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# Congress' Failure To Enact Animal Welfare Legislation For The Rearing Of Farm Animals: What Is Truly At Stake?

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# CONGRESS' FAILURE TO ENACT ANIMAL WELFARE LEGISLATION FOR THE REARING OF FARM ANIMALS: WHAT IS TRULY AT STAKE?

JIMENA URALDE\*

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## I. INTRODUCTION

It is estimated that billions of farm animals are raised and killed each year in the United States for the purpose of food production.<sup>1</sup> For the average American consumer, not much though is given to this statistic, much less is

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<sup>1</sup> See GENE BAUSTON, BATTERED BIRDS, CRATED HERDS: HOW WE TREAT THE ANIMALS WE EAT 5 (1996).

any import given to how these animals are raised.<sup>2</sup> The sad truth is that billions of farm animals suffer yearly at the hands of the profit-driven U.S. agribusiness.<sup>3</sup> Over time mass-production factory farming has replaced traditional husbandry practices, resulting in the torture of and cruelty towards farm animals.<sup>4</sup> Confinement agriculture has accompanied this agricultural transformation, where priority is given to productivity, efficiency, and profit,<sup>5</sup> without any regard for the psychological and biological needs of animals.<sup>6</sup>

Although animal agriculture in the United States has undergone a major transformation from husbandry to industry, Congress has failed to keep up with this evolution. Consumers generally accept and demand animal products, but they nevertheless want assurance animals are treated humanely.<sup>7</sup> Despite an increasing concern in the United States regarding the welfare of farm animals<sup>8</sup> and a growing interest in seeing the treatment of farm animals legislated,<sup>9</sup> federal legislation has for the most part failed to address this issue.<sup>10</sup> There is currently federal animal welfare legislation regulating the transporting and slaughtering of animals in the food industry, yet there is no federal law regulating the rearing of such animals even though this is an area of primary social concern.<sup>11</sup> This failure to legislate may be due mainly to the potential effects regulation may have on the U.S. national economy, since agriculture plays an important function in this country's economic welfare.<sup>12</sup> Legislation regulating the rearing of farm animals would lead to increased production costs, and result in increased consumer prices if producers are unwilling or unable to absorb the cost.<sup>13</sup> Such price increases could, in turn, potentially have an aggregate effect on other aspects

<sup>2</sup> See BERNARD E. ROLLIN, *FARM ANIMAL WELFARE: SOCIETAL, BIOETHICAL, AND RESEARCH ISSUES* 23 (1995).

<sup>3</sup> See BAUSTON, *supra* note 1, at 5.

<sup>4</sup> See ROLLIN, *supra* note 2, at 137.

<sup>5</sup> See *id.* at 9, 137.

<sup>6</sup> See *id.* at 13.

<sup>7</sup> See *id.* at 23.

<sup>8</sup> See Council for Agricultural Science and Technology, News Release, *Welfare of Farm Animals a Growing Concern*, at [http://www.cast-science.org/anwb\\_nr.htm](http://www.cast-science.org/anwb_nr.htm) (Sept. 17, 1999).

<sup>9</sup> See ROLLIN, *supra* note 2, at 23.

<sup>10</sup> See Richard Orr, *Scientists Call for Study of How Farm Animals are Treated*, CHI. TRIB., Oct. 27, 1997, at 3.

<sup>11</sup> See Farm Sanctuary, *Legal Protection for Animals Raised for Food or Food Production*, FARM SANCTUARY NEWS, (Summer 1998) available at <http://www.farmsanctuary.org/newsletter/newslet9.htm> (last visited Jan. 17, 2001).

<sup>12</sup> See RONALD D. KNUTSON ET AL., *AGRICULTURAL AND FOOD POLICY* 373 (1983).

<sup>13</sup> See Harold D. Guither & Janice Swanson, *Animal Rights and Animal Welfare*, at <http://ianrwww.unl.edu/farmbill/animrightu.htm> (last visited Jan. 13, 2001).

of the nation's economy. In dealing with these countervailing forces, Congress' failure to legislate how farm animals are reared appears to send a message that societal concerns regarding animal welfare must defer to economic incentives and profit-oriented management; public concern for animal welfare must give way to this nation's economic prosperity.

This comment addresses whether Congress' failure to enact animal welfare legislation regarding confinement agriculture is driven by the potential effects such regulation may have on the U.S. economy. Part II discusses the history of traditional agricultural practices and its evolution, the suffering inflicted on particular farm animals, and the motives for practicing confinement agriculture. Part III addresses the types of federal and state legislation that currently exist. Part IV provides a detailed analysis of Congress' failure to enact protective legislation regarding the rearing of farm animals, with a particular focus on what role agriculture plays in the U.S. economy; whether it is economically feasible to return to traditional husbandry practices; and, if not, whether animals can profitably be raised in semi-extensive conditions. This section further addresses other potential reasons for Congress' failure to enact protective legislation regarding the rearing of farm animals and the implications of Congress' enactment of some forms of protective legislation and Congress' failure to enact other forms.

## II. AGRICULTURAL EVOLUTION AND THE SUFFERING OF FARM ANIMALS

### A. *How Agricultural Change has Caused Farm Animal Suffering*

"U.S. society is extremely naive about the nature of agricultural production."<sup>14</sup> Contrary to popular belief, the animals we eat are not raised on pastures or in barnyards, living happy and contented lives.<sup>15</sup> In the past, under traditional husbandry practices, this idea was more of a reality.<sup>16</sup> Traditional agriculture was founded on good husbandry where animals were kept under conditions to which their natures were biologically adapted.<sup>17</sup> Providing animals with additional food, protection, care, and shelter enhanced their natural abilities.<sup>18</sup> Agriculture embodied the integration of

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<sup>14</sup> ROLLIN, *supra* note 2, at 23.

<sup>15</sup> See Bernadette Sonefiled & Keith Ackers, *Factory Farming: Life for Today's Farm Animals*, Vegetarian Society of Colorado, at <http://www.vsc.org/page37.html> (last visited Jan. 17, 2001).

<sup>16</sup> See HSUS, *Farm Animals & Sustainable Agriculture*, at <http://www.hsus.org/programs/farm> (last visited Feb. 19, 2001).

<sup>17</sup> See ROLLIN, *supra* note 2, at 6.

<sup>18</sup> See *id.*

ethics and self-interest, reflecting the view that if animals thrived, producers would thrive as well.<sup>19</sup> While traditional agriculture did not necessarily embody a perfect world for animals,<sup>20</sup> animal suffering "at human hands" was nevertheless minimal.<sup>21</sup> Since good husbandry was dictated by producers' self-interests, society did not need legislation mandating humane agricultural practice.<sup>22</sup>

Despite this strong traditional agricultural ethic, agriculture eventually evolved and producers began to give little importance to the welfare of the animals they raised.<sup>23</sup> The development of technological agriculture led to the replacement of husbandry by industry, since it allowed producers to increase their profitability by "meet[ing] the select needs of animals that were relevant to efficiency and productivity" without any regard for the animals' psychological and biological needs.<sup>24</sup>

Prior to 1940, farm animals were typically reared outdoors on small-scale family owned and managed farms.<sup>25</sup> Post 1940 marked a time of change, where many large corporations bought a majority of available farmland, thereby transforming farming into a big business.<sup>26</sup> After World War II, U.S. agriculture experienced a productivity increase of more than fivefold in thirty-years due to technological innovations and mechanization, which made it possible to raise large numbers of animals in confined environments.<sup>27</sup> Today, the success of corporate farms is largely attributable to federal policy and market forces, which favor mechanized and capital-intensive farming "as the means to ensuring cheap and plentiful food."<sup>28</sup> Technological advances have enabled producers to alter the environments in which animals are raised, while at the same time making it possible to increase productivity.<sup>29</sup> For example, antibiotics and vaccines now enable producers to raise animals in crowded conditions, thereby increasing

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* (noting animals raised under traditional agricultural practices nevertheless suffered from famine, drought, disease, and extremes of climate).

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* at 7.

<sup>23</sup> See Bernard E. Rollin, *Animal Welfare, Animal Rights, and Swine Production*, Address from Potpourri du Porc Seminar, Shakespeare, Ontario (Nov. 6, 1996), available at <http://www.gov.on.ca/OMAFRA/english/livestock/swine/facts/animal.htm>.

<sup>24</sup> See ROLLIN, *supra* note 2, at 137.

<sup>25</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, 145 (1995).

<sup>26</sup> See *id.*

<sup>27</sup> See ROLLIN, *supra* note 2, at 8-9.

<sup>28</sup> See Fox, *supra* note 25, at 145.

<sup>29</sup> See ROLLIN, *supra* note 2, at 9.

productivity, without the infliction of animal disease.<sup>30</sup> At the same time, mechanization has allowed producers to increase efficiency and to reduce labor costs.<sup>31</sup> The goals of efficiency, price reduction, and increased profits resulted in an agricultural system of "intensive confinement," whereby animals are raised in a manner that "maximizes the use of land and space in order to maximize corporate profits."<sup>32</sup> As a result, intensive agricultural systems were formulated without any regard for the behavioral and psychological needs of animals.<sup>33</sup> Such disregard has led to inhumane treatment of animals reared for food, whereby animals are subjected to daily pain and suffering.<sup>34</sup>

### B. *The Suffering of Animals Raised in Confined Environments*

Due to today's industrialized agricultural environment, less attention is given to individual animals.<sup>35</sup> Factory farming essentially denies animals of their basic physical and behavioral needs by immobilizing them in crates or cages or in overcrowded feedlots or warehouses and denying them normal social interactions.<sup>36</sup> Raising these animals in such artificial environments causes behavioral and physical disorders, such as distress, boredom, and frustration often resulting in aggression, self-mutilation, and physical injury.<sup>37</sup> The poultry and swine industries effectively demonstrate the types of inhumane treatment to which animals raised in confined environments are subjected.

## 1. CHICKENS IN THE POULTRY INDUSTRY

Chickens are raised for their production of eggs and for their meat.<sup>38</sup> Indoor confinement has been the primary means of transforming "chickens from farmyard birds into manufactured items."<sup>39</sup> As a result, these birds are

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<sup>30</sup> See *id.*

<sup>31</sup> See Stanley E. Curtis, *The Case for Intensive Farming of Food Animals*, in *ANIMAL RIGHTS AND HUMAN OBLIGATIONS* 169, 170 (Tom Regan & Peter Singer eds., 2d. ed. 1989).

<sup>32</sup> Fox, *supra* note 25, at 145-46.

<sup>33</sup> See ROLLIN, *supra* note 2, at 25.

<sup>34</sup> See HSUS, *Farm Animals & Sustainable Agriculture: Factory Farming*, at <http://www.hsus.org/programs/farm/factory> (last visited Feb. 19, 2001).

<sup>35</sup> See ROLLIN, *supra* note 2, at 9. For example, one single factory farmer often raises over five million animals. See Fox, *supra* note 25, at 146.

<sup>36</sup> See HSUS, *supra* note 34.

<sup>37</sup> See *id.*

<sup>38</sup> See PETER SINGER, *ANIMAL LIBERATION* 98 (2d ed. 1990).

<sup>39</sup> See *id.*

subjected to a great deal of pain and suffering.<sup>40</sup> Layers, hens raised for egg production,<sup>41</sup> are confined in twelve-by-eighteen inch wire battery cages typically holding four-to-five crammed hens.<sup>42</sup> Such overcrowding causes the weakening of chickens' bones causing almost fifty percent of laying hens to develop and suffer from leg abnormalities.<sup>43</sup> Overcrowding also leads to high stress levels causing chickens to fight with one another.<sup>44</sup> Such fighting often drives chickens to self-mutilation.<sup>45</sup> Layers also have difficulty standing comfortably in their cages due to sloping wire floors.<sup>46</sup> These birds are also susceptible to having their toenails permanently entangled in the cage wire further restricting their voluntary movement.<sup>47</sup> Layers also suffer from severe feather loss and constant affliction of bruises and abrasions, as a result of being tightly confined in wire cages.<sup>48</sup> In addition to suffering from physical disorders, layers raised in confined environments are deprived of expressing their natural instincts, such as stretching their wings, walking around, scratching the ground, building nests, and being part of a flock.<sup>49</sup> Broilers, chickens reared for their meat, are not raised in such intensive confinement as layers, but they nevertheless suffer from restrictive living conditions.<sup>50</sup> Broilers are raised in severely overcrowded conditions, forced to live in warehouses holding up to 20,000 birds, leaving sixteen chickens to share no more than one square meter of space.<sup>51</sup> Such tight living conditions make the air in the warehouses barely breathable,<sup>52</sup> since these warehouses are windowless and rely on artificial ventilation.<sup>53</sup> Animals have the potential to literally suffocate, if a mechanical failure were to occur.<sup>54</sup> Broilers are also at risk of suffocation by "piling."<sup>55</sup> "Piling" results when broilers are raised in restrictive conditions. Restrictive conditions cause broilers to develop a

<sup>40</sup> See *id.* at 98-99.

<sup>41</sup> The Fund for Animals, *Animal Agricultural Fact Sheet # 1, Ethical Eating: Exploring Vegetarianism*, (May 2, 2000), at <http://fund.org/library/documentViewer.asp?ID=68&table=documents> (last visited Jan. 12, 2001).

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See SINGER, *supra* note 38, at 109.

<sup>47</sup> See *id.* at 110.

<sup>48</sup> See BAUSTON, *supra* note 1, at 23.

<sup>49</sup> See SINGER, *supra* note 38, at 113.

<sup>50</sup> See The Fund for Animals, *supra* note 41.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See SINGER, *supra* note 38, at 103.

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

nervous condition where any type of disturbance can drive them to pile on top of each other in one corner in the pursuit of safety.<sup>56</sup> Broilers placed in overcrowded conditions are also forced to live in near darkness since normal lighting conditions often lead to animal fighting due to the stress of overcrowding, and therefore drive animals to kill and eat one another.<sup>57</sup> These birds are also afflicted with physical wounds such as ulcerated feet and breast blisters caused by being forced to sit and stand on rotting and dirty litter.<sup>58</sup> Broilers are also denied clean air, forced to breathe inescapable ammonia ridden air produced from their own droppings.<sup>59</sup>

## 2. PIGS IN THE SWINE INDUSTRY

The severe confinement of any animal is cruel, yet pig confinement appears to be the cruelest type of confinement when compared to that of other farm animals in light of the following attributes of pigs. Pigs are considered to be the most intelligent of all farm animals, and are curious and learning-able beings.<sup>60</sup> Furthermore, pigs are clean and highly social creatures and have the ability to express friendliness, loyalty, and forgiveness.<sup>61</sup> They are very vocal animals, communicating constantly with one another and also rely on touch and bodily contact with other pigs.<sup>62</sup> Pigs also exhibit consistent behavioral patterns such as forming stable social groups, building communal nests, and being active.<sup>63</sup>

Despite their need to live unrestricted social lives, almost ninety percent of pigs are raised in some form of confined environment.<sup>64</sup> These helpless animals are kept in confinement from the moment they are born until the time they are killed.<sup>65</sup> The life of a pig raised in confinement is reduced to mere existence, for the animal is limited to eating, sleeping, standing or lying down.<sup>66</sup> Pregnant sows are housed in small pens or metal gestation crates

<sup>56</sup> See *id.*

<sup>57</sup> See *id.* at 99.

<sup>58</sup> See *id.* at 105.

<sup>59</sup> See *id.* at 103.

<sup>60</sup> See ROLLIN, *supra* note 2, at 73.

<sup>61</sup> See Sonfield & Akers, *supra* note 15.

<sup>62</sup> See Melanie Adcock & Mary Finelli, *Against Nature: The Sensitive Pig Versus the Hostile Environment of the Modern Pig Farm*, HSUS NEWS (Spring 1996), available at <http://www.hsus.org/programs/farm/factory/against.html> (last visited Feb. 19, 2001).

<sup>63</sup> See SINGER, *supra* note 38, at 120.

<sup>64</sup> See ROLLIN, *supra* note 2, at 73.

<sup>65</sup> See BAUSTON, *supra* note 1, at 19.

<sup>66</sup> See SINGER, *supra* note 38, at 120.



that are only two-feet wide.<sup>67</sup> When it is time to give birth, sows are transferred to farrowing pens so small that the sows have minimal room to even stand or lie down.<sup>68</sup> Sows are also forced to stand and lie down on hard floors, since straw bedding is allegedly too expensive.<sup>69</sup> The piglets born to these imprisoned mothers are also doomed for a life of severe confinement.<sup>70</sup> Piglets are taken from their mothers at two-to-three weeks old and are placed in small pens with concrete floors and metal bars.<sup>71</sup> As the piglets grow older, they are transferred to similar restrictive pens, and are kept there until they reach the required slaughter weight.<sup>72</sup> Pigs are also forced to live in filth, since their stalls are built on slatted floors, which enable the animals' excrement to collect beneath them in collection pits.<sup>73</sup> As a result of being confined, pigs suffer from respiratory problems arising from inescapable toxic pollutants that fill the air, such as dust, ammonia, and noxious gases.<sup>74</sup> Pigs also suffer from crippling leg abnormalities caused by having to stand on hard flooring.<sup>75</sup> Many pigs also suffer from severe joint damage or damaged cartilage caused by restricted movement.<sup>76</sup>

In addition to physical injuries, confined pigs develop a number of psychological problems.<sup>77</sup> These helpless animals suffer from extreme boredom, aggression, and physical and mental deterioration caused by the stress of being confined.<sup>78</sup> Pigs are driven to ear-chewing, tail biting, and cannibalism caused by aggressive behavior resulting from being placed in overcrowded pens.<sup>79</sup> The saddest symptom of confinement is that pigs confined for their entire lives are driven to insanity, developing neurotic behaviors, such as repetitive nose rubbing and bar biting.<sup>80</sup> Isolated sows often exhibit a "mourning" behavior, which is characterized by sitting motionless for hours with their heads either hung low or pressed against the crate with drooping ears and their eyes clamped shut.<sup>81</sup> Some pigs, due to the

<sup>67</sup> See BAUSTON, *supra* note 1, at 21.

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.* at 19.

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See The Fund for Animals, *supra* note 41.

<sup>74</sup> See BAUSTON, *supra* note 1, at 19.

<sup>75</sup> See *id.* at 22.

<sup>76</sup> See *Pig Cruelty Exposed: Pig Abusers Convicted of Hideous Abuse on Factory Farm*, at <http://www.meatstinks.com/pigcaseff.html> (last visited Jan. 12, 2001).

<sup>77</sup> See BAUSTON, *supra* note 1, at 22.

<sup>78</sup> See *id.*

<sup>79</sup> See *Pig Cruelty Exposed: Pig Abusers Convicted of Hideous Abuse on Factory Farm*, *supra* note 76.

<sup>80</sup> See *id.*

<sup>81</sup> See Adcock & Finelli, *supra* note 62.

stress resulting from severe confinement, develop Porcine Stress Syndrome, which causes animals to become high-strung as a result of responding poorly to stress.<sup>82</sup> Comparable to shock in human beings,<sup>83</sup> pigs plagued by this syndrome begin to shake and essentially die of a heart attack.<sup>84</sup>

### C. *The Driving Forces Behind Confinement Agriculture*

After one hears about the cruel treatment farm animals are subjected to through the institutions of confinement agriculture, one must wonder what are the motives underlying the inhumane treatment of such helpless animals. The answer is simple for producers who inflict this kind of suffering on farm animals, profit.<sup>85</sup> Bernard E. Rollin, a professor of Philosophy, Physiology, and Biophysics, states that "in general, our society is plagued by a business management mindset that tends to define activities in terms of efficiency and productivity . . . ."<sup>86</sup> This mindset is evidenced through the profit tactics employed by animal producers.<sup>87</sup> Producers are always seeking ways to cut costs and increase efficiency in an effort to increase their profit margins.<sup>88</sup> Labor, land, and feed costs can be greatly reduced by severely confining animals.<sup>89</sup> Raising animals in extensive environments requires large acres of land, which makes it economically unfeasible for most producers to raise animals in such environments.<sup>90</sup> Producers today raise extensive numbers of animals; therefore, more land would be required to raise animals in extensive systems if the same level of productivity were to be maintained.<sup>91</sup> The cost of labor is another type of production cost that can cut into a producer's profits.<sup>92</sup> Such costs can be reduced through the use of intensive systems, since less manpower is required to run an operation.<sup>93</sup> Automated feeding and feces disposal through slatted floors reduces labor requirements, thereby creating less need to invest large sums of money in paying workers'

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<sup>82</sup> See BAUSTON, *supra* note 1, at 22.

<sup>83</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, 418 (1996).

<sup>84</sup> See BAUSTON, *supra* note 1, at 22.

<sup>85</sup> See HSUS, *supra* note 34.

<sup>86</sup> ROLLIN, *supra* note 2, at 138.

<sup>87</sup> See SINGER, *supra* note 38, at 123-26.

<sup>88</sup> See Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 853 (1995).

<sup>89</sup> See Curtis, *supra* note 31, at 170.

<sup>90</sup> See *id.* at 169.

<sup>91</sup> See HSUS, *supra* note 16.

<sup>92</sup> See SINGER, *supra* note 38, at 123.

<sup>93</sup> See *id.*

wages.<sup>94</sup> Reducing the amount of feed per animal can also aid producers in reducing production costs.<sup>95</sup> Less feed is required for animals kept in confined environments since minimal movement prevents animals from burning up the food they eat.<sup>96</sup> As a result, an animal does not need to be fed as much in order to maintain a desired weight.<sup>97</sup>

While agriculture has seemingly always been profit motivated, traditional husbandry practices embodied a symbiotic and interdependent relationship between producers and their animals; for example, if the animals thrived, then producers thrived as well.<sup>98</sup> Today's animal agricultural industry lacks this mutuality.<sup>99</sup> It has been stated, "the inhumane conditions on factory farms result from the incongruity between concerns for animals and economic incentives."<sup>100</sup> Factory farms are not motivated by the well-being of individual animals.<sup>101</sup> Producers today can afford to lose a high number of animals to physical and behavioral disorders since profits are dependent on the optimal use of space and equipment rather than the individual animals' welfare.<sup>102</sup> Producers limit their efforts to rectifying conditions or adverse behaviors animals develop that may ultimately cost them money.<sup>103</sup> Eliminating the actual cause of the vices themselves, such as overcrowding, is not a viable option for producers, given such action could gravely affect their profit margins.<sup>104</sup>

### III. LEGISLATION REGARDING FARM ANIMAL WELFARE

#### A. Federal Animal Welfare Legislation

Despite the inhumane treatment food animals reared in confinement are subjected to, Congress has not been very responsive to the need to protect the welfare of such animals.<sup>105</sup> Congress has enacted more than fifty statutes

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See ROLLIN, *supra* note 2, at 6.

<sup>99</sup> See HSUS, *supra* note 34.

<sup>100</sup> O'Brien, *supra* note 83, at 427.

<sup>101</sup> See HSUS, *supra* note 16.

<sup>102</sup> See *id.*

<sup>103</sup> See SINGER, *supra* note 38, at 100. For example, chickens are kept in very dim lighting as a means to prevent fighting brought on by overcrowding. See *id.* at 101.

<sup>104</sup> See *id.* at 100.

<sup>105</sup> See Farm Sanctuary, *supra* note 11.

regarding animal welfare,<sup>106</sup> yet only two laws in particular address the welfare of animals raised for food or food production.<sup>107</sup> The Humane Methods of Livestock Slaughter Act<sup>108</sup> requires the slaughter of livestock “be carried out only by humane methods” in order to prevent “needless suffering.”<sup>109</sup> The Twenty-Eight Hour Law of 1877<sup>110</sup> provides animals cannot be transported across state lines for more than twenty-eight consecutive hours by “rail carrier, express carrier, or common carrier (except air or water)” without being unloaded for at least five consecutive hours of “feeding, water, and rest.”<sup>111</sup> Since current federal regulation only addresses the treatment of food animals during transport and slaughter, the treatment of animals reared for food is left solely to the discretion of producers.<sup>112</sup> Such discretion, more often than not, results in the mistreatment of animals since producers are in no way limited in how they can cut costs and improve productivity.<sup>113</sup> Furthermore, the Animal Welfare Act,<sup>114</sup> the most important legislation regarding the welfare of animals generally, explicitly excludes food animals from protection providing:

The term “animal” means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded mammal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes . . . farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.<sup>115</sup>

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<sup>106</sup> See Cass R. Sunstein, *A Tribute to Kenneth L. Karst: Standing for Animals*, 47 UCLAL. Rev. 1333, 1334 (2000).

<sup>107</sup> See Farm Sanctuary, *supra* note 11.

<sup>108</sup> See 7 U.S.C. §§ 1901-1904, 1906 (1994).

<sup>109</sup> See 7 U.S.C. § 1901.

<sup>110</sup> See 49 U.S.C. § 80502 (1994).

<sup>111</sup> See *id.* Note that this statute applies to the transportation of animals generally and is not strictly directed at the protection of farm animals. See *id.*

<sup>112</sup> See Thomas A. Decapo, Note, *Challenging Objectionable Treatment with the Shareholder Proxy Proposal Rule*, 1988 U. ILL. L. REV. 119, 131 (1988).

<sup>113</sup> See *id.*

<sup>114</sup> See 7 U.S.C. §§ 2131-2159 (1994).

<sup>115</sup> 7 U.S.C. § 2132(g) (1994).

### B. Protective State Law

At the state level, protection for the welfare of animals generally is common.<sup>116</sup> All fifty states have some form of criminal statute prohibiting animal cruelty.<sup>117</sup> State anti-cruelty statutes generally prohibit the “unnecessary” starving, beating, torturing, and mutilating of animals.<sup>118</sup> Many state statutes also impose affirmative duties on people caring for animals whereby owners are required to provide their animals with adequate shelter and sustenance.<sup>119</sup> Actions such as overworking, underfeeding, and depriving animals of adequate protection may all be violative of these anti-cruelty statutes.<sup>120</sup> In addition, an owner’s omissions may be classified as cruel treatment under a statute.<sup>121</sup> However, state anti-cruelty statutes are, for the most part, ineffective in protecting animals reared for food.<sup>122</sup> Some statutes exclude farm animals from the definition of “animal” and many state statutes exclude from coverage actions that classify as customary husbandry practices.<sup>123</sup> As a result, the protection of food animals is mostly dependent upon state anti-cruelty statutes, which essentially condone “necessary” practices producers engage in despite the infliction of significant pain and suffering, and are therefore very ineffective.<sup>124</sup>

### C. Voluntary Industry Action and Congress’ Failure to Regulate

Due to a lack of legislative protection for animals raised for food both at state and federal levels, it is questionable whether voluntary actions by producers is a viable option for promoting protection for animals raised for food. In a consultancy report, Glen Schmidt, a professor at Ohio State

<sup>116</sup> See Decapo, *supra* note 112, at 131.

<sup>117</sup> See *id.*

<sup>118</sup> See Steven J. Haverkamp, Note, *Are Moderate Animal Welfare Laws and a Sustainable Agricultural Economy Mutually Exclusive? Laws, Moral Implications, and Recommendations*, 46 DRAKE L. REV. 645, 666 (1988); see also FLA. STAT. § 828.12(1) (2000).

<sup>119</sup> See Sunstein, *supra* note 106, at 1337-38; see also *State v. Groseclose*, 171 P.2d 863, 864 (Idaho 1946) (holding a cattle owner can be charged with a misdemeanor under a state statute for permitting his cattle to be at large in the street “without proper care and attention”); FLA. STAT. §828.13(3) (2000).

<sup>120</sup> See Sunstein, *supra* note 106, at 1337-38; see also *State v. Goodall*, 175 P. 857, 858 (Or. 1918) (holding a horse owner can be charged with the torture, torment, and deprivation of necessary sustenance to his horse under a state statute for riding his horse while the animal was suffering from an ulcerated sore on its back and shoulders and for food deprivation).

<sup>121</sup> See Sunstein, *supra* note 106, at 1337.

<sup>122</sup> See *id.* at 1339.

<sup>123</sup> See O’Brien, *supra* note 83, at 407; see also FLA. STAT. § 828.122(7)(2000); FLA. STAT. § 828.125(5)(2000).

<sup>124</sup> See Haverkamp, *supra* note 118, at 665.

University's department of animal sciences, recommends that U.S. livestock and poultry producers should "examine whether they can make their practices more animal-friendly if they want to head off European-style animal welfare directives that dictate how farm animals are raised."<sup>125</sup> Voluntary action by producers may very well have the effect of easing public pressure to legislate the rearing of food animals and halting the enactment of animal welfare legislation.<sup>126</sup> Yet, even producers who believe in semi-extensive agricultural practices are often forced to violate such practices in order to remain competitive.<sup>127</sup> Despite the need among ethical producers to have some form of regulation as a means for remaining competitive, some members of Congress take the position that farmers are not cruel to animals they raise because their economic livelihoods depend upon the welfare of these animals.<sup>128</sup> It is a common contention of farmers that "farmers go beyond their role of humane guardians and show devoted concern for their animals' health and safety".<sup>129</sup> However, as previously noted, producers' profits are dependent on the optimal use of space and equipment, rather than the individual welfare of the animals they raise.<sup>130</sup> This is precisely the reason farmers claim "rigid regulations specifying how animals are raised would make farmers less efficient, lead to a greater loss of farmland, and raise consumer prices."<sup>131</sup> Furthermore, Randall T. Sawyer from the New York Farm Bureau states that U.S. farmers are able to provide the most affordable food in the world due to the cooperation of the federal and state governments.<sup>132</sup> Congress' complacency with producers' insistence that they provide their animals with the best care, even though such animals are raised in intensive agricultural systems, seems to imply Congress prefers to provide producers with autonomy over having to regulate producers' rearing practices.<sup>133</sup> A laissez-faire attitude arguably takes preference over regulation due to the United States' emphasis on individualism and profit.<sup>134</sup>

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<sup>125</sup> U.S. Warned Against EU-style Animal Welfare Rules in Consultancy Report, AGRA EUROPE, Jan. 12, 1996, at N6.

<sup>126</sup> See Simon Wragg, *Voluntary Moves Could Pre-empt Welfare Laws*, FARMERS WKLY., Oct. 2, 1998, at 44.

<sup>127</sup> See ROLLIN, *supra* note 2, at 140.

<sup>128</sup> See Fox, *supra* note 25, at 154. Factory farms are motivated by the optimal use of space and equipment rather than the individual animals' welfare. See HSUS, *supra* note 34.

<sup>129</sup> Farm Bureau, *Farmer's Care for America's Farm Animals: Beyond the Basics*, at <http://www.fb.com/aboutus/farmcare/beyond.html> (last modified Sept. 30, 1998).

<sup>130</sup> See HSUS, *supra* note 16.

<sup>131</sup> Farm Bureau, *supra* note 129.

<sup>132</sup> See *Farmers Not Cruel to Livestock*, USA TODAY, Nov. 16, 1995, at 14A.

<sup>133</sup> See U.S. Warned Against EU-style Animal Welfare Rules in Consultancy Report, *supra* note 125.

<sup>134</sup> See *id.*

#### D. Proposed Legislation and Ideal Animal Protection

Currently, only two proposed animal protection bills regarding the treatment of farm animals exist.<sup>135</sup> The Downed Animal Protection Act<sup>136</sup> is a bill to amend the Packers and Stockyards Act of 1921,<sup>137</sup> which would prohibit any stockyard owner, market agency, or dealer to transfer or market "livestock that is unable to walk or stand unassisted."<sup>138</sup> The Farm Sustainability and Animal Feedlot Enforcement Act<sup>139</sup> aims to reduce environmental contamination from animal waste and to improve living conditions for farm animals.<sup>140</sup> Of these two proposed bills, only the Farm Sustainability and Animal Feedlot Enforcement Act actually addresses the treatment of animals in rearing practices.<sup>141</sup> Furthermore, this proposed legislation has a stated purpose of controlling water pollution from concentrated animal feeding operations as opposed to protecting the welfare of farm animals.<sup>142</sup> As a result, farm animals would only benefit indirectly from the enactment of this bill by requiring producers to adopt a threshold capacity for animal waste, which would improve animals' living conditions by reducing exposure to urine and fecal matter.<sup>143</sup>

Undoubtedly, a toxic free environment would improve animals' living conditions by reducing susceptibility to ailments, such as infections and respiratory problems. Yet, legislation regarding the rearing of farm animals ideally needs to address many more issues other than just environmental contamination from animal waste, if living conditions for farm animals are to really be improved. For example, the sizes of cages and pens, in which animals are confined, seems to be the primary issue that needs to be addressed, given confinement alone leads to many physical and psychological animal afflictions.<sup>144</sup> Legislation could impose minimum-size housing requirements on producers, in order to ensure that animals have at least

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<sup>135</sup> See American Humane Association, *Animal Protection Bills*, available at <http://www.americanhumane.org/actnow/apbill.htm> (last visited Feb. 19, 2001).

<sup>136</sup> Downed Animal Protection Act, S. 515, 106th Cong. (1999).

<sup>137</sup> See 7 U.S.C. §§ 201-217 (1994).

<sup>138</sup> See S. 515.

<sup>139</sup> See Farm Sustainability and Animal Feedlot Enforcement Act, H.R. 684, 106 Cong. (1999), available at <http://thomas.loc.gov/cgi-bin/query/z?c106:H.R.684>: (Feb. 10, 1999).

<sup>140</sup> See American Humane Association, *supra* note 135.

<sup>141</sup> See *id.*

<sup>142</sup> See 7 U.S.C. §§201-217.

<sup>143</sup> See *id.*

<sup>144</sup> See Farm Animal Services, *What Does Free Farmed Mean?*, at <http://www.freefarmed.org/mean.htm> (last visited Feb. 19, 2001).

some amount of comfort and are able to easily walk around, stand, and lie down.<sup>145</sup> Restrictions on overcrowding could also be imposed as a means for preventing animal stress and fighting.<sup>146</sup> Furthermore, directives requiring highly social animals, such as pigs, to be placed with other animals and given enough room to roam could also be imposed.<sup>147</sup> Such directives would promote the psychological welfare of such animals by reducing the potential for depression, boredom, stress, aggression, and frustration.<sup>148</sup> Producers could also be required to provide their animals with sufficient daylight and ventilation.<sup>149</sup> Directives requiring producers to provide non-concrete or non-hard flooring could be imposed, or alternatively, a requirement to furnish some type of soft bedding to alleviate the maladies that plague animals forced to stand and lie on hard floors.<sup>150</sup> Legislation could also require producers to feed their animals nutritious diets, and to make water readily accessible to the animals.<sup>151</sup>

#### IV. THE IMPLICATIONS OF CONGRESS' FAILURE TO REGULATE FARM ANIMAL REARING PRACTICES

##### A. *The Importance of Agriculture in the U.S. Economy and the Effects of Mechanization*

"[A]griculture is the oldest economic activity of civilized man."<sup>152</sup> Therefore, it is no surprise that agriculture plays an important function in the national economy.<sup>153</sup> Even so, agriculture has experienced a decline in comparison to other economic activities with respect to labor and the production of income.<sup>154</sup> For example, the percentage of the U.S. population involved in production agriculture has dropped from twenty-four percent, just prior to World War II, to slightly less than two percent in 1995,<sup>155</sup> and only ten percent of the gross national product consists of total receipts for

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<sup>145</sup> See *id.*

<sup>146</sup> See *id.*

<sup>147</sup> See *id.*

<sup>148</sup> See *id.*

<sup>149</sup> See *id.*

<sup>150</sup> See *id.*

<sup>151</sup> See *id.*

<sup>152</sup> BRUCE L. GARDNER, *THE GOVERNING OF AGRICULTURE* 1 (1981).

<sup>153</sup> See KNUTSON, *supra* note 12, at 373.

<sup>154</sup> See Earl O. Heady & Joseph Ackerman, *The Income and Resource Problem, in AGRICULTURAL ADJUSTMENT PROBLEMS IN A GROWING ECONOMY* 1, 3 (Earl O. Heady et al. eds., 1958).

<sup>155</sup> See ROLLIN, *supra* note 2, at 8.



retail food.<sup>156</sup> This does not suggest, however, that agriculture no longer has any significance in the U.S. economy.<sup>157</sup> While agriculture in-and-of itself is becoming less economically important, it is becoming more and more integrated with other economic areas.<sup>158</sup> As a result, U.S. agriculture appears to have less of a direct economic effect, but continues to have an aggregate impact on the national economy.<sup>159</sup> For example, agriculture makes a significant contribution to the United States balance of trade,<sup>160</sup> exports of farm products being one of the few prominent areas in this balance.<sup>161</sup> Furthermore, food has the potential to either reduce inflation during a period of falling prices or increase inflation during a period of rising prices, since it makes up about twenty percent of the consumer price index.<sup>162</sup> The potential effect food can have on inflation is one that affects the entire economy, since welfare and social security benefits are indexed to inflation.<sup>163</sup> This, in turn, causes changes in government spending, which ultimately affect the size of the federal deficit.<sup>164</sup> Wage rates can also be affected by food prices' effect on inflation, since labor union contracts often index wage rates to the inflation rate.<sup>165</sup> A more direct effect of agriculture on the national economy is exhibited by how consumption responds to food prices.<sup>166</sup> For example, rising food prices trigger less consumption and falling food prices prompt more consumption.<sup>167</sup> Therefore, consumer spending on food is directly affected by food pricing.<sup>168</sup>

It is also important to note the function and philosophy of the United States Department of Agriculture (U.S.D.A.), which is one of the largest government agencies.<sup>169</sup> The U.S.D.A. has, throughout most of the United

<sup>156</sup> See KNUTSON, *supra* note 12, at 373 (noting this change in the structure of agriculture has resulted, in part, because of the mechanization of animal agriculture and the confinement of animals); see also ROLLIN, *supra* note 2, at 8-9.

<sup>157</sup> See KNUTSON, *supra* note 12, at 373.

<sup>158</sup> See GARDNER, *supra* note 152, at 117 (noting, for example, food and agriculture are of greater importance in international affairs).

<sup>159</sup> See KNUTSON, *supra* note 12, at 373.

<sup>160</sup> See *id.*

<sup>161</sup> See Neil D. Hamilton, *Changing Structures and Expectations in Agriculture*, 14 N. ILL. U. L. REV. 613, 622 (1994); BAUSTON, *supra* note 1, at 5 (noting a growing number of food animals raised in the U.S. for food production are intended to be sold for export).

<sup>162</sup> See KNUTSON, *supra* note 12, at 373.

<sup>163</sup> See *id.*

<sup>164</sup> See *id.*

<sup>165</sup> See *id.*

<sup>166</sup> See GARDNER, *supra* note 152, at 2.

<sup>167</sup> See *id.*

<sup>168</sup> See *id.*

<sup>169</sup> See Hamilton, *supra* note 161, at 627.

States' agricultural history, served the purpose of assisting economic growth, and was created mainly to promote and protect the agricultural sector of the economy.<sup>170</sup> Furthermore, the U.S.D.A. embodies a fundamentalist philosophy, which provides that "the root of all wealth lies in agriculture and the soil."<sup>171</sup> The policy driving the fundamentalist view is essentially to maintain agriculture's economic health.<sup>172</sup> This fundamentalist philosophy is apparent as the U.S.D.A. seal is inscribed with the following credo: "Agriculture is the foundation of manufacture and commerce."<sup>173</sup> As such, the U.S.D.A.'s pro-agriculture policy and philosophy further indicate agriculture is an important factor in the U.S. national economy.

Since agriculture plays an important role in the U.S. economy, efforts have been undertaken to help make this economic activity thrive.<sup>174</sup> For example, capital investment in machinery and technology for the purpose of enhancing labor productivity in agricultural production processes has allowed modern agriculture to grow economically.<sup>175</sup> Mechanization has resulted in the growth of agricultural productivity thereby reducing commodity prices.<sup>176</sup> At least one commentator has remarked: "a nation can be wealthy only if few of its resources are required to produce food for subsistence."<sup>177</sup> As technological growth continues in the United States with respect to agriculture food, it will be able to be produced with less labor.<sup>178</sup> Every improvement in farm mechanization, animal breeding, or farm management practices allows relatively inefficient agricultural input to be replaced, thereby allowing such input to be used in other economic sectors.<sup>179</sup> Furthermore, technology and mechanization will allow consumers to benefit from the availability of food at relatively low prices, thereby enabling them to spend less money on food,<sup>180</sup> and have more disposable income for other goods and services.<sup>181</sup>

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<sup>170</sup> See *id.*

<sup>171</sup> See KNUSTON, *supra* note 12, at 32.

<sup>172</sup> See *id.*

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

<sup>174</sup> See *id.*

<sup>175</sup> See *id.* at 4.

<sup>176</sup> See *id.*

<sup>177</sup> Heady & Ackerman, *supra* note 154, at 3 (noting, for example, the standard of living in many countries is low due to the fact that a substantial portion of the labor force must be used for food production).

<sup>178</sup> See *id.* at 4.

<sup>179</sup> See Chen, *supra* note 88, at 850.

<sup>180</sup> See Heady & Ackerman, *supra* note 154, at 4.

<sup>181</sup> See *id.*

### B. *Can Traditional Husbandry Practices be Restored?*

Now that agriculture has evolved into a highly efficient industry in terms of providing large quantities of food at a relatively low cost, although at the expense of helpless animals, it is questionable if it is possible to return to traditional husbandry practices. Bernard E. Rollin states: "it is socially and economically impossible to return completely to fully extensive but husbandry-oriented management systems for farm animals."<sup>182</sup> Technology and mechanization have created a highly efficient and productive agricultural system, so that the complete elimination of these components could be economically detrimental to producers.<sup>183</sup> The central issue concerning animal regulation is not attempting to entirely abolish confinement agriculture, but rather determining what types of changes can be made in the agricultural industry that will both provide adequate protection for the welfare of animals and at the same time will not detrimentally interfere with sustainable agricultural practices.<sup>184</sup> Therefore, the only viable option for humane treatment of animals raised for food may be to establish intensive systems, which are "animal-friendly."<sup>185</sup> Such systems would satisfy animals' psychological and biological needs, yet remain economically feasible.<sup>186</sup> Other countries, more in tune with animal welfare issues, have researched available existing alternatives to replace intensive systems having no regard for animal welfare.<sup>187</sup> The United States could rely on such research for the purposes of introducing animal-friendly intensive systems, yet the United States Government has not been responsive to the availability of this research, nor has it undertaken any research of its own.<sup>188</sup>

### C. *Other Potential Reasons for Congress' Failure to Enact Animal Welfare Legislation*

Other forces may be driving Congress' passivity in relation to the enactment of legislation regarding the welfare of animals raised in intensive systems. One may argue there has been a lack of public concern regarding the issue, or one may argue Congress fails to enact such legislation because

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<sup>182</sup> ROLLIN, *supra* note 2, at 24.

<sup>183</sup> See Curtis, *supra* note 31, at 174.

<sup>184</sup> See Haverkamp, *supra* note 118, at 673.

<sup>185</sup> See ROLLIN, *supra* note 2, at 24.

<sup>186</sup> See *id.*

<sup>187</sup> See *id.*

<sup>188</sup> See *Swedish Model; Food Safety and Animal Welfare Practices in Swedish Agricultural Industry*, GROCER, June 17, 2000, at S1.

it may be too costly for the government. Yet these proffered explanations can be readily discarded as the primary reasons for Congress' failure to enact legislation regarding rearing practices. There has been an increasing public sentiment regarding the welfare of animals raised for food.<sup>189</sup> The large number of animal rights organizations exemplify this sentiment in the United States.<sup>190</sup> Concern regarding animal welfare is also demonstrated in the reactions of young people between the ages of eleven and eighteen, who "say they are more likely to become vegetarian because of the emotive issues surrounding animal welfare."<sup>191</sup> Additionally, concern for the well-being of food animals is expressed by some producers themselves, who wish to provide better conditions for the animals they raise, yet are constrained by the competition of producers who do not follow animal-friendly practices.<sup>192</sup> Furthermore, the American Humane Association and the U.S.D.A. have recently announced the creation of a "Free Farmed" label signifying the product was produced from animals which were not treated inhumanely, or subjected to unnecessary pain, fear or distress.<sup>193</sup> This initiative illustrates U.S. consumers' concern regarding the welfare of the animals they eat.<sup>194</sup> The fact that McDonalds recently became the first U.S. fast-food corporation requiring their egg suppliers to provide better living conditions for their hens further indicates a growing public sentiment for the welfare of food animals.<sup>195</sup>

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<sup>189</sup> See Gene Wunderlich, *The Ethics of Animal Agriculture; Issues Confronting Livestock Production and Marketing*, 14 U.S. DEP'T OF AGRIC. FOOD REV. 24, 24 (Oct. 1991); see also Rollin, *supra* note 23 (noting a 1995 survey indicated that ninety-seven percent of U.S. citizens believe that people are obligated to worry about an animal's quality of life even if the animal is destined for slaughter, and seventy-percent strongly disapproved of confining sows to stalls).

<sup>190</sup> See Wunderlich, *supra* note 189, at 24 (noting existence of at least 200 animal rights organizations in the United States dedicated to trying to establish stricter government control over animal transport, slaughter, and rearing practices).

<sup>191</sup> See *Animal Welfare but at What Price?*, SUPER MARKETING, Sept. 11, 1992, at 16.

<sup>192</sup> See ROLLIN, *supra* note 2, at 140.

<sup>193</sup> See Carolyn Jung, *American Humane Association, U.S. Agriculture Department Announce New Label*, SAN JOSE MERCURY NEWS, Sept. 20, 2000, at 1A. The Free Farmed certification program will ensure that animals are free from: unnecessary fear and distress by providing animals with conditions that limit stress; pain, injury, and disease by preventing diseases through fast diagnosis and treatment; hunger and thirst by making water readily accessible and providing a healthy diet; unnecessary discomfort by providing animals with adequate shelter and comfortable resting areas, allowing animals to express their normal behaviors, and by providing animals with sufficient space and animal companionship. See *Farm Animal Services*, *supra* note 144.

<sup>194</sup> See Jung, *supra* note 193.

<sup>195</sup> See *id.* The standards adopted by McDonald's Corporation were recommended to the company by a panel of scientific advisers formed by McDonald's Corporation for the purpose of addressing concerns about the treatment of food animals. See Associated Press, *McDonald's Orders Farmers to Treat Laying Hens Better*, Aug. 23, 2000, at <http://www.cnn.com/2000/FOOD/news/08/23/mcdonalds.eggs.ap/> (last visited Jan. 13, 2001).

The possibility that Congress has failed to enact legislation regulating how animals are raised due to the fact that such regulation may be too costly for the government can also be disregarded. Foreign countries have been on the fast track to establishing a national policy of humane treatment for farm animals and enacting legislation regulating cruelty to farm animals.<sup>196</sup> The European Union (EU) in particular has taken numerous legislative measures for regulating such cruelty in response to public opinion regarding the cruelties of factory farming.<sup>197</sup> For example, the European Community (EC) has adopted minimum housing requirements for chickens.<sup>198</sup> Sweden, in particular, is the world leader in animal welfare legislation and practice.<sup>199</sup> In 1988, Sweden enacted an animal protection law, which prohibits confinement agriculture based on efficiency alone, and mandates that farm animals must be reared in environments which promote animal health and allow animals to express their natural behaviors.<sup>200</sup> The fact that other countries have been able to enact legislation addressing this very issue indicates regulation may be feasible in terms of government cost. The United States, in particular, probably has more resources than any other country for implementing such regulation,<sup>201</sup> yet it has failed to do so. Such inaction tends to imply that economic concerns may underlie Congress' inaction.

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<sup>196</sup> See Fox, *supra* note 25, at 175.

<sup>197</sup> See *id.* Protocol to the European Union Treaty of 1997 (The Amsterdam Treaty) requires member states to pay full regard to the welfare requirements of animals in formulating and implementing the EU's agriculture, transport, internal market, and research policies. See World Animal Net, *European Union Legislation*, at <http://www.worldanimal.net/eu-legis.html> (last visited Feb. 19, 2001).

<sup>198</sup> See Fox, *supra* note 25, at 175. The new rearing standards will be phased in over a seven-year period requiring minimum space standards for cages, adequate flooring to support forward facing claws, appropriate lighting, insulation and ventilation. See *id.* No such mandatory requirements currently exist in the United States. See Decapo, *supra* note 112, at 131.

<sup>199</sup> See *Swedish Model; Food Safety and Animal Welfare Practices in Swedish Agricultural Industry*, *supra* note 188.

<sup>200</sup> See ROLLIN, *supra* note 2, at 19. Examples of Swedish farm animal legislation include: a ban on conventional laying hen battery cages; requirement that cattle must be sent out to pasture during the summer; requirement animals must be fed a sufficient, varied, and well-balanced diet; and a requirement pigs must be housed in loafing barns and provided sleeping, feeding, and dunging areas, and immobilization equipment may only be used temporarily. See Animal Rights Sweden, *Farm Animals*, at <http://www.djurensratt.org/english/> (last visited Feb. 19, 2001).

<sup>201</sup> See Euroknow, Britain and the EU, Chapter 9, at <http://www.euro-know.co.uk/articles/bandeubj1.html> (last visited Feb. 19, 2001); STEVEN SURANOVIC, INTERNATIONAL FINANCE THEORY AND POLICY (1999), at <http://www.internationalecon.com/v1.0/Finance/ch5/5c040.html> (last visited Jan. 13, 2001). The United States has a much more prominent Gross Domestic Product (GDP) when compared to the GDP's of countries in the European Union, indicating a strong economic position. See *id.*

D. *The Implications of Congress' Selective Enactment of Animal Welfare Legislation*

Congress' enactment of legislation regulating the transport and slaughter of farm animals marks needed progress in protecting the welfare of these animals.<sup>202</sup> Yet it is questionable why Congress has avoided regulating how farm animals are raised. An obvious implication from Congress' regulation of animal transport and slaughter is that either social concern regarding animal welfare exists or that Congress itself feels that animal welfare is an area that should be regulated. Furthermore, Congress' enactment of some protective legislation seems to stand for the proposition that animal welfare is a concern. As such, it remains unclear why Congress has limited regulation to the transport and slaughter of farm animals despite increasing public sentiment concerning current rearing practices. As previously mentioned, one conclusion that can be drawn from Congress' failure to regulate food animal rearing is that such regulation may have too great of an adverse economic effect. Arguably, the regulation of transport and slaughter appears to have less economic impact on businesses by cutting less into their profit margins. For example, confinement agriculture is a practice whose creation was solely driven by a desire to increase productivity and efficiency, in order to increase producers' profit margins.<sup>203</sup> While the transport and slaughter practices employed by the animal industry also focus on such factors,<sup>204</sup> it is arguable that these businesses were not initially created for the sole purpose of increasing productivity and efficiency. That is to say, the transport and slaughter of farm animals were services that were essentially required for the purpose of food production. On the other hand, confinement agriculture is simply a type of farm animal rearing and was not initially the only manner in which to raise animals for food. The differentiating motives for the establishment of these practices and Congress' selective regulation tends to imply that Congress feels that animal welfare can only be addressed in instances where regulation will not substantially cut into businesses' bottom-line. It has been said, "the U.S. [sic] has no national farm animal welfare regulations principally because of the nation's emphasis on individualism and the profit motive."<sup>205</sup>

It is also important to note federal and state governments spend over one billion dollars annually on agricultural research aimed at developing new

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<sup>202</sup> See 7 U.S.C. §§ 1901-1904, 1906 (1994); 49 U.S.C. § 80502 (1994).

<sup>203</sup> See ROLLIN, *supra* note 2, at 9.

<sup>204</sup> See BAUSTON, *supra* note 1, at 43.

<sup>205</sup> *U.S. Warned Against EU-style Animal Welfare Rules in Consultancy Report*, *supra* note 125.

technologies.<sup>206</sup> Such technology is essentially what spawned confinement agriculture and inadvertently causes the suffering of billions of animals.<sup>207</sup> The federal government's willingness to invest large amounts of funding for developing new technologies strongly suggests productivity, efficiency, and profit are goals highly endorsed by government policy in agriculture. Furthermore, given that Congress annually invests large sums of money in promoting the development of new technologies for use in food farming, it implicitly suggests it is unlikely to enact legislation that would have a contrary effect on such development.<sup>208</sup>

## V. CONCLUSION

Protective agricultural legislation may be necessary to reassure the public that farm animals are being treated humanely and to provide producers with a level playing field.<sup>209</sup> Additionally, the issue regarding the regulation of farm animal rearing practices may become a very heated battle between animal rights lobbyists and opposing agricultural lobbyists.<sup>210</sup> The agriculture community regards animal welfare as one of three major challenges confronting agriculture.<sup>211</sup> Now that the use of animals for scientific research has been partially addressed through the enactment of two protective federal laws, an increasing social demand for legislation concerning animal agriculture can be expected.<sup>212</sup> However, strong opposition from animal producers to any attempt to extend protection to farm animals remains likely,<sup>213</sup> since agribusiness has an important stake in maintaining the current husbandry practices.<sup>214</sup>

The current status of animal welfare legislation regarding the rearing of farm animals provides producers with an extensive amount of freedom in adopting management and production practices they believe are the best methods for achieving the most efficient production at the lowest cost.<sup>215</sup>

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<sup>206</sup> See BARRY L. PRICE, *THE POLITICAL ECONOMY OF MECHANIZATION IN U.S. AGRICULTURE* 1 (1983).

<sup>207</sup> See ROLLIN, *supra* note 2, at 9.

<sup>208</sup> Arguably, the federal government is unlikely to invest funding for the development of "animal-friendly" technologies since such technologies presumably can never be as efficient and productive as non-animal friendly technologies.

<sup>209</sup> See ROLLIN, *supra* note 2, at 24.

<sup>210</sup> See O'Brien, *supra* note 83, at 427.

<sup>211</sup> See ROLLIN, *supra* note 2, at 1 (noting environmental issues and food-safety concerns are the other two major challenges threatening agriculture community).

<sup>212</sup> See *id.* at 19.

<sup>213</sup> See O'Brien, *supra* note 83, at 441.

<sup>214</sup> See *id.* at 427.

<sup>215</sup> See Guither & Swanson, *supra* note 13.

The adoption of "acceptable humane practices" would essentially alter producers' freedom of choice with regard to rearing practices through the imposition of restrictions on rearing methods.<sup>216</sup> Yet it is questionable at what cost such change would come. If humane standards for rearing farm animals were established and enforced by government regulation, there would be a potential for "higher production and marketing costs, lower business returns, and reduced incentives for investment in the animal industry."<sup>217</sup>

Agribusiness firms forced to follow rigid government-imposed rearing practices could essentially suffer from reduced animal production,<sup>218</sup> since efficient production is associated with raising the greatest number of animals in the least amount space possible<sup>219</sup> and regulations would likely come in the form of housing size and overcrowding restrictions. Lowered production would result in reduced business, and ultimately lower returns.<sup>220</sup> Regulation could further reduce the availability of animal products.<sup>221</sup> Increased production costs and reduced supplies of animal products could, in turn, increase food costs for consumers.<sup>222</sup> Regulation could also potentially create more bureaucracy as a means for implementing and enforcing rearing restrictions, thereby resulting in more costs to taxpayers.<sup>223</sup>

Certain animal welfare legislation in Western Europe outlawing particular production systems has caused the collapse of certain sectors affected by such legislation, and has also resulted in the importation of foods produced in systems similar to those outlawed domestically.<sup>224</sup> As a result of the harsh effects such legislation has had on the European animal agricultural industry and consumers' recognition of the domestic and international economic realities regarding the imposition of such legislation, a number of laws have been either modified or rescinded.<sup>225</sup> If the same results are to be expected in the United States were Congress to decide to regulate farm animal rearing and management, the economy could be adversely affected.<sup>226</sup>

<sup>216</sup> See *id.*

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

<sup>218</sup> See *id.*

<sup>219</sup> See HSUS, *supra* note 16.

<sup>220</sup> See Guither & Swanson, *supra* note 13.

<sup>221</sup> See *id.*

<sup>222</sup> See *id.*

<sup>223</sup> See *id.*

<sup>224</sup> See Council for Agricultural Science and Technology, *supra* note 8.

<sup>225</sup> See *id.* Such adverse economic effects indicate the importance of researching alternative rearing methods as a means for establishing "animal-friendly" rearing practices, which are also economically viable. See ROLLIN, *supra* note 2, at 24.

<sup>226</sup> See Council for Agricultural Science and Technology, *supra* note 8.



The United States could lose domestic food revenue to imported foods and could potentially suffer the loss of many producers as viable contributors to the national economy.<sup>227</sup> "It would be unjust and probably counter the public interest if the government were intentionally to undertake actions that would reduce or penalize profit-seeking agriculture."<sup>228</sup>

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<sup>227</sup> *See id.* (noting if the United States took the initiative to enact legislation regulating farm animal rearing, it would first have to invest federal funding in researching alternative rearing methods for the sake of preventing economic disaster). Yet it is questionable whether the United States would ever be willing to make such investment. Arguably then, rearing practices will remain unregulated until alternative animal rearing methods have been researched, since an attempt to regulate without first researching viable rearing methods could be economically detrimental to the United States.

<sup>228</sup> GARDNER, *supra* note 152, at 98.