Unwarranted Discrepancies in the Advancement of Animal Law: The Growing Disparity in Protection between Companion Animals and Agricultural Animals

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INTRODUCTION

In August 2009, Lashawn Whitehead was at home with his baby and his girlfriend's three-month-old puppy, Susie.¹ Susie, a German shepherd and Pit Bull mix,² jumped onto the couch where Whitehead's baby was resting.³ Whitehead became enraged.⁴ He grabbed Susie by the fur, took her outside, and dripped lighter fluid over her.⁵ Whitehead held her down and beat her for approximately...
fifteen minutes, breaking her jaw and teeth, before finally setting her on fire.\(^6\) Two weeks later, Susie was found nearly dead in a Greensboro, North Carolina, park with second and third degree burns covering sixty percent of her body.\(^7\)

Whitehead pleaded guilty to burning personal property and to felony animal cruelty.\(^8\) The crime of burning personal property carried a sentence of six to eight months in prison; however, the crime of felony animal cruelty brought only probation with a possible sentence of four to five months in prison if Whitehead violated the terms of his probation.\(^9\) This trivial sentence sparked a wave of controversy and debate.\(^10\) Citizens sent letters and emails to state legislators,\(^11\) resulting in new legislation called Susie’s Law.\(^12\) This new law increases penalties for certain acts of animal cruelty in North Carolina.\(^13\)

Susie’s Law exemplifies the advancements taking place in animal law in the United States. It continues the modern trend of animal law, which is to provide more protection to animals, generally.\(^14\) The unfortunate truth of these laws, however, is that they apply to only a specified class of animals, and they entirely exclude other animals, such as those used in food production, medical research, and certain forms of breeding.\(^15\) Since not all exceptions may be discussed here, this Comment will focus on the exclusion of agricultural animals. These animals, including cows, pigs, and chickens, feel pain on a daily

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\(^7\) Susie, supra note 6.
\(^8\) Seals, supra note 5.
\(^9\) Id.
\(^10\) See Susie, supra note 6.
\(^11\) Id.
\(^12\) Susie’s Law, ch. 16, 2010 N.C. Sess. Laws 16, 16 (codified as amended at N.C. GEN. STAT. § 14-360 (2011)).
\(^14\) See infra Part II.C.
\(^15\) See, e.g., Animal Welfare Act of 1970 § 3, 7 U.S.C. § 2132(g) (2006) (excluding from protection horses not used in research and other farm animals); N.C. GEN. STAT. § 14-360 (2011) (excluding from protection animals used in the activities of biomedical research; training; production of livestock, poultry, or aquatic species; providing food for human or animal consumption; and physical alteration to conform with breed or show standards); Pamela D. Frasch et al., State Animal Anti-Cruelty Statutes: An Overview, 5 ANIMAL L. 69, 78 (1999) (“Eighteen states provide an exemption for the practice of slaughtering animals for food.”).
basis, but there are no public outcries, no legislative debates, and few, if any, laws to protect them.

This Comment examines the progression of animal law—laws concerning, relating to, and affecting the protection of animals—over time, focusing on two sets of animals: companion animals and agricultural animals. As to the latter category, this Comment focuses entirely on agricultural animals who reside on factory farms, rather than those owned by individual farmers, since "[f]actory farming now accounts for more than 99 percent of all farmed animals raised and slaughtered in the United States." Part I discusses Susie's Law, which exemplifies contemporary animal law's exclusion of agricultural animals from anti-cruelty statutes. Part II presents a survey of American animal law from the colonial era through the twenty-first century, showing increasing concern for animals. Part III provides a detailed look into current law concerning companion and agricultural animals, focusing on how companion animals have enjoyed increasing protection while agricultural animals have lost almost all protection. Part IV considers reasons for the disparity in this treatment, arguing that the reasons for the disparity are nothing more than arbitrary cultural norms, which a truly egalitarian legal system should not endorse. Finally, Part V proposes a solution to remedy this discrepancy in the law.

I. SUSIE’S LAW

Susie’s Law modifies section 14-360 of the North Carolina General Statutes, making intentional starvation of an animal a felony, where previously it was a misdemeanor. Additionally, it increases the punishment for torturing, cruelly beating, maiming, mutilating, poisoning, or killing an animal to a higher class of felonies, giving

16. This Comment defines “companion animals” as animals owned by humans and kept for companionship, protection, or out of a sense of affection toward the animal. These are animals not kept for profit, production, or industrial or labor purposes.

17. This Comment defines “agricultural animals” as animals raised for food purposes, being comprised largely of chickens, pigs, and cattle. Agricultural animals are the animals killed most often in the United States, with the exception of animals killed in the seafood industry, and, as this Comment will discuss, they are some of the least protected of all animals. See Doris Lin, How Many Animals Are Killed Each Year?, ABOUT.COM, http://animalrights.about.com/od/animalrightsl01/tp/How-Many-Animals-Are-Killed.htm (last visited Feb. 22, 2012).

18. For an explanation of factory farming, see infra Part III.B.


20. See Susie’s Law, ch. 16, § 1, 2010 N.C. Sess. Laws 16, 16 (codified as amended at N.C. GEN. STAT § 14-360(a1)).
violators an active sentence.\textsuperscript{21} Susie’s Law is a triumph for animal rights in North Carolina because it adds an increased level of protection for North Carolina animals. This new law, however, does not change the statute’s original wording concerning which animals the statute protects. The victory of Susie’s Law belongs almost entirely to companion animals, such as Susie herself. It does not apply to agricultural animals.

Section 14-360 defines “animal” as “every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.”\textsuperscript{22} However, the statute states that the term “animals” does not apply to, among others, “livestock, poultry, or aquatic species” used for production purposes, or animals used for the “purpose of providing food for human or animal consumption.”\textsuperscript{23} While chapter 14 does not define “livestock” or “poultry,” other parts of the North Carolina General Statutes do. Section 68-15 defines the term “livestock” as follows: “The word ‘livestock’ in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine.”\textsuperscript{24} Section 106-549.51 defines “poultry” as “any domesticated bird, whether live or dead.”\textsuperscript{25} Therefore, these statutes exempt from protection agricultural animals. Cattle and pigs are exempted under the “livestock” definition, as they are “bovine animals” and “swine” respectively, and chickens are exempted under the “poultry” definition.\textsuperscript{26} Both definitions are broadly defined, and the definition of “livestock” is open ended: any other animal used in food production may be exempted under these terms.

\textsuperscript{21} Susie’s Law increased the punishment for torturing, cruelly beating, maiming, mutilating, poisoning, or killing an animal to a Class H felony. See N.C. GEN. STAT. § 14-360(b) (2011); \textit{see also} SENTENCING & POLICY ADVISORY COMM’N, FELONY PUNISHMENT CHART, MINIMUM AND MAXIMUM SENTENCES, \textit{available at} http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/felonychartR_12_01_09min_max_sentences.pdf (effective for offenses committed on or after Dec. 1, 2009); Bowens, \textit{supra} note 13 (noting how Susie’s Law toughens penalties for animal cruelty).

\textsuperscript{22} N.C. GEN. STAT. § 14-360(c) (2011).

\textsuperscript{23} Id.

\textsuperscript{24} § 68-15.

\textsuperscript{25} § 106-549.51.

\textsuperscript{26} “Bovine” is defined as “having qualities . . . characteristic of oxen or cows,” “poultry” is defined as “domesticated birds kept for eggs or meat,” and “swine” is defined as “any of various stout-bodied short-legged omnivorous artiodactyl mammals . . . with a thick bristly skin and a long flexible snout,” especially “a domesticated one descended from the wild boar.” \textsc{Merriam-Webster’s Collegiate Dictionary} 147, 972, 1264 (11th ed. 2003).
The enactment of Susie's Law exemplifies a phenomenon that is occurring throughout the country. Although some citizens of North Carolina were outraged by Susie's treatment, North Carolina continues to support a thriving hog industry,\(^7\) a stable cattle industry,\(^2\) and a growing poultry industry.\(^9\) Agricultural animals face conditions as bad as, or worse than, those that Susie suffered on a daily basis.\(^3\) The legislature, however, did not address the situation of these animals when it added protection for companion animals. While policymakers may see a great difference between companion and agricultural animals that justifies varying treatment, this Comment will argue that the differences are, in fact, quite minimal.\(^3\) The disparity in treatment and opinion of these separate groups of animals is clearly reflected in the law. While companion animals are gaining a more protected status, agricultural animals are losing almost all protection under the law.

II. PROGRESSION OF LAWS OVER TIME

To understand the disparity in legal protection between companion and agricultural animals, it is important to understand the progression of animal law as a legal doctrine. This Part will survey the evolution of American animal law from the early colonial law period onward. Early law provided relatively few protections for either group of animals. Beginning with basic protections for commercially valuable animals, animal law steadily developed an increasing concern with protecting animals for the animals' sake.


\(^{28}\) Agricultural Overview—Commodities, N.C. DEPT OF AGRIC. & CONSUMER SERVS., http://www.ncagr.gov/stats/general/commodities.htm (last updated July 27, 2007) ("North Carolina's number of cattle ... [and] calves on farms has remained relatively stable throughout time.").

\(^{29}\) Id. ("Unlike other commodities, broiler [chicken] production in North Carolina is increasing throughout the state."); see also NAT'L AGRIC. STATISTICS SERV., U.S. DEPT OF AGRIC., LIVESTOCK, DAIRY AND POULTRY: NORTH CAROLINA AGRICULTURAL STATISTICS 38–42 (2010), available at http://www.ncagr.gov/stats/2010AgStat/Page037_056.pdf (giving statistics on all livestock and poultry production in North Carolina).

\(^{30}\) See infra Part III.C.

\(^{31}\) See infra Part IV.A.
A. Colonial Law

In the early seventeenth century, animals were legally protected because they were seen as property. Protection of the animal was a safeguard of the owner's property, rather than a protection of the animal herself. One of the first laws to exemplify this way of thinking was the Massachusetts Body of Liberties, a code of law enacted by the Massachusetts Bay Colony in 1641. Liberties 92 and 93, under the section "Of the Bruite Creatures," are claimed to be the first anti-cruelty laws for animals. They read:

92 No man shall exercise any Tyranny or Crueltie towards any bruite Creature which are usuallie kept for man's use.

93 If any man shall have occasion to leade or drive Cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them, for a competent time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

These laws show the early rationale of animal anti-cruelty laws. Liberty 92 was not meant to protect animals for their own sake, but rather to protect the property of a human, i.e., animals "usuallie kept for man's use." This law would protect cattle and horses, since they were usually used for food, plowing, riding, pulling carriages, and such activities, but it would certainly not protect a cat. Similarly, Liberty 93 provides a special protection for cattle that allowed a man leading or driving cattle a long distance to stop and allow the animals to rest on any open land, excluding only cornfields, meadows, and land enclosed for "some peculiar use." The purpose of this law was not to prevent the suffering of the cattle, but rather it was meant to keep the property of the man alive. Both Liberties applied only to animals used by humans, not ownerless or stray animals. Liberty 93 did not provide that a stray, wandering cow might stop on someone's
land to rest; Liberty 93 only provided that a human driving or leading cattle could stop on another’s land. Therefore, while the law did benefit some animals, it did not do so with the intention of increasing animal protection. Both provisions were meant to protect the property of humans.

In 1846, Vermont enacted a similar law:

Every person who shall willfully and maliciously kill, wound, maim or disfigure any horse, or horses, or horse kind, cattle, sheep, or swine, of another person, or shall willfully or maliciously administer poison to any such animal . . . shall be punished by imprisonment [of] . . . not more than five years, or fined not exceeding five hundred dollars.

This law protected “commercially valuable animals, not pets or wild animals,” and the injury had to be caused by someone other than the owner. Again, the law protected the animal because it protected the property of the owner. The owner could dispose of or do what he wished with his property. The law was not meant to prevent the suffering of animals. Rather, the law protected animals that were used as tools, such as cattle for farmers. Thus, the first animals legally protected in the United States were commercially valuable animals, like livestock, rather than companion animals, like dogs and cats.

In some other early laws, animal cruelty was outlawed as a means of protecting against the demoralization of humans, rather than protecting animals for the animals’ own sake. An early example of this is the Gaming Act of 1664, enacted by the British Parliament and imposed in the Maryland Colony. This Act against “deceitful, disorderly, and excessive [g]aming” prevented gambling on cock fights, horse races, and dog fights, among other activities. If one

40. See id.
41. See id.
42. See id.
44. FAVRE, supra note 32, at 205.
45. Id.
46. See id.
47. See id.
48. See id.
51. Id. at 644.
gambled and won something in either a cock fight, a horse race, or a
dog fight, then the winner forfeited three times the amount of the
winnings.\textsuperscript{52} Thus, the Act did not necessarily criminalize these uses of
animals, but rather prohibited a morally unacceptable activity at these
events—gambling. The Act stated the reason for its regulation was
the idea that activities such as animal races and fights should be used
for recreation only, and not for one’s trade.\textsuperscript{53} In other words, the
problem with these activities was entirely based on gambling, not the
treatment of animals.\textsuperscript{54} According to the Act’s authors, gambling
generates disorderly and dishonest gamblers, who deceive others,
waste time, and ruin their estates and fortunes.\textsuperscript{55} While the law
unintentionally provided some protection to animals—decreasing the
prevalence of animal fights and races—the purpose of the Act was to
better the human race, not prevent any animal suffering.

During the nineteenth century, “lawmakers began to recognize
that an animal’s potential for pain and suffering was real and
deserving of protection against its unnecessary infliction.”\textsuperscript{56} Maine
passed a statute that read:

\begin{quote}
[I]f any person shall cruelly beat any horse or cattle, and be
thereof convicted, . . . he shall be punished by fine not less than
two dollars nor more than five dollars, or by imprisonment in
the common gaol for a term not exceeding thirty days,
according to the aggravation of the offence.\textsuperscript{57}
\end{quote}

Again, this law was meant to protect animals of commercial value,
like cattle and horses, rather than the animals now considered pets.
This law, however, was more progressive than other early laws in
denying immunity to the owner of the animal.\textsuperscript{58} Under early laws, like
the Vermont law discussed above, a person was only guilty if he killed
or injured an animal belonging to another person.\textsuperscript{59} Here, on the
other hand, anyone who “cruelly beat[s] any horse or cattle,”
regardless of ownership, was subject to liability.\textsuperscript{60} While “cruelly” set
a fairly high standard,\textsuperscript{61} this showed a concern not purely for

\textsuperscript{52} Id.
\textsuperscript{53} Id. at 643.
\textsuperscript{54} See id. at 643–46.
\textsuperscript{55} See id.
\textsuperscript{56} FAVRE, supra note 32, at 204.
\textsuperscript{57} 1821 Me. Laws 55, 57–58, as reprinted in FAVRE, supra note 32, at 206.
\textsuperscript{58} See FAVRE, supra note 32, at 206.
\textsuperscript{59} See 1846 Vt. Acts & Resolves 35, 35, as reprinted in FAVRE, supra note 32, at 205.
\textsuperscript{60} Id.
\textsuperscript{61} See id.
protecting the owner's property interest in the animal, but also for protecting the animal for her own sake.

In 1822, the courts in New York ruled "that wanton cruelty to an animal . . . [w]as a misdemeanor at common law." Cruelty against domestic animals was outlawed in New York in 1828, in Washington in 1859, in California in 1868, and in Florida in 1889. These early anti-cruelty laws, however, were still often promulgated for human benefit, as many people believed that cruelty to animals might lead to cruelty against humans. The concern of the laws, therefore, "was for the moral state of the human actor, rather than the suffering of the nonhuman animal."

As mentioned above, the law remained concerned with protecting animals that were owned and used by humans: only those animals with commercial value. Therefore, it was not yet illegal to torture a dog or a cat.

For example, in an 1856 case, the Minnesota Supreme Court held that a statute making it a crime for anyone to "willfully and maliciously kill, maim or disfigure any horses, cattle, or other beasts of another person" did not apply to dogs. The court stated, "The term beasts may well be intended to include asses, mules, sheep, swine, and, perhaps, some other domesticated animals, but it would be going quite too far to hold that dogs were intended."

What the Minnesota case makes clear is that while nineteenth century animal law had progressed enough to prevent cruel abuse to commercially valuable animals, legislative and judicial bodies were still not concerned with the welfare of animals, but instead were focused on the animals' value to humans. Cattle, which today enjoy little to no protection, were given some minimal protection by the laws since they had commercial value.

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63. BROOKMAN & LEGGE, supra note 33, at 50.
64. FAVRE, supra note 32, at 208.
65. Id.
66. See United States v. Gideon, 1 Minn. 226, 229 (1856) (excluding dogs from a list of "domesticated animals" protected under an animal anti-cruelty statute—thus implying dogs, unlike animals used in agriculture, were not valued enough to deserve protection).
67. See FAVRE, supra note 32, at 207.
68. Gideon, 1 Minn. at 229 (internal quotation marks omitted).
69. Id.
70. See infra Part III.B–C.
71. The laws show that animals that could provide revenue agriculturally—such as horses, cows, donkeys, mules, sheep, and pigs—were given protection against animal
As with today's body of animal law, during the nineteenth century there was a disparity in the protection of animals. Those animals that now receive the most protection—companion animals—received little to no protection from cruelty, while livestock animals were valued enough to maintain a basic level of protection. It would be difficult to conclude that there is some inherent trait in dogs and cats that has always made them worthy of legal protection, while the intrinsic qualities of agricultural animals have always made them unworthy of basic protection. Thus, at first glance, animal protection laws, including Susie's Law, seem arbitrary.

B. The Bergh Era

Henry Bergh's influence, which began around 1866,72 led to laws that provided protection for animals based on their own value as living, sentient beings, rather than merely their value as property.73 Bergh was born in New York City in 1813.74 In the 1840s, he and his wife traveled through Europe.75 While in Spain, Bergh noted a cart driver whose voice "filled his horse with terror."76 In Greece, he wrote that the horses were treated even worse than in Spain, being struck by their drivers when not moving fast enough.77 After witnessing a bullfight in Seville, Bergh "was so upset by what he saw that he wrote a letter to a New York newspaper . . . [protesting] . . . the slaughter of the bullring."78

In 1865, Bergh observed the work of the Royal Society for the Prevention of Cruelty to Animals ("RSPCA") during a visit to England.79 After spending several weeks interacting with Lord

cruelty. See 1821 Me. Laws ch. IV, § 7, as reprinted in MAINE, LAWS OF THE STATE OF MAINE 57–58 (Hallowell, Calvin Spaulding 1822); 1846 Vt. Acts & Resolves 35, 35, as reprinted in FAVRE, supra note 32, at 205; Gideon, 1 Minn. at 229. On the other hand, dogs and cats are consistently excluded from early laws. See Gideon, 1 Minn. at 229; see also Grise v. State, 37 Ark. 456, 459 (1881) (suggesting that the judicial system does not have time to prosecute everyone who drowns a litter of kittens). One of the earliest anti-cruelty laws concerning dogs only protected dogs with commercial value, i.e., dogs that could pull loads. FAVRE, supra note 32, at 211.

72. FAVRE, supra note 32, at 208.
73. Id. at 211 ("The focus of social concern was on the animals themselves.").
75. See id. at 11.
76. Id. (internal quotation marks omitted).
77. Id.
78. Id. at 11–12.
79. Id. at 17.
Harrowby, president of the RSPCA, Bergh returned to the United States and focused his efforts in the New York Legislature to minimize animal cruelty. He successfully obtained a charter from the New York Legislature for the creation of the American Society for the Prevention of Cruelty to Animals ("ASPCA"), an animal interest organization that still exists today.

An early animal anti-cruelty statute in New York prohibited the killing, maiming, or wounding of "any horse, ox or other cattle, or any sheep, belonging to another." Bergh was able to influence the legislature to modify this act to include "any living creature," rather than just those animals of commercial value. This act brought today's companion animals under the protection of the law. Bergh also successfully pushed for legislation requiring the registration of dogs used by businesses to pull loads, thus further including today's companion animals under the law. Until this time, animals with commercial value, such as livestock, received the most, if not the only, protection—in contrast to today, where, although there appears to be more animal protection overall, agricultural animals suffer from less protection. Thus, this was the beginning of a shift in animal protection.

Several cases exemplify the changes that occurred during the Bergh era. In Grise v. State, the issue was whether the defendant had violated a statute that made it a misdemeanor to needlessly kill or mutilate an animal when he struck and killed a neighbor's hog that was on his land. While the statute at issue was progressive in that it protected all animals, the Supreme Court of Arkansas was not as forward-thinking. The court stated that upholding a literal construction of the statute would lead to absurdities: "Society, for instance, could not long tolerate a system of laws, which might drag to the criminal bar, every lady who might impale a butterfly, or every
man who might drown a litter of kittens . . . ."90 The court’s tone shows that, despite the law’s attempt to be progressive in its concern for animals, the thinking of the time had still not caught up to this view, and the judiciary was unwilling to apply this philosophy. Cats, which are among the most protected animals today,91 were not seen by this court as deserving protection since they had no commercial value.92 While the law might have attempted to protect cats, the court showed that commercial value to humans still played a large role in determining which animals should be protected.

As the law began to expand to other domestic but less commercially valuable animals, the focus shifted slightly to include the suffering of the animal rather than merely the financial detriment to the owner. In Horton v. State,93 the defendant was convicted of “cruelly killing a dog” for shooting him with a rifle.94 The statute at issue forbade a person from “cruelly kill[ing]” an animal.95 The Supreme Court of Alabama reversed the conviction since the statute only prevented cruel killings, not mere killings, and the court did not believe that the defendant’s actions had risen to this level.96 The court stated that it could not hold a mere killing to be cruelly done because, if it were to do so, “then he who kills his pig, or ox, for the market, would fall within the letter of the law, and no exception being made in the statute as to the purpose of the killing, we must eat no more meat.”97 The court recognized, however, that the statute was for the “prevention of cruelty to the animal itself,” not for “any offense against the owner of the property.”98 This recognition was a significant advancement in animal law since the focus was not entirely on the human owner.

The shift from laws protecting human property to laws focusing on animal suffering remained narrow during the time of Bergh, focusing on pain rather than death, but allowing pain if it could be

90. Id. at 459.
91. See infra Part III.A (outlining modern developments which heightened the legal status of companion animals, including cats).
92. See Grise, 37 Ark. at 459; United States v. Gideon, 1 Minn. 226, 230 (1856) (noting that animals not serving as food lacked intrinsic value under the law).
93. 27 So. 468 (Ala. 1900).
94. Id. at 468. The Horton court did not specify the dog’s sex, but this Comment will refer to animals with gendered pronouns, rather than “it.”
95. Id.
96. Id.
97. Id.
98. Id.
deemed necessary. In *State v. Roche*, defendants were charged with “unlawfully, wilfully and cruelly overdriving a horse,” resulting in his death. The St. Louis Court of Appeals overturned the conviction, holding that the overdriving of the horse had to be “willful” and noting that merely killing the horse by overdriving was not sufficient to show that the overdriving was willful. While this case again shows some concern for animals, it also shows the very limited scope of animal protection at the time. The statute in *Roche* may again suggest that the legislative reasoning behind the law was to protect the humanity and “decency” of humans by preventing them from doing acts that would seem unnecessarily cruel rather than to protect the animal from unnecessarily cruel acts.

The Supreme Judicial Court of New Hampshire in *State v. Avery*, in which a defendant was charged with “willfully, maliciously and cruelly beat[ing] and wound[ing]” his own horse, clearly stated the general thoughts of this era. The court noted that the anti-cruelty statute was “founded upon a high moral principle, which denounces the wanton and unnecessary infliction of pain, even upon animals created for the use of man, as contrary alike to the principles of Christianity and the spirit of the age.” Thus, the court believed that cruelty should be prevented not for the sake of the animals, but in order to uphold a higher Christian principle.

The court further stated that chastisement of animals as necessary for training or discipline, and if done in good faith and for a proper purpose, is not necessarily malicious even if it is excessive. Instead, the court explained, a person should only be prosecuted if the excessive infliction of pain is done in a “malevolent spirit, and not by any justifiable motive.” Therefore, animals could still be beaten, even excessively, so long as there was a proper purpose for the beating, such as “training or discipline.” While all domesticated animals, including those originally not protected, such as dogs, were beginning to come under the protective scope of the law, the protection remained minimal. Human purposes were still placed

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99. 37 Mo. App. 480 (1889).
100. *Id.* at 481.
101. *Id.* at 482.
102. 44 N.H. 392 (1862).
103. *Id.* at 393.
104. *Id.* at 396.
105. *Id.*
106. *Id.*
107. *Id.*
above animal suffering, thereby allowing an exception to essentially all, if not actually all, forms of animal abuse.

C. Modern Cases

Recent cases have increased the focus on the suffering of animals themselves. The exceptions to animal cruelty laws have become fewer and, in some cases, even nonexistent. In People v. Voelker,108 where the defendant cut the heads off of three live and conscious iguanas, the Criminal Court of New York stated, “[I]t is clear that the justification for killing or torturing the animals must be of the type necessary to preserve the safety of property or to overcome danger or injury.”109 While previously the law allowed broad justifications for animal cruelty, such as the incredibly malleable “training or discipline” exception in Avery,110 the Voelker decision was an advancement in animal law in that animal cruelty is only justified if done to protect property or overcome danger or injury.111

In Aaroe v. State,112 the District Court of Appeals of Florida upheld the felony conviction of a defendant who shot a cat, Smokey, that had crawled under the defendant’s trailer and excited his dogs.113 The statute in Aaroe made it illegal to “intentionally commit[] an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done.”114 In stark contrast to previous court decisions, the Aaroe court upheld the defendant’s conviction for shooting a cat, an act which not only lacked the cruelty required in Roche or Avery,116 but also an act that the court in Grise found beyond protection.117 Notably, the punishment for this crime was imprisonment for up to five years, a fine of not more than $10,000, or both.118 This case highlights the large difference between the views held by nineteenth century and twenty-first century courts on the legal protection of animals.

109. Id. at 181, 183.
110. See Avery, 44 N.H. at 396.
111. Voelker, 658 N.Y.S.2d at 183.
113. Id. at 341.
114. Id. at 341 n.1.
115. Id. at 341.
118. FLA. STAT. ANN. § 828.12(2) (West 2006); Aaroe, 788 So. 2d at 341 n.1.
The wording of the statute in Aaroe applies to “any animal,” illustrating the progression away from protecting only commercially valuable animals. While the statute still requires that the act be intentional and that a death be a “cruel death,” “cruel” does not modify the “excessive or repeated infliction of unnecessary pain or suffering.” This contrasts with the statute in Avery in which “willfully and maliciously” modified “kill, maim, wound, poison, or disfigure.” This also differs from the statute in Roche in which “unlawfully, willfully and cruelly” modified “overdriving a horse.”

The court in Aaroe did not say under which provision the defendant was convicted; however, the “cruel death” provision can be ruled out since Smokey did not die, as can the “repeated infliction of pain or suffering provision,” as Smokey was only shot once. It is likely that the court upheld this conviction under the excessive infliction of pain or suffering provision. It is unlikely that a nineteenth or even early twentieth century court would have found a single, non-fatal shot to a cat to be “excessive.” The fact that a single, non-fatal shot to a cat could be called “excessive” and was worthy of punishment of up to five years in prison or a $10,000 fine speaks strongly to the advancement of animal law from a century earlier.

The greatest change in modern animal anti-cruelty laws is that the laws sometimes allow animal suffering to outweigh human interests, at least for companion animals. In Elisea v. State, the Indiana Court of Appeals upheld the conviction of a defendant who cropped two puppies’ ears without anesthesia and left the wounds unbound and unsutured. The court allowed a veterinarian to testify as to the pain that the puppies likely felt, thereafter holding that the defendant’s actions were prohibited by a statute preventing the “torture” or “mutilation” of animals.

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119. Aaroe, 788 So. 2d at 341 n.1.
120. Id.
121. Avery, 44 N.H. at 394.
122. State v. Roche, 37 Mo. App. 480, 481 (1889).
123. See Aaroe, 788 So. 2d at 341.
124. See id.
125. Compare Avery, 44 N.H. at 396 (allowing excessive infliction of pain unless it was also malicious), with State v. Horton, 27 So. 468, 468 (Ala. 1900) (holding that a single shot that killed a dog did not rise to the level of a cruel killing and thus should not be punishable).
127. Id. at 47.
128. Id. at 48.
Avery, the Elisea court felt that the animals’ interest outweighed the human interest.

Further, the court considered the pain that the puppies felt and even allowed testimony on the subject. While courts during the Bergh era began to consider animal suffering, the suffering could be outweighed by a human purpose. Another important aspect of the Elisea case was the sentence given: a one-year jail sentence. An active jail sentence for animal abuse demonstrates that modern laws consider animal abuse to be a much more serious crime than their nineteenth century predecessors.

State v. Witham demonstrates an even further advancement of modern animal law. In Witham, the defendant purposefully ran over his girlfriend’s pregnant cat. The Maine Supreme Court upheld his conviction under a statute making it aggravated animal cruelty to “intentionally, knowingly or recklessly” cause “extreme physical pain to an animal,” cause “the death of an animal,” or “[p]hysically torture[] an animal.” Unlike previous laws that required that a human’s act of abuse toward an animal be intentional or even cruel, this statute allows conviction even if the act is done recklessly and not intentionally. The wording of this statute greatly broadens the scope of what constitutes animal abuse by including even reckless acts. This change represents a notable advancement in modern animal law.

If an anti-cruelty statute has an intent requirement, the majority rule, as stated in People v. Alvarado, is that the modifiers “willfully,” “knowingly,” “intentionally,” and “maliciously” refer to general, not specific, intent crimes. The Alvarado court explained that, as a rule, “intentionally” only requires that a defendant intend to do the act that is prohibited and not that the defendant know that the act is prohibited. Accordingly, one who violates an animal abuse statute in a majority rule jurisdiction, such as a statute preventing the

129. See Avery, 44 N.H. at 396.
130. Elisea, 777 N.E.2d at 48.
131. Id. at 51.
133. Id. ¶ 3, 876 A.2d at 41.
134. Id. ¶ 5, 876 A.2d at 41–42 (quoting ME. REV. STAT. tit. 17, § 1031(1-B) (Supp. 2003)).
135. See tit. 17, § 1031(1-B).
136. 23 Cal. Rptr. 3d 391 (Ct. App. 2005).
137. Id. at 396.
138. Id. (quoting People v. Ramsey, 94 Cal. Rptr. 2d 301, 308 (Ct. App. 2000)) (internal quotation marks omitted).
torture of an animal, must not be found to have intended to torture the animal, but rather must have only intended to act in the way that he acted.\footnote{See, e.g., id. at 398.} While modifying an animal abuse statute with “intentionally” limits the scope of who may qualify as an offender, this is not a substantial limitation on the statute.

Thus, the trend in modern animal law is toward increased protection. There is a greater focus on the suffering of the animal involved. Also, there are fewer exceptions that allow a defendant to justify his cruel acts toward an animal. In interpreting a statutory requirement of intent, most courts will find that the only intent required is that the defendant intended to do the act that he committed. Now, animal law’s purpose is to protect the animal, rather than merely to benefit mankind in a way that tangentially results in protecting the animal.\footnote{See supra Part II.C.} Commercial value is less of a consideration than it was under common law: any “animal,” with prescribed exceptions, is protected under most anti-cruelty statutes, including under Susie’s Law.\footnote{See supra Part II.C.; see also supra Part I (exploring Susie’s Law in detail and its effect on animal protection).} As will be discussed below, however, the laws have exempted some animals from this increased protection. This has led to the gaping disparity between companion and agricultural animals.

III. CURRENT DIVISION OF THE LAWS

While the previous Part detailed the advances in animal law, this Part will discuss how, although animal anti-cruelty statutes as a whole have become more protective, not all animals have benefited equally from this increase in protection. Companion animals, such as dogs and cats, have steadily gained more protection, but agricultural animals, such as cattle, chickens, and pigs, have lost almost all protection under the law.

A. Companion Animals

The recent update to North Carolina’s animal cruelty law, Susie’s Law, exemplifies the current trend in animal law as a whole.\footnote{See supra Part I.} Susie’s Law makes intentional starvation of an animal a felony\footnote{N.C. GEN. STAT. § 14-360(a1) (2011).} and increases the punishment for torturing, beating, maiming, mutilating,
poisoning, or killing an animal to a higher class of felonies. However, even after the enactment of Susie's Law, agricultural animals remain excluded from North Carolina's definition of "animal." While dogs, cats, and other pets are able to benefit from the law, cows, pigs, and chickens—animals of commercial value that in earlier times would have received more protection than dogs or cats—receive no benefit at all from the statute.

Companion animals are moving toward a status of more than mere property. A New York court overruled prior precedent in 1979 and held that "a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property." Notably, the court referred to a "pet," rather than an "animal," thus giving companion animals a special legal status. Similarly, in the Texas case Bueckner v. Hamel, Justice Andell stated in his concurring opinion that a dog worth only ten dollars on the market could be "a highly valued companion whose loss would be deeply felt" and that "[p]eople who love and care for animals should not be forced to accept as compensation for their loss the amount that the animal would bring in the market." In determining the value of a dog for legal purposes, Justice Andell stated the "true rule" is that the dog's value "may be either a market value, if the dog has any, or some special or pecuniary value to the owner, which may be ascertained by reference to the usefulness and services of the dog."

While market value is still the main way courts determine damages for injury or death of companion animals, some courts, in line with Justice Andell's concurring opinion, have found that harm to pets justifies additional damages. For example, a California jury awarded a dog owner $39,000 in damages, $30,000 of which was given for the "intrinsic" or "special value" of the dog.

144. § 14-360(b).
145. § 14-360(c)(2)–(2a); see supra Part I.
147. Id.
149. Id. at 374 (Andell, J., concurring).
150. Id. at 375 (quoting Heiligmann v. Rose, 16 S.W. 931, 932 (Tex. 1891)) (internal quotation marks omitted). Justice Andell went on to state that, due to their characteristics, he considers animals to "belong to a unique category of 'property' that neither statutory law nor caselaw has yet recognized," and that the "law should reflect society's recognition that animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live." Id. at 377–78.
151. FAVRE, supra note 32, at 138.
152. R. Scott Nolen, California Dog Owner Awarded $39,000 in Veterinary Malpractice Suit, J. AM. VETERINARY MED. ASS'N NEWS (Apr. 15, 2004), http://www.avma.org
Although still slight, there is more willingness by the courts to award damages for the mental pain and suffering of pet owners whose pets have been harmed. The Third Circuit, in Brown v. Muhlenberg Township,\(^\text{153}\) held that an emotional distress claim for injury to a pet could, in fact, succeed in certain circumstances, such as “where it is shown that a police officer’s attention was called to the severe emotional distress of the pet’s owner, he hesitated before shooting, and he then attempted to fire five bullets into the pet within the owner’s view and without justification.”\(^\text{154}\) While relatively few courts have taken this stance on emotional distress claims, this holding is a step forward in recognizing animal rights.\(^\text{155}\)

A few courts also allow damages for the mental pain and suffering that comes from the loss of a pet’s companionship.\(^\text{156}\) These claims often succeed at the trial level but are generally reversed on appeal.\(^\text{157}\) In Brousseau v. Rosenthal,\(^\text{158}\) when the plaintiff’s dog died without justification at the defendant’s kennel, the court ordered damages for the plaintiff, taking into consideration both loss of companionship and loss of protective value of the dog, a mutt and a gift.\(^\text{159}\) In making its decision, the court stated: “Resisting the temptation to romanticize the virtues of a ‘human’s best friend,’ it would be wrong not to acknowledge the companionship and protection that Ms. Brousseau lost with the death of her canine companion of eight years.”\(^\text{160}\)

Additionally, a Seattle district court judge ordered a defendant, whose dog had fatally mauled the plaintiff’s cat, to pay the plaintiff $45,480, including “$30,000 for the loss of the cat and $15,000 for emotional distress.”\(^\text{161}\) While damages for loss of companionship and emotional distress are still not the norm in animal cruelty cases, they

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\(^{153}\) 269 F.3d 205 (3d Cir. 2001).

\(^{154}\) Id. at 218–19.


\(^{156}\) See FAVRE, supra note 32, at 156.

\(^{157}\) Id. at 157.


\(^{159}\) Id. at 286.

\(^{160}\) Id. at 286–87.

\(^{161}\) FAVRE, supra note 32, at 157; see Warren Cornwall & Craig Welch, Judge Awards $45,480 in Cat’s Death, SEATTLE TIMES, May 9, 2005, at A1.
are occasionally allowed, showing the advancements for companion animals under the law.

Further, as evidenced by Susie’s Law and in state actions, such as Alabama’s sentencing of Juan Daniels to nine years in prison for torturing a dog, courts and legislatures are becoming more willing to give prison sentences for harming pets. Companion animals seem to be moving toward a status of “Living Property, which consists of property that can possess defined legal rights of their own.” In contrast, the first conviction for animal abuse to an agricultural animal on a factory farm did not occur until 1999, and there have been incredibly few convictions since that time, despite vast evidence of abuse.

Companion animals have reached a point where humans have legal responsibilities for them. For example, there is often a duty of care that attaches to animals, such that the owner must provide a basic level of care. For example, a Minnesota statute states that “[n]o person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.” However, these duty of care statutes also often have exemptions for agricultural practices. For example, Michigan requires that an “owner, possessor, or person having the charge or custody of an animal shall” provide the animal with “adequate care,” which means “sufficient food, water, shelter, sanitary conditions, exercise, and veterinary medical attention in order to maintain an animal in a state of good health.” These provisions do not apply, however, to “[f]arming or a generally

163. FAVRE, supra note 32, at 431.
164. The first felony indictments for cruelty to agricultural animals, which were later dropped to misdemeanors, were issued in 1999 based on video footage of farm workers beating pregnant sows, skinning a pig alive, and cutting off a conscious pig’s leg. See Hogs Mutilated and Beaten, PET-ABUSE.COM, http://www.pet-abuse.com/cases/3001/NC/US/ (last visited Feb. 22, 2012); Investigation of North Carolina Pig Farm Results in Historic Felony Cruelty Convictions, PETA (Apr. 2000), http://www.peta.org/about/victories /Investigation-of-North-Carolina-Pig-Farm-Results-in-Historic-Felony-Cruelty-Convictions.aspx. The first charges of animal cruelty to agricultural birds came in 2008 based on allegations of “stomping on turkeys, punching them, beating them with pipes and boards, and twisting the birds’ necks repeatedly,” and even “shoving a broomstick down a turkey’s throat.” RaeLeann Smith, Factory-Farm Workers Face First-Ever Felony Cruelty Charges, ENCyclopedia BRITANNICA BLOG (Feb. 16, 2009), http://www.britannica.com /blogs/2009/02/factory-farm-workers-face-first-ever-felony-cruelty-charges/.
165. See infra Part III.C.
166. MINN. STAT. ANN. § 343.21(2) (West 2004).
accepted animal husbandry or farming practice involving livestock."  

There may also be a duty to provide veterinary care to companion animals. In *State v. Dresbach*, the Ohio Court of Appeals upheld the defendant's conviction for not providing veterinary care to a dog with hookworms under a statute providing that no person shall "[t]orture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water." While the duty to provide veterinary care is not clearly stated in the statute, the court read the definition of "torture" in the act to include a duty to provide such care. The definition being "every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief." Under the court's reasoning, an owner would be guilty of torturing an animal in "situations where an animal suffers needlessly because of the owner's failure to seek critically necessary veterinary care, if such care represents a reasonable remedy." There is still, however, a split among courts concerning the duty to provide veterinary care.

The duty to provide care to animals also prevents animal hoarding. Illinois was one of the first states to add hoarding to its animal cruelty law. The Illinois statute defines a "companion animal hoarder" as a person possessing "a large number of

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168. § 750.50(11)(f) (West Supp. 2011).
170. OHIO REV. CODE ANN. § 959.13(A)(1) (LexisNexis 2010); Dresbach, 702 N.E.2d at 515.
171. Dresbach, 702 N.E.2d at 516.
172. § 1717.01(B).
173. Dresbach, 702 N.E.2d at 516.
174. See People v. Sanchez, 114 Cal. Rptr. 2d 437, 448 (Ct. App. 2001) ("The fact [defendant] never saw the chow attack the puppy does not negate the gravamen of the offense that he was aware the puppy was injured and did nothing to treat its wounds."); People v. Olary, 170 N.W.2d 842, 843-44 (Mich. 1969) (holding that a farmer's failure to provide medical care to his injured cattle, even if he did not cause the injury, was sufficient to support a finding of cruelty under an animal anti-cruelty statute); People v. Mahoney, 804 N.Y.S.2d 535, 536 (App. Div. 2005) (holding that a jury charge defining sustenance to include veterinary care and adequate shelter to maintain the dog's health and comfort properly conveyed the appropriate law). *But see* People v. Arroyo, 777 N.Y.S.2d 836, 842-47 (Crim. Ct. 2004) (holding that a statute requiring the provision of "necessary sustenance" to an animal was unconstitutionally vague and did not give notice that a pet owner must provide veterinary care to a terminally ill animal).
175. FAVRE, *supra* note 32, at 284.
companion animals . . . [who] fails to or is unable to provide what he or she is required to provide . . . [and who] keeps the companion animals in a severely overcrowded environment." Further, the animal hoarder must "display[] an inability to recognize or understand the nature of or ha[ve] a reckless disregard for the conditions under which the companion animals are living and the deleterious impact they have on the companion animals' and owner's health and well-being."

The statute anticipates that a companion animal hoarder will violate Section 3 of Illinois's Humane Care for Animals Act, which includes such categories as "Owner's Duties," "Cruel Treatment," and "Aggravated Cruelty." Further, under each of these three categories, the Act states that if the convicted person is a companion animal hoarder, then "the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation." Thus, the law here shows a concern with protecting animals from cruel conditions, even if the owner does not have the intent to harm the animals but merely has an "inability to recognize or understand the nature of" the situation.

Hoarders often claim to love their animals, arguing that they are just trying to take care of them. Laws against hoarding, then, set a fairly high standard of animal care, since they eliminate the intent requirement and put animal interests above a potentially meaningful human interest. This advancement in the law is only for companion animals. For example, the Illinois law refers to a companion animal hoarder, excluding all non-companion animals.

There is one situation, however, in which a form of companion animal hoarding is allowed—puppy mills. "A puppy mill is usually a small business, perhaps a family business, where the goal of selling puppies dominates and the care for the breeding mothers as well as the puppies becomes secondary." In State v. Johnson, for

176. 510 ILL. COMP. STAT. ANN. 70/2.10 (West 2004).
177. Id.
178. See id.
179. 510 ILL. COMP. STAT. ANN. 70/3 to 3.02 (West 2004 & Supp. 2011).
180. Id.
181. See id. at 70/2.10.
182. FAVRE, supra note 32, at 283.
183. See 510 ILL. COMP. STAT. ANN. 70/2.10.
184. FAVRE, supra note 32, at 265.
example, the Tennessee Court of Criminal Appeals upheld a conviction of eleven counts of animal cruelty against husband and wife defendants who owned and operated a puppy mill with approximately 350 dogs. Each of the eleven counts charged that the defendants "did unlawfully and knowingly confine an animal in a cruel manner and did unreasonably fail to provide necessary care for an animal in their custody," a violation of the Tennessee Code. In discussing the sufficiency of the evidence, the court noted that the defendants had "in excess of 350 dogs on their premises," all living in "filthy and unsanitary" conditions, with "[p]oor, or nonexistent, means of cooling or even circulating the air," which created a foul, ammonia-like smell. "A number of the dogs were not provided food or water and what food was made available was often unsanitary, with water green in color." Further, "[m]any of the dogs and puppies were kept in very crowded and inhumane conditions," being in need of "necessary veterinary treatment," and having coats with extensive matting problems. The facility was full of feces, and "huge numbers of maggots" were infesting the feces in one cage. Some "puppies were kept on wire mesh, which allowed large amounts of feces to collect on the unemptied trays beneath their cages, and trapped them, as their legs slipped through, making them immobile." The court found that this evidence would be sufficient for a reasonable trier of fact to find "that the defendants unlawfully and knowingly confined the dogs in a cruel manner and unreasonably failed to provide necessary care." While puppy mills often have some of the worst conditions for companion animals allowable, the court showed there is a clear limit to what is allowed and that cruelty to animals will not be permitted.

Companion animals have, thus, steadily gained more rights as time has progressed. Although companion animals had little to no protection in early colonial law, they are now the animals that enjoy

/johnsonjudy%26stanley.pdf.

186. Id. at 26.

187. Id. at 25 (internal quotation marks omitted); see also TENN. CODE ANN. § 39-14-202 (2010) ("A person commits an offense who intentionally or knowingly . . . [f]ails unreasonably to provide necessary food, water, care or shelter for an animal in the person's custody [or] . . . [t]ransports or confines an animal in a cruel manner . . . ").

188. Johnson, slip op. at 26.

189. Id.

190. Id.

191. Id.

192. Id.

193. Id.
the greatest protection with humans even having duties to provide care, sustenance, and humane and sanitary living conditions. The law is beginning to treat companion animals as something more than property—as something “between a person and a piece of personal property.” The courts are slowly beginning to reflect this progression as some are awarding damages based not only on market value, but also on intrinsic value, emotional distress, or loss of companionship. Further, punishments for animal abuse, as seen by the enactment of Susie’s Law, are also increasing with respect to companion animals.

While there is a trend of improvement in animal protection laws, the next section explains that this improvement is not shared by all animals. While the law espouses humane conditions for companion animals, the law is silent on the abuse of agricultural animals.

B. Agricultural Animals

Laws currently in effect in the United States provide a scarcity of protection for agricultural animals. Today, agricultural animals, including cows, pigs, chickens, and other poultry, are “the largest group of animals exploited by the United States.” While anti-cruelty laws have increased their overall protection of “any animal,” the definition of “animal” often excludes agricultural animals. Indeed, “Eighteen states exempt the practice of slaughtering animals for food, with only some states specifying that a humane method of slaughtering must be used.” Thirty states allow branding, castrating, and dehorning, and Iowa and Utah do not consider livestock to be “animals” under their animal protection statutes. California, unlike most states, has a humane slaughter regulation that applies to chickens; however, the regulation does not apply to “spent hens,” defined as “older chicken hens which are considered too unproductive to retain as egg-layers.”

196. See supra Part II. 
197. See supra notes 22–26 and accompanying text; infra notes 205–09 and accompanying text.
198. Engelman, supra note 195, at 342 (citation omitted).
199. Frasch et al., supra note 15, at 77.
202. § 1246.1(b).
hens" exemption was upheld in 2003 when two factory farms used wood-chippers to kill 30,000 live "spent hens." Neither the farm workers nor owners were prosecuted because they did not violate California's anti-cruelty law.

Federal statutes are also of little help to agricultural animals. The Animal Welfare Act, passed in 1970, is one of the major sources of protection for animals in the United States today, yet it only covers animals used for "research, testing, experimentation, or exhibition purposes, or as . . . pet[s]." The Act does not include agricultural animals because it exempts, among other animals, "livestock or poultry, used or intended for use as food or fiber." Due to this farm animal exemption, the Act specifically exempts more than ten billion animals killed yearly on factory farms.

Left without protection, these animals may be treated in whatever way is most efficient for factory farm operators. Lack of regulation allows for mass confinement and feedings in factory farms, also called Concentrated Animal Feeding Operations ("CAFOs"). A CAFO, according to the Environmental Protection Agency ("EPA"), is a form of Animal Feeding Operation ("AFO") that meets certain EPA criteria. The EPA defines AFOs as entities that "congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures, fields, or on rangeland." CAFOs, which produce "more than 99 percent of all farmed animals raised and slaughtered in the United States," contain unnaturally large numbers of animals in

204. Id.
207. § 2132(g)(3).
208. Engelsman, supra note 195, at 332.
210. See Dowding, supra note 209; Factory Farming, supra note 209.
212. Id.
213. Factory Farming, FARM FORWARD, supra note 19.
closely confined spaces: “Cattle feedlots generally contain thousands of animals in one place, while many egg-laying businesses house one million or more chickens.”\textsuperscript{214} The animals are confined indoors, preventing them from engaging in their normal behaviors and providing them with “little or no access to sunlight and fresh air.”\textsuperscript{215}

The Humane Slaughter Act\textsuperscript{216} is one of the few laws purporting to protect agricultural animals. Enacted in 1958, the Humane Slaughter Act states that “[n]o method 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.”\textsuperscript{217} What this Act means by “humane slaughtering” is that “before being shackled, hoisted, thrown, cast, or cut,” all “cattle, calves, horses, mules, sheep, swine, and other livestock . . . [must be] rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective.”\textsuperscript{218} The Humane Slaughter Act has an exemption for “the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries.”\textsuperscript{219} This exemption includes the rituals of Judaism and Islam, where sacrificial animals are lifted up by one or both of their back legs and, while hanging upside down, their throats are cut, causing them to bleed to death for up to eight minutes.\textsuperscript{220} In addition to bleeding, these animals, conscious and frightened, tend to kick and thrash, breaking their bones and tearing ligaments.\textsuperscript{221}

The meaning of the term “other livestock” in the Humane Slaughter Act has been defined by the United States Department of Agriculture so that the term does not include chickens or other poultry,\textsuperscript{222} which make up over ninety-two percent of the ten billion animals slaughtered annually in the United States.\textsuperscript{223} These birds are killed by various means that can reasonably be said to cause a significant amount of pain, such as being immersed in boiling water.\textsuperscript{224}

\textsuperscript{214} Factory Farming, SUSTAINABLE TABLE, supra note 209.
\textsuperscript{215} Id.
\textsuperscript{217} § 1902.
\textsuperscript{218} § 1902(a).
\textsuperscript{219} § 1902(b).
\textsuperscript{220} Engelsman, supra note 195, at 334.
\textsuperscript{221} Id.
\textsuperscript{222} 9 C.F.R. § 301.2 (2011).
\textsuperscript{223} Engelsman, supra note 195, at 335.
\textsuperscript{224} Id.
While the Animal Welfare Act provides virtually no protection to agricultural animals, the Humane Slaughter Act provides little more, allowing painful procedures and production of animals and exempting ninety-two percent of all agricultural animals.

Another federal law regulating agricultural animals is the Livestock Transportation Act, enacted in 1906 to limit the amount of time that animals could be held without food or water to twenty-eight hours.\(^2\) Although scientific research done by the European Commission shows that transporting animals for twenty-eight hours without food or water is too long, the law has not changed.\(^2\) According to the European Union, cattle need rest, food, and water after only fourteen hours of transport; the European Commission states that fourteen hours is the maximum amount of time that may still be considered "humane."\(^2\) According to the European Commission, nine hours would be better, with eleven hours of rest immediately following.\(^2\) Although the European report suggests that twenty-eight hours without food or water is inhumane,\(^2\) United States federal law allows animals to be confined for thirty-six hours when the owner requests an extension, without requiring a reason for the extension.\(^2\) Additionally, sheep may be legally confined as long as thirty-six hours without food, water, or rest as long as the twenty-eight hour period of confinement ends at night.\(^2\) The Livestock Transportation Act is another law providing only minimal protection for factory farm animals, again leaving factory farm operators free to choose how to treat the animals on their farms. Published reports estimate that 260,000 pigs and 120,000 cattle die annually "as a result of transport."\(^2\)

Although an initial look at the laws concerning agricultural animals may reveal obvious differences in comparison to those laws protecting companion animals, the following section highlights those differences, showing specifically the conditions that are allowed as a result of the lack of legal protection for agricultural animals. The treatment of agricultural animals is noteworthy by itself; however, it


\(^{226}\) Engelsman, supra note 195, at 337.

\(^{227}\) Id.

\(^{228}\) Id.

\(^{229}\) Id.


\(^{231}\) § 80502(a)(2).

takes on new meaning when compared with the treatment of companion animals.

C. The Disparity

The true disparity between the law's protection of agricultural animals and the law's protection of companion animals comes from the treatment of the animals that is allowed by the differing laws. New animal protection statutes, like Susie's Law, suggest a steady, increasing concern for animal suffering in the law. Unfortunately, the law is not providing increased protection for all animals equally. This theme of increased protection has almost completely excluded today's agricultural animals. There were approximately 8.7 billion chickens,\(^233\) 110.9 million pigs,\(^234\) 34.1 million cattle, and 851,500 calves killed for agricultural purposes in the United States in 2011.\(^235\) In the United States alone, "over 20 million chickens are slaughtered every 24-hours."\(^236\) These animals are not merely killed, but they are allowed to suffer in ways that would not be allowed for companion animals.\(^237\) Thus, animal law, on its face and at its core, is inconsistent: It purports to be a policy of animal protection, but openly provides differing standards of care for agricultural animals and companion animals.

For example, egg-laying chickens (also called cage hens or battery hens) are only meant to produce eggs or more egg-laying hens. As a result, male chicks that come from egg layers are not deemed useful and will be killed as soon as they are born, either by being put into garbage bags and suffocated by "carbon-dioxide induced asphyxiation, or by decapitation."\(^238\) This type of treatment would be illegal if done to companion animals, such as in Aaroe, where shooting a cat was found to have violated a statute making it illegal to "intentionally commit[] an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary

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\(^{235}\) Id.

\(^{236}\) FAVRE, supra note 32, at 292.

\(^{237}\) Compare Part III.A (examining current legal protections for companion animals), with Part III.B (discussing the current lack of legal protection for agricultural animals).

\(^{238}\) FAVRE, supra note 32, at 293.
pain or suffering.” In *Aaroe*, the non-fatal shooting was seen as “excessive.” If the court in *Aaroe* saw shooting a cat as an “excessive” infliction of unnecessary pain or suffering, then suffocating or decapitating the chicks should also be “excessive” under the law, but this is not the case for agricultural animals.

While chicks may be decapitated, iguanas may not. The court in *Voelker* denied the defendant’s motion to dismiss on allegations of animal cruelty where the defendant decapitated three live iguanas, stating that a jury could find the act unjustifiable, even though he allegedly cooked and consumed the iguanas after he killed them. *Voelker* shows a concern with the iguanas’ pain that is not seen with agricultural animals. If the defendant did in fact eat the iguanas, there was some purpose to be found in the killing, and, therefore, it is the manner of killing that a jury could find to be unjustifiable. While iguanas are protected from the cruelty of decapitation, even though they could have been killed for the purpose of providing a meal, chicks go through the same painful process and find no protection under the law. The unfortunate, disparate state of the law is simply that “[t]here are no legal restrictions on the disposal of chicks.”

Chickens face further painful conditions that point to the disparities in the law. Battery hens spend their entire lives in a “battery cage,” which is a wire cage measuring twelve inches by eighteen inches and generally holding six chickens. The chickens cannot do any of their natural behaviors, such as nesting, pecking, dust-bathing, or even walking, and often they cannot stand up at all, sometimes causing their feet to grow into the wire floor of the cage. Chickens raised for meat, or “broiler” chickens, are usually raised in litter on the floor of a warehouse with as many as 40,000 other chickens. These warehouses have no windows and no cooling, although they usually have heating. There is just enough ventilation

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240. *Id.*
242. See *id.* at 182–84.
243. See *id.* at 182.
244. See *id.* at 182–84.
245. *FAVRE*, *supra* note 32, at 293.
247. *FAVRE, supra* note 32, at 293; *see FOER, supra* note 246, at 47–48, 88–89.
248. *FAVRE, supra* note 32, at 293; *see FOER, supra* note 246, at 47–48, 88–89.
249. *FAVRE, supra* note 32, at 293; *see FOER, supra* note 246, at 47–48, 88–89.
250. *SINGER, supra* note 34, at 103; *see FOER, supra* note 246, at 47–48, 88–89.
to keep the birds from suffocating from the ammonia-filled air, resulting from their own waste.\textsuperscript{251} If there is ever a malfunction in ventilation, the birds quickly suffocate.\textsuperscript{252} Broilers also suffocate through "piling," where, in a nervous panic to get to safety, they pile on top of each other, suffocating the lower chickens in the pile.\textsuperscript{253} During the seven to eight weeks the birds live, the litter is not changed and the birds' waste is not removed, damaging the birds' lungs due to the dust, ammonia, and bacteria.\textsuperscript{254}

Furthermore, chickens also suffer physical maladies, such as "ulcerated feet, breast blisters, and hock burns" from the "rotting, dirty, ammonia-charged litter" in which they live,\textsuperscript{255} as well as feather-loss, tumors, foot and leg deformities, and osteoporosis.\textsuperscript{256} Since broiler chickens are raised for meat, they are bred to grow quickly, and, in fact, now grow so fast that their bones, heart, and lungs cannot keep up, leading to crippling leg disorders, lung and heart disease, and sudden death syndrome.\textsuperscript{257} Chickens also suffer from boredom.\textsuperscript{258} The on-farm death rate from stress, injury, or disease can be up to twenty-eight percent of all chickens.\textsuperscript{259} Although courts may hold that companion animals deserve to be treated by a veterinarian,\textsuperscript{260} it seems that courts and lawmakers have not begun to show concern for the conditions that agricultural animals face.\textsuperscript{261}

To prevent chickens from pecking at and injuring one another, as they might do since they cannot establish their own pecking order in the cages, chickens are de-beaked with a hot blade soon after birth.\textsuperscript{262} A bird's beak is not like a fingernail; rather, the beak contains a "thin layer of highly sensitive soft tissue, resembling the quick of the human nail."\textsuperscript{263} De-beaking cuts through the beak, the bone, and the soft

\begin{footnotes}
\footnote{251. SINGER, supra note 34, at 103; see FOER, supra note 246, at 47–48, 88–89.}
\footnote{252. SINGER, supra note 34, at 103.}
\footnote{253. Id.; see FOER, supra note 246, at 47–48.}
\footnote{254. SINGER, supra note 34, at 104; see FOER, supra note 246, at 47–48.}
\footnote{255. SINGER, supra note 34, at 105.}
\footnote{256. SINGER, supra note 34, at 103; see FOER, supra note 246, at 47–48.}
\footnote{257. FAVRE, supra note 32, at 294.}
\footnote{258. See SINGER, supra note 34, at 103.}
\footnote{261. See supra Part III.B.}
\footnote{262. FAVRE, supra note 32, at 293.}
\footnote{263. SINGER, supra note 34, at 101 (citation omitted) (internal quotation marks omitted).}
\end{footnotes}
tissue. This process is very painful, and the pain is thought to last several weeks. See id. at 102. Broilers and egg layers are de-beaked and they may also have their toes removed to discourage fighting. See id. at 102.

Other agricultural animals face similarly harsh conditions, and nearly all are overcrowded at least as much as the puppies in Johnson. Pigs live in overcrowded conditions with no straw or bedding, leading them to bite each others' tails. See FAVRE, supra note 32, at 294. Sows, used for constant reproduction, are kept in individual pens too small to walk or turn around in during the entire two to three months of their pregnancy; the sow may also be chained at the neck. See supra note 34, at 120-21. When ready to give birth, the sow is put in a "farrowing" (meaning "birthing") pen that allows her "almost zero movement." When put in the farrowing pens, the sows may make violent attempts to escape, lasting up to three hours, after which the sows may lay and groan or whine. See supra note 34, at 120-21. The confinement used for sows prevents them from walking ten months out of each year; if artificial insemination is used, the sow may never leave her pen or have room to walk. See supra note 34, at 120-21. Further, piglets are taken from their mothers much sooner than is natural for pigs, causing distress to the mother and piglets. See supra note 34, at 120-21.

Pigs also become bored and stressed, and many die from the stress in a phenomenon called "porcine stress syndrome." As one commentator explained, "[P]igs are so sensitive that they develop neurotic behaviors such as self-mutilation when in captivity." Most pigs live entirely confined indoors, and their lungs are damaged from the ammonia-filled air caused by accumulation of the animals' waste. To help with this waste problem, floors are slated or solid concrete, which results in extraordinarily high rates of foot and leg damage. To prevent tail biting, farmers dock the tails of pigs with

264. See id. at 102.
265. FAVRE, supra note 32, at 294.
266. SINGER, supra note 34, at 120-21.
267. Id. at 126.
268. FAVRE, supra note 32, at 291; see SINGER, supra note 34, at 126.
269. SINGER, supra note 34, at 127.
270. Id. at 128.
271. Id. at 125.
272. Id. at 122.
273. MELANIE JOY, WHY WE LOVE DOGS, EAT PIGS, AND WEAR COWS: AN INTRODUCTION TO CARNISM 26 (2010).
274. SINGER, supra note 34, at 123-24; Getting To Know the Pig Behind Your Bacon, FOOD CONNECT, http://brisbane.foodconnect.com.au/inspiration/agrarian-revolution/getting-to-know-the-pig-behind-your-bacon/ (last visited Feb. 22, 2012) (noting that "60% of breeding sows and 93% of pigs reared for meat live their lives almost entirely indoors").
275. SINGER, supra note 34, at 124.
side-cutting pliers or some other blunt instrument. The on-farm death rate is around fourteen percent of all pigs.

Cattle face similar conditions. Dairy cows are kept in one of the following: “tie-stall barns, where they spend their life tethered by their neck to a stall; free-stall barns, where cattle are kept indoors and provided stalls for milking and rest; or dry lots, which is an area with no vegetation where the cattle are kept between trips to the milking barn.” A dairy cow is milked two to three times a day for ten months of the year, being kept pregnant in order to sustain milk production. Beef cattle are generally raised in dry lots, or indoors in pens. Like pigs, cattle suffer from boredom. Outdoor cattle suffer from exposure to the elements. As with pigs, dairy cattle usually have their tails docked. Around half of all dairy cows develop mastitis, a bacterial infection of their udder, and, being sensitive animals, the cows manifest psychological and physiological distress as a result.

Calves used for veal are chained as newborns in a stall so narrow that the calf cannot turn around, has trouble standing up, and cannot lie flat. Raising veal calves has been called “the most morally repugnant” of all farm practices. The calves are fed only a liquid diet based on milk powder and vitamins, and there is no straw in the stall so that the calves will not eat the straw and ruin the tenderness of their flesh. The liquid formula makes the calves grow quickly; to make them drink it, they are generally given no water. Veal calves are kept anemic, or iron deficient, as iron makes the flesh

276. Id. at 121.
277. Humane Farming Ass’n, supra note 259.
279. SINGER, supra note 34, at 137.
280. Animal Welfare, supra note 278.
281. SINGER, supra note 34, at 140.
282. See id.
283. Id.
284. Animal Welfare, supra note 278.
286. SINGER, supra note 34, at 137.
287. Id. at 132.
288. Id. at 129–31.
289. Id. at 129.
290. Id. at 130.
291. Id. at 134.
292. Id. at 135.
darker and less valuable. They often develop digestive disorders, including stomach ulcers and chronic diarrhea, as a result. The on-farm death rate is approximately four percent of all cattle and calves.

Companion animals are protected from these conditions by laws governing the standards of care for companion animals held in confinement. Agricultural animals, however, enjoy much lower standards of living and care. The living conditions on factory farms are unsanitary to the point of being unhealthy or even fatal, greatly surpassing the conditions allowing for conviction in the puppy mill case of State v. Johnson. The Johnson court noted not only the unsanitary conditions of the puppy mill, but also the poor or nonexistent means of cooling the puppies, the smell of ammonia in the air from the puppies' waste, the overcrowded conditions, the lack of water, and the immobility of the puppies—all conditions which are present on factory farms. The court found these conditions sufficient to allow a trier of fact to find that the defendant "confined the dogs in a cruel manner and unreasonably failed to provide necessary care" and to convict on those grounds. The conditions for agricultural animals, then, would likely support a conviction for cruelty under Johnson, if the animals involved were companion animals.

The treatment of agricultural animals, therefore, contrasts starkly with companion animals. Many states' anti-cruelty statutes prevent the "torture" of animals. Susie's Law, for example, increases the punishment for maliciously torturing, cruelly beating, maiming, mutilating, poisoning, or killing an animal, defining "torture" and "cruelly" to "include or refer to any act, omission, or neglect causing death or serious physical injury to an animal as a result of a wilful act of the owner or of the animal's custodian or chargee" and "include or refer to any act of ill-treatment of an animal which is likely to cause death or serious physical injury to the animal as a result of a wilful act of the owner or of the animal's custodian or chargee."
or permitting unjustifiable pain, suffering, or death.”

If agricultural animals were not generally exempted from protection statutes, then the conditions that these animals face could be seen as a violation of this statute or as causing unnecessary or unjustifiable pain or suffering that is prohibited under most animal anti-cruelty laws.

Furthermore, causing and allowing the physical illnesses of animals to continue would likely be prohibited under Dresbach, which upheld the defendant’s conviction for not providing veterinary care to a dog with hookworms. Agricultural animals face many severe mental and physical ailments that go untreated. As one farm worker stated in reference to pigs, “They all have sores . . . . There’s hardly a pig in there who doesn’t have a sore.” The Dresbach court held that causing, permitting, or allowing “unnecessary or unjustifiable pain or suffering” to continue, “when there is a reasonable remedy or relief,” would violate a duty to provide veterinary care, would be considered “torture,” and would violate anti-cruelty statutes.

There is no doubt that some of the permitted practices on CAFOs cause agricultural animals unnecessary pain. One pig producer stated, in reference to pig tail docking:

They hate it! The pigs just hate it! And I suppose we could probably do without tail-docking if we gave them more room, because they don’t get so crazy and mean when they have more space. With enough room, they’re actually quite nice animals. But we can’t afford it. These buildings cost a lot.

The same external signs that humans use to infer pain may be seen in other species, especially in mammals and birds, since they are most closely related to humans. These signs include “writhing, facial contortions, moaning, yelping or other forms of calling, attempts to avoid the source of pain, appearance of fear at the prospect of its repetition, and so on.” Additionally, animals and humans have similar nervous systems, meaning that animals’ nervous systems respond physiologically in the same way as human nervous

303. § 14-360(c).
305. Dresbach, 702 N.E.2d at 516–18.
306. FOER, supra note 246, at 183 (internal quotation marks omitted).
307. Dresbach, 702 N.E.2d at 515–16 (citations and internal quotation marks omitted).
308. SINGER, supra note 34, at 121.
309. Id. at 11.
310. Id.
disparity in the protection of animals

systems in situations where humans would feel pain. There is no doubt that these animals suffer.

There are several arguments that show that the pain and suffering of agricultural animals is often "unnecessary." First, it might be argued that raising and killing animals for food is unnecessary, as vegetarian diets are at least as nutritionally adequate as diets including meat. Even if one considers meat to be an essential part of life, however, the suffering of agricultural animals is still preventable. As stated above, for example, tail-docking would likely be unnecessary if pigs were given more room. De-beaking is also unnecessary when chickens are given adequate living space. There is no reason to separate mothers and their young so early or provide such highly unsanitary and overcrowded living conditions or to allow animals to suffer such high rates of disease and injury, apart from economic profit. For example, the Johnson court found that the owners “unreasonably” failed to provide “necessary care” for the puppies, even though the overcrowded, unsanitary, and unhealthy conditions likely increased the owners’ economic profit. It is likely unnecessary to kill all male chicks that are born to egg-laying hens. It is also likely unnecessary to keep the animals in such poor living conditions that many of them die at the factory farm before slaughter or during transport to slaughter. The conditions facing agricultural animals would likely not be found to be necessary and would be a violation of animal anti-cruelty statutes, such as the statute in Dresbach, if these animals were treated like companion animals.

Whether the treatment of these animals is "unjustifiable," which some anti-cruelty statutes require, is a more difficult question. If a defendant’s act of cutting the heads off live iguanas, which he later allegedly ate, could be sufficient for a jury to find the infliction of pain unjustifiable, then at least some juries might agree that similar abuse of agricultural animals is also unjustifiable. The problem,

311. Id.
312. See infra notes 393–98 and accompanying text.
313. See Singer, supra note 34, at 121.
314. Id. at 102.
316. See, e.g., N.C. GEN. STAT. § 14-360(c) (2011).
317. People v. Voelker, 658 N.Y.S.2d 180, 183 (Crim. Ct. 1997) (stating that the matter of whether defendant “unjustifiably” committed the acts was best left to the trier of fact and declining to dismiss the case).
however, is that this treatment is not generally considered animal abuse under law, so criminal charges, as stated, are rarely brought.

IV. REASONS FOR THE DISPARITY

The disparate legal treatment of companion and agricultural animals is clear. What is not clear, however, is the reason for this disparity. This Part looks into possible reasons and justifications for that disparity.

A. Character Traits of Companion Animals and Agricultural Animals

An obvious and common justification is that companion animals and agricultural animals are quite different from one another, the former possessing qualities deserving of protection and the latter possessing qualities justifying their slaughter for human use. In truth, however, there are more similarities between companion and agricultural animals than differences. The concurring opinion in *Bueckner v. Hamel* notes that dogs are such beloved pets, often considered members of the family, because of the traits they embody: “These represent some of the best of human traits, including loyalty, trust, courage, playfulness, and love.”318 These traits, however, are not unique to dogs.

Intelligence is prized in dogs and cats, but agricultural animals are often at least as intelligent as companion animals. Pigs are the most intelligent of agricultural animals.319 They are as intelligent and as capable of being trained to respond to commands as dogs.320 Pigs, like dogs, enjoy playing with toys.321 Pigs are also as adept as dogs at problem-solving, and they have a way of understanding other pigs that “has often been assumed to be unique to apes and humans.”322 Pigs “have an understanding of what is going on in other pigs’ minds and make their own decisions accordingly in order to get what they want.”323 Certain pigs were even taught by a scientist to play a video

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319. *SINGER, supra* note 34, at 119.
320. *Id.; see* *FOER, supra* note 246, at 101.
321. *MATTHEW SCULLY, DOMINION* 241–42 (2002) (describing the sophistication with which pigs play with toys and the improvements in pig behavior, which result in higher quality meat).
322. *FAVRE, supra* note 32, at 289.
323. *Id.* (internal quotation marks omitted).
game with a joystick they could operate with their snouts. Surprisingly, the pigs learned the game as quickly as chimpanzees.

Like dogs, pigs are active, inquisitive, and extremely social, forming bonds with other pigs, other animal species, and even humans. Pigs value and seek out close contact with others. They use over twenty vocalizations to communicate with other pigs and, in fact, “[p]igs may be able to recognize and remember up to 20–30 individuals.” Pigs undoubtedly have the courage and loyalty praised in dogs in Bueckner, as they will defend one another and even one another’s piglets. Piglets stay with their mothers even after they are weaned, and “[t]wo or more sows and their piglets usually join together in an extended family,” creating close bonds between one another. Thus, pigs appear to have many of the prized traits of dogs and certainly those traits noted in Bueckner.

Pigs are not the only agricultural animals possessing traits valued by humans. Chickens, perhaps surprisingly, are “highly social animals,” developing a social hierarchy when not enclosed on factory farms. Furthermore, “studies have shown that a flock of up to ninety chickens can maintain a stable social order, each bird knowing its place [in the hierarchy].” Additionally, when not in captivity, chickens will care for other chickens who are ill or injured, and even kill the sick chickens if necessary, showing a basic level of concern for one another and for the flock as a whole. Chickens can even “deceive one another and can delay [present] satisfaction for larger rewards.” Hens also feel stress when put in overcrowded conditions, just as humans do. Chickens make up for their differences in physical appearance from dogs and humans by exhibiting mental capabilities similar to both. Chickens, similarly, possess desirable qualities of sociability and affection.

324. FOER, supra note 246, at 64–65.
325. Id.
326. FAVRE, supra note 32, at 289; see FOER, supra note 246, at 101–02.
327. FAVRE, supra note 32, at 290.
328. Id.
329. Id.
331. FAVRE, supra note 32, at 289–90.
332. Id. at 290.
333. SINGER, supra note 34, at 99.
334. Id. at 100.
335. Id. at 102.
336. FOER, supra note 246, at 66.
337. SINGER, supra note 34, at 113–14.
Cows, too, are not nearly as different from companion animals as one might expect. They are “sensitive animals who manifest both psychological and physiological disturbances as a result of stress.”338 Cows “have a strong need to identify with their caretakers.”339 One farm worker even had a cow lick his face and lean against him for a period of time before he slaughtered her.340 Cows also show the prized trait of affection in that “young calves sorely miss their mothers.”341 For example, “[w]hen cows are weaned, both the cows and calves bellow for about twenty-four hours.”342 Further, “[c]attle will also bellow for departed penmates.”343 Veal calves, particularly, become bored and restless because their environment does not allow them to be as active as they would like to be.344

Thus, while pigs, chickens, and cows may behave differently than dogs or cats, there are few inherent differences in the animals when it comes to the fundamental traits of intelligence, communication, social aptitude, playfulness, loyalty, and affection. For example, a dog may be able to fetch better than a cow or chicken, but perhaps not better than a pig.345 Also, cows, contrary to what some may think, express as much affection toward humans as the average dog or cat. Agricultural animals, then, are only different from companions animals in the way that one species is different from another, or in the same way that a dog is different from a cat. These animals do not show any apparent traits that should allow for or justify their exclusion from the protection of animal anti-cruelty laws. This distinction between companion animals and agricultural animals, then, appears to be arbitrary.

B. The Advent of Factory Farming

Another possible reason for the disparity between legal treatment of companion animals and agricultural animals is the advent of factory farming. One of the earliest examples of the switch from traditional farming to factory farming came in the 1920s when

338. Id. at 137.
339. Id. (internal quotation marks omitted).
340. FOER, supra note 246, at 161–62.
341. SINGER, supra note 34, at 132.
342. SCULLY, supra note 321, at 245 (quoting TEMPLE GRANDIN, THINKING IN PICTURES 168 (1995)) (internal quotation marks omitted).
343. Id. (quoting GRANDIN, supra note 342, at 168) (internal quotation marks omitted).
344. See SINGER, supra note 34, at 135.
345. See FOER, supra note 246, at 25 (observing that pigs “can fetch, run, and play, be mischievous, and reciprocate affection”).
Ms. Cecile Steele of Maryland, who had ordered fifty chicks to expand her flock of egg-laying hens, received 500 chicks by mistake.\footnote{346} Steele kept the chicks, built a shed for them, and raised them indoors for their meat, selling them for a better profit than eggs would have brought.\footnote{347} Other farmers copied Steele, and chickens became the first factory farmed animal, with pigs and cows following in the 1960s.\footnote{348}

Traditional farming, evoking ideas of animals roaming and grazing outdoors, was rarely as “idyllic” for agricultural animals as many people believe.\footnote{349} However, “[t]here was a time when these creatures rated a certain respect from those who reared them for slaughter—unsentimental, and yet shown in a minimal attentiveness to their needs.”\footnote{350} Now, farming is an automated process with animals “[g]enetically designed by machines, inseminated by machines, fed by machines, monitored, herded, electrocuted, stabbed, cleaned, cut, and packed by machines—themselves treated like machines from birth to bacon—these creatures, when eaten, have hardly ever been touched by human hands.”\footnote{351} As a result of streamlining the agricultural production process, meat-producing farms have become less numerous; however, with the substantial increase in human population over the last century, they have become both more efficient and unavoidable.\footnote{352}

While agriculture traditionally consisted of many small farms, with 24% of Americans employed in agriculture before World War II, farming is now handled by only a small number of companies with only 1.5% of Americans currently employed in agriculture.\footnote{353} The rationing of red meat during World War II and the promise of “a chicken in every pot” led agricultural companies to focus on increasing the production of chickens for meat.\footnote{354} Further, government subsidies and cheap corn prices helped concentrate the raising of agricultural animals into a relatively small number of large farming operations.\footnote{355} More than ever, farming is now concerned with

\footnote{346. DANIELLE NIERENBERG, HAPPIER MEALS: RETHINKING THE GLOBAL MEAT INDUSTRY 13 (Lisa Mastney ed., 2005).} \footnote{347. Id. at 14.} \footnote{348. Id. at 14–15.} \footnote{349. SINGER, supra note 34, at 96.} \footnote{350. SCULLY, supra note 321, at 29.} \footnote{351. Id. (internal quotation marks omitted).} \footnote{352. See id. at 29–30.} \footnote{353. Id. at 29; see NIERENBERG, supra note 346, at 6.} \footnote{354. See NIERENBERG, supra note 346, at 15, 17.} \footnote{355. See id.}

When the focus on agricultural animals shifted to a focus on profitability and production, agricultural animals were divided from companion animals. The latter gained protection from laws that were concerned with protecting animals for their own sake. Agricultural animals, however, were placed outside the “sphere of moral consideration,” treated as merely “things used by humans to satisfy [human] desires.” This change in attitude toward agricultural animals is largely the result of modern factory farming practices, whereby agricultural “[a]nimals are treated like machines that convert low-priced fodder into high-priced flesh, and any innovation will be used if it results in a cheaper conversion ratio.” Today there is a significant disparity between the legal protection of companion animals and that of agricultural animals, leaving the latter to face the harsh conditions of factory farms with almost no legal protection at all.

C. Why We Love Dogs, Eat Pigs, and Wear Cows

Although the advent of factory farming may explain why agricultural animals lost nearly all rights, it cannot explain why Americans originally chose to love dogs and cats, while eating pigs, cows, and chickens. Melanie Joy, author of Why We Love Dogs, Eat Pigs, and Wear Cows: An Introduction to Carnism, argues that humans “react differently to different types of meat not because there is a physical difference between them, but because [humans’] perception of them is different.” Humans may view cows and dogs differently because the only contact people often have with cows is when they are eating or wearing them. The human relationship with dogs, however, is often very similar to relationships between people. Dogs are “man’s best friend,” and eating dog meat is “taboo.” “Dogs go with cats, kids, and firemen. We share our food and beds with [dogs], bring them on planes and to doctors, take joy in

356. SINGER, supra note 34, at 97; see NIERENBERG, supra note 346, at 5.
357. SINGER, supra note 34, at 97.
358. Id. (internal quotation marks omitted).
359. JOY, supra note 273.
360. Id. at 12.
361. Id. at 13.
362. Id.
363. FOER, supra note 246, at 24.
their joy, and mourn their deaths." \( ^{364} \) Different cultures have different taboos about meat: \( ^{365} \) "[A] Hindu might have the same response to beef as an American Christian would to dog meat." \( ^{366} \) These different perceptions are a result of the different "schemas," or the "psychological framework that shapes—and is shaped by—[human] beliefs, ideas, perceptions, and experiences, and [that] automatically organizes and interprets incoming information." \( ^{367} \) Humans have schemas for animals, organizing them into groups that are either pets or food. \( ^{368} \)

When humans reject meat from certain animals as inedible, it is generally because we picture the animal alive and with that image comes disgust and refusal to eat it. \( ^{369} \) However, when most Americans see beef, they do not make the connection to the living being; instead, they see the beef only as food and have no trouble eating it. \( ^{370} \) Children are taught to eat meat at an early age, \( ^{371} \) so cows, pigs, and chickens are right away seen by Americans as animals meant for food. Not only is the truth of how meat is made hidden from Americans by the intensive production systems of factory farms, but also the distance between the slaughterhouse and the dinner plate makes it easy for Americans to not know—or to "choose not to know"—where their meat comes from. \( ^{372} \) Further, how humans treat animals informs their perception of them: "The more we don't eat dogs and do eat cows, the more we reinforce the belief that dogs are inedible and cows are edible." \( ^{373} \)

While Joy's reasoning explains why Americans now continue to eat cows, pigs, and chickens, rather than dogs or cats, the question still remains: why exactly have Americans chosen dogs and cats as pets, while choosing cows, pigs, and chickens as those animals deserving of slaughter? One theory suggests that "[s]ome early humans may have started eating meat as a way to survive within their own ecological niche." \( ^{374} \) Archeological findings indicate that the dog

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364. Id. at 29.
365. See Joy, supra note 273, at 13 n.*.
366. Id. at 14.
367. Id.
368. See id.
369. Id. at 15.
370. See id.
372. Nierenberg, supra note 346, at 8.
was the first domesticated animal, likely domesticated around the end of the last Ice Age, about 10,000 to 14,000 years ago.\textsuperscript{375} When early humans were hunting for food, they likely caught some wolf pups and kept them for eating later.\textsuperscript{376} Some pups, however, were not eaten, and as they grew up, a few grew tame to humans.\textsuperscript{377} The first domesticated dogs were likely used by humans to help with hunting other animals for food.\textsuperscript{378} On the other hand, cats may have domesticated themselves, entering human communities around 10,000 years ago for protection from larger wild animals and being tolerated by humans because they caught rodents in the humans' houses and granaries.\textsuperscript{379}

The domestication of dogs and cats may appear to explain their special status as companion animals, but this is not quite so. While it may make sense to favor the first domesticated animal and fellow hunting partner of humans, or to protect an animal that provides some service to humans other than food, not all societies feel this way:

Fourth-century tombs contain depictions of dogs being slaughtered along with other food animals. . . . Hippocrates praised dog meat as a source of strength. The Romans ate “suckling puppy,” Dakota Indians enjoyed dog liver, and not so long ago Hawaiians ate dog brains and blood. . . . And dogs are still eaten to overcome bad luck in the Philippines; as medicine in China and Korea; to enhance libido in Nigeria; and in numerous places, on every continent, because they taste good.\textsuperscript{380}

Cats are still eaten in China, Vietnam, and parts of South America.\textsuperscript{381}

Thus, as Joy writes, human eating habits are based on human perceptions of animals. These perceptions come from what humans


\textsuperscript{376} Clutton-Brock, \textit{supra} note 375, at 8.

\textsuperscript{377} \textit{Id.} at 8, 10.

\textsuperscript{378} \textit{Id.} at 10.

\textsuperscript{379} Nicholas Wade, \textit{Study Traces Cat’s Ancestry to Middle East}, \textit{N.Y. Times}, June 29, 2007, at A8.

\textsuperscript{380} \textit{FOER, supra} note 246, at 26.

are raised to eat, what animals humans interact with, and cultural taboos. The truth at the heart of eating habits, however, is that they are arbitrary. An animal’s standing in society is not based on how early his species was domesticated or how useful his species has been to humankind. What a society eats is based on nothing more than what that society’s ancestors started raising and eating, whether out of convenience or necessity, having no basis in the animal’s intelligence, sensitivity to pain, or affection toward humans. In other words, “The French, who love their dogs, sometimes eat their horses. The Spanish, who love their horses, sometimes eat their cows. The Indians, who love their cows, sometimes eat their dogs.”  

The law reflecting these cultural norms is, thus, arbitrary itself, setting vastly different standards for animals with little logical reason for doing so.

V. GOING FORWARD

If one accepts that there is a discrepancy between the laws protecting agricultural animals and companion animals and that there is no reason for this discrepancy, then the next logical step is to determine what must be done. The first question to consider is whether there is a problem with this disparity. Is it acceptable to treat animals in significantly different ways on an arbitrary basis? In the American legal system, the answer should be no.

The discrepancies in animal law create a problem for the American legal system. Americans like to think of the law as “just.” The Preamble to the United States Constitution itself states, “We the People of the United States, in Order to form a more perfect Union, establish Justice.”

Exactly what “just” or “justice” is may be debated, but a common definition is “the quality of being just, impartial, or fair,” or “conformity to truth, fact, or reason.”

If the law is meant to be just, there must be some justification for treating companion and agricultural animals so differently. Treating one set of animals as if their suffering matters, while condoning the suffering of different animals in similar conditions, cannot be seen as “fair,” “impartial,” or based on “reason,” unless there is a reason to do so. Allowing the disparity due to tradition cannot be a sufficient reason in a true justice system, as this does not alleviate the law’s unfairness, partiality, and lack of logical reason. Further, the law has not always treated agricultural animals with such indifference. At one

382. FOER, supra note 246, at 25.
point, the law afforded them a minimal level of protection. This change in their treatment by the law, then, needs some sort of justification, or else the law must be arbitrary, full of inconsistencies and double-standards of protection. Only a justification for this disparity can relieve animal law of its unwarranted discrepancies. The disparity, however, has no justification; thus, it must be eliminated.

The simplest way to completely eliminate this disparity is to treat agricultural animals and companion animals in the same manner. This would entail bringing agricultural animals under the same laws as companion animals and providing them with the same protections. While changing the laws in this manner would affect several aspects of animal treatment, those animals first and foremost affected would be agricultural animals on CAFOs. As explained above, the current living conditions on CAFOs are much worse than those conditions leading to conviction in the puppy mill case of State v. Johnson. On a most basic level, this restructuring of CAFOs would entail giving the animals room to move about, rather than keeping them immobilized in cages, keeping their living situations sanitary, rather than allowing waste and ammonia to build up on the floor; and prohibiting painful and unnecessary procedures, such as de-beaking and tail docking.

It is doubtful that uniform legal protection for all animals would still allow the slaughter of animals for food. Statutes allowing for harm to companion animals when necessary sometimes add when "necessary to preserve the safety of property or to overcome danger or injury," which would not allow for harm to animals to produce

385. For example, ordinances forbid tethering dogs for more than three hours a day, yet do not prohibit immobilizing veal calves for months. See, e.g., Raleigh Passes Dog Tethering Ordinance, WRAL (June 30, 2009), http://www.wral.com/news/news_briefs/story/4662009/.

386. See supra Part III.C.

387. See State v. Johnson, No. W2001-01272-CCA-R3-CD, slip op. at 26 (Tenn. Crim. App. June 26, 2002), available at http://www.tncourts.gov/sites/default/files/OPINIONS/tcca/PDF/022/johnsonjudy%26stanley.pdf. In upholding the conviction of eleven counts of animal cruelty against the owners and operators of a puppy mill, the court noted that the puppies were kept in cages of wire mesh, which allowed their legs to slip through the bottom and left them immobilized, and that "[m]any of the dogs and puppies were kept in very crowded and inhumane conditions." Id.

388. See id. (noting that the puppies were kept in "filthy and unsanitary" conditions).


Further, it is illegal to eat dog meat in six states, so in those states at least, consumption of agricultural animals would not be allowed if agricultural animals were treated the same as companion animals.

Two related arguments would likely arise. First, treating agricultural animals equivalently to companion animals would be too expensive and unprofitable. Second, since humans need meat for nutrition, these animals must be produced as they currently are. These arguments fail for two main reasons. First, it is not at all necessary for humans to eat animals. “[A]ppropriately planned vegetarian diets are now recognized by many, including the American Dietetic Association, as being nutritionally adequate, and providing healthful benefits in the prevention and treatment of chronic diseases.” The Physicians Committee for Responsible Medicine (“PCRM”) has found not only that meat does not ensure adequate nutrition, but also that “vegetarian diets have remarkable health benefits and can help prevent certain diseases, such as cancer, diabetes, and heart disease.” In fact, “[t]he total direct medical costs in the United States attributable to meat consumption were estimated to be $30–60 billion a year, based upon the higher prevalence of hypertension, heart disease, cancer, diabetes, gallstones, obesity and food-borne illness among omnivores compared with vegetarians.” PCRM recommends a vegetarian diet and states that a vegan diet is the healthiest of all. Further, the 2010 Dietary Guidelines for Americans, published by the United States Department of Agriculture and the United States Department of Health and Human Services, acknowledge that a vegetarian diet, devoid of all seafood, has “been associated with improved health

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391. See FOER, supra note 246, at 24.
392. SINGER, supra note 34, at 121 (noting that pigs’ tails would likely not need to be docked if the pigs were given more room, but that more room would be too expensive); David J. Yount, Eight Arguments in Favor of Eating Meat and Objections Thereto, http://www.mesacc.edu/~yount/text/meatarg.html (last visited Feb. 22, 2012).
395. Craig, supra note 393.
396. PHYSICIANS COMM. FOR RESPONSIBLE MED., supra note 394.
outcomes—lower levels of obesity, a reduced risk of cardiovascular disease, and lower total mortality."\textsuperscript{397} The Guidelines state that "[s]everal clinical trials have documented that vegetarian eating patterns lower blood pressure."\textsuperscript{398} Therefore, eating meat is unnecessary.

Second, aside from the health argument, there is a moral argument for treating agricultural animals more humanely. Although it would be feasible to industrially farm dogs and cats, Americans refrain from doing so. If there is something about companion animals that has warranted human affection, care, and protection and that has pushed the legislatures of individual states to enact these sentiments into law, then agricultural animals should be treated no differently, regardless of cost. Americans spend approximately $41 billion on companion animals each year—"more than the gross domestic product of all but 64 countries in the world."\textsuperscript{399} If companion animals are receiving this much financial support for everything from vet bills to "frilly canine ball gowns,"\textsuperscript{400} then it is certainly not a stretch to require that more financial resources be put into providing better living conditions for agricultural animals.

Individuals, of course, may be disinclined to give up their chicken nuggets or steak.\textsuperscript{401} Personal desire, however, provides no justification in the case of abuse of companion animals. There can be little doubt that the couple in \textit{State v. Johnson} would have preferred to have been left alone, out of court, and free to run their puppy mill as they chose. The law, however, stepped in to provide protection to the dogs in that case based on an ideal greater than the desires of the defendants—the idea that companion animals deserve better treatment than what was given to the dogs there. In the case of agricultural animals, the law should now start providing protection.


\textsuperscript{398} Id.


\textsuperscript{400} Id.

CONCLUSION

Susie's Law is a successful advancement of animal law in North Carolina. However, like other animal laws, while Susie's Law proclaims application to "any animal," its protection is strictly reserved to companion animals, excluding the billions of agricultural animals killed in America annually. Since any minor differences between companion animals and agricultural animals do not merit protection for one class of animals and suffering for the other, the law's blatant division of protection is an arbitrary anomaly in the justice system. There is no reason why the pain that puppies feel because of a slipshod ear cropping merits punishment, while the tail docking of livestock and de-beaking of chickens occurs legally each day. Such obvious inequities cannot command respect for the law or justice system.

The easiest solution for animal law is to extend protection to "any animal," rather than merely companion animals. Providing uniform legal protection to every cow, pig, chicken, dog, cat, and any other animal would allow greater consistency in the law, and it would substantially decrease the suffering of billions of animals. While improving the conditions for animals on factory farms may decrease profitability for producers, legislation shows that Americans value animal protection and generally feel that animal suffering is morally reprehensible. The law should apply this value equally. If one suffering animal deserves protection, why not protect all suffering animals?

ELIZABETH ANN OVERCASH**

402. See supra notes 233–36 and accompanying text.

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