> See Tao at 323.

<sup>63</sup> See Havercamp. at 655.

<sup>64</sup> Available at <http://www.hfa.org/factory/index.html>

<sup>65</sup> Walker, Polly, *Book Review: American Meat: A Threat to Your Health*, 4 Yale J. Health Pol’y L. & Ethics 173, 181 (2004).

outdoors, but CAFO owners would reason that if the animals are going to become food anyway, why should it matter? Another benefit is that if the animals are indoors, they are less likely to be subject to insect problems or temperature variances since CAFOs keep their factories temperature and climate controlled.<sup>66</sup> However, this is balanced out by animals contracting so many diseases from being in close quarters along with unnatural aggression amongst what are normally passive animals.

Along with the negative effects above that counteract the positive effects seen from CAFOs, there are other negative effects to these factory farms. Even though meat is bountiful and cheap for the average American family, much attention has been paid to the obesity epidemic in the United States, which could very well result in part from fat-laden, cheap meat.<sup>67</sup> Unfortunately, “Saturated fat consumption [such as meat and high fat dairy] is a major contributor to the high prevalence of cardiovascular disease in developed countries.”<sup>68</sup> Also, “[c]urrent meat consumption in the United States averages 220 pounds per person per year, supplying nearly double the amount of protein we need.”<sup>69</sup>

Diets high in meat also are associated with cancer.<sup>70</sup> The World Cancer Research Fund and American Cancer Society advocate that individuals should adopt vegetarian diets and especially avoid red meat to avert cancer.<sup>71</sup> In China, a 1998 study discovered “...degenerative diseases like cancer and heart disease show up in communities where an

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<sup>66</sup> *Id.*

<sup>67</sup> See Polly Walker, *Book Review: American Meat: A Threat to Your Health*, 4 *Yale J. Health Pol’y L. & Ethics* 173, 181 (2004).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See <http://www.pcrm.org> (Physicians Committee for Responsible Medicine).

<sup>71</sup> See Tao at 336.

improving economy gives people the ability to consume more meat.”<sup>72</sup> In no place can the effects of the increase of meat consumption be ascertained better than in the United States. “[I]n 1900, approximately 40% of deaths in the United States were caused by infectious diseases like typhoid and pneumonia, whereas only 16% were caused by the three ‘diseases of affluence’—cancer, stroke, and heart disease....[B]y 1973 infectious diseases were responsible for only 6% of deaths, while the three diseases of affluence now claimed 58%.”<sup>73</sup> A forthcoming Journal of the American Medical Association study shows that there is a lower risk of colon cancer in people who eat less red and processed meat and Physicians Committee for Responsible Medicine (PCRM) intends to use the study to petition the USDA to “remove meat products from the list of recommended foods in the U.S. Dietary Guidelines and the Food Guide Pyramid and...Warn against the consumption of these products.”<sup>74</sup>

Another problem with increased meat consumption is that “world food production capacity cannot produce enough grain to meet world food needs if more people adopt the high meat diet of the average person in the United States.”<sup>75</sup> Since livestock require a grain diet, a consumer is increasing their grain consumption whenever he or she eats meat, and “[t]he United States has the highest per capita grain consumption in the world at about 900 kilograms of grain per capita per year.”<sup>76</sup> Perhaps the dwindling grain supply and higher costs of grains like alfalfa and soybeans is why many CAFOs now feed

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<sup>72</sup> *Id.* at 337.

<sup>73</sup> *Id.*

<sup>74</sup> See <http://www.pcrm.org/cgi-bin/lists/mail.cgi?flavor=archive&id=20050111103016&list=news>

<sup>75</sup> See Walker at 181.

<sup>76</sup> *Id.*

the livestock with remains of other livestock which can cause Mad Cow Disease in humans.<sup>77</sup>

Also, as mentioned earlier, an enormous environmental and health problem is that animals produce a great amount of waste and when many animals are all packed together the waste produced is astronomical. This can cause contamination if the waste lagoons “leak, breach, or overflow.”<sup>78</sup> This can kill fish and affect the quality of water that humans enjoy.<sup>79</sup> In fact, “A 10,000 hog operation produces as much waste in a single day as a town of 25,000 people.”<sup>80</sup> Furthermore, the smells from factory farms that are caused from byproducts of waste can cause humans “nausea, vomiting and headache...shallow breathing and coughing; upset sleep, stomach and appetite; irritate eyes, nose and throat; and disturb, annoy and depress.”<sup>81</sup> It has been shown that property values located near a CAFO decreased by 30%.<sup>82</sup>

These effects do not even include the effects of factory farms that the workers who tend to and slaughter the animals are faced with since they work so closely to the animals. The workers have to contend with biological hazards and infectious disease as well as respiratory problems from breathing in the air of decomposing waste.<sup>83</sup> The problem with all of these negative effects is that they outweigh the positive effects of CAFOs and a study shows that “approximately 40 percent of traditional Midwest producers are competitive with large-scale production units.”<sup>84</sup> Therefore, there is not

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<sup>77</sup> See Kerri Machado, *Unfit for Human Consumption: Why American Beef is Making Us Sick*, 13 Alb. L.J. Sci. & Tech. 801, 808 (2003).

<sup>78</sup> See Havercamp at 657.

<sup>79</sup> *Id.*

<sup>80</sup> Available at <http://www.sierraclub.org/factoryfarms/faq.asp>

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 658.

<sup>84</sup> *Id.* at 659.

really a legitimate reason to use CAFOs that entail so many negative effects on the environment and human health.

## ANTIBIOTICS

In addition to the environmental and human health detriments associated with factory farms as noted above, an additional detriment is the factory farmer's addiction to the use of antibiotics. Researchers have found that using antibiotics in animals can promote growth and treat disease that is the result of the close confinement of sick and healthy animals on a factory farm.<sup>85</sup> Antibiotics help maximize profits by minimizing sickness from the stress of the factory farm's standard of living and by maximizing the growth of the animal. Antibiotics also are needed because "[c]onfinement...makes it less likely that an animal will grow to the size it could if raised outdoors, with plenty of fresh air, exercise, and sunlight."<sup>86</sup> Antibiotics now come "laced in animal feed" whereas before those antibiotics had to be prescribed by a veterinarian.<sup>87</sup> Because the antibiotics are so commonplace, the tolerance level of the animals rise and now "fifteen to seventeen million pounds of antibiotics [are] used subtherapeutically<sup>88</sup> [on animals] each year in this country alone" and "...10,000 farmers lace feed with illegal levels of drugs to maintain growth."<sup>89</sup>

Antibiotics are used across all types of animals confined in CAFOs. The Sierra Club found "antibiotic-resistant bacteria in name brand poultry products."<sup>90</sup> They state

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<sup>85</sup> See Mosel at 149.

<sup>86</sup> See Barbara O'Brien, *Comment: Animal Welfare Reform and the Magic Bullet: The Use and Abuse of Subtherapeutic Doses of Antibiotics in Livestock*, 67 U. Colo. L. Rev. 407, 426 (1996).

<sup>87</sup> *Id.*

<sup>88</sup> "Subtherapeutic" is when antibiotics are given for reasons other than the treatment of disease. See Midkiff at 40. In comparison to CAFOs, many family farmers report that they do not use antibiotics at all. *Id.* at 41.

<sup>89</sup> See O'Brien at 426.

<sup>90</sup> Available at <http://www.sierraclub.org/factoryfarms/antibiotics>

that “consumers are ingesting bacteria resistant to important human antibiotics like ciprofloxacin (Cipro), Synecid, and tetracycline.”<sup>91</sup> Since antibiotics are used routinely on animals that are not even sick through antibiotic laced animal feed, humans who ingest this meat will also ingest bacteria that have a resistance to drugs.<sup>92</sup> In fact, “repeated exposure to antibiotics enables resistant strains of bacteria to evolve.”<sup>93</sup> These resistant bacteria stay within the body and antibiotics are not as effective when they are ingested again.<sup>94</sup> It has been reported that the “annual cost of treating antibiotic-resistant infections in the U.S. might be as high as \$30 billion.”<sup>95</sup> Every year, the amount of antibiotics used on livestock in the U.S. constitutes “about 70% of the total amount of antibiotics produced in the U.S. each year and eight times more than the amount used as human medicine.”<sup>96</sup>

The CDC has known since 1984 that there is a link between antibiotics ingested in animals and human resistance to antibiotics. In 1984, their study found that “there was a direct connection between antibiotic feed additives and eighteen severe salmonella poisonings the previous year.”<sup>97</sup> Also, at its 2001 meeting, the American Medical Association spoke out against the subtherapeutic use of antibiotics in meat by creating a resolution that opposed this practice because they believe use of subtheapeutic antibiotics in animals will cause resistance in humans and that it is “a threat to human health.”<sup>98</sup> They also advocated for legislative action and stated that nearly “80% of

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Available at <http://www.sierraclub.org/factoryfarms/factsheets/antibiotics.asp>

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*, see also [http://www.ucsus.org/food\\_and\\_environment/antibiotic\\_resistance/index.cfm](http://www.ucsus.org/food_and_environment/antibiotic_resistance/index.cfm)

<sup>97</sup> See O’Brien at 425. Through “genetic fingerprinting” the study found that the food poisoning originated at a farm in South Dakota where the cattle grain was laced with tetracycline. *Id.* at 425.

<sup>98</sup> Available at <http://www.tufts.edu/med/apua/News/news.html>

antimicrobial use in agriculture is for growth promotion, as pesticides, or prophylactic (disease prevention).”<sup>99</sup> The Physicians Committee for Responsible Medicine (PCRM) highlighted a 2001 study done on salmonella which found that 20% of 200 samples of chicken, beef, turkey, and pork taken from Washington, D.C. supermarkets contained salmonella and of those 84% were resistant to antibiotics.<sup>100</sup> PCRM states “The routine use of antibiotics in farmed animals has made treatment of such illnesses increasingly difficult as consumers of these products become desensitized to drugs they regularly ingest.”<sup>101</sup>

Furthermore, in 2000 the FDA revoked its approval for the use of fluoroquinolones in chicken, stating “[t]he use of fluoroquinolones in poultry causes the development of fluoroquinolone-resistant *Campylobacter* in humans” and that “fluoroquinolone-resistant *Campylobacter* infections are a hazard to human health.”<sup>102</sup> Another study was completed by a microbiologist and professor at Tufts University, Stuart Levy.<sup>103</sup> He isolated and traced a strain of E-coli and found the bacteria in a calf spread to mice in its barn as well as to pigs, chickens, and flies even though these animals were quite a distance from the calf.<sup>104</sup> Finally, humans who worked with the calf began excreting the E-coli, showing it was possible to have a cross species contamination.<sup>105</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> See <http://www.pcrm.org/magazine/GM02SpringSummer/GM02SS09.html>, quoting White D, Shaohua Z, Sudler R., *The isolation of antibiotic-resistant salmonella from retail ground meats*, N. Eng. J. Med. 2001;345: 1147-54. Salmonella infections come from eating eggs, dairy, and meat products. *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Available at <http://www.fda.gov/cvm/index/updates/nooh.htm>. Fluoroquinolones are for use in controlling E-coli in chickens. *Id.* Fluoroquinolones are approved for use in humans (since 1986) and are considered valuable in their treatment of foodborne illness. *Id.* The FDA approved such use in poultry in 1995. *Id.* See Also <http://www.fda.gov/cvm/index/updates/noelufllq.htm> and final rule available at <http://www.fda.gov/cvm/index/amducca/fqnotice.htm>

<sup>103</sup> See O’Brien at 423. Levy’s book is entitled *The Antibiotic Paradox: How Miracle Drugs are Destroying the Miracle*. *Id.*

<sup>104</sup> *Id.* at 426.

<sup>105</sup> *Id.*

Bacteria resistant to antibiotics can be spread the same way either by farmers who work with the animals or consumers who eat the end product of contaminated meat.<sup>106</sup> Even though antibiotic use has been shown to be harmful, dosages keep increasing due to animal resistance and greater overcrowding at factory farms, thereby putting into motion a potential public health crisis as factory farms flourish.

### ANIMAL WELFARE

One of the biggest crimes committed by CAFOs is their blatant disregard of animal welfare. Their flippant attitude toward the suffering of animals imprisoned in their industrialized assembly line is astonishing, and slaughterhouses frequently violate standing laws such as the Humane Slaughter Act.<sup>107</sup> The law is violated due to the traditional corporate attitude of wanting to maximize profit and minimize expenses. Profit is maximized by increasing output and therefore line speeds are so high that workers do not have time to properly stun an animal before it is eviscerated as the HSA mandates.<sup>108</sup> Also, the USDA, who is in charge of enforcing the HSA, spends little time enforcing the Act and if it attempts to, its workers are chastised by the CAFO owner.<sup>109</sup> In fact, 900 million livestock never get to the slaughterhouse, and they die prematurely because of disease or stress from the extreme living conditions seen at CAFOs.<sup>110</sup>

### *TREATMENT OF COWS*

Ramon Moreno worked at an IBP, Inc. meatpacking plant in Washington state.<sup>111</sup> His job was to cut the legs off of dead cows that came past him on an assembly line,

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<sup>106</sup> *Id.*

<sup>107</sup> Available at 7 U.S.C. 1901-1906.

<sup>108</sup> See Eisnitz at 90.

<sup>109</sup> *Id.* at 18.

<sup>110</sup> Available at <http://www.hfa.org/factory/index.html>.

<sup>111</sup> See Joby Warrick, *They Die Piece by Piece*, Washington Post at A01, April 11, 2001,

which sent by 309 cows per hour.<sup>112</sup> The Humane Slaughter Act dictates that the cows are supposed to be rendered unconscious before Moreno starts his job, but this does not always occur.<sup>113</sup> Moreno said that when the cows get to his station “They blink, they make noises...The head moves, the eyes are wide and looking around.”<sup>114</sup>

Today’s factory farms are so fast and have such heightened production that it only takes 25 minutes to process a cow in the meatpacking plant and ship it off to supermarkets as prepackaged steak.<sup>115</sup> Moreno states that he does his job regardless of whether the cow is dead or alive and that he is required to remove the legs of “dozens” of live cows per day.<sup>116</sup> In fact, he states that cows may even make it through his station still alive and reach further processing areas such as the hide remover that they are required to go through while still alive.<sup>117</sup> Moreno states that the cows die in the meatpacking plant “piece by piece.”<sup>118</sup> In 1998, the government discovered that a Texas slaughterhouse was cutting the hooves off of live cows and received 22 citations but the government failed to act.<sup>119</sup> Even while workers cannot keep up with line speeds the way they are, line speeds are continuing to increase. The rate “increased from 50 head of cattle an hour in the early 1990s to almost 400 head an hour in some of the newest plants” in the United States.<sup>120</sup> Yet, “[t]he line is never stopped simply because an animal is alive.”<sup>121</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> See Joby Warrick, *They Die Piece by Piece*, Washington Post at A01, April 11, 2001.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Tao at 337.

<sup>121</sup> See Warrick at A01.

USDA is supposed to be enforcing the Humane Slaughter Act so that cows are immediately unconscious before they are processed by workers like Moreno, but veterinarians state that Moreno's story "...happens on a daily basis."<sup>122</sup> CAFOs have strict production quotas and USDA agents, even while observing a violation, rarely stop the production line or else they are harassed by the CAFO owner for costing the CAFO money.<sup>123</sup> Many USDA agents are therefore frightened to act and the result is that the Humane Slaughter Act is rarely enforced. Even if a line is stopped or a violation is witnessed by the USDA, "sanctions are rare."<sup>124</sup> This kind of cruelty even has an effect on quality of meat because "[f]ear and pain cause animals to produce hormones that damage meat and cost companies tens of millions of dollars a year in discarded product..."<sup>125</sup> Apparently this loss of product does not bother the CAFO owners who consider animals to be unfeeling automatons that are easily replaceable and easily bred. They see animals that suffer and die from extreme conditions in their plant as a cost of doing business.

Unfortunately, another animal protection law, the Animal Welfare Act, protects animals used in research and exempts livestock.<sup>126</sup> Furthermore, the anti-cruelty laws of various states also exempt farm animals so unless the USDA is enforcing the Humane Slaughter Act, the evisceration of live animals a little at a time at meatpacking plants is allowed to continue unnoticed.

In addition to being victims of Humane Slaughter Act violations, cows are being turned into cannibals, thereby becoming conduits for Mad Cow Disease where the cow's

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<sup>122</sup> *Id.*

<sup>123</sup> *See* Eisnitz at 18.

<sup>124</sup> *See* Warrick at A01.

<sup>125</sup> *Id.*

<sup>126</sup> *Available at* 7 U.S.C. §§ 2131-59.

brain turns into porous tissue. The natural diet of cows consists of grass rather than meat, but meat producers have begun feeding the cattle protein in order to increase the cow's weight before slaughter as much as possible.<sup>127</sup> The protein itself is not a problem. The problem is the form in which the cows are fed protein. Naturally, producers want to make the cow as fat as possible while decreasing costs. This is accomplished by feeding the cow remains of sick cattle, chicken manure, human sewage, rendered meat, ground bone meal and 40 billion pounds worth of "slaughterhouse wasters like blood, bone, and viscera, as well as the remains of millions of euthanized cats and dogs."<sup>128</sup> This cost savings for the producers comes at the detriment to the consumer due to the relationship between the human form of Mad Cow Disease and cattle feed containing these ingredients. Some rendered animal remains are even directly fed to consumers in the form of gelatin and Gummy Bears.<sup>129</sup> Even though the FDA has since halted the use of some of these ingredients in cattle feed, not all Mad Cow Disease causing substances have been eliminated from the diet of cattle, and the compliance rate with FDA's order is low.<sup>130</sup>

#### *TREATMENT OF VEAL CALVES*

Undoubtedly, the worst abuse of cows in meatpacking plants occurs to veal calves. Because the gourmet meat of the veal calf is very unique and consumers have certain, strict expectations for it, the calf is raised with unrelenting cruelty. The cruelty

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<sup>127</sup> See Kerri Machado, *Unfit for Human Consumption: Why American Beef is Making Us Sick* 13 *Alb. L.J. Sci. & Tech.* 801, 808 (2003).

<sup>128</sup> *Id.* at 809.

<sup>129</sup> See Matthew Scully, *Dominion* 261 (2002). Matthew Scully is a former speech writer for George W. Bush. *Id.*

<sup>130</sup> *Id.*

begins when the calf is born and is torn from its mother before weaning.<sup>131</sup> The calf then is forced into anemia because it is only given powdered milk to drink and no water or solid food.<sup>132</sup> The calf is also drugged to increase its weight, and it is forced to remain immobile, chained into wooden crates so small that the calf cannot even turn around.<sup>133</sup> The calf never leaves the crate and is even forced to live in its own excrement which makes the calf vulnerable to respiratory problems to the point where ten percent of CAFO veal calves die before slaughter even while force-fed antibiotics.<sup>134</sup>

### *TREATMENT OF CHICKENS*

Even though the Humane Slaughter Act is virtually unenforced for the animals it is supposed to protect, chickens and other poultry are completely exempted from Humane Slaughter Act protection.<sup>135</sup> This is especially baffling considering that 80% of animals slaughtered for meat are chickens.<sup>136</sup> The lack of legal protection leaves doors wide open for cruelty towards chickens. In fact, “[t]he on-farm death rate ranges from a low of 4 percent for cows and calves to 12 percent for turkeys, 14 percent for hogs, and 28 percent for some types of chickens.”<sup>137</sup> Perhaps so many chickens are dying on the farm because of the lack of legal protections they are afforded.

Broiler chickens are those chickens raised for meat while egg-laying chickens are raised for eggs. Broilers were the first species to be confined to factory farms and just

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<sup>131</sup> See Amy Mosel, *What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production*, 27 Dayton L. Rev. 133, 147 (2001).

<sup>132</sup> *Id.* at 148.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See 21 U.S.C. §610

<sup>136</sup> See Nicole Fox, *Note and Comment: The Inadequate Protection of Animals against Cruel Animal Husbandry Practices Under United States Law*, 17 Whittier L. Rev. 145, 152 (1995).

<sup>137</sup> Available at <http://www.hfa.org/factory/index.html>

one person could be responsible for 10,000 chickens.<sup>138</sup> Broilers share their cage with many other broilers and do not have space to flap their wings which is an innate behavior that chickens engage in. To compensate for this close confinement, factory farmers (without anesthetic) remove the beak (debeak) of the chickens with a hot iron so that they cannot peck each other or become cannibals.<sup>139</sup> Therefore, the factory farmers torture the birds due to a close confinement condition that they create. If the birds were given more space, they would not have to be painfully debeaked. The fact that the chickens exhibit such dysfunctional behavior when they are placed too close together demonstrates that it is cruel and unnatural to confine the chickens in this manner. The egg-laying chickens are kept in the infamous “battery cage” device, where four or five chickens are expected to live in a “twelve by twenty inch space” which is also too small to allow the chickens to flap their wings or turn around.<sup>140</sup> These metal wire cages cause foot sores and prevent the chickens from scratching the ground.<sup>141</sup> Egg-laying chickens are starved so that egg producers can shock the birds into laying more eggs.<sup>142</sup>

#### *TREATMENT OF PIGS*

Pigs have many of the same problems as chickens. Pigs are also closely confined to small spaces and this practice causes the pigs to painfully bite the tails of other pigs.<sup>143</sup> In order to deter this behavior, pig farmers, again without costly anesthesia, practice tail docking where the pig’s tail is cut and teeth pulling. Pigs in CAFOs can be seen trying to bite the metal bars in an attempt to escape their cages.<sup>144</sup> Pigs also suffer similar abuses

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<sup>138</sup> See Tao at 342.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Mosel at 146.

<sup>142</sup> See Tao at 342.

<sup>143</sup> *Id.* at 343.

<sup>144</sup> Available at <http://www.awionline.org/farm/ff.htm>

to cows in that the Humane Slaughter Act is violated. High line speeds make it possible and even likely that many pigs are sent to the hot scalding water vat alive, which is the station they pass through before they are skinned.<sup>145</sup>

Sows are especially abused because they are kept in “gestation crates” where they are continually bred and are not allowed to move because they are locked between bars which resemble a prison cell.<sup>146</sup> They exist in complete darkness until it is their feeding time.<sup>147</sup> Perhaps it is good that they continuously have babies because once they have outlived their usefulness and can no longer reproduce or they become sick, they are killed by a captive bolt gun. They are then thrown in a hole or taken to the rendering department and then delivered to die in mass graves, only to be consumed by other mass confined animals or by people through Gummy Bears.<sup>148</sup> Even though exercise is a necessity for all animals, sows are forced to live within the confines of their gestation crate and are not allowed to exercise as it allows them to “...carry more fetuses. We get rid of them after eight litters.”<sup>149</sup>

Matthew Scully’s book, *Dominion*, describes his visit to a Smithfield Farms gestation area CAFO in North Carolina. He writes that the 500 pound sows are in gestation crates “seven feet long, and in width less than twice the length of my 11 3/4-inch legal pad.”<sup>150</sup> He noticed tumors on the legs of sows that were “the size of half a soccer ball.”<sup>151</sup> The Smithfield Farms representative told Scully that the sow with the tumor will probably die before birth but this is of no concern to them because Smithfield

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<sup>145</sup> See Tao at 343.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> See Scully at 264.

<sup>149</sup> *Id.* at 265.

<sup>150</sup> *Id.* at 267.

<sup>151</sup> *Id.*

has technology to harvest the babies from the womb of the dead mothers.<sup>152</sup> Scully also described seeing “sores, tumors, ulcers, pus pockets, lesions, cysts, bruises, torn ears, swollen legs everywhere.”<sup>153</sup> When Scully asked how these injuries were treated, he was informed that “Kopertox” is used as an “all-purpose remedy.”<sup>154</sup> In actuality, Kopertox is “made of copper naphthenate and dangerous if licked by another pig or absorbed into the flesh and ingested by a human, Kopertox carries the warning: ‘Do not use on animals which are used for food production.’”<sup>155</sup>

Scully describes treatment for sick sows as “Kopertox or the cull pen.”<sup>156</sup> Even though veterinarians are supposed to treat the pigs and keep them healthy as a result of their sworn oath “to protect animal health [and] relieve animal suffering,” this is not done by the veterinarians who occasionally come by unless the injury is a threat to meat output.<sup>157</sup> Unfortunately, this kind of abuse is widespread throughout CAFOs and “Smithfield is the standard, modern animal science literally by the textbook.”<sup>158</sup>

### ELIMINATING THE CORPORATE FARM

Factory farms come with so many negative externalities in the form of human health violations and environmental detriments that they should be categorically eliminated. Their existence simply produces too high of a social cost. CAFO elimination can be accomplished through instituting new legislation and through targeting the market consolidation CAFOs cause via antitrust legislation. If CAFOs continue to be

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> See Matthew Scully, *Dominion* 261 (2002).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 269.

<sup>157</sup> *Id.* at 268.

<sup>158</sup> *Id.* at 270.

unregulated, they will further risk public health in their everlasting quest for greater profits.

### *WHY THE FACTORY FARM SHOULD BE ELIMINATED*

Besides from the obvious human health and environmental risks inherent in factory farms, this type of farming operation should be banned because of its abusive and barbaric nature towards animals. Currently, surveys show Americans are more concerned with the environment and animals and this concern “outweighs an interest in economic growth by three to one.”<sup>159</sup> Congress has instituted the will of the people by passing legislation such as the Animal Welfare Act which has as its sole purpose to protect animals.<sup>160</sup> People hold their pets in a very high capacity and animals such as pigs, cows, and chickens do not suffer or feel pain any less than the family dog. It probably can be assumed that no one would approve of the family dog being hung upside down and being eviscerated piece by piece or being dunked into a scalding water vat. Due to the advent of factory farms, there has been a demand increase of organic meat for which consumers will pay a higher dollar value from knowing the animal was raised in an ethical manner. Reports show that “organic products will steal five percent of mainstream markets within five years.”<sup>161</sup>

One does not have to take an animal rights stance to believe that animals should receive minimal humane standards of treatment at slaughterhouses and feedlots. Rather the position is one of more basic decency and common sense for other beings that are very capable of suffering and feeling pain. Consumers should become more educated as to the origin of their meat and demand higher standards. Perhaps the notion of animals of

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<sup>159</sup> See Mosel at 158.

<sup>160</sup> See 7 U.S.C. §§2131-59.

<sup>161</sup> See Mosel at 160.

property is something that needs to be changed in the law because it is obvious that animals can feel pain as evidenced by the screams of pigs in the slaughterhouse being scalded alive. An animal is simply not property in the same sense as a table or antique jewelry. An alternative to the animals as property regime is to give animals “equitable self ownership.”<sup>162</sup> This way, title is split into an equitable and a legal title with the animal being holder to equitable title in itself because animals have the interest to live.<sup>163</sup> This would allow an animal to sue to recover for injuries inflicted against it.<sup>164</sup> Perhaps adopting a different paradigm for the ways animals are viewed within society and within the legal system will make the factory farm obsolete.

## SOLUTIONS FOR ELIMINATING THE CORPORATE FARM

### *ANTITRUST*

Today, “intensive confinement systems have been instituted in every sector of the farmed-animal industry.”<sup>165</sup> Consolidation has been very heavy and prevalent in the meatpacking industry over the past twenty years.<sup>166</sup> This same practice happened during the times of *The Jungle* and that consolidation is what caused in part the institution of the Sherman Act and the 1921 Packers and Stockyards Act.<sup>167</sup> Big mergers such as Tyson and IBP push family farmers out of business and make it so that Tyson can move from

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<sup>162</sup> See David Favre, *Equitable Self Ownership for Animals*, 50 Duke L.J. 473 (2000).

<sup>163</sup> *Id.* at 498.

<sup>164</sup> *Id.* at 499.

<sup>165</sup> See Student Note, *Note: Challenging Concentration of Control in the American Meat Industry*, 117 Harv. L. Rev. 2643, 2646 (2004), quoting 147 Cong. Rec. S7311 (daily ed. July 9, 2001) (Statement of Sen. Byrd).

<sup>166</sup> See Roger McEowen, *The 2002 Senate Farm Bill: The Ban on Packer Ownership of Livestock*, 7 Drake J. Agric. L. 267 (2002).

<sup>167</sup> *Id.*, see also Perry, Charles, *Disintegration and Change: Labor Relations in the Meat Packing Industry*. “From 1890 to 1921 the meat industry...came in for a substantial amount of criticism for fixing prices and dividing markets. This criticism led to such developments as the Meat Inspection Act of 1906, the Federal Trade Commission (FTC) investigation and report on alleged violations of the antitrust laws, and the Packers and Stockyards Act of 1921.” See Perry at 13. At this time, the major meatpacking firms entered into a “consent decree” with the United States that required them to cease their retailing activities and required them to only be involved in foods “closely related to animal products.” *Id.*

controlling the poultry market to control over pork and beef.<sup>168</sup> This is bad for consumers since the meat they are eating is now assured to have originated from a factory farm. Consumers therefore do not get the choice to buy antibiotic free meat in a large supermarket. In fact, “two percent of cattle feed operations account for more than 40% of the nation’s cattle.”<sup>169</sup> Within fifteen years recently, pig farms went down from 600,000 to 157,000, but the number of pigs sold were greater with less producers.<sup>170</sup> Chicken farms also decreased between 1969 and 1992 by 35% while the number of chickens killed reported a three-fold increase in the same time frame.<sup>171</sup>

The government has not pursued any antitrust remedies or blocked mergers such as Tyson and IBP due to the enormous amount of lobbying. The meat industry is very influential and they have made contributions totaling more than \$41 million to lawmakers between 1987 and 1996.<sup>172</sup> Therefore, lawmakers defer to the special interests of the large meatpackers and there is no hope for the family farmer who does not have the same lobbying power. With the high rate of corporate consolidations within the agriculture arena, there are many actions the government can take within antitrust provisions to allow for the return of family farms and make competition fair again.

*PROPOSED LEGISLATION: HUMANE STANDARDS OF LIVING ACT*

There is currently no legislation that covers farm animals from birth until slaughter. This oversight allows for factory farms to subject the animals to whatever standard of living they wish. Naturally, CAFOs choose the cheapest standard of living.

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<sup>168</sup> See David Moeller, *The Problem of Agricultural Concentration: The Case of the Tyson-IBP Merger*, 8 Drake J. Agric. L. 33, 54 (2003).

<sup>169</sup> Available at <http://www.hfa.org/factory/index.html>

<sup>170</sup> *Id.*

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

<sup>172</sup> *Id.*

This is why the animals at feedlots are packed together as tightly as possible to the point where they cannot move. This maximizes output and minimizes costs without regard to worker or animal safety.

Since there is a Humane Slaughter Act, there should clearly be a Federal Humane Standards of Living Act to cover how the animal is raised. Animals should be given the chance to do the things they naturally do such as pigs rooting in the mud and chickens scratching the ground. All animals should be allowed the chance to go outdoors and have the ability to move around freely, exercise, and socialize in a meaningful way. As part of the return to sustainable agriculture, battery cages and gestation crates should be banned. Battery cages are so small that when the chickens grow, their feet are forced to grow around the wire because they get stuck to the bottom of the cage.<sup>173</sup> These cruel cages serve to immobilize the chicken trapped in it even more.

Since there seems to be no humane way of raising veal, the production of veal should be banned by states, much like foie gras in California.<sup>174</sup> The treatment of veal calves is simply too barbaric in today's civilized society. These types of concessions would eliminate the factory farm because the animals could no longer be forced to remain indoors in cages. Allowing animals outside would require more workers to tend to the animals which CAFOs would not be able to afford. Allowing animals to move about outside eliminates the usefulness of the mechanized assembly line way of doing business at CAFOs.

Another part of the Humane Standards of Living Act would be a provision that eliminates antibiotics from animal feed. This would eliminate factory farms because

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<sup>173</sup> See Mosel at 147.

<sup>174</sup> Available at <http://www.msnbc.msn.com/id/6136469>

animals could no longer be kept in such close confinement if antibiotics were disallowed. This would ruin the factory farm's economies of scale and cost containment. There is simply too much of a risk for contracting superbugs and other diseases that are immune to conventional antibiotics if humans continually ingest antibiotic tainted meat.

The Act would also have provisions that disallow for any changes to an animal's basic anatomy. For example, the chicken cannot be debeaked and the pig cannot have its teeth pulled and its tail docked. It cannot be castrated without anesthesia. A cow cannot have its horns removed. These actions are simply too painful to be endured without anesthetics and the basic bodily integrity of these living beings should be preserved, especially if one subscribes to the view of equitable self ownership.

The purpose of this Act would serve as a complement to the Humane Slaughter Act. The provisions above would serve as a starting point for the Act. As science uncovers even better husbandry standards, those provisions should be added to the Act at a later time. To enforce the Act, a neutral third party would be required to inspect feedlots to ensure the mandated husbandry standards are being met since corporate farms clearly are not capable of self monitoring and cannot even follow standing laws such as the Humane Slaughter Act.

The downside of this Act is that it may cause the price of meat to go up. Many larger American families buy meat in bulk and cannot afford to buy organic even if they are morally opposed to the way livestock is raised. This price increase will simply cause consumers to buy less meat which is actually preferable. As stated, Americans ingest double the amount of protein they need in their diet and because of an obesity epidemic,

less meat consumption is warranted. There are also many products that act as meat substitutes such as tofu, nuts, or vegetable burgers.

It can also be argued that government subsidies can put family farms on par with factory farms. As family farm numbers rise, subsidies can be diverted from corporate farms to family farms so that output prices are not greatly changed. In fact, money will be saved by the return to family farms because not as many diseases are rampant on family farms due to manageable herd size. Also, antibiotics will not be needed to be given as a matter of course because conditions are more sanitary since animals at family farms have more room to move and are not so closely confined as to spread sickness. Furthermore, if conditions on corporate farms do not improve, Mad Cow Disease will continue to proliferate causing foreign countries to not import American meat. This would be a huge detriment to the United States economy and it is important to invest in clean and sanitary farms that are not public health threats. The environmental costs and medical costs of corporate farms are also high, but these environmental costs do not exist with sustainable agriculture. In fact, with sustainable agriculture, waste is composted and put back into the land as opposed to corporate farming where waste is stored and leaks into groundwater and rivers which pollutes the water supply.<sup>175</sup> Avoiding these clean up costs and having clean water will be well worth a modest increase in the price of meat which is not even necessary to a human diet.

#### *ENFORCEMENT OF THE HUMANE SLAUGHTER ACT*

The Humane Slaughter Act, which regulates the method of slaughter at meatpacking plants dictates:

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<sup>175</sup> See Nestle at 44.

No methods of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are 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; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a methods 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 and handling in connection with such slaughtering.<sup>176</sup>

The Congressional policy behind this Act dictates:

The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce.<sup>177</sup>

Although many Americans believe that this 1958 law stops meat producers from inflicting unrelenting cruelty towards livestock, in actuality this law is not enforced at all and may as well not even be in existence. Other countries such as Canada mistakenly believe this law is being enforced due to USDA assurances, and they agree to import our meat because of it.<sup>178</sup> The question therefore is what really goes on behind the scenes which is hidden from the American meat consumer? First of all, as noted earlier, chickens are not included in the HSA. Therefore, the HSA should be amended to bring chickens as well as other poultry such as turkeys within its reach.

Ramon Moreno's story exposes the law breaking propensities of today's corporate farm. Unfortunately, there are many more stories similar to his and these

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<sup>176</sup> See 7 U.S.C.A. §1902

<sup>177</sup> See 7 U.S.C.A. §1901

<sup>178</sup> See Eisnitz at 194.

atrocities undoubtedly give rise to the 100% turnover rate that the meatpacking industry experiences.<sup>179</sup> Many meatpackers are untrained immigrants from Mexico who do not even know how to read English or what the Humane Slaughter Act is.<sup>180</sup> Slaughterhouse workers report that when 2,000 pigs for instance are killed every hour, it is inevitable that some are not “rendered insensible to pain” before being cut as the HSA mandates.<sup>181</sup> With line speeds as high as 2,000 an hour, having “some” mistakes makes it a reality that exponential amounts of pigs suffer. In the United States, 103 million pigs are killed annually so a 1% minimum would constitute over a million pigs being killed in this brutal fashion.<sup>182</sup> Furthermore, just like the debeaked chickens, again animals are being punished for a system that is not of their own making. If line speeds were not designed to be so high, pigs would be properly rendered insensitive to pain first. If chickens were not required to live in such unnaturally close quarters, they would not need to be debeaked. It is not enough that these animals die for protein that the population does not need, but CAFO owners require their animals to die in the most barbaric way possible.

The Humane Slaughter Act is so blatantly violated that workers have to wear earplugs to disguise the intense screaming of pigs who are being cut and skinned alive, and often pigs that are supposed to be unconscious remove themselves from their shackles and run around the table.<sup>183</sup> In that case, the pig has to be “chased and beaten” by workers who will “...get to beating that hog all they want to. They use a shackle, a pipe, anything they can get their hands on.”<sup>184</sup> This is in spite of the fact that the HSA

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<sup>179</sup> See Scully at 282.

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

<sup>181</sup> *Id.* at 283.

<sup>182</sup> *Id.* at 284.

<sup>183</sup> *Id.* at 282, 283.

<sup>184</sup> *Id.* at 283.

mandates the pig be rendered insensitive to pain in a manner that is “rapid and effective” not slow and painful beatings with a pipe.<sup>185</sup> Sometimes the pigs move around too much to be beaten effectively so they are shackled upside down and kick and squeal as they are lowered into the vat of scalding water which softens their skin for removal.<sup>186</sup>

The Humane Slaughter Act must be amended to dictate maximum line speeds to CAFOs. Workers should be able to comfortably manage the line speed to the point where no animals go through the slaughtering process alive. Congress has already dictated in the HSA that they want an “orderly flow,” the prevention of “needless suffering” and “safer and better working conditions.”<sup>187</sup>

OSHA (Occupational Safety and Health Administration)<sup>188</sup> should be involved with setting line speeds instead of following their policy of “voluntary compliance” which allows companies to show them an injury log rather than being subject to unannounced inspections.<sup>189</sup> The problem is that these injury logs have been falsified so that OSHA is duped and it is impossible to make improvements to meatpacking plants.<sup>190</sup> Instead, OSHA must have more of a role in deciding line speeds based on ergonomic studies, and the maximum line speed should be legislated and dictated to meatpacking plants. This would also ease the inspection duty because inspectors would be able to verify that the correct amount of animals are being sent down the line. Inspection would not be based on subjectivity and independent judgment on the part of the USDA. By reducing output, factory farms will be forced into putting more attention

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<sup>185</sup> See 7 U.S.C.A. §1902.

<sup>186</sup> See Scully at 284.

<sup>187</sup> See 7 U.S.C.A. §1901

<sup>188</sup> See [www.osha.gov](http://www.osha.gov). OSHA is a federal government agency and “OSHA’s mission is to assure the safety and health of America’s workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.” *Id.*

<sup>189</sup> See Schlosser at 179-81.

<sup>190</sup> *Id.* at 181.

towards worker and animal safety. Even more likely, the economies of scale impetuous that factory farms can now realize would be gone and their reason for existence would become moot.

### *USDA HAS FAILED THE AMERICAN PEOPLE*

Where is the USDA during these cruel practices? The USDA is charged with enforcement of the Humane Slaughter Act since a corporation cannot be trusted to comply with this law on its own. Unfortunately, the USDA has a conflict of interest and their ties to big agribusiness win out against the suffering of animals who are considered to be mere property in the American legal system. This conflict stems from the fact that the USDA must “promote and police American agriculture.”<sup>191</sup> Lately, the USDA has focused more on this promotion due to “the beef industry’s large donations to the Republican Party, and its political appointees.”<sup>192</sup> However, both political parties are vulnerable to the financial lobbying of the meat industry.

The people appointed to run the USDA have connections to large agribusiness and they wish to see it succeed. In 1989, Joann Smith was appointed to Assistant Secretary of Agriculture by then President Bush, and she made the decision “to authorize the labeling and use of leftover cartilage and connective tissues as meat. This decision increased the value of a carcass by seven dollars each, which in turn increased the beef industry’s profits by millions annually.”<sup>193</sup> Even though this was helpful to agribusiness and maybe the economy, consumers would probably not consider cartilage to be something they would want to eat, especially in the wake of Mad Cow Disease. Other USDA decision makers appointed by Presidents Reagan and Bush vocally favor

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<sup>191</sup> See Machado at 825.

<sup>192</sup> *Id.* at 826.

<sup>193</sup> *Id.*

deregulation of agribusiness. Some USDA appointees such as Dr. Lester Crawford leave the USDA to become part of agribusiness.<sup>194</sup> Suddenly the USDA and the meatpacking industry itself have become one in the same.

There is currently no law that bans these kinds of special interests but it is as if special interests have taken over an agency that is designed to protect the public and any other consumers of America's meat supply. A law should be passed so that neutral third parties are in control of agencies charged with consumer protection, not executives in agribusiness who have vested interests. Even when USDA agents try to complain about unsanitary practices in slaughterhouses, they are rebuffed and risk their jobs.<sup>195</sup> Meatpacking plants should continue to be regulated and there needs to be an environment where USDA agents feel comfortable doing their jobs rather than being pressured by executives not to say anything.

#### *ANTI-CRUELTY LAWS*

Modern state anti-cruelty laws completely exclude livestock from their protection.

The Michigan anti-cruelty law exempts livestock from cruelty protection as follows:

- (8) This section does not prohibit the lawful killing or other use of an animal, including, but not limited to, the following:
  - (f) Farming or a generally accepted animal husbandry or farming practice involving livestock.<sup>196</sup>

Although livestock is not protected, it is feasible that factory farm owners can be brought within the ambit of state anti-cruelty statutes. First of all, anti-cruelty statutes were promulgated way before CAFOs were envisioned and they should now be revised to reflect the fact that CAFOs are practicing their own brand of animal cruelty.

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<sup>194</sup> *Id.*

<sup>195</sup> *See* Eisnitz at 183.

<sup>196</sup> *See* M.C.L.A. §750.50 (8)(f)

Furthermore, the statute in section (8) uses the phrase “lawful killing.”<sup>197</sup> A killing that violates the Humane Slaughter Act is not lawful by its definition since most states have their own version of the Humane Slaughter Act. Therefore, the unlawful killing of an animal would theoretically not be excused from the anti-cruelty statute.

In some states, violating the state anti-cruelty law is a felony, and if prosecutors chose to prosecute factory farm owners, it is likely they would be convicted. Testimony from slaughterhouse workers would show that animals are not killed in accordance with the HSA. Furthermore, many undercover investigations have been conducted in slaughterhouses with hidden cameras.<sup>198</sup> These investigations have proven the slaughterhouse worker’s stories to be true. Even if this theory did not hold true, farmed animals should most certainly be protected under state anti-cruelty statutes by amending the statute since reliable information shows that they are not being killed in a lawful way. It may be best to create a new criminal liability for meatpacking plants which allow their workers to violate the Humane Slaughter Act so that a prosecutor would have a better chance at a conviction and the possibility for higher fines.

#### *MEDICAL COMMUNITY RESPONSIBILITY*

The United States medical community has the best information as to how substances such as antibiotics should be administered and the potential for their abuse. Therefore, the medical community should work with veterinarians and farmers to decide when animals should ingest antibiotics and what amount is proper. Veterinarians do not have tools to determine how these antibiotics in animals have the potential for serious harms to humans so information sharing is needed. The American Medical Association

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<sup>197</sup> *Id.*

<sup>198</sup> Available at <http://www.peta.org>

and Physicians Committee for Responsible Medicine have decried this antibiotic use and groups such as Union of Concerned Scientists exist to raise awareness of the problem and provide solutions.<sup>199</sup> This kind of advocacy should continue and perhaps the medical community can work with Congress to establish legislation for antibiotic limits in animals so that no public health crisis develops at a later time.

### *THE EUROPEAN MODEL*

There are ways to make farming safe for consumers and more conscious of animal suffering. The United States would be best off following the practices of its European allies in regards to agriculture. The European Union (EU) recognizes animal welfare as a goal that is important to them and as such they have statutes that provide for better husbandry standards than those in the U.S.<sup>200</sup> These statutes provide for sick animals to be treated quickly, no subtherapeutic antibiotics, free movement, attention to psychological needs specific to the species, and no perpetual darkness.<sup>201</sup> The EU also protects chickens against battery cages by requiring much larger cage sizes so that there is room to move and the chickens are not forced into hostility, therefore needing their beaks removed.<sup>202</sup> The United Kingdom requires even larger cages than the EU for chickens and larger stalls for pigs.<sup>203</sup> In the United Kingdom, the farmer must take into account psychological needs of the animal and they have restrictions on the amount of animals allowed into one stall.<sup>204</sup>

### CONCLUSION

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<sup>199</sup> See <http://www.ucsusa.org>

<sup>200</sup> See Mosel at 170.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 174.

<sup>204</sup> *Id.*

Laws that cover farmed animals clearly are not being followed. The public relies on laws such as the Humane Slaughter Act to be followed as part of the decision to eat meat. If factory farms continue to exist and flourish, it will be the responsibility of consumers of the American meat supply to take their health into their own hands and question the origin of the food they choose to eat. Consumers should demand the very best treatment of animals from farmers, and when these demands are not met then consumers should promote their own health and safety by patronizing establishments that sell organic, non-antibiotic laced meat. Because the USDA is biased and provides only lax oversight, other agencies such as OSHA should become involved in meatpacking plants by slowing down the line speed for the safety of workers and the welfare of animals. Also, laws should be changed so that appointees to agencies such as USDA do not have ties to agribusiness and vested interests. Neutral parties should be favored to lead agencies that have human health and safety as their focus. The medical community should insist on a ban of the use of subtherapeutic antibiotics on animals due to the public health threat. Without antibiotics, animals would not be able to live in the stressful, crowded environment a CAFO has to offer. Therefore, a return to sustainable agriculture will be inevitable and animals will again have the space they need to roam and pursue their own interests for at least a short time. Factory farms are reckless and inhumane profiteers only interested in furthering their own cause at the expense of the health of consumers, workers, and animals.