

Yes, Chickens Have Feelings Too. The Recognition of Animal Sentience Will Address Outdated Animal Protection Laws for Chickens and Other Poultry in the United States

JESSICA PARK*

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ABSTRACT

The cages on the truck rattle vigorously with every bump and crevice on the road. The sun continues to blaze while a young, oversized chicken barely finds the strength to stand upright. It cannot support its own hormone-induced weight, and it is crammed against the corner after losing a battle with other chickens for more space. Over twenty-four hours have elapsed since its last meal or drink.

Chickens have adapted and grown alongside the development and industrialization of the United States, and their companionship even predates the official creation of the nation itself. The current state of animal welfare legislation in the United States is reflective of the lack of enforcement and protection of poultry. For example, one piece of legislation—the Twenty-Eight Hour Law—dates back to the late 1870s and has never been updated. Animal welfare and protection remains an unfinished byproduct of social, religious, and political evolution throughout the history of the United States.

Nations and regions that have strong animal welfare laws would view the lack of protection for animals, such as chicken, in the United States as a gross violation of the “dignity of the animal.” Governing bodies, such as the European Union, and nations, such as Switzerland and Austria, have

strong political and social infrastructure that protects chickens, poultry, and other animals, and also communicate these ideals through their education system by creating animal welfare-regulating government bodies.

Recognizing animal sentience—or the ability for an animal to feel and perceive emotion and feeling—is integral to the best animal welfare legislation. It is time for the United States to change its sociopolitical outlook on the sentience of animals.

I. INTRODUCTION

The age-old question is clear: “[t]he issue is, what is [a] chicken?”¹ Fortunately, there is no contract interpretation necessary in this context. Instead, a better reframing of the question is, “what does a chicken feel?” According to the Animal Protection Index (API) provided by the World Animal Protection (WPA), legal systems vary in their answers to this question.² The API compares and assesses the law and policy of different nations regarding animal welfare and protection and provides a score ranging from “A” through “G” (with “A” being the highest and “G” being the lowest) for various categories of animal welfare law.³ When it comes to recognition of animal sentience, Austria and Switzerland have a “B” rating while the United States has an “E” rating.⁴ Another notable category includes “protecting animals in farming,” where the United States received an “E” rating while its Austrian and Swiss counterparts received “B” and “C” ratings, respectively.⁵ Recognizing animal sentience would call for expanding protective legislation to include chickens and other species of animals that may not be protected under United States animal welfare legislation.

This Comment will address the legal framework of animal welfare regulations and standards practiced in the United States, the European Union, Austria, and Switzerland. Additionally, this comment will analyze domestic laws and international laws in order show how the United States can reformulate its regulations and protections for chickens and other poultry to mirror some of the world’s strongest animal welfare nations.

1. *Frigalment Importing Co. v. B. N. S. Int’l Sales Corp.*, 190 F. Supp. 116, 116 (S.D.N.Y. 1960).

2. *See Comparing Countries in the Index*, WORLD ANIMAL PROT., ANIMAL PROT. INDEX, <https://api.worldanimalprotection.org/compare> [<https://perma.cc/F5AS-RMDH>].

3. *Methodology*, WORLD ANIMAL PROT., ANIMAL PROT. INDEX, <https://api.worldanimalprotection.org/methodology> [<https://perma.cc/C5HM-84AD>].

4. *See Comparing Countries in the Index*, *supra* note 2.

5. *Id.*

II. BACKGROUND

A. *Notions of Sentience and its Origins*

Nations with the most protective animal welfare laws formally recognize animal sentience.⁶ Sentience is “a feeling or sensation as distinguished from perception and thought.”⁷ Animal sentience is by no means a new concept, and traces its recognition in Renaissance philosophers, such as Thomas Moore, Montaigne, and Francis Bacon.⁸ This concept was widely accepted in the scientific community in the early nineteenth century by William H. Youatt, an honorary veterinary surgeon of the Royal Society for the Prevention of Cruelty to Animals (RSPCA), who recognized that animals have docility, memory, sociability, and some friendship and loyalty.⁹

By the middle of the nineteenth century, Herbert Spencer, an individualist philosopher who wrote *Principles of Psychology*, which emphasized and postulated that feelings are adaptations, and that feelings combined with memory and reason provide a foreground for animals to process their environment and react accordingly.¹⁰ It was not until the twentieth century that behavioral scientists started to derail any study of animal feelings. William James promoted behaviorism and its concepts of mind and consciousness.¹¹ The understanding, or lack thereof, of animal sentience would inevitably have a huge effect on how to deal with animal welfare.

Strong influences from scientists, such as William James, prolifically spread the lack of consideration of consciousness and feelings of animals in North American schools of psychology.¹² James saw the adaptive nature of an animal’s mental activity as a form of functionalism and survival rather than a form of separate consciousness of feelings.¹³ This pattern of thought

6. *See id.*

7. *Sentience*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sentience> [<https://perma.cc/YHY4-A6G6>].

8. ROD PREECE, *AWE FOR THE TIGER LOVE FOR THE LAMB: A CHRONICLE OF SENSIBILITY TO ANIMALS* 95, 97, 110–11 (UBC Press 2002).

9. W.H. YOUATT, *THE OBLIGATION AND EXTENT OF HUMANITY TO BRUTES, PRINCIPALLY CONSIDERED WITH REFERENCE TO THE DOMESTICATED ANIMALS* 53–54 (1839) (republished by Edwin Mellen Press 2003).

10. HERBERT SPENCER, *THE PRINCIPLES OF PSYCHOLOGY* (Longmen, Brown, Green, and Longmans) (1855).

11. William James, *Does “Consciousness” Exist?*, 1 J. PHIL. PSYCH. & SCI. METHODS 477, 478 (1904).

12. Ian J.H. Duncan, *The Changing Concept of Animal Sentience*, 100 APPLIED ANIMAL BEHAV. SCI. 11, 13 (2006).

13. John K. Burton et al., *Behaviorism and Instructional Technology*, VA. POLYTECHNIC INST. 3, 4 (2004).

was not broken until Donald Griffin began to explore subjective feelings of animals in 1976.¹⁴

B. Development of Science Behind Sentience

Since Griffin, scientific studies began to explore welfare and its connections with the physiological stress response; animals were not just experiencing physical symptoms of stress, they were sentient and could feel stressed.¹⁵ Ruth Harrison, a British animal welfare activist, emphasized animal sentience in a book, which led to a public outcry regarding intensive poultry farming and livestock practices.¹⁶ The British government appointed a committee to address this matter.¹⁷ In 1965, Professor Roger Brambell, the former Head of the Department of Zoology at the University of Bangor in North Wales, presented a report that served to protect an animal's freedoms and needs, which became known as Brambell's Five Freedoms.¹⁸ The Five Freedoms concept is the basis of animal welfare reform proposal for many representative groups.¹⁹ The Five Freedoms include freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury, or disease, freedom to express normal behavior, and freedom from fear and distress.²⁰

Animal welfare is determined by factors, such as physical and mental states, environmental stressors, and a determination through human ethics to observe and interpret the behavior and health status of the animal.²¹ Even if we do not know conclusively what an animal is experiencing feeling-wise, an indication of how positively or negatively the animal is reacting to a circumstance can help guide animal welfare.²²

For example, if we are considering a chicken that we suspect is frightened, we do not need to know if it is experiencing what a human being experiences when being threatened by a savage dog or being trapped in a burning building. In order to assess the chicken's welfare, all we need to know is whether or not it is experiencing something negative. If the chicken is experiencing negative feelings, it would also

14. Duncan, *supra* note 12, at 13.

15. *Id.*

16. *Id.*

17. *Id.*

18. Melissa Elischer, *The Five Freedoms: A History Lesson in Animal Care and Welfare*, MICH. ST. U. EXTENSION (Sept. 6, 2019), https://www.canr.msu.edu/news/animal_welfare_history_lesson_on_the_five_freedoms [<https://perma.cc/SSY8-KU38>].

19. *Id.*

20. *Id.*

21. *Id.*

22. Duncan, *supra* note 12, at 11–19.

be helpful to know how negative these feelings are. Although it is impossible to measure feelings directly, it is possible to get some indication of what an animal is feeling by indirect means. . . .²³

Of all states of suffering and feeling, farm animals are subjected to the most chronic pain due to their poorly-designed environments.²⁴ When hens are placed in battery cages, many suffer from hyperkeratosis on their talons from slipping and injuries from feather-pecking.²⁵ Human-induced procedures, such as beak-trimming and de-toeing, are often performed without anesthetics, despite the hormone injections that have caused skeletal weakness in chickens from growing too fast.²⁶ Although a chicken cannot say it is in pain, studies indicate that when given a choice, chickens gravitate toward a self-administered painkiller feed as opposed to a non-painkiller feed.²⁷

Another type of suffering that indicates sentience is deprivation; similar to how pleasure adds to the quality of life of humans, animals also appear to experience pleasure and boredom.²⁸ States of pleasure and suffering have evolved separately to solve two different types of problems.²⁹ First, negative feelings have evolved to solve need-based situations where there is an immediate threat to fitness from not fulfilling that need, such as not drinking when thirsty or not being able to escape a predator.³⁰ Second, positive feelings have evolved to motivate certain behavior in “opportunity situations,” where the cost to the animal performing the behavior is low because their primary needs are met, but have a chance to improve, such as social grooming and playing.³¹ For example, domestic fowls were thought to dust-bathe for a need-driven behavior pattern, but when prevented from doing so, they did not exhibit negative emotions.³² Instead, it was suggested that such “opportunity situations” merely evoked pleasure for the fowl.³³

23. *Id.*

24. *Id.* at 15.

25. *Id.* Hyperkeratosis is the thickening of the outer layer of skin. *Hyperkeratosis*, HARV. HEALTH PUBL'G (Jan. 2019), https://www.health.harvard.edu/a_to_z/hyperkeratosis-a-to-z#:~:text=Hyperkeratosis%20is%20a%20thickening%20of,corns%20on%20hands%20and%20feet [https://perma.cc/3SE2-UVWB].

26. *Id.*

27. T.C. Danbury et al., *Self-Selection of the Analgesic Drug Carprofen by Lame Broiler Chickens*, 146 VET. REC. 307, 307–11 (Mar. 2000).

28. Duncan, *supra* note 12, at 16.

29. See Tina M. Widowski & Ian J.H. Duncan, *Working for a Dustbath: Are Hens Increasing Pleasure Rather Than Reducing Suffering?*, 68 APPLIED ANIMAL BEHAV. SCI. 39, 39–40 (2000); Duncan, *supra* note 12, at 16.

30. See Widowski & Duncan, *supra* note 29; Duncan, *supra* note 12, at 16.

31. See Widowski & Duncan, *supra* note 29; Duncan, *supra* note 12, at 16.

32. See Widowski & Duncan, *supra* note 29, at 39–53.

33. See Duncan, *supra* note 12, at 16.

This shows that fowls are sentient because they are able to distinguish between situations that are necessary for their survival and situations that are supplementary to their life.³⁴ This is revolutionary because although animal sentience is less complex than that of human beings, animals are capable of having emotional and cognitive responses to outside stimuli that goes beyond mere survival.³⁵ These scientific explorations tend to develop alongside the social attitudes and changes relating to animals throughout the years.³⁶

*C. Factors to Determine the Quality of Animal Welfare
Laws on Sentience*

The Animal Protection Index (API) was created and designed by a working group led by World Animal Protection, and included participation from NGOs, various experts, and research partnerships with the law firm DLA Piper.³⁷ The index lists key issues relevant to improving animal welfare and categorizes each legal system's standards for animal protection, governance structures, and provisions for education and awareness.³⁸ The index has fifteen unique indicators, one of which is a nation's recognition of animal sentience.³⁹

When analyzing the extent of a nation's recognition of animal protection, the API looks for a full formal recognition of sentience, or particular elements of sentience that are applicable to at least all vertebrates, that operates as the basis for animal protection in the nation.⁴⁰ This indicator serves as an overarching qualifier for other indicators, such as a nation's pledged support of the University Declaration on Animal Welfare (UDAW), which received support from political bodies within the European Union.⁴¹

34. *See id.*

35. *See* Widowski & Duncan, *supra* note 29, at 41–42, 49–51.

36. *See* David Walls, *Animal Rights Movement*, SONOMA STATE U., <https://web.sonoma.edu/users/w/wallsd/animal-rights-movement.shtml> [<https://perma.cc/WP8M-STSK>] (discussing the Animal Rights Movement, the evolution of the moment, and where sentient research has expanded under the New Animal Rights Movement).

37. *About the Animal Protection Index*, WORLD ANIMAL PROT., <https://api.worldanimalprotection.org/about> [<https://perma.cc/LZ4M-J9FP>].

38. *Methodology*, *supra* note 3.

39. *Id.*

40. *Id.*

41. *EU Supports Universal Declaration of Animal Welfare*, COMPASSION IN WORLD FARMING (Mar. 26, 2009), <https://www.ciwf.org.uk/news/2009/03/eu-supports-universal-declaration-of-animal-welfare> [<https://perma.cc/KJ3-SRHH>].

As part of their solution-oriented platform, UDAW recognizes animal sentience as a basis for driving change in the global community to protect animals and making animal protection a priority.⁴² Other indicators, such as prohibiting animal suffering generally and specifically within the context of farming, flow from the formal recognition of animal sentience.⁴³

III. THE UNITED STATES

This section will include all applicable law in the United States and analysis of such law.

A. Applicable Law

Current federal laws and regulations in the United States do not incorporate the concept of animals as sentient creatures, which leads to weak animal protection laws, such as the Animal Welfare Act, the Humane Slaughter Act, and the Twenty-Eight Hour Law.⁴⁴

1. Animal Welfare Act

The Animal Welfare Act of 1970 (AWA) expanded the Federal Laboratory Animal Welfare Act (FLAWA) to regulate the use of animals for exhibition, as pets, or for research purposes.⁴⁵ The Act also incorporates standards and certification protocol for humane handling and care.⁴⁶ AWA includes a farm-animal exemption, which inherently excludes chickens.⁴⁷

2. Humane Slaughter Act

Another piece of federal legislation in the United States that excludes protection for poultry is the Humane Slaughter Act (HSA).⁴⁸ The language of the Act is vague and fails to ensure humane methods of slaughter for poultry. The Act states that “no method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public

42. See *Back a Universal Declaration on Animal Welfare*, WORLD ANIMAL PROT., https://www.worldanimalprotection.us/take-action/back-universal-declaration-animal-welfare?from=international_en&_ga=2.34293537.1847419381.1572838697-423116444.1566532963 [https://perma.cc/YCJ3-MQ3C].

43. See *Methodology*, *supra* note 3.

44. Animal Welfare Act, 7 U.S.C. §§ 2131–2159; Humane Slaughter Act, 7 U.S.C. § 1902; Twenty-Eight Hour Law, 49 U.S.C. § 80502.

45. 7 U.S.C. § 2131(1); Joseph Mendelson, III, *Should Animals Have Standing? A Review of the Animal Welfare Act*, 24 B.C. ENV'T AFF. L. REV. 795, 795–96 (1997).

46. 7 U.S.C. § 2143.

47. *Id.* § 2132(g).

48. *Id.* §§ 1901–1907.

policy of the United States unless it is humane.”⁴⁹ The Act also details for humanely slaughtering certain animals, including cattle, calves, horses, mules, sheep, swine, and other livestock.⁵⁰

Methods are considered “humane” if the animals are “rendered insensible to pain by a single blow or gunshot or an electrical chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut.”⁵¹ If slaughtered for religious purposes, then methods are humane when “the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of carotid arteries with a sharp instrument and handling in connection with such slaughtering.”⁵² The term, “and other livestock” does not extend to chickens because the United States Department of Agriculture defines livestock as “cattle, sheep, swine, goat, horse, mule, or other equine.”⁵³ Poultry is not mentioned or included in the Act.

3. *Twenty-Eight Hour Law*

Each year, countless chickens, turkeys, and other livestock travel along state lines with very little protection for their welfare because the Twenty-Eight Hour Law provides no protection for poultry.⁵⁴ Enacted in 1877, the Twenty-Eight Hour Law states without premise that animals can be confined for up to twenty-eight hours without food, water, and rest.⁵⁵ This allowed time period has not changed since the original enactment.

4. *State Law in the United States*

There is no uniformity among states in the United States when it comes to animal welfare and protection laws. For all states, animals are classified as property and considered “objects.”⁵⁶ Certain states, however, are far more progressive in ensuring the health and welfare of animals. For example,

49. *Id.* § 1901.

50. *Id.* § 1902(a).

51. *Id.* § 1901.

52. *Id.*

53. 9 C.F.R. § 301.2 (2005).

54. *See* 49 U.S.C. § 80502.

55. *Id.*

56. Nicole Pallotta, *Brussels Recognizes Animals as Sentient Beings Distinct from Objects*, ANIMAL LEGAL DEF. FUND (Dec. 8, 2018), <https://aldf.org/article/brussels-recognizes-animals-as-sentient-beings-distinct-from-objects/> [<https://perma.cc/SN4D-WEGF>].

Oregon adopted legislation that recognizes animals as “sentient beings capable of experiencing pain, stress and fear.”⁵⁷

In 2008, the ballot measure in California included California Proposition 2, known as the Standards for Confining Farm Animals, which was a new statute that prohibited confining farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs.⁵⁸ Subsequently, the United States Court of Appeals for the Ninth Circuit held in *Cramer v. Harris* that a reasonable person can determine the dimensions of an appropriate confinement that will comply with Proposition 2, despite attempts by opponents of the measure to argue that the measure was too vague because the exact dimensions for housing chickens were not specified.⁵⁹ Although this decision was made at the state level, its impact transcended the borders of California because of states’ desire to penetrate the national market for poultry and eggs through interstate commerce.⁶⁰

B. Development of U.S. Animal Welfare Laws

The development of animal welfare laws in the United States stems back to the early 1640s. In December 1641, the Massachusetts General Court enacted the *Body of Liberties*, which included the prohibition of any tyranny or cruelty toward creatures that are kept for man’s use.⁶¹ The law even mandated a periodic rest for any working cattle.⁶² This Puritan-influenced mandate shows a long historical relationship between religion and animal protection.⁶³ Transnational protestant revivalism and social reform in the early nineteenth century began creating a blueprint for new anticruelty laws in the United States and started developing notions of

57. *Id.*

58. Attorney Gen. of Cal., *Standards for Confining Farm Animals*, U.C. HASTINGS SCHOLARSHIP REPOSITORY 16, 16–17 (2008), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2281&context=ca_ballot_props [<https://perma.cc/B5XL-TGSS>].

59. *Cramer v. Harris*, 591 F. App’x 634, 635 (9th Cir. 2015).

60. *See California Proposition 2, Standards for Confining Farm Animals*, BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_2,_Standards_for_Confining_Farm_Animals_\(2008\)#cite_note-1](https://ballotpedia.org/California_Proposition_2,_Standards_for_Confining_Farm_Animals_(2008)#cite_note-1) [<https://perma.cc/6WVN-BEWZ>].

61. THE BODY OF LIBERTIES OF 1641, *reprinted in* THE COLONIAL LAWS OF MASSACHUSETTS 53 (William H. Whitmore ed., 1890) (“No man shall exercise any Tyranny or Crueltie towards any brute Creature which are usuallie kept for man’s use.”).

62. *Id.*

63. *See id.*

animal mercy.⁶⁴ These notions transitioned into the antebellum activism of the 1850s.⁶⁵

Antebellum activism and cultural thought began a new social movement after the Civil War because the abolition of slavery and the horror of battle brought documentation of thousands of dead soldiers and horses, catalyzing a national movement for kindness toward animals as a marker of advanced civilization.⁶⁶ This new movement sparked the New York Legislature to incorporate state animal protection that was largely modeled after the work of Henry Bergh, a shipping heir, who drafted the articles of incorporation for the American Society for the Prevention of Cruelty to Animals (ASPCA).⁶⁷ By the 1870s, the Gilded Age sparked activists to provide better treatment for laboring animals in an urbanizing world and address the systems of livestock railroad transport.⁶⁸ This new movement ultimately led to the first federal animal welfare legislation in the 1870s—the Twenty-Eight Hour Law, which mandated food, water, and rest stops every twenty-eight hours for animals being transported.⁶⁹

The 1960s and 1970s social justice movements extended to animals concretely when Peter Singer published *Animal Liberation*.⁷⁰ Singer argued that sentient creatures have a right to “equal consideration,” and went so far as to say that “speciesism” was a form of discrimination similar to racism and sexism.⁷¹ Some civil rights groups argued that this view trivialized their struggles.⁷² Other philosophers in the 1980s, such as Tom Regan, started to apply and extend the philosophical notions of deontology to animals.⁷³

The twenty-first century development for animal protection began to incorporate the notions of legal personhood through works from legal activists, such as Steven Wise who used neuroscience to argue that certain

64. Janet M. Davis, *The History of Animal Protection in the United States*, ORG. OF AM. HISTORIANS (Nov. 2015), <https://www.oah.org/tah/issues/2015/november/the-history-of-animal-protection-in-the-united-states/> [<https://perma.cc/2U6K-ACSM>].

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*; see generally Twenty-Eight Hour Law, 49 U.S.C. § 80502.

70. Davis, *supra* note 64.

71. *Id.*

72. *Id.*

73. *Id.*

animals possess the legal right to “bodily liberty” due to their cognitive abilities.⁷⁴ It is yet to extend to all animals.

C. *Legal Analysis*

United States legislation for animal welfare provides overly broad and under-serving authority that protects only the interests of a limited number of species. For example, under the Animal Welfare Act, only some “warm-blooded” laboratory animals are afforded protection; there are exemptions for farm animals, birds, mice, or rats when it comes to experimentation.⁷⁵ Furthermore, the federal Act pertains to research facilities under federal jurisdiction, meaning that roughly 95% of laboratory animals have no federal protection.⁷⁶

The United States must create and implement legislation that will recognize animal sentience in order to provide appropriately calibrated psychological and physiological accommodations for animals in all contexts. By recognizing animal sentience, substantial changes to current animal protection laws can be made that extend protection to chickens and other poultry.

1. *Standards for Humane Methods of Slaughter for Poultry*

The current legislation surrounding the Humane Methods of Slaughter Act of 1958 should extend to apply to poultry by redefining the meaning of the word “livestock.”⁷⁷ The purpose is not to eradicate all commodity use of poultry. There is an apparent lack of protection for poultry animals that are cognizant enough to feel pain and experience every moment of torture that ensues from their lack of accounted-for welfare. Such federal legislation should not be abated by any state statute that negates the purpose of protecting the welfare, sentience, and well-being.

2. *Standards for Chicken Transportation and Confinement*

There needs to be an expansion of the statutory and regulatory scheme surrounding the Twenty-Eight Hour Law because it currently excludes chickens, turkeys, and other birds. Congress’s intent at the time of passing

74. *Id.* (noting the superior cognitive abilities of apes, cetaceans, elephants, and parrots).

75. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (codified at 7 U.S.C. 2132(g)). This Act single-handedly denied protection to 95% of the animals used in United States research facilities.

76. *Federal Laws and Agencies with Animal Testing*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/federal-laws-and-agencies-involved-with-animal-testing/> [https://perma.cc/JKE2-9TPD].

77. *See* The Humane Methods of Slaughter Act of 1958, Pub. L. No. 85-765, 72 Stat. 862.

the Twenty-Eight Hour Law was to prohibit animal cruelty and promote animal welfare, so it seems natural that chickens be included among the animals that should receive animal welfare protection.⁷⁸

There can be a standard for a minimum level of care based on the species of the animal. For example, with transporting chickens, it could be helpful to have proper ventilation and floor surfaces that prevent slipping. A catch-all twenty-eight hour law that is not based in science is not helpful to the variety of species' needs. The European Union recognizes the need for different transport times depending on the type of farm animal.⁷⁹ The European Union regulation on farmed animal transport provides that journey times for "domestic animals of bovine, ovine, caprine and porcine species" shall not exceed eight hours.⁸⁰ When animals are given legally mandated bedding and feeds, pigs may be transported for twenty-four hours with continuous access to water, while all other animals can travel only fourteen hours with a one-hour rest period before traveling a further fourteen hours.⁸¹

Chickens, which are currently not regulated under the Twenty-Eight Hour Law, face a series of harmful and stressful circumstances during transportation, such as food and water deprivation, social disruption, loud noises, and other disruptive circumstances while travelling on truck trailers.⁸² Chickens often die during transport due to overcrowding, overheating, and overpacking.⁸³ Despite recommendations from poultry scientists who suggest not holding more than six chickens in a transport crate, these crates often do not allow chickens to move around and are stacked on top

78. Several courts in the early 1900s reflected and reiterated Congress's intent in their opinions. *See* *United States v. Sioux City Stock Yards Co.*, 162 F. 556, 562 (N.D. Iowa 1908) ("The primary purpose of the statute, as indicated by its title, is to prevent cruelty to animals while being transported by railroad or other means of conveyance."); *United States v. Union Pac. R. Co.*, 169 F. 65, 68 (8th Cir. 1909) ("The real purpose of the legislation in our opinion was to alleviate the condition of dumb animals in transit."); *United States v. S. Pac. Co.*, 157 F. 459, 461 (N.D. Cal. 1907) ("The object and purpose of the act . . . is to insure the humane treatment of animals in interstate transportation of animals upon cars.").

79. *See* Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals during Transport and Related Operations, [2004] O.J. L3/25.

80. *Id.*

81. *Id.*

82. *An HSUS Report: The Welfare of Animals in the Chicken Industry*, HUMANE SOCIETY 8 (Dec. 2013), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-welfare-chicken-industry.pdf> [<https://perma.cc/FCT7-VZUX>].

83. Phillip J. Clauer et al., *Transporting Poultry in a Humane Manner*, VA. COOP. EXTENSION (May 1, 2000), https://www.pubs.ext.vt.edu/content/dam/pubs_ext_vt_edu/2902/2902-1088/APSC-147.pdf [<https://perma.cc/CKN7-VW7G>].

of each other with poor ventilation and heat regulation.⁸⁴ Many chickens, particularly broiler chickens, do not survive the trip.⁸⁵

The economic costs of transporting animals tends to be lower than transporting feed, so animals will be transported to a certain location depending on the geographical differences in the availability and pricing of feed and forage and the development and locality of feedlots and slaughterhouses.⁸⁶ The need for interstate transportation is integral to the process of production since large-scale farming is the predominant farming method in the United States.⁸⁷ Most farm animal transport throughout the United States is meant for the slaughtering process.⁸⁸ Reducing stress is not only better for the animal, but evidence indicates that animals who experience lower levels of stress before death might also produce meat products that are far better for human consumption.⁸⁹ Although it is unlikely that laws would stop the transportation of animals entirely, reducing the hours farm animals are in transport and providing more humane conditions during transport are the most realistic parameters to implement.

3. *Standards for Education on Animal Welfare*

The United States lacks education on animal welfare and should take note of the standards of other nations, such as Austria and Switzerland. According to section 2 of the Austrian Federal Act on the Protection of Animals, the federal government, the states, and the communities are obliged to arouse the understanding of the public and youth for the protection of animals.⁹⁰ Animal welfare education is an integral part of sustainable youth and adult education.⁹¹

84. *Id.*

85. *Id.*

86. See DENNIS A. SHIELDS & KENNETH H. MATHEWS, JR., U.S. DEP'T OF AGRIC., INTERSTATE LIVESTOCK MOVEMENTS 1, 7–10 (2003).

87. See MONICA ENGBRETSON, LONG DISTANCE TRANSPORT AND WELFARE OF FARM ANIMALS 218, 221 (Michael C. Appleby et al. eds., 2008).

88. *See id.*

89. Daisy Freund, *How Animal Welfare Leads to Better Meat: A Lesson From Spain*, ATLANTIC (Aug. 25, 2011), <https://www.theatlantic.com/health/archive/2011/08/how-animal-welfare-leads-to-better-meat-a-lesson-from-spain/244127/> [<https://perma.cc/9MXM-ARNC>].

90. TIERSCHUTZGESETZ [TSCHG] [FEDERAL ACT ON THE PROTECTION OF ANIMALS] § 2, BUNDESGESETZBLATT I [BGBl I] No. 86/2018, as amended, § 2, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2004_1_118/ERV_2004_1_118.pdf (Austria).

91. Margot Michel & Eveline Schneider Kayasseh, *The Legal Situation of Animals in Switzerland: Two Steps Forward, One Step Back – Many Steps to Go*, 7 J. ANIMAL L. 1, 16 (2011), <https://www.afgoetschel.com/de/downloads/legal-situation-of-animals-in-switzerland.pdf> [<https://perma.cc/8EA7-CJFY>].

4. *Standards for Political Infrastructure*

Each state should incorporate a federally regulated center to be staffed with federal employees that serve to protect the interests of animals and animal welfare. The goals of these centers should be to educate and regulate animal welfare laws within their respective zones.

IV. THE EUROPEAN UNION

A. *Applicable Law*

1. *Council Directive 98/58/EC*

In 1998, the European Union implemented Council Directive 98/58/EC to protect animals of all species kept for “the production of food, wool, skin or fur or for other farming purposes, including fish, reptiles or amphibians.”⁹² These rules reflect the Five Freedoms, which include freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury, or disease, freedom to express normal behavior, and freedom from fear and distress.⁹³ In 2009, the Lisbon Treaty amended the Treaty on the Functioning of the European Union (TFEU) to provide for animals in Article 13 of Title II:

In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the EU nations relating in particular to religious rites, cultural traditions and regional heritage.⁹⁴

The European Union eradicated some of the worst animal exploitation methods, such as battery cages for egg-laying hens.⁹⁵ Article 13 of the Treaty on the Functioning of the European Union recognizes animal sentience

92. Council Directive 98/58, 1998 O.J. (L 221) 23, 27 (EC).

93. *The Five Freedoms for Animals*, ANIMAL HUMANE SOC’Y, <https://www.animalhumanesociety.org/health/five-freedoms-animals> [<https://perma.cc/75QP-YT89>].

94. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 13, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

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

and requires participating member states to implement and formulate E.U. policies when it comes to animal welfare.⁹⁶

B. Legal Analysis

The modern animal rights movements within the European Union can be traced back to 1974, when the Council of Europe passed a directive requiring animals to be rendered unconscious before slaughter.⁹⁷ In 1976, the European Convention for the Protection of Animals Kept for Farming Purposes was passed, which required that farm animals be raised in conditions conducive to their “physiological and ethological needs,” which were dependent on every animal’s specific needs and requirements for survival.⁹⁸

With the birth of the modern European Union in 1993 came significant animal welfare reform.⁹⁹ The reform set minimum welfare standards for major classes of farm animals. For example, legislation in 1999 phased out the use of barren battery cages for hens, which were then completely banned in 2012.¹⁰⁰ In 1998, Council Directive 98/58/EC Concerning the Protection of Animals Kept for Farming Purposes passed, which set out general rules for protecting all species kept for production of food, clothing, or other agricultural purposes.¹⁰¹ The Directive was modeled after the Five Freedoms, a concept originally conceived in England and previously adopted by the Farm Animal Welfare Council.¹⁰²

In 2005, the Commission first proposed legislation to improve conditions for broiler chickens.¹⁰³ The legislation took a result-oriented approach that

96. *Animal Protection Index: Austria*, WORLD ANIMAL PROT., <https://api.worldanimalprotection.org/country/austria> [<https://perma.cc/L9S2-T5L4>].

97. See Council Directive 74/577, art. 1, of Nov. 18, 1974, on Stunning of Animals Before Slaughter, 1974 O.J. (L 316) 10 (EC); updated by Council Regulation 1099/2009, art. 1, of Sept. 24, 2009, on the Protection of Animals at the Time of Killing, 2009 O.J. (L 303) 1–30.

98. European Convention for the Protection of Animals Kept for Farming Purposes, 1978 O.J. (L 323) 14–22 (EC).

99. Matthew J. Gabel, *European Union*, BRITANNICA, <https://www.britannica.com/topic/European-Union> [<https://perma.cc/SN8K-AF8M>].

100. Council Directive 1999/74 of July 19, 1999, Laying Down Minimum Standards for the Protection of Laying Hens, 1999 O.J. (L 203) 53, 55 (EC).

101. See Council Directive 98/58 of July 20, 1998, Concerning the Protection of Animals Kept for Farming Purposes, 1998 O.J. (L 221) 23 (EC).

102. *Five Freedoms*, FARM ANIMAL WELFARE COUNCIL, <https://webarchive.nationalarchives.gov.uk/20121010012427/http://www.fawc.org.uk/freedoms.htm> [<https://perma.cc/8PM8-JT79>].

103. *EU Broiler Welfare Proposals Unveiled*, POULTRY SITE (July 5, 2005, 12:00 AM), <https://www.thepoultrysite.com/news/2005/07/eu-broiler-welfare-proposals-unveiled> [<https://perma.cc/D66J-5UTP>].

ensured concrete improvements to the lives of animals. Specifically, its focus was to reduce overcrowding for chickens, set a minimum period of darkness allowed for chickens to rest, and mandate ventilation and fresh litter at all times.¹⁰⁴ Since 2010, all member states have implemented this legislation, which requires data collection at slaughterhouses across the European Union to serve as a basis for future reform.¹⁰⁵

In January 2006, when the rotating presidency of the European Commission was assigned to Austria, the Commission wrote to both the Council and Parliament outlining an Action Plan for the Protection and Welfare of Animals that laid out specific measures to improve animal welfare in the European Union and to further promote it internationally.¹⁰⁶ These measures included upgrading minimum standards for animal protection and welfare; promoting animal welfare-related research; introducing standard animal welfare indicators; ensuring animal handlers and the general public are more involved in animal welfare issues; and supporting further international initiatives to raise awareness of animal welfare.¹⁰⁷

European Union law provides minimum standards for egg-laying hens, especially for housing.¹⁰⁸ Eradicating battery cages, which usually contain a significant number of hens stuffed into a small cage, was a huge step in providing better living conditions for hens.¹⁰⁹ As part of the consideration of the welfare of hens, the Directive allows “enriched” cages, which require a hen to have perches, nests, and litter so that the hens can peck, scratch, and perform other natural behaviors.¹¹⁰ Additionally, feeding and watering times regularly monitored, and transportation measures take into consideration the overall fragility of a chicken’s anatomy and its risk of injury or broken bones in transit.¹¹¹ Although much of Europe’s animal regulation is managed at the European Union level, there still remains a spectrum within domestic legislation of member states. On the animal-friendly end of the spectrum,

104. European Commission Press Release IP/07/630, Commissioner Kyprianou Welcomes Council Agreement on Animal Welfare Rules for Broilers (May 8, 2007).

105. *Id.*

106. *Communication from the Commission to the European Parliament and the Council on a Community Action Plan on the Protection and Welfare of Animals*, COM (2006) 13 final (Jan. 23, 2006).

107. *Id.*

108. See Council Directive 1999/74, *supra* note 97.

109. See Stephanie J. Engelsman, “World Leader” – At What Price? A Look at Lagging American Animal Protection Laws, 22 PACE ENV’T L. REV. 329, 352 (2005).

110. Council Directive 1999/74, *supra* note 97.

111. Engelsman, *supra* note 109.

Switzerland and Austria made strides toward constitutional protection and welfare of animals.¹¹²

The European Union's Five Freedoms framework establishes a uniform guiding principle for its member states to model their legislation.¹¹³ If a large governing body, such as the European Union, can enforce this framework with its member states, it can be paralleled with the United States on a federal level. This guiding principle would extend animal welfare protection not just to certain animals, but to all animals—including chickens.

V. AUSTRIA

A. *Applicable Law*

1. *Animal Welfare Act*

Austria has adopted similar standards to those under the European Union alongside its own rules and regulations, which created animal protection laws known to be some of the strongest in the world.¹¹⁴ Article 1 of the Animal Welfare Act of 2004 provides that its purpose is to protect animals in light of the responsibility that mankind bears to fellow creatures, and suggests a moral equality between humans and animals.¹¹⁵ Additionally, Article 13 of the Act is applicable to animals of demonstrable sentience and requires that animals be accommodated for based on their genotype or phenotype.¹¹⁶ Along with vertebrates, the Act extends to cephalopods, such as octopus and squid, and decapods, such as shrimp, crab, or lobster.¹¹⁷

B. *Legal Analysis*

In recent years, Austria is known for taking the greatest strides toward an animal-friendly legal regime, which can be attributed in large part to a group of activists acting under the leadership of Martin Balluch.¹¹⁸ Balluch is an Austrian physicist, philosopher, and prominent animal rights activist who led a group of activists in a campaign against factory farms and the

112. Although Switzerland is not a member of the European Union, like Norway, it remains legally separate but is well-integrated with the E.U. member states. *See infra* Sections V, VI.

113. *See Five Freedoms, supra* note 102.

114. *See Tough Animal Rights Laws Enacted in Austria*, NBC NEWS (May 27, 2004, 12:33 PM), <https://www.nbcnews.com/health/health-news/tough-animal-rights-laws-enacted-austria-flna1C9447499> [<https://perma.cc/PRJ6-3DZA>].

115. *Animal Protection Index: Austria, supra* note 96.

116. *Id.*

117. *Id.*

118. Martin Balluch, *How Austria Achieved a Historic Breakthrough for Animals*, in IN DEFENSE OF ANIMALS: THE SECOND WAVE 157–66 (Peter Singer ed., 2006).

conservative parties protecting factory farms.¹¹⁹ He did so by rescuing birds from battery cages, shooting extensive footage inside farms, holding sit-ins at party headquarters, conducting letter campaigns, and even disrupting party debates.¹²⁰ These tactics ultimately led to violent retaliation, which gained them sympathetic press coverage.¹²¹ This dramatic change was the result of intense activism, which Balluch would likely say was a necessary means.

Accommodations for animals can be far more effective by taking the broad concept of animal sentience and specifying the relative and scientific range of animal sentience that an animal possesses. For chickens, there are studies to indicate that chickens possess the mental aptitude to have distinct personalities, the capacity to reason, the ability to demonstrate self-control, and enough behavioral sophistication to work through complex negative and positive emotions.¹²²

The best assessment for animal welfare takes into account aspects of how the animal perceives its living environment (the physical and social aspects, mortality, and mobility), level of injuries, physiological responses to stress, and meat quality. Austria's political infrastructure and governance ensures proper enforcement of these considerations.

1. Political Infrastructure

On a societal level, Austria boasts an Animal Protection Council that monitors, evaluates, and develops legal animal protection in the nation.¹²³ Tasks of the Animal Protection Council include providing advisory services for the Federal Minister of Health; creating a basis for the uniform enforcement of animal welfare law; evaluating and implementing animal welfare law; contributing to animal welfare education; elaborating bases for decisions

119. *Law Without Order: Catching Up with Martin Balluch*, ANIMAL VOICES (Feb. 8, 2011), <https://animalvoices.ca/2011/02/08/law-without-order-catching-up-with-martin-balluch/> [<https://perma.cc/Z7NT-GQXD>]; Balluch, *supra* note 118, at 157, 163.

120. Balluch, *supra* note 118, at 157, 163.

121. *Id.*

122. Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 ANIMAL COGNITION 127, 141 (Jan. 2, 2017).

123. See TIERSCHUTZGESETZ [TSCHG] [FEDERAL ACT ON THE PROTECTION OF ANIMALS] § 2, BUNDESGESETZBLATT I [BGBl I] No. 86/2018, as amended, § 42, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2004_1_118/ERV_2004_1_118.pdf (Austria).

based on practical and scientific knowledge; and providing scientific evaluations and observations.¹²⁴

The government promotes and protects animal welfare by requiring an animal welfare advisory committee.¹²⁵ These welfare spokespeople are appointed by the state and report to the federal minister.¹²⁶ In 2005, the Federal Act on the Protection of Animals required that these ombudsmen have a prerequisite background in veterinary medicine, zoology, agricultural sciences, or any comparable education, and have additional training in the field of animal welfare.¹²⁷ These officers serve a term of five years with the opportunity for reelection.¹²⁸

By taking into account all European legal requirements, economic conditions, and practicalities enforceable by the Federal Ministry of Health, officers in the special unit for animal husbandry and welfare hold extensive power to run administrative proceedings and investigations into different fields of animal welfare law.¹²⁹ This calls for numerous licensing requirements for all events involving animals, animal shelters, zoos, and circuses.¹³⁰ Each province is required to have an ombudsperson, in accordance with section 41 of the Federal Act on the Protection of Animals.¹³¹

VI. SWITZERLAND

A. Applicable Law

Switzerland formally withdrew from the European Union's animal welfare standards in 2016, but the nation adopted its own regulation in the Animal Welfare Act of 2005 (revised in 2008), which protects the dignity and welfare of animals.¹³² Activities involving animals are forbidden if there is disregard for their dignity, if there is any strain imposed on an animal that is not justified by overriding interests (particularly if there is pain, suffering, humiliation, anxiety or harm inflicted), or if there is major

124. *Id.*

125. *Id.* art. 41.

126. *Id.*

127. *Id.* An ombudsman is an official appointed to investigate individuals' complaints against maladministration, especially that of public authorities. Ombudsman, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ombudsman> [<https://perma.cc/9BDY-SH95>].

128. *Id.* art. 1.

129. See TIERSCHUTZGESETZ [TSCHG] [FEDERAL ACT ON THE PROTECTION OF ANIMALS] § 2, BUNDESGESETZBLATT I [BGBl I] No. 86/2018, as amended, § 18, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2004_1_118/ERV_2004_1_118.pdf (Austria).

130. *Id.* arts. 23, 26, 27, 29.

131. *Id.* art. 41.

132. TIERSCHUTZGESETZ [TSCHG], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 16, 2005, SR 455, art. 1 (Switz.).

or excessive interference with the animals' appearance or abilities.¹³³ The Federal Council ensures that the Act applies to both vertebrates and invertebrates as guided by science and discretionarily designated by the council.¹³⁴

1. Swiss Federal Constitution

In 1992, Switzerland became the first nation to incorporate the concept of protecting the dignity of animals into its Constitution, which stemmed from a movement and demand for protection against genetic technology abuse.¹³⁵ Article 120 of the Swiss Constitution roughly translates to: (1) Human beings and their environment shall be protected against the misuse of gene technology and (2) The Confederation shall legislate the use of reproductive and genetic material from animals, plants, and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals, and the environment, and shall protect the genetic diversity of animal and plant species.¹³⁶

Protection of the dignity of the creature is recognized as a constitutional principle in Switzerland and is a fundamental guideline for state action.¹³⁷ Although there is no uniform understanding or definition of the concept of dignity, the prevailing legal opinion is that protection of the dignity of a creature, which in certain cases even extends to plants, is based upon the animal's inherent value.¹³⁸ The inherent value of an animal essentially respects their "otherness," and recognizes that it cannot be based upon the human use of animals.¹³⁹ By recognizing the dignity of animals, one can at least concede that the fundamental protection of life applies to all living beings.¹⁴⁰

133. *Id.* art. 3.

134. *Id.* art. 2.

135. Michel & Kayasseh, *supra* note 91, at 3.

136. *Id.*

137. *Id.*

138. *The Dignity of Living Beings with Regard to Plants: Moral Considerations of Plants for Their Own Sake*, FED. ETHICS COMM. ON NON-HUMAN BIOTECH., https://www.ekah.admin.ch/inhalte/_migrated/content_uploads/e-Broschure-Wurde-Pflanze-2008.pdf [<https://perma.cc/J9AS-E8BB>]; Michel & Kayasseh, *supra* note 91, at 9.

139. Michel & Kayasseh, *supra* note 91, at 9.

140. *Id.* at 10.

2. *Swiss Animal Welfare Act*

Article 80 of the revised Swiss Constitution provides the federal government with the extensive power to enact provisions for animal protection.¹⁴¹ The Swiss Animal Welfare Act of 2005 (Swiss Animal Welfare Act), which was revised and updated in 2008, gives the federal government the power to enact laws concerning the care of animals, experiments, procedures, use of animals, import on animal products, trade in animals, transport of animals, and the slaughter of animals.¹⁴² Enforcement of these regulations is largely up to each “canton,” which is a subdivision of the nation.¹⁴³ Twenty-seven years after the Act’s enactment in 1981, an updated version came into force with provisions that protect the welfare of animals and denote explicit protection of animal dignity.¹⁴⁴ This recognition of dignity protects only vertebrates, cephalopods, and crustaceans, excluding arthropods, Mollusca, and many other classes of animals.¹⁴⁵ The Act acknowledges the distinct degrees of sentience in animals, and modifies the fundamental provisions depending on the degree of sentience.¹⁴⁶

B. Legal Analysis

Since 1981, Switzerland has maintained its federal animal protection law known as the Swiss Animal Welfare Act.¹⁴⁷ The Act is based on a constitutional amendment that granted the federal government extensive powers to provide for animal protection.¹⁴⁸ Since then, a variety of Swiss law reforms have worked toward improving the status and welfare of animals. Switzerland was the first nation in the world to acknowledge the protection of the dignity of a nonhuman creature in a federal Constitution.¹⁴⁹ In 1992, the “dignity of the creature” was added to the Swiss Constitution and then further recognized in the 2008 revision of the Act.¹⁵⁰

Swiss authors attempted to analyze the concept of the dignity of a creature by comparing and contrasting it with human dignity.¹⁵¹ This demarcates two schools of thought where some authors analogize the dignity of a creature to the dignity of a human while other authors distinguish

141. *Id.* at 11.

142. *Id.*

143. *Id.*

144. *Id.* at 11–12.

145. *Id.* at 12.

146. *Id.* at 11.

147. *Id.*

148. *Id.*

149. *Id.* at 3.

150. *Id.* at 1.

151. *Id.* at 5.

between the two.¹⁵² In 2003, an article in Switzerland's Civil Code stated that animals are not objects, which effectively changed the substantive laws in tort, inheritance, and title law.¹⁵³ This established Switzerland as a leader in animal welfare law reform.¹⁵⁴

The Swiss Animal Welfare Act protects the dignity and welfare of animals and recognizes that such dignity is the inherent worth of an animal.¹⁵⁵ This standard is applicable only to certain animals, which is also an issue in U.S. federal regulations that impose a hierarchical system among the protection of animals, with chickens and other poultry being fairly low on the list.¹⁵⁶

1. System of Penalties for Violations of Animal Protection

Switzerland incorporates a two-track system of penalties for violations of the Swiss Animal Welfare Act: (1) administrative protection of animals, and (2) animal protection through enforcement personnel and authorities.¹⁵⁷ In Switzerland, the Federal Veterinary Office is in charge of managing and delegating all administrative functions and protections, with offices based in cantons throughout the nation.¹⁵⁸ The Federal Veterinary Office is also in charge of keeping the population educated and informed about the proper handling of animals.¹⁵⁹ The cantonal authorities also enforce the Swiss Animal Welfare Act, particularly when it comes to cruelty toward animals, which is a criminal offense liable to public prosecution and is punishable by fine or imprisonment for up to three years.¹⁶⁰

2. Political Infrastructure

In conjunction with the Federal Department of Home Affairs and the Federal Food Safety and Veterinary Office, Switzerland maintains animal

152. *Id.*

153. *Id.* at 1.

154. *Id.*

155. TIERSCHUTZGESETZ [TSCHG], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 16, 2005, SR 455, arts. 1, 3 (Switz.).

156. *See* 7 U.S.C. § 2132(g).

157. Michel & Kayasseh, *supra* note 91, at 16.

158. *The Swiss Veterinary Service*, FED. FOOD SAFETY & VET. OFF., <https://www.blv.admin.ch/blv/en/home/das-blv/organisation/veterinaerdienst-schweiz.html> [<https://perma.cc/NJZ8-HA5Z>].

159. Michel & Kayasseh, *supra* note 91, at 17.

160. Michel & Kayasseh, *supra* note 91, at 16; *Switzerland*, WORLD ANIMAL PROT., <https://api.worldanimalprotection.org/country/Switzerland> [<https://perma.cc/9KW6-ZPD9>].

welfare as a mainstream concern throughout the nation.¹⁶¹ This is largely enforced through Switzerland's education programs and training for people who handle animals.¹⁶² Like Ombudsman offices in Austria, the Cantons in Switzerland have the relevant authority to implement licenses for breeding, scientific research, and any other animal welfare-related matters in order to ensure that such matters comply with the Act's regulations.¹⁶³

According to Switzerland's Animal Welfare Report in 2018, the regulations are so thorough that they even consider the welfare of poultry when the animals are kept as a hobby.¹⁶⁴ These regulations include requirements as to the size of the coops that hold the animals, the social conditions that are conducive to a chicken's welfare, the proper maintenance of its environment, and the additional factors that are important when considering the chicken's psychological wellbeing.¹⁶⁵

The Federal Food Safety and Veterinary Office provides educational information on how to implement "animal-friendly" poultry farms that operate in accordance with the Swiss Animal Welfare Act.¹⁶⁶ Since January 2010, all poultry farms are required to register with the canton in order to monitor the health of these chickens, prevent diseases, and make it easier to trace the origin of the food.¹⁶⁷ Switzerland also has a specialized department known as the Center for Animal Welfare: Poultry and Rabbits (ZTHZ) in Zollikofen, which assists the canton offices in furthering animal welfare legislation by conducting and compiling on-site research to improve conditions for chickens.¹⁶⁸

3. Dignity Requirement

The Swiss Federal Supreme Court expressed in its first two verdicts on animal testing in 2009 through the recognition of the dignity of an animal, one can derive the fundamentals necessary to provide protection of life and inherent value.¹⁶⁹ In one of the cases, they stated that although animal dignity may differ from human dignity, at least to a certain degree it should be regarded and valued as being of equal stature to humans.¹⁷⁰ Although

161. *Switzerland, supra* note 160.

162. *Id.*

163. *Id.*

164. *Animal Protection Report 2018, Poultry Farming*, PLEASANT HOBBY, <http://www.blv-tierschutzbericht.ch/huehner-hobbyhaltung/> [<https://perma.cc/6JH5-83EF>].

165. *Id.*

166. *Keep Poultry*, FED. FOOD SAFETY & VET. OFF., <https://www.blv.admin.ch/blv/de/home/tiere/tierschutz/nutztierhaltung/huehner.html> [<https://perma.cc/TK4E-UZBT>].

167. *Id.*

168. *Id.*

169. Michel & Kayasseh, *supra* note 91, at 10.

170. *Id.*

the Swiss Federal Supreme Court regarded the dignity of animals as not necessarily equal to the dignity of human beings, the Court did not explicitly draw any categorical distinctions between them.¹⁷¹

Given that these two cases pertained to nonhuman primates, they did not resolve whether the dignity of animals is a hierarchical system, where there are stronger protections for animals whose cognitive abilities are similar to humans, or whether dignity should be determined by reference to the degree of suffering they would experience or some other measure of concern.¹⁷²

VII. PROPOSED LEGISLATION FOR THE UNITED STATES

The United States should enact new legislation that replicates the governance infrastructure of Austria and Switzerland to ensure proper regulation and supervision of animal welfare laws. Additionally, the United States should implement animal welfare and protection curriculum into school education and establish a recognition of animal sentience that will enable lasting change for the protection of animals.

A. The Animal Sentience Act

A new law should be enacted and titled as the Animal Sentience Act. Implementing this Act would effectively amend the Animal Welfare Act, the Humane Slaughter Act, and the Twenty-Eight Hour Law, and reinvent domestic standards for animal welfare in the United States. The new law should be as follows:

ANIMAL SENTIENCE ACT

This Act shall protect the welfare of all animals and provide for an animal's social, mental, physical, or scientific needs, and any other provision as deemed necessary for its health depending on the animal's sentience.

- (a) **Definitions** – For purposes of this Act, the following terms shall have the following meaning:
- i. Animal – any nonhuman creature.
 - ii. Caregiver – any individual(s) who is tasked with providing care

171. *Id.*

172. *Id.*

for an animal for a temporary or permanent duration of the animal's life.

- iii. Cruelty – any activity that significantly deprives an animal of its rights to health in a manner that causes physical, mental, emotional, or any other type of harm in an inhumane manner for any period of time.
 - iv. Cage – any enclosure that restricts the movement of an animal and deprives an animal of any of its health needs.
 - v. Enclosure – a space that confines an animal to a designated area that is reasonably defined to still provide all fundamental needs for the animal's health.
 - vi. Farm animals – animals that are kept for the production of animal products (food, wool, fur, leather) or other agricultural or forestry purposes.
 - vii. Genotype – the genetic makeup of an animal.
 - viii. Humane – a manner that prevents physical, mental, emotional, or any other form of suffering.
 - ix. Pet – any animal that is purchased or received for the purpose of companionship.
 - x. Phenotype – physical characteristics of an animal based on the animal's interaction to the environment based on its genotype.
 - xi. Sentience – the ability to feel and perceive emotions based on stimuli or lack of stimuli.
 - xii. Slaughter/ed/ing – the killing of an animal with the intent to sell, distribute, and produce the products of the animal for the purpose of consumption.
 - xiii. Suffering – any activity that causes an animal to experience unjustified physical or emotional pain, anxiety, frustration, or any other negative emotion that an animal is determined to have the ability to feel through its level of sentience.
- (b) **Determination of Sentience** - The animal's genotype and phenotype will determine the level of sentience that an animal possesses based on the most current scientific research.
- (c) **Prohibited Activity** – All forms of cruelty are prohibited and are punishable by law and the level of punishment will depend on the jurisdiction.
- i. The level of punishment shall not be below a \$15,000 fine or 1 year in prison.
 - ii. The degree of punishment is to be determined based on state jurisdiction.
- (d) **Education** – All public school districts shall incorporate into K-12th grade curriculum the notion of animal sentience, and provide education on:

- i. the legal ramifications of animal cruelty;
 - ii. methods to care for common pets;
 - iii. animal protection techniques;
 - iv. how to report activities of animal cruelty;
 - v. the animal cruelty hotline; and
 - vi. any other aspect of animal welfare and protection that a jurisdiction may find appropriate.
- (e) **Slaughter** – Animals that are to be utilized for the purpose of consumption shall be humanely slaughtered in a manner that is deemed appropriate based on the animal’s genotype and phenotype and in a way that would not cause the animal any suffering.
- (f) **Transportation** – Animals that are transported for any purpose on any sort of transportation device shall be properly held in an enclosure that does not significantly restrict the health of the animal. Individuals in charge of handling and transporting animals must be certified and trained based on the regulations of the state’s enforcement agency as described in (i) in a manner that complies with this Act.
- i. No animal shall be confined in an enclosure without food or water for longer than eight hours or any lower number that a state enforcement agency described in (i) shall deem appropriate.
- (g) **Housing/Enclosures** – Housing and enclosures for animals shall be regulated and enforced by every state’s committee to comply with the protection of an animal’s health and welfare as defined in this Act.
- i. All facilities that house animals for the purposes of consumption shall be registered with the enforcement agency in (i).
 - ii. All enclosures used for the purpose of housing in permanent or temporary circumstances (such as through transportation) shall have proper ventilation, food and water, ability for the animal to move around, and any other necessary provision that the animal requires for its health and safety as defined in this Act.
- (h) **Laboratory Testing** – Animals utilized for laboratory testing shall be registered with and regulated by the state enforcement agency described in (i) to prevent any form of animal cruelty.
- (i) **Enforcement** – Every state shall develop a statewide agency that enforces, regulates, and supervises compliance with this Act. The committee shall consist of the following roles:
- i. Chief Officer of Animal Welfare – This individual shall have formal training and education in veterinary sciences

and shall oversee all administrative aspects of the enforcement committee and shall be in charge of:

- (1) providing new curriculum updates to the school system based on updated scientific research;
 - (2) delegating the enforcement of this Act to its various subcommittee members;
 - (3) ensuring updated information about animal care, confinement, welfare, and any other reasonable animal welfare information is provided through a bulletin;
 - (4) attending meetings with every state's Chief Officer of Animal Welfare at least twice a year to ensure uniform compliance and to negotiate terms for interstate activity involving animals.
- ii. **Compliance Officer of Enforcement Agencies** – This individual shall work closely with all state and local police forces to regulate the rules under this Act.
 - iii. **Scientific Advancement Officer** – This individual shall have formal training and education in veterinary sciences and will work with all state universities, veterinarian programs, and all other animal-related organizations that research how to provide properly for the welfare and protection of animals.
 - (1) This officer shall appoint a subcommittee of veterinary experts and scientists for the purpose of creating and implementing standards for all animals to prevent suffering.
 - iv. **Hearing Committee** – The Hearing Committee serves as a subcommittee within the agency that will oversee and hear all grievances brought by private or state entities for purposes involving this Act or any other animal welfare-related reason.
 - v. **Other Necessary Personnel** – Depending on the animal demographics of the state, other necessary personnel may include:
 - (1) **Farming Regulation Officer** – work directly with the Department of Agriculture to create and enforce the protection of farm animals.
 - (2) **Laboratory Regulation Officer** – supervise all animal testing facilities and ensure they comply with compliance standards provided by this Act and in accordance with state regulation that follows this Act.
 - (j) **Applicability** – This Act shall amend or eradicate all or some parts of any current federal regulation regarding animal welfare, including (but not limited to) the Animal Welfare Act, the Twenty-Eight Hour Law, and the Humane Slaughter Act.

VIII. CONCLUSION

Animal rights and animal welfare laws have biological, cultural, economic, social, philosophical, and political dimensions. By formally recognizing animal sentience, animal welfare laws in the United States would be far more inclusive, expanding protection to all poultry—including chickens, geese, ducks, and turkeys.¹⁷³

To this day, the United States has no federal law or regulation for the humane slaughter of poultry.¹⁷⁴ In 2018 alone, the United States slaughtered over 236 million turkeys, 27 million ducks, and 9 billion chickens.¹⁷⁵ Chickens make up over 90% of the 10 billion animals slaughtered each year in the agricultural industry.¹⁷⁶ Slaughter is distinguishable from other manufacturing because the raw material is alive, can express emotion, and has many biological components similar to humans.¹⁷⁷

In contrast, 67% of households in the United States own a pet, which roughly equates to 84.9 million homes; \$95.7 billion was spent in 2019 alone on pets.¹⁷⁸ A majority of the United States population adheres to treating pets to a quality of life because their companionship creates strong emotional and relational ties to most, if not all members of a household.¹⁷⁹ There is an apparent disconnect between the acceptable standards for pets and for poultry. Understandably, this disconnect lies in the perception that chickens, as opposed to other animals classified as pets or livestock, are more of a commodity, “devoid of authenticity as a real animal with an

173. *Poultry*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/poultry> [<https://perma.cc/T8YL-CRU3>].

174. The Humane Slaughter Act (HSA) only requires humane standards for “cattle, calves, horses, mules, sheep, swine, and other livestock.” *See* 7 U.S.C. § 1902(a).

175. USDA, POULTRY SLAUGHTER 2018 SUMMARY (2019), <https://downloads.usda.library.cornell.edu/usda-esmis/files/pg15bd88s/p8418w155/7p88cq28g/pslaan19.pdf> [<https://perma.cc/9927-78HJ>].

176. *See id.*; USDA, LIVESTOCK SLAUGHTER 2018 SUMMARY (2019), <https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/8336h934w/hq37vx004/lsslan19.pdf> [<https://perma.cc/9RH9-EEZ9>].

177. Janice Swanson, *Why You Should Care About Animal Welfare*, Address at American Meat Institute Foundation, Annual Animal Handling and Stunning Conference (Feb. 21, 2002).

178. AM. PET PRODUCTS ASS'N, PET INDUSTRY MARKET SIZE & OWNERSHIP STATISTICS, https://www.americanpetproducts.org/press_industrytrends.asp [<https://perma.cc/T3N6-FCZW>].

179. Luis E. Chiesa, *Animal Rights Unraveled: Why Abolitionism Collapses into Welfareism and What It Means for Animal Ethics*, 28 GEO. ENV'T L. REV. 557, 577 (2016).

evolutionary history and phylogenetic context.”¹⁸⁰ The continuity of this erroneous perception leaves the United States far behind the nations with the best-developed animal welfare laws.

While many factors determine social attitudes toward animals, one of the most notable standards is the human perception of an animal’s sentience or intelligence. In the United States, chickens are misperceived as lacking intelligence or psychological characteristics.¹⁸¹ If the United States formally recognizes animal sentience and changes animal welfare laws accordingly, the chickens will be better off, and so will we.

180. Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 *ANIMAL COGNITION* 127, 127 (2017).

181. *Id.*